



ANNO TRICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1988

No. 39 of 1988

An Act to amend the Workers Rehabilitation and Compensation Act, 1986.

[Assented to 28 April 1988]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Workers Rehabilitation and Compensation Act Amendment Act, 1988*.

(2) The *Workers Rehabilitation and Compensation Act, 1986*, is in this Act referred to as "the principal Act".

Commencement

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

Interpretation

3. Section 3 of the principal Act is amended—

(a) by inserting in subparagraph (i) of paragraph (a) of the definition of "disability" in subsection (1) " , deterioration" after "loss";

(b) by striking out from paragraph (b) of the definition of "employer" in subsection (1) " , under subsection (2)," and substituting " , under section 103a,";

(c) by striking out paragraph (a) of the definition of "employment" in subsection (1) and substituting the following paragraph:

(a) work done under a contract of service;;

(d) by striking out paragraph (c) of the definition of "employment" in subsection (1) and substituting the following paragraph:

(c) the work of persons of whom the Crown is, under section 103a, the presumptive employer;;

(e) by striking out from paragraph (b) of the definition of "worker" in subsection (1) "subsection (2)" and substituting "section 103a";

and

(f) by striking out subsection (2).

Functions and powers of the Corporation

4. Section 14 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) For the purpose of determining any matter that might affect its liabilities, or carrying out any of its other functions, the Corporation may make such investigations and inquiries as it thinks fit.

Evidentiary provision

5. Section 31 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 and the worker makes a claim for noise induced hearing loss after the expiration of two years from the date of the retirement, subsection (1) does not apply in relation to that claim.

Medical Expenses

6. Section 32 of the principal Act is amended—

(a) by inserting after “Corporation” in paragraph (f) of subsection (2) “or of a class approved by the Corporation”;

and

(b) by inserting after “costs” in paragraph (i) of subsection (2) “(or classes of costs)”.

Transportation for initial treatment

7. Section 33 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) If the cost of transportation provided by an employer (other than an exempt employer) to a worker in accordance with subsection (1) exceeds an amount prescribed by the regulations, the employer is, on application to the Corporation in a manner and form approved by the Corporation, entitled to recover the excess from the Corporation.

Discontinuance of weekly payments

8. Section 36 of the principal Act is amended by inserting after subsection (5) the following subsection:

(6) If the Corporation makes a weekly payment to a worker on the assumption that the worker is incapacitated for work but the worker has in fact returned to work, the Corporation may, subject to the regulations, recover the amount of the payment as a debt.

Lump sum compensation

9. Section 43 of the principal Act is amended by striking out paragraph (a) of the definition of “the prescribed sum” in subsection (11) and substituting the following paragraph:

(a) in relation to a disability occurring in 1987—\$65 300;

Incidence of liability

10. Section 46 of the principal Act is amended—

(a) by striking out from subsection (3) “Subject to subsection (4),” and substituting “Subject to this section,”;

(b) by inserting after subsection (6) the following subsection:

(6a) Where an employer (not being an exempt employer) pays compensation under subsection (3) in respect of an unrepresentative disability, the employer may recover the amount of the payment from the Corporation.;

and

(c) by inserting after subsection (8) the following subsection:

(8a) The regulations may exempt prescribed classes of employers from the operation of subsection (3) (and in that case the Corporation will undertake any liability of those employers that would otherwise have arisen under that subsection).

Claim for compensation

11. Section 52 of the principal Act is amended—

(a) by inserting after “an employer” in subsection (5) “(not being an exempt employer)”;

and

(b) by inserting after subsection (6) the following subsection:

(6a) Where a claim is only for compensation under section 32, the Corporation (or an exempt employer) may dispense with the requirement of a certificate under subsection (1) (c).

Determination of claim

12. Section 53 of the principal Act is amended by inserting after subsection (4) the following subsection:

(4a) Where—

(a) the disability results from a road accident;

(b) no member of the police force attends at the scene of the accident;

and

(c) the claimant is required to report the accident to a member of the police force or at a police station under the *Road Traffic Act, 1961*,

the Corporation may refrain from determining the claim until the accident is so reported.

Limitation of employer's liability

13. Section 54 of the principal Act is amended—

(a) by inserting after subsection (4) the following subsections:

(4a) Where—

(a) a worker suffers a compensable disability (not being a disability that arises out of the use of a motor vehicle and gives rise to a liability of a kind referred to in subsection (2));

and

(b) the disability is attributable to the negligence of another worker—

(i) who was acting in the course of employment with the same employer;

and

(ii) whose negligence did not arise from, or in the course of, serious and wilful misconduct,

the worker has no right of action against the other worker.

(4b) Where—

(a) a worker suffers a compensable disability (not being a disability that arises out of the use of a motor vehicle and gives rise to a liability of a kind referred to in subsection (2));

and

(b) action is taken against a person other than the employer for damages in respect of the disability,

the other person has no right to recover contribution from the employer.;

(b) by inserting after “entitled to recover” in subsection (5) “from that other person”;
and

(c) by inserting after subsection (7) the following subsections:

(7a) This section is intended to apply in relation to any action that arises out of the occurrence of a compensable disability—

(a) irrespective of where the disability occurred;

and

(b) (i) irrespective of whether the action is brought before a court of this State or before a court of some other state, territory or country;

and

(ii) notwithstanding that the court before which the action is brought would not (but for this subsection) apply, or take into account, South Australian law.

(7b) If—

(a) an action is brought in respect of a compensable disability in a court that is not a court of the State;

(b) notwithstanding subsection (7a), the court awards an amount against an employer that is in excess of the amount (if any) that would have been awarded in a similar action before a court of the State;

and

(c) the Corporation is liable to pay the amount awarded by virtue of insurance provided under this Act,

the Corporation is entitled to recover the excess from the person to whom the amount is awarded.

(7c) In the course of proceedings under subsection (7b) a court may—

(a) receive in evidence any transcript of evidence in proceedings before the court by which the amount was awarded and draw any conclusions of fact from the evidence that it considers proper;

or

(b) adopt any of the court's findings of fact.

Certain sporting injuries not to be compensable

14. Section 58 of the principal Act is amended by striking out paragraph (a) of the definition of "the prescribed amount" in subsection (3) and substituting the following paragraph:

(a) in relation to 1987—\$27 200;

Insertion of ss. 58a and 58b

15. The following sections are inserted immediately after section 58 of the principal Act:

Reports of return to work, etc.

58a. (1) An employer (other than an exempt employer) must notify the Corporation whenever—

(a) a worker who has been receiving weekly payments for total incapacity returns to work;

(b) there is a change in the weekly earnings of a worker who is receiving weekly payments for partial incapacity;

or

(c) there is a change in the type of work performed by a worker who is receiving weekly payments for partial incapacity,

(but notification is not required in a case or class of cases excepted by the Corporation from the operation of this subsection).

(2) Where a worker who has been receiving weekly payments for total incapacity returns to work with an employer other than the employer from whose employment the disability arose, the worker must notify that previous employer of the return to work.

(3) A notification under subsection (1) or (2)—

(a) must be given within 14 days of the occurrence of the notifiable event or such longer period as the regulations may allow;

and

(b) must include full particulars of the notifiable event.

(4) A person who without reasonable excuse fails to comply with this section is guilty of an offence.

Penalty: \$1 000.

Continuation of employment

58b. (1) If a worker who has been incapacitated for work in consequence of a compensable disability is able to return to work (whether on a full-time or part-time basis and whether or not to his or her previous employment), the employer from whose employment the disability arose must provide suitable employment for the worker (the employment being employment for which the worker is fit and, subject to that qualification, so far as reasonably practicable the same as, or equivalent to, the employment in which the worker was employed immediately before the incapacity).

(2) Subsection (1) does not apply if—

(a) it is not reasonably practicable to provide employment in accordance with that subsection (and the onus of establishing that lies in any legal proceedings on the employer);

or

(b) the worker left the employment of that employer before the commencement of the incapacity for work.

(3) If a worker has suffered a compensable disability, the employer from whose employment the disability arose must not terminate the worker's employment (except on the ground of serious and wilful misconduct) without first giving both the Corporation and the worker at least 28 days notice of the proposed termination of employment.

Penalty: \$5 000.

(4) In any legal proceedings in which an employer is alleged to have terminated a worker's employment contrary to subsection (3), the onus of proving that the employment was terminated on the ground of serious and wilful misconduct lies on the employer.

Exempt employers

16. Section 60 of the principal Act is amended—

(a) by inserting after paragraph (e) of subsection (4) the following paragraph:

(ea) the record of the employer or the employers constituting the group in providing suitable employment to workers who suffer compensable disabilities;;

and

(b) by inserting after paragraph (a) of subsection (5) the following paragraph:

(ab) takes effect on a date fixed by the Corporation;

Delegation to exempt employers

17. Section 63 of the principal Act is amended by striking out from paragraph (a) of subsection (1) "Section 108" and substituting:

Section 106
Section 106a.

Preliminary

18. Section 65 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

(2) For the purposes of this Division, two or more employers will, if the Corporation so determines, constitute a group if—

(a) they are capable of being treated as members of a group under the *Pay-roll Tax Act, 1971*;

or

(b) they are related in some other way.

(3) Where two or more employers constitute a group, one of those employers, nominated by the Corporation after consultation with the members of the group, will be treated as the employer of all workers employed by the members of the group.

Imposition of levies

19. Section 66 of the principal Act is amended—

(a) by striking out subsections (2) to (5) (inclusive) and substituting the following subsections:

(2) Subject to this section, the levy payable by an employer is a percentage of the aggregate remuneration paid to the employer's workers over the period

to which the levy relates, the percentage being determined by reference to the class of industry, or the predominant class of industry, in which the employer is engaged.

(3) The Corporation may for the purposes of this section divide industries into various classes.

(4) Any question as to the class of industry, or the predominant class of industry, in which an employer is engaged will be conclusively resolved by determination of the Corporation.

(5) The Corporation may, on the application of an employer who is engaged in more than one class of industry, allow the employer to pay a separate levy in relation to each class of industry.

(5a) In making a decision on an application by an employer under subsection (5), the Corporation may have regard to—

(a) whether the employer's operations in each industry are separate and distinct;

(b) whether the workers (apart from administrative staff) who work in each industry are separate and distinct;

(c) whether each industry is carried on at a separate location;

(d) whether the employer uses an accounting system that separately sets out the remuneration paid to workers in each industry;

and

(e) any other relevant factor.;

and

(b) by striking out subsection (12) and substituting the following subsection:

(12) The Corporation may, in prescribed circumstances, remit the levy payable by an employer under this section wholly or in part.

Adjustment of levies

20. Section 67 of the principal Act is amended—

(a) by inserting after paragraph (d) of subsection (1) the following paragraph:

(e) such other matters as the Corporation thinks fit.;

and

(b) by inserting after paragraph (b) of subsection (2) the following paragraphs:

(c) the failure of the employer to provide, in accordance with this Act, employment to a worker who has suffered a compensable disability in the employer's employment;

(d) the failure of the employer to retain in his or her employment a worker who has suffered a compensable disability in that employment;

(e) such other matters as the Corporation thinks fit.;

Special levy for exempt employers

21. Section 68 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsection:

(2) The levy payable by an exempt employer will be a percentage of the levy that would have been payable by the employer if the employer were not registered as an

exempt employer and will be fixed by the Corporation with a view to raising from exempt employers—

- (a) a fair contribution towards the administrative expenditure of the Corporation;
 - (b) a fair contribution towards the cost of rehabilitation funding;
 - (c) a fair contribution towards the cost to the Corporation of reviews and appeals that relate to decisions of exempt employers;
- and
- (d) a fair contribution towards actual and prospective liabilities of the Corporation arising from the insolvency of employers.

Returns by employers

22. Section 69 of the principal Act is amended—

- (a) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

- (a) a statement of the aggregate remuneration paid to the employer's workers during the month;

and

- (b) by striking out subsection (4) and substituting the following subsections:

- (4) The Corporation may—

- (a) determine that a requirement of this section will not apply to a particular employer or employers of a particular class;

- and

- (b) impose, by notice to the particular employer or by notice in the *Gazette*, such other requirements on that employer or those employers as may be appropriate in the circumstances.

- (4a) The Corporation may, by further notice in the *Gazette*, vary or revoke requirements imposed under subsection (4) (b), or impose new requirements.

Review of levy

23. Section 72 of the principal Act is amended by inserting in subsection (2) “(and the board may, in its absolute discretion, decide whether to permit the employer to appear personally or by representative before it)” after “board”.

Amendment of s. 76

24. Section 76 of the principal Act is amended—

- (a) by striking out “or an” and substituting “, an”;

and

- (b) by inserting “or any other person appointed by the Corporation in writing for the purposes of this section” after “association”.

Insertion of s. 76a

25. The following section is inserted immediately after section 76 of the principal Act:

Recovery of levy

76a. A levy payable under this Act (and any penalty interest or fine imposed by the Corporation under this Part) is a debt due to the Corporation and may be recovered by the Corporation in a court of competent jurisdiction.

Rules of the Tribunal

26. Section 82 of the principal Act is amended by inserting after its present contents (now to be redesignated as subsection (1)) the following subsections:

(2) Without limiting the generality of subsection (1), those rules may make provision for—

- (a) prehearing conferences presided over by a presidential member of the Tribunal sitting alone;
- (b) the disclosure of information between the parties to an appeal before the hearing of the appeal;
- (c) recording the terms of any settlement of an appeal;
- (d) procedures to be followed in default of the appearance of a party to an appeal.

(3) Subject to subsection (4), any hearing of an appeal before the Tribunal should be conducted in a place open to the public.

(4) The Tribunal may, in the interests of a party to an appeal, hear any proceedings in private.

Constitution of Panels

27. Section 84 of the principal Act is amended by striking out from paragraph (a) of subsection (4) “a panel or” and substituting “a panel of”.

Principles relating to reviews

28. Section 88 of the principal Act is amended by inserting after its present contents (now to be redesignated as subsection (1)) the following subsections:

(2) A review authority may refer any technical or specialized matter to an expert and accept that expert's report as evidence.

(3) Where an expert's report is obtained under subsection (2), the expert must, if a party to the proceedings so requests, be called for examination or cross-examination on the subject matter of the report.

(4) A review authority must, in conducting its proceedings under this Act, act as expeditiously as possible.

Notice of proceedings, etc.

29. Section 89 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) A party must be afforded a reasonable opportunity to make submissions to the review authority and, in the case of proceedings before a Review Officer, a reasonable opportunity to call or give evidence and to examine or cross-examine witnesses.

Powers of review authorities

30. Section 90 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2a) A member of a Medical Review Panel who examines a worker under subsection (2) (a) cannot be subsequently called to give evidence in any proceedings relating to the worker's claim.

Statement of appeal rights

31. Section 93 of the principal Act is amended—

(a) by striking out from subsection (1) “at the request of a party to the proceedings”;
and

(b) by striking out subsections (2) and (3) and substituting the following subsections:

(2) A review authority (other than a Medical Review Panel) need not furnish a statement under subsection (1) unless a request for such a statement is made by or on behalf of a party to the review within 15 business days after the completion of the review.

(3) If a review authority does not propose to furnish a statement under subsection (1) as a matter of course, it must inform the parties, at the the conclusion of the review, of the right to request such a statement.

Application for review

32. Section 95 of the principal Act is amended by inserting at the end of paragraph (d) of subsection (2) “(but a decision as to the date from which such a registration will take effect is not reviewable)”.

Review by Review Officer

33. Section 96 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) A party to proceedings before a Review Officer must disclose to the Review Officer and all other parties to the proceedings the existence of all material in the party's possession or power that may be relevant to the proceedings and must, if the Review Officer so requests, produce all or any of that material to the Review Officer.

Appeals

34. Section 97 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (2);

(b) by striking out subsections (4) and (5) and substituting the following subsections:

(4) A notice of appeal must state with reasonable particularity the grounds of appeal and the relief sought on the appeal.

(4a) The Registrar of Review Authorities must notify the Review Officer of the institution of an appeal.

(4b) The Review Officer must, as soon as practicable after receiving notification under subsection (4a), send to the Registrar of Review Authorities—

(a) any application, documents, written submissions, statements, reports, and other papers lodged with, or received by, the Review Officer during the course of the earlier proceedings;

(b) any relevant exhibits in the custody of the Review Officer;

(c) a copy of any notes of evidence made by or at the direction of the Review Officer during the course of the earlier proceedings;

and

(d) a copy of the decision appealed against.

(4c) The appellate authority may, on an appeal under this section—

- (a) examine any papers, exhibits and notes submitted under subsection (4b) and draw any conclusions of fact from them it considers proper;
- (b) direct the Review Officer to furnish a report (which must be made available to the parties to the appeal) on any aspect of the subject matter of the appeal.

(4d) Subject to subsection (4e), the appellate authority has a discretion to rehear the whole or any part of the evidence taken before the Review Officer, or to take further evidence.

(4e) The appellate authority must, on the application of a party to the appeal—

- (a) rehear evidence taken before the Review Officer if the evidence is relevant to the appeal and the record of the evidence is incomplete or inaccurate in a material particular;
- (b) hear oral evidence relevant to the appeal from a witness from whom evidence was taken in documentary form by the Review Officer;
- (c) take further evidence if the evidence is relevant to the appeal and the party seeking to introduce it could not reasonably be expected to have done so in the proceedings before the Review Officer;
- (d) take evidence if—
 - (i) the evidence is relevant to the appeal;
 - and
 - (ii) there is some substantial reason for admitting the evidence in the interests of justice.

(4f) A party must be afforded a reasonable opportunity to examine or cross-examine witnesses appearing before the appellate authority.

(5) On an appeal under this section, the appellate authority may—

- (a) confirm, vary or reverse the decision under appeal;
- (b) make incidental or ancillary orders.;

and

(c) by striking out subsection (8) and substituting the following subsection:

(8) On an appeal to the Tribunal under this section against a decision of a Review Officer, the Tribunal may, on such terms and conditions as it thinks fit, order that the operation of the decision subject to the appeal be stayed wholly or in part until the appeal is decided or until further order by the Tribunal.

Insertion of s. 98

35. The following section is inserted immediately after section 98 of the principal Act:

Decisions relation to exempt employers

98a. (1) If the Corporation refuses the registration, or cancels the registration, of an employer or group of employers as an exempt employer or group of exempt employers, the employer or employers may appeal to the Minister against that decision.

(2) The appeal must be instituted within one month after the employer or employers receive notice of the Corporation's decision unless the Minister, in his or her discretion, allows an extension of time for the appeal.

(3) The Minister may (but is not obliged to) permit an appellant to appear personally or by representative before the Minister on an appeal.

(4) The Minister has an absolute discretion to decide an appeal under this section as the Minister thinks fit.

(5) If the Minister decides in favour of the appellant, the Minister must furnish the Corporation with a statement of the reasons for the decision.

Insertion of s. 103a

36. The following section is inserted after section 103 of the principal Act:

Special provision for prescribed classes of volunteers

103a. (1) The Crown is the presumptive employer of persons of a prescribed class who voluntarily perform work of a prescribed class that is of benefit to the State (and the Crown therefore has the liabilities of an exempt employer in relation to persons of that class).

(2) Where a person of a class prescribed under subsection (1) suffers a compensable disability while performing the work to which the prescription relates—

(a) the question of whether and, if so, to what extent the person is incapacitated for work must be determined according to the employment (including self-employment) in which the person was otherwise engaged at the commencement of the incapacity or, if the person was not then engaged in other employment, by reference to employment for which he or she was then reasonably fitted;

(b) subject to paragraph (c), the average weekly earnings of the person must be determined—

(i) if the person was self-employed, by reference to the remuneration that the person would have received if he or she had been doing the same work in employment;

or

(ii) if the person was not employed, by reference to the remuneration that the person would have received if he or she had been working in employment for which he or she was reasonably fitted,

and, if there is an award or industrial agreement applicable to that class or grade of employment, by reference to that award or agreement;

and

(c) where—

(i) the person dies;

(ii) a claim for compensation is made by a person claiming to be a dependant of the deceased;

(iii) the deceased and the claimant were both members of a partnership or proprietary company and the predominant work of the deceased before the date of death was in the business of that partnership or company,

then for the purposes of determining whether the claimant was a dependant of the deceased and, if so, the extent of the dependency, any income derived by the claimant from the partnership or company during the

deceased's lifetime will (to the extent that the income is attributable to the deceased's work on behalf of the partnership or company) be taken to be an allowance made by the deceased, out of the deceased's own income, for the maintenance of the claimant.

Substitution of s. 105

37. Section 105 of the principal Act is repealed and the following section is substituted:

Insurance of registered employers against other liabilities

105. An employer who is registered under this Act (not being an exempt employer), and any employer who is not required to be registered because of an exemption under the regulations, is insured by the Corporation, subject to terms and conditions prescribed by regulation, against any liability that may arise apart from this Act in respect of a compensable disability arising from employment (being employment to which this Act applies) by the employer.

Insertion of s. 106a

38. The following section is inserted after section 106 of the principal Act:

Payment not to constitute an admission of liability

106a. A payment by the Corporation or an employer to a worker does not constitute an admission of liability or estop a subsequent denial of liability.

Confidentiality

39. Section 112 of the principal Act is amended—

(a) by inserting after paragraph (a) of subsection (2) the following paragraph:

(ab) the disclosure of statistical information;;

(b) by inserting after paragraph (d) of subsection (2) the following paragraph:

(e) the disclosure in accordance with the regulations of prescribed information to any prescribed government authority or any prescribed agency or instrumentality of the Crown (whether of this State or of another State or Territory of the Commonwealth, or of the Commonwealth);

and

(c) by inserting after subsection (2) the following subsection:

(2a) A regulation made for the purposes of subsection (2) (e) cannot take effect unless it has been laid before both Houses of Parliament and—

(a) no motion for disallowance is moved within the time for such a motion;

or

(b) every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.

Disabilities that develop gradually

40. Section 113 of the principal Act is amended—

(a) by striking out from subsection (2) "Where a claim" and substituting "Subject to this section, where a claim";

(b) by inserting after "in respect of noise induced hearing loss" in subsection (2) "by a worker (not being a person who has retired from employment on account of age or ill-health)";

and

(c) by inserting after subsection (2) the following subsections:

(2a) Where a claim is made under this Act in respect of noise induced hearing loss by a person who has retired from employment on account of age or ill-health, the whole of the loss shall be deemed to have occurred immediately before the person retired and, subject to any proof to the contrary, to have arisen out of employment in which the person was last exposed to noise capable of causing noise induced hearing loss.

(2b) The Corporation may, by notice to the particular employer or employers, or by notice in the *Gazette*, require an employer, or employers of a specified class determined by the Corporation, to carry out (within a period specified by the Corporation) tests of a kind prescribed by the regulations on workers belonging to classes determined by the Corporation.

(2c) Unless the Corporation otherwise determines, the cost of carrying out tests under subsection (2b) must be borne by the employer.

Insertion of s. 119a

41. The following section is inserted after section 119 of the principal Act:

False statements

119a. (1) A person who makes a statement knowing it to be false or misleading in a material respect for the purposes of, or in connection with, a claim for compensation under this Act is guilty of an offence.

Penalty: \$2 000 or imprisonment for six months.

(2) A person who—

(a) aids, abets, counsels or procures the commission of an offence under subsection (1);

or

(b) solicits or incites the commission of such an offence,

is guilty of an offence.

Penalty: \$2 000 or imprisonment for six months.

Insertion of s. 120a

42. The following section is inserted after section 120 of the principal Act:

Evidence

120a. (1) In any legal proceedings, a certificate apparently signed by an officer of the Corporation, certifying—

(a) that a person was, on a day specified in the certificate, an employer;

(b) that a person was, on a day specified in the certificate, a worker,

will, in the absence of proof to the contrary, be proof of the matters stated in the certificate.

(2) In any legal proceedings against a person for failing to register with the Corporation as an employer, a certificate apparently signed by an officer of the Corporation, certifying that the person was not, on a specified day, registered as an employer will, in the absence of proof to the contrary, be proof of the matters stated in the certificate.

(3) In any legal proceedings, a certificate apparently signed by an officer of the Corporation, certifying that an amount specified in the certificate is payable to the Corporation, by way of levy or fine, by a person named in the certificate, will, in the absence of proof to the contrary, be proof of the liability.

(4) In any proceedings against a person for failing to furnish a return under this Act, a certificate apparently signed by an officer of the Corporation certifying that the return was not received before the expiration of the period within which it was required to be furnished will, in the absence of evidence to the contrary, be proof that the defendant failed duly to furnish the return.

(5) In any proceedings, a certificate apparently under the seal of the Corporation certifying that an officer of the Corporation named in the certificate was, on a day specified in the certificate, invested with specified delegated powers or functions will, in the absence of evidence to the contrary, be proof of the matters stated in the certificate.

(6) In this section—

“officer of the Corporation” includes a person who, although not an officer of the Corporation, is acting under a delegation of the Corporation.

Offences

43. Section 122 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) Subsection (1) does not render the Corporation, a member of the staff of the Corporation, or any person acting on behalf of the Corporation, liable to prosecution for any act or omission related to the administration or enforcement of this Act.

Regulations

44. Section 124 of the principal Act is amended by inserting after its present contents (now to be redesignated as subsection (1) the following subsection:

(2) Regulations made under this Act—

(a) may be of general or limited application;

(b) may allow for matters to be determined at the discretion of the Corporation (or a delegate of the Corporation) or confer other forms of discretionary power on the Corporation (or a delegate of the Corporation).

Amendment of First Schedule

45. The first schedule to the principal Act is amended—

(a) by striking out from paragraph (c) of subclause (3) of clause 2 “and any question relating to the extent of such a subrogation or reduction may be determined, on the application of an interested party, by the Industrial Court.”;

and

(b) by inserting after subclause (3) of clause 2 the following subclauses:

(4) Where a compensating authority—

(a) pays compensation to a claimant under this Act;

(b) becomes entitled to recover a proportion of the payment from an employer by virtue of subrogation to the rights of the claimant under subclause (3) (a);

and

(c) notifies that employer in writing of the payment,

the amount recoverable from the employer will be increased by interest at the prescribed rate as from the date of the notification.

(5) The Corporation will, in the first instance, make a determination of—

(a) the extent of a subrogation under subclause (3) (a) or a reduction in the amount of compensation under subclause (3) (b);

and

(b) the amount of any consequential liability.

(6) Before making such a determination the Corporation must allow any person whose interests may be affected by the determination a reasonable opportunity to make representations to the Corporation on the subject matter of the determination and when the determination is made the Corporation must give written notification (personally or by post) of the terms of the determination to every person whose interests are affected by it.

(7) Any such person may, by written notice served personally or by post on the Corporation within one month after receiving notice of the determination or such longer period as the Corporation may allow, dispute the determination.

(8) Any such dispute may be referred on the application of any party affected by the determination—

(a) to the Industrial Court;

or

(b) if all parties affected by the determination agree—to an arbitrator appointed under the *Commercial Arbitration Act, 1986*,

(but where the dispute is referred to an arbitrator no part of the costs of the arbitration can be awarded against the worker).

(9) Where a dispute is so referred, the Industrial Court or the arbitrator will review the Corporation's determination and may confirm, vary or revoke it.

(10) Subject to the regulations, a determination by the Corporation under this clause may be enforced in the same way as a judgment of the Industrial Court.

(11) A determination by the Corporation may be enforced notwithstanding that it is disputed, but if it appears from the result of a review that a compensating authority has recovered an amount in pursuance of the determination to which the compensating authority is not entitled, that amount must be repaid together with interest at the prescribed rate.

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

D. B. DUNSTAN, Governor