



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 47 of 1982

An Act to amend the Workers Compensation Act, 1971-1979; and to repeal the Workers Compensation (Insurance) Act, 1980-1981 and the Workers Compensation (Special Provisions) Act, 1977-1980.

[Assented to 29 April 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Workers Compensation Act Amendment Act, 1982".

(2) The Workers Compensation Act, 1971-1979, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Workers Compensation Act, 1971-1982".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Arrangement of Act.

3. Section 3 of the principal Act is amended—

(a) by inserting after the item:

PART VI—ALTERNATIVE REMEDIES

the item:

PART VIA—REHABILITATION OF INJURED WORKERS

DIVISION I—THE WORKERS REHABILITATION ADVISORY UNIT

DIVISION II—THE WORKERS REHABILITATION ADVISORY BOARD

DIVISION III—REFERENCE OF CASES TO THE WORKERS REHABILITATION ADVISORY UNIT

DIVISION IV—CERTIFICATES IN CERTAIN CASES

DIVISION V—COSTS OF ADMINISTERING THIS PART;

(b) by striking out the item:

PART VIII—INDUSTRIAL DISEASES

and substituting the item:

PART VIII—CONTRIBUTION AND INDUSTRIAL DISEASES;

and

(c) by inserting after the item:

PART X—INDUSTRIAL DISEASES CONTRACTED AT PORT PIRIE

the item:

PART XA—INSURANCE

DIVISION I—PRELIMINARY

DIVISION II—OBLIGATION TO BE INSURED

DIVISION III—THE STATUTORY RESERVE FUND

DIVISION IV—CLAIMS AGAINST THE FUND

DIVISION V—ASSISTANCE WITH OBTAINING INSURANCE

4. Section 8 of the principal Act is amended—

Amendment of
s. 8—
Interpretation.

(a) by inserting after the definition of “employer” in subsection (1) the following definition:

“exempt employer” means an employer in respect of whom a certificate of exemption is in force under Division II of Part XA.;

(b) by inserting after the definition of “outworker” in subsection (1) the following definition:

“place of abode” in relation to a worker means the worker’s principal place of abode and, where the worker is required by reason of the place or nature of his employment to reside away from his principal place of abode, includes the place at which he so resides.;

and

(c) by inserting after the definition of “the repealed Act” in subsection (1) the following definitions:

“spouse” means a husband or wife:

“the Statutory Reserve Fund” means the Fund maintained under Division III of Part XA of this Act.;

5. Section 9 of the principal Act is amended by inserting after subsection (5) the following subsections:

Amendment of
s. 9—
Liability of
employers to
compensate
workers for
injuries.

(5a) For the purposes of this section, a journey that commences at a worker’s place of abode shall not be regarded as having commenced until the worker has progressed beyond the land appurtenant to the house or other structure that constitutes his place of abode.

(5b) For the purposes of this section, a journey that terminates at a worker's place of abode shall be regarded as having terminated when the worker reaches land appurtenant to the house or other structure that constitutes his place of abode.

(5c) Where an injury occurs in the course of a journey of a kind mentioned in subsection (2) (a), (b) or (e), and the worker is convicted, in relation to that journey, of an offence against section 47, 47b, 47e or 47i of the Road Traffic Act, 1961-1981, no compensation shall be payable under this Act in respect of that injury.

Amendment of
s. 27—
Time within
which notice
and claim
must be given
or made.

6. Section 27 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) Where a worker retires or is retired from employment on account of age or ill health, then notwithstanding the foregoing provisions of this section, a claim in respect of hearing loss arising out of or in the course of that employment shall, unless made within two years of the date of retirement, be barred.

Amendment of
s. 32—
Medical
reports.

7. Section 32 of the principal Act is amended—

(a) by striking out paragraph (a) and substituting the following paragraph:

(a) a copy of every report of the examination furnished to the employer or his representative by the medical practitioner who conducted the examination;;

and

(b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) Evidence of the condition of a worker shall not be adduced from a medical practitioner in proceedings under this Act unless at least twenty-eight days before the day on which it is to be adduced (or such lesser period as the Court may fix) the party proposing to adduce the evidence furnishes to each other party to the proceedings a copy of every report furnished by the medical practitioner to the party proposing to adduce the evidence;

Repeal of
s. 32a.

8. Section 32a of the principal Act is repealed.

Amendment of
s. 49—
Amount of
compensation
where worker
dies leaving
dependants.

9. Section 49 of the principal Act is amended—

(a) by striking out from subsection (1) the passage "five hundred dollars" where it occurs for the first time in that subsection and substituting the passage "one thousand dollars";

(b) by striking out from paragraph (a) of subsection (1) the passage "eight thousand dollars, plus five hundred dollars" and substituting the passage "sixteen thousand dollars, plus one thousand dollars";

(c) by striking out from paragraph (b) of subsection (1) the passage "twenty-five thousand dollars plus five hundred dollars" and substituting the passage "fifty thousand dollars plus one thousand dollars";

- (d) by striking out from subsection (5) the passage “five hundred dollars” and substituting the passage “one thousand dollars”;
- (e) by striking out subsection (6) and substituting the following subsection:

(6) In this section—

“dependant” in relation to a deceased worker means a member of the family of the worker who, at the time of the worker’s death—

(a) was wholly or partially dependent on the earnings of the worker;

or

(b) would, but for incapacity arising from the worker’s injury, have been so dependent,

and includes a posthumous child of the worker:

“dependent child” means a child who was, at the time of the worker’s death, wholly or partially dependent on the earnings of the worker.

and

- (f) by striking out subsection (8) and substituting the following subsections:

(8) Where a worker to whom subsection (1) applies died before the commencement of the Workers Compensation Act Amendment Act, 1982, this section has effect in relation to the death of that worker as if that amending Act had not been enacted.

(9) Where a worker to whom subsection (1) applies dies on or after the commencement of the Workers Compensation Act Amendment Act, 1982, this section, as amended by that amending Act, has effect in relation to the death of that worker whether the injury resulting in the death occurred before, on or after the commencement of that amending Act.

10. Section 50 of the principal Act is amended—

- (a) by striking out from paragraph (b) the passage “five hundred dollars” and substituting the passage “one thousand dollars”;
- and

- (b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) Where a worker to whom subsection (1) applies died before the commencement of the Workers Compensation Act Amendment Act, 1982, this section has effect in relation to the death of the worker as if that amending Act had not been enacted.

(3) Where a worker to whom subsection (1) applies dies on or after the commencement of the Workers Compensation Act Amendment Act, 1982, this section, as amended by that amending Act, has effect in relation to the death of the worker whether the injury resulting in the death occurred before, on or after the commencement of that amending Act.

Amendment of
s. 50—
Amount of
compensation
where worker
dies leaving
no dependants.

Amendment of
s. 51—
Compensation
for incapacity.

11. Section 51 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “subsection (5) of”;
- (b) by striking out from paragraph (a) of subsection (4) the passage “eighteen thousand dollars” and substituting the passage “thirty-six thousand dollars”;
- (c) by striking out from paragraph (b) of subsection (4) the passage “twenty-five thousand dollars or such greater amount as is fixed by the Court having regard to the circumstances of the case” and substituting the passage “fifty thousand dollars”;
- (d) by striking out from subsection (5) the passage “No worker” and substituting the passage “Subject to subsection (7), no worker”;

and

- (e) by striking out subsection (7) and substituting the following subsections:

(7) Where weekly payments are made to a worker over a continuous period exceeding twenty-six weeks, each weekly payment made after the expiration of the first twenty-six weeks shall be reduced to 95% of the amount otherwise payable and the balance of 5% shall be paid to the Minister for the credit of a fund to be established and maintained by him entitled the “Workers Rehabilitation Assistance Fund”.

(8) No weekly payment shall be payable in respect of a period of incapacity for work—

- (a) commencing after the worker had retired from employment;

or

- (b) falling after the date on which the worker reached the age of sixty-five years,

unless the incapacity commenced after the worker (not having retired from employment) reached the age of sixty-four years in which case no weekly payment shall be payable in respect of a period of incapacity falling after the first anniversary of the commencement of the incapacity.

(9) Where incapacity to which this section applies commenced before the commencement of the Workers Compensation Act Amendment Act, 1982, this section, as in force before the commencement of that amending Act applies to the incapacity and weekly payments payable in respect of the incapacity shall be computed as if that amending Act had not been enacted.

(10) This section, as amended by the Workers Compensation Act Amendment Act, 1982, applies to incapacity that commences after the commencement of that amending Act (whether the injury resulting in the incapacity occurred before or after the commencement of that amending Act) and weekly payments payable in respect of the incapacity shall be computed in accordance with the relevant provisions of this Act as amended by that amending Act.

12. Section 53 of the principal Act is amended by inserting after subsection (7) the following subsection:

Amendment of
s. 53—
Weekly
payments.

(8) Where, in pursuance of subsection (3), the Court dismisses an application and the Court is of the opinion that the applicant made the application without reasonable grounds for doing so, and knowing that he had no reasonable grounds for doing so, the Court may impose a penalty of an amount not exceeding five hundred dollars on the applicant.

(9) The amount of a penalty imposed under subsection (8) shall be payable to, and recoverable summarily by, the Crown.

13. Section 54 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

Amendment of
s. 54—
Annual and
long service
leave.

(2) Where a worker has received weekly payments of compensation over a continuous period of fifty-two weeks or more, the liability of the employer under any Act, award or industrial agreement to grant annual leave to the worker in respect of a year of employment that coincides with, or ends during the course of, that period, shall be deemed to have been satisfied.

(3) Subsection (2) does not affect the obligation of an employer to make a payment in the nature of an annual leave loading.

14. Section 56 of the principal Act is amended by inserting after subsection (1) the following subsections:

Amendment of
s. 56—
Place at which
worker is to
reside.

(1a) A worker shall not, while receiving weekly payments, be absent from the Commonwealth for a continuous period in excess of seven days unless at least three days before leaving the Commonwealth he informs the employer and the executive officer of the Workers Rehabilitation Advisory Unit in writing of his intention to be absent from the Commonwealth and of the duration of his proposed absence.

(1b) If a worker is absent from the Commonwealth in contravention of subsection (1a), his entitlement to receive weekly payments shall be suspended as from the expiration of seven days from the time when he left the Commonwealth.

15. Section 59 of the principal Act is amended—

Amendment of
s. 59—
Additional
compensation.

(a) by striking out from subsection (1) the passage “a worker is entitled to compensation under the provisions of this Act or by reason of subsection (6) of this section” and substituting the passage “a worker suffers injury arising out of or in the course of his employment,”;

(b) by striking out the passage “by a registered optician or on the prescription of a legally qualified medical practitioner” in paragraph (a) of the definition of “medical services” in subsection (2) and substituting the passage “by a registered optician, by a registered chiropractor,”;

(c) by inserting after the passage “registered optician” in paragraph (f) of the definition of “medical services” in subsection (2) the passage “, registered chiropractor,”;

and

(d) by striking out subsection (6).

Amendment of
s. 63—
Certain
amounts not
to be included
in earnings.

16. Section 63 of the principal Act is amended by striking out paragraph (c) and the word “or” immediately preceding that paragraph and substituting the following paragraphs:

(c) by way of a site allowance;

(d) by way of overtime;

or

(e) by way of any other prescribed payment, allowance or benefit.

Amendment
s. 69—
Fixed rates of
compensation
for certain
injuries.

17. Section 69 of the principal Act is amended—

(a) by striking out from subsection (5) the passage “the worker shall be entitled” and substituting the passage “the worker shall, subject to subsection (5a), be entitled”;

(b) by inserting after subsection (5) the following subsection:

(5a) Where a worker suffers noise-induced hearing loss, no compensation shall be payable under this section unless the percentage loss exceeds ten per centum and, where the percentage loss exceeds ten per centum, compensation shall be payable under this section only in respect of the percentage loss in excess of ten per centum.;

(c) by striking out from subsection (7) the passage “twenty thousand dollars” and substituting the passage “the prescribed sum”;

(d) by striking out from subsection (10) the symbol and figures “\$20,000.00” and substituting the passage “the prescribed sum”;

and

(e) by inserting after subsection (10) the following subsection:

(11) In this section—

“the prescribed sum” means—

(a) in relation to an injury occurring before the first day of July, 1982—\$20 000;

(b) in relation to an injury occurring on or after the first day of July, 1982, but before the first day of July, 1983—\$30 000;

and

(c) in relation to an injury occurring on or after the first day of July, 1983—\$40 000.

(12) Where a worker suffers noise-induced hearing loss and a claim for compensation under this section in respect of the injury is made by him after retirement on account of age or ill-health from employment that caused or contributed to the injury, the injury shall, for the purposes of subsection (11), be deemed to have occurred on the date of retirement.

Amendment of
s. 70—
Injuries not
mentioned in
the table.

18. Section 70 of the principal Act is amended by striking out from subsection (3) the passage “fourteen thousand dollars” and substituting the passage “twenty-eight thousand dollars”.

19. Section 72 of the principal Act is amended—

- (a) by inserting in subsection (1) after the passage “by proceedings under this Act, and” the passage “, subject to subsection (2),”;

and

- (b) by striking out subsection (2) and substituting the following subsection:

(2) Where a lump sum has been settled under subsection (1) the employer shall pay five per cent of the lump sum to the Minister for the credit of the Workers Rehabilitation Assistance Fund.

Amendment of s. 72—
Lump sum in redemption of weekly payments.

20. Section 75 of the principal Act is amended by inserting after subsection (3) the following subsections:

(4) Where compensation is paid into the Court in respect of the death of a worker, and the worker is survived by a spouse, the compensation shall, subject to subsection (5), upon application for payment of the compensation under this subsection, be paid out to the spouse.

(5) Any component of the compensation referred to in subsection (4) that is referable to a dependent child of the deceased worker shall not be paid to the spouse unless the Court is satisfied that the spouse is maintaining the dependent child.

Amendment of s. 75—
Payment into Court in case of death of worker.

21. The following new Part is inserted after Part VI of the principal Act:

Insertion of new Part VIA.

PART VIA

REHABILITATION OF INJURED WORKERS

DIVISION I—THE WORKERS REHABILITATION ADVISORY UNIT

86a. (1) There shall be a Workers Rehabilitation Advisory Unit.

The Workers Rehabilitation Advisory Unit.

(2) The Unit shall be a division of a department of the Public Service administered by the Minister.

(3) There shall be an Executive Officer of the Unit and such other staff as the Minister may determine.

(4) The functions of the Unit are as follows:

(a) to inquire into the condition of injured workers and assess the prospects of rehabilitation;

(b) to advise injured workers on the most appropriate means of rehabilitating themselves for employment;

(c) to establish and maintain educational programmes on subjects relating to rehabilitation;

(d) to consult with and advise employers with a view to rehabilitating injured workers and expediting their return to work;

(e) to encourage the establishment of rehabilitation programmes by employers;

and

(f) to maintain and publish statistics relating to its activities.

(5) The Unit is not to carry out medical examinations or provide or prescribe medical treatment but a legally qualified medical practitioner, registered dentist, registered physiotherapist, registered chiropractor, registered optician or registered chiropodist shall, at the request of the Executive Officer of the Unit, furnish the Unit, with copies of reports prepared by him in relation to the condition of the worker.

Penalty: Two hundred dollars.

(6) Evidence of a statement made by or to an officer of the Unit in respect of a worker who is receiving or has received compensation under this Act shall not be admissible as evidence in legal proceedings unless the Executive Officer of the Unit and the persons by whom and to whom the statement was made consent to the admission of the statement in evidence.

DIVISION II—THE WORKERS REHABILITATION ADVISORY BOARD

The Workers
Rehabilitation
Advisory
Board.

86b. (1) There shall be a Board entitled the "Workers Rehabilitation Advisory Board".

(2) The Board shall consist of the following members:

(a) a person experienced in the field of rehabilitation (who shall be chairman of the Board);

(b) a legally qualified medical practitioner experienced in the field of rehabilitation;

(c) a person who is, in the opinion of the Minister, a suitable person to represent the interests of employers (other than exempt employers);

(d) a person who is, in the opinion of the Minister, a suitable person to represent the interests of exempt employers;

(e) two persons who are, in the opinion of the Minister, suitable persons to represent the interests of workers;

and

(f) a person who is, in the opinion of the Minister, a suitable person to represent the interests of insurers.

(3) A member of the Board shall be appointed by the Minister upon such terms and conditions as the Minister thinks fit and shall hold office at the pleasure of the Minister.

(4) The functions of the Board are as follows:

(a) to monitor the activities of the Workers Rehabilitation Unit;

(b) to investigate and report on policies that are being pursued or should, in the opinion of the Board, be pursued in relation to the rehabilitation of injured workers;

(c) to report to the Minister on the activities of the Unit and on the policies that should in the opinion of the Board be pursued by the Unit.

DIVISION III—REFERENCE OF CASES TO THE WORKERS
REHABILITATION ADVISORY UNIT

86c. (1) Where a worker has, by reason of an injury, been incapacitated from work the employer, the worker or a medical practitioner may notify the Executive Officer of the Unit in writing of that fact and furnish him with prescribed particulars of the worker, the injury and the incapacity.

Reference of cases to the Workers Rehabilitation Advisory Unit.

(2) Where an incapacity to which subsection (1) applies has (disregarding any periods for which the worker has temporarily returned to work) continued for twelve weeks, and the worker appears unlikely to return to work in the immediate future, the employer shall, within twenty-one days after the expiration of the period of twelve weeks, furnish the notification and particulars referred to in subsection (1).

Penalty: Two hundred dollars.

(3) Upon receipt of notification under subsection (1) or (2), the Director may make arrangements for the worker to be counselled by appropriate officers of the Unit and shall, when the arrangements have been made, inform the worker in writing of the arrangements.

(4) Where a worker—

(a) fails to submit himself for counselling by appropriate officers of the Workers Rehabilitation Unit in accordance with arrangements made under subsection (2);

or

(b) fails to make, in the opinion of the Executive Officer, satisfactory attempts to rehabilitate himself for employment,

the Executive Officer may certify accordingly.

(5) Where the Executive Officer has issued a certificate in respect of a worker under subsection (4), the employer may apply to the Court for an order under this section.

(6) Upon an application under subsection (4), the Court may, if satisfied that the worker has no reasonable excuse for the default to which the certificate relates, suspend the worker's right to receive weekly payments in respect of a period of default.

DIVISION IV—CERTIFICATES IN CERTAIN CASES

86d. (1) Where, in the opinion of the Executive Officer of the Unit, delays in the settlement or determination of a claim for compensation under this Act are having an adverse effect on the course of rehabilitation of a worker, he may certify accordingly.

Certain cases to have priority.

(2) Where a certificate under subsection (1) has been issued in respect of a party to proceedings under this Act and the certificate is filed in the Court, the Court—

(a) shall, in determining the order in which cases are to be dealt with by the Court, accord the case such priority as is reasonably practicable;

and

(b) may give such directions as may be necessary or expedient for the expeditious hearing and determination of the case.

DIVISION V—COSTS OF ADMINISTERING THIS PART

Administration expenses may be paid from Fund.

86e. The Minister may apply moneys from the Workers Rehabilitation Assistance Fund towards defraying the cost of administering this Part.

Insertion of new s. 98a.

22. The following section is inserted in Part VII of the principal Act after section 89:

Certain sporting injuries not to fall within the purview of this Act.

89a. (1) Notwithstanding any other provision of this Act, but subject to this section, where—

(a) a person is employed by his employer solely—

(i) to participate as a contestant in a sporting or athletic activity;

(ii) to engage in training or preparation with a view to his participation in a sporting or athletic activity;

and

(b) remuneration is not payable under the contract of employment except in respect of such employment,

no compensation is payable under this Act in respect of an injury arising out of, or in the course of, that employment.

(2) This section does not apply to—

(a) a person authorized or permitted by or under the Racing Act, 1976-1981 to ride or drive in any race as defined in that Act;

(b) a boxer, wrestler or referee employed or engaged for a fee to participate in any boxing or wrestling match;

(c) a person who derives his entire livelihood, or an annual income in excess of a prescribed amount, from participation as a contestant in sporting or athletic activities and from activities related to his participation in sporting or athletic activities;.

Repeal of s. 90 and heading and substitution of new section and heading.

23. Section 90 of the principal Act and the heading immediately preceding that section are repealed and the following heading and section are substituted:

PART VIII

CONTRIBUTION AND INDUSTRIAL DISEASES

Injuries attributable to employment by two or more employers.

90. (1) Subject to this Act, where an injury is caused by or arises out of employment by two or more employers, compensation under this Act shall be payable by the employer whose employment last contributed to the injury as if the injury had arisen entirely out of, or in the course of, that employment at the time when that employment last contributed to the injury.

(2) Subject to this Act, an employer who, at any time during the period of ten years immediately preceding the time when employment last contributed to an injury referred to in subsection (1), employed the worker in employment that also contributed to the injury, shall be liable to make to an employer referred to in that subsection such contribution as may be determined by agreement or, in default of agreement, by the Court.

(3) Where—

- (a) an injury arose out of, or in the course of, employment;
 - (b) an aggravation, acceleration, exacerbation, deterioration or recurrence of the injury arose out of or in the course of subsequent employment;
- and
- (c) the worker proceeds against the former employer for compensation under this Act,

subsections (1) and (2) shall apply as if that former employer were the employer whose employment last contributed to the injury, but in determining the extent of that employer's liability any aggravation, acceleration, exacerbation, deterioration or recurrence of the injury attributable to subsequent employment of the worker shall be disregarded.

(4) This section applies to an injury in respect of which a claim for compensation was made on or after the commencement of the Workers Compensation Act Amendment Act, 1982, whether the injury occurred before or after, or partially before and partially after, the commencement of that amending Act.

24. Section 91 of the principal Act is amended by striking out the passage "A worker referred to in subsection (1) of section 90 of this Act" and substituting the passage "A worker who has suffered an injury to which section 90 applies".

Amendment of s. 91—
Information to be supplied.

25. Section 93 of the principal Act is amended by striking out the passage "the employment to the nature of which the disease was due" and substituting the passage "employment that contributed to the injury".

Amendment of s. 93—
Employer to whom notice to be given.

26. Section 95 of the principal Act is amended by striking out from subsection (1) the passage "this Part" and substituting the passage "section 94".

Amendment of s. 95—
Extension of s. 94 to other diseases and processes.

27. Section 103 of the principal Act is repealed and the following section is substituted:

Repeal of s. 103 and substitution of new section.

103. A scheme under this Part may extend, vary or revoke the provisions of any former scheme under this Part.

Variation, etc., of scheme under this Part.

28. The following new Part is inserted after Part X of the principal Act:

Insertion of new Part XA.

PART XA

INSURANCE

DIVISION I—PRELIMINARY

118a.(1) In this Part unless the contrary intention appears—

Interpretation.

"the Commission" means the State Government Insurance Commission:

"the Commissioner" means a person holding, or acting in, the office of Commissioner of Stamps, or Deputy Commissioner of Stamps, under the Stamp Duties Act, 1923-1981:

“common law liability” means a liability arising at common law and includes a liability arising under the Wrongs Act, 1936-1975:

“exempt employer” means an employer in respect of whom a certificate of exemption is in force under Division II of this Part:

“insurance company” or “insurer” means a body (whether corporate or unincorporate) carrying on the business of insurance:

“premium” in relation to a policy of insurance does not include stamp duty:

“workers compensation insurance” means insurance under which an employer is insured against—

(a) liabilities of the employer arising under this Act;

or

(b) common law liabilities of the employer in respect of injury to workers of that employer,

or both:

“workers compensation liability” means—

(a) a liability of an employer arising under this Act;

or

(b) a common law liability of an employer in respect of injury to a worker of that employer.

(2) Where a policy of insurance is in part a policy of workers compensation insurance, and in part relates to other forms of insurance, a reference to “premium” in this Part means, in relation to that policy, the portion of the premium payable under the policy that is referable to workers compensation insurance.

(3) For the purposes of this Part, the Commissioner may determine conclusively what portion of a premium payable under a policy of insurance that relates both to workers compensation insurance and to other forms of insurance is referable to workers compensation insurance.

DIVISION II—OBLIGATION TO BE INSURED

Compulsory
Insurance.

118b. (1) No employer shall employ a worker unless he is fully insured by an insurer against his liability to pay compensation under this Act to, or in respect of, all workers employed by him.

(2) For the purposes of subsection (1), a liability to make a payment by way of a penalty amount under this Act shall be regarded as a liability to pay compensation under this Act.

(3) Notwithstanding any other Act or law, a policy of insurance referred to in subsection (1) shall not be avoided or abrogated on the ground that—

(a) the policy was obtained by a mis-statement or non-disclosure;

- (b) the employer has committed a breach of, or has failed to comply with, a term, condition or warranty of the policy;
or
- (c) the employer has failed to comply with a provision of this Act or any other Act or enactment.

(4) An insurer who is by reason of subsection (3) of this section liable under a policy of insurance may, in addition to any other remedy he may have, recover from the employer liable to pay compensation and if two or more employers were so liable from those employers jointly and severally—

- (a) such sums as the insurer has paid in payment settlement or compromise of a claim or judgment against the employer;
and
- (b) any costs or expenses incurred by the insurer in relation to the payment, settlement or compromise.

(5) An employer who fails to comply with this section shall be guilty of an offence and liable to a penalty not exceeding one hundred dollars in respect of each uninsured worker employed by him.

(6) A policy of insurance indemnifying an employer against liabilities under this Act shall be construed as extending to liabilities arising by virtue of amendments to this Act that had not been enacted, or were not in force, at the time the policy was issued.

(7) This section shall not apply to—

- (a) the Crown;
or
- (b) any employer who, in the opinion of the Minister, has adequate financial resources to meet all probable claims under this Act, and who obtains a certificate of exemption from the provisions of this section from the Minister.

(8) No prosecution for a contravention of this section shall be instituted without the consent of the Minister (which may be proved by the production of a document purporting to be signed by the Minister and to give consent to the prosecution).

(9) No employer or insurer shall directly or indirectly take or receive any money from a worker, whether by way of deduction from wages or otherwise in respect of a liability of an employer to take out insurance, or to pay compensation, under this Act and all moneys taken or received from a worker in contravention of this section may be recovered as a debt due to the worker by the employer or insurer.

DIVISION III—THE STATUTORY RESERVE FUND

118c. (1) The fund at the Treasury entitled the “Statutory Reserve Fund” shall continue in existence. The Statutory Reserve Fund.

(2) The following moneys shall be paid into the fund:

- (a) the moneys received or recovered by the Commissioner by way of additional levy under subsection (3);

- (b) the moneys received or recovered from exempt employers under subsection (6);
 - (c) the moneys that the Treasurer is required to pay into the fund under subsection (9);
 - (d) any advance made to the fund by the Treasurer under subsection (10);
 - (e) any interest or accretions arising from investment under subsection (11);
 - (f) any moneys recovered by the Treasurer in respect of rights to which he is subrogated under section 118d (12);
- and
- (g) any other moneys that are under a provision of this Act to be credited to the fund.

(3) The stamp duty payable under the Stamp Duties Act, 1923-1981, (whether as a licence fee, a component of a licence fee, or upon a return) in relation to policies of workers compensation insurance shall, subject to subsection (5), be increased by an additional levy equal to the prescribed percentage (not exceeding two per centum) of the premiums payable under those policies.

(4) For the purposes of subsection (3), the prescribed percentage is a percentage fixed by the Treasurer on the advice of the Public Actuary and prescribed by regulation.

(5) If, on the thirty-first day of October in any year, the amount standing to the credit of the fund equals or exceeds five million dollars there shall be no additional levy in the year commencing on the first day of January falling fourteen months after that date.

(6) Once in each year (other than a year in which there is to be no additional levy), the Commissioner shall, by instrument in writing, require each exempt employer to pay to him such amount, specified in the instrument, as would, in the opinion of the Commissioner, have been payable by that employer during that year by way of additional levy if that employer were an insurance company by which the employer had been insured under a policy of workers compensation insurance, and any such amount may be recovered by the Commissioner as a debt.

(7) For the purpose of determining the amount payable by an exempt employer under subsection (6) the Commissioner may, by notice in writing, require the employer—

- (a) to furnish the Commissioner with such information;

and

- (b) to produce such documents for inspection by the Commissioner,

as the Commissioner considers necessary.

(8) An employer who fails to comply with a requirement under subsection (7) within the time allowed in the notice shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(9) The Treasurer shall, in each year, pay into the fund an amount that would, in the opinion of the Treasurer, have been payable by the Crown in consequence of the additional levy under subsection (3) if the Crown were a non-exempt employer and were liable to stamp duty.

(10) The Treasurer may advance moneys to the fund on such terms and conditions as he thinks fit (and this subsection is, without further appropriation a sufficient authority for the payment of those moneys from the General Revenue of the State).

(11) The Treasurer may invest any moneys that form part of the fund, and are not immediately required for the purposes of this Act, in such manner as he thinks fit.

(12) The costs of administering this Part shall be paid out of the fund.

DIVISION IV—CLAIMS AGAINST THE FUND

118d. (1) Subject to this section, a person is entitled to make a claim against the fund— Claims against the fund.

(a) in respect of liabilities arising under a policy of workers compensation insurance that are, by reason of the insolvency of the insurance company by which the policy was issued, unsatisfied;

(b) in respect of workers compensation liabilities—

(i) that are not covered by a policy of workers compensation insurance;

and

(ii) that are, by reason of the insolvency of an employer or former employer, unsatisfied;

(c) in respect of costs—

(i) that were reasonably incurred in attempting to recover moneys from an insurance company in respect of liabilities arising under a policy workers compensation insurance, or from an employer in respect of workers compensation liabilities;

and

(ii) that are, by reason of the insolvency of the insurance company or the employer, not recoverable from the insurance company or employer.

(2) Where a liability referred to in subsection (1) is a liability in respect of weekly payments, the liability shall be regarded as being unsatisfied when any one of the weekly payments is not paid in full on the day on which it falls due, and a claim based upon that liability may then be made under this section in respect of weekly payments whether, at the date of the claim, they have fallen due or are to be made in the future.

(3) No claim may be made under this section in respect of a liability of an employer or insurance company that became insolvent before the first day of July, 1979.

(4) A claim under this section must be made within six months after the claimant becomes aware of the circumstances on which his claim is based,

(5) A claim against the fund—

(a) must be in writing and lodged with the Commission;

and

(b) must contain such information as the Commission may require.

(6) The Commission shall determine whether a claim lodged under this section should be—

(a) allowed wholly or in part;

or

(b) disallowed,

and notice of the determination shall be served personally or by post on the claimant.

(7) A determination of the Commission under subsection (6) should be made as expeditiously as possible and, wherever possible, within twenty-one days after the date of lodgment of the claim.

(8) In making a determination under subsection (6) the Commission is not bound by any settlement or agreement between a worker and an employer or insurance company.

(9) Where a claimant is dissatisfied with a determination of the Commission under subsection (6), he may, within twenty-one days after the day on which notice of the determination is served upon him, appeal to the Court against the determination, and the Court may, if it thinks fit, vary or reverse the determination.

(10) Upon an appeal under this section—

(a) the Court shall, subject to any relevant rules of Court, be constituted of a single Judge;

and

(b) the Court shall have power to review all aspects of the determination of the Commission.

(11) Subject to the limitations (if any), prescribed by regulation, the Treasurer shall pay out of the fund the whole of the amount of a claim, or a part of a claim, that has been allowed under this section.

(12) Where the Treasurer makes a payment under subsection (11), he shall be subrogated, to the extent of the payment—

(a) to the rights of the claimant against the insurance company or employer to whom the claim relates;

(b) where the claim relates to an insurance company that has rights in respect of the claim under a contract of re-insurance—to the rights of the insurance company under the contract of re-insurance;

and

(c) where the claim relates to an employer who has rights of indemnity in respect of the claim against a third party—to those rights of indemnity.

118e. If an insurance company becomes insolvent, then—

Insolvency of
insurance
company.

(a) for the purpose of determining whether an employer is insured as required by this Act, a policy of workers compensation insurance issued by the company shall, after the expiration of twenty-eight days from the day on which the company becomes insolvent, be disregarded;

and

(b) no claim may be made by an employer against the fund under this Act in respect of liabilities arising under a policy of workers compensation insurance issued by the company if the liabilities relate to an injury occurring after the expiration of twenty-eight days from the day on which the company becomes insolvent.

DIVISION V—ASSISTANCE WITH OBTAINING INSURANCE

118f. (1) The Minister shall establish a committee entitled the “Insurance Assistance Committee”.

The Insurance
Assistance
Committee.

(2) The Committee shall consist of—

(a) one representative of the Commission;

and

(b) two persons who are, in the opinion of the Minister, suitable representatives of the interests of other insurers.

(3) The members of the committee shall be appointed by, and shall hold office at the pleasure of, the Minister.

118g. (1) Where an employer or prospective employer, after making reasonable attempts to do so, is unable to obtain the insurance required by this Act, or not at rates commensurate with the risk, the employer may apply to the Committee for assistance.

Assistance to
employers.

(2) Where an application is made under subsection (1), the Committee shall attempt to find an insurer prepared to accept the risk for what is, in the Committee’s opinion, a reasonable premium.

(3) Where the attempts made by the Committee under subsection (2) prove unsuccessful, the Commission shall offer the applicant a policy of insurance in respect of the relevant risk at a premium recommended by the Committee, and, if the employer accepts the offer, shall issue such a policy to the employer.

(4) The Commission shall be entitled to recoup losses made in respect of policies of insurance issued by it under this section from the Fund.

Repeal of
ss. 123 and 124.

29. Sections 123 and 124 of the principal Act are repealed.

Amendment of
s. 126—
Regulations.

30. Section 126 of the principal Act is amended by inserting after paragraph (a) of subsection (2) the following paragraph:

(ab) prescribing the form, and the information to be contained in, medical certificates or reports relating to injuries in respect of which compensation is, or is to be, claimed under this Act;

Insertion of
new s. 218a.

31. The following section is inserted after section 128 of the principal Act:

Vexatious
claims.

128a. A worker who claims compensation under this Act knowing that reasonable grounds for the claim do not exist shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Amendment of
second
schedule.

32. The second schedule to the principal Act is amended by striking out the item commencing ‘“Q” fever’ and substituting the following item:

Brucellosis, leptospirosis, or Q fever Employment at, in, about, or in connection with, a meat works or involving the handling of meat, hides, skins or carcasses.

Repeal of
certain Acts.

33. The following Acts are repealed:

(a) the Workers Compensation (Special Provisions) Act, 1977-1980;

(b) the Workers Compensation (Insurance) Act, 1980-1981.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor