



ANNO QUADRAGESIMO

# ELIZABETHAE II REGINAE

A.D. 1991

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No. 4 of 1991

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

[Assented to 21 March 1991]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1991*.

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

## Commencement

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.

(2) If a provision of this Act is not brought into operation before the expiration of three months after assent, the provision will come into operation three months after assent.

## Interpretation

3. Section 3 of the principal Act is amended—

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

“orphan child” means a child whose natural or adoptive parents are dead and includes a child, one of whose natural or adoptive parents is dead and who has no reasonable prospect of being supported by the surviving natural or adoptive parent;

(b) by striking out paragraph (c) of the definition of “prescribed allowance” in subsection (1);

(c) by striking out paragraphs (b) and (c) of the definition of “review authority” in subsection (1) and substituting the following word and paragraph:

or

(b) the Tribunal;

and.

(d) by inserting after subsection (6) the following subsections:

(7) The regulations may exclude (either absolutely or subject to limitations or conditions stated in the regulations) specified classes of workers wholly or partially from the application of this Act.

(8) A regulation under subsection (7) cannot be made unless the board, by unanimous resolution of the members present at a meeting of the board, agrees to the making of the regulation (but this requirement does not extend to a regulation revoking, or reducing the scope of an exclusion).

#### **Average weekly earnings**

4. Section 4 of the principal Act is amended by striking out subsection (8) and substituting the following subsection:

(8) For the purposes of determining the average weekly earnings of a worker—

(a) any component of the worker's earnings attributable to overtime will be disregarded unless—

(i) the worker worked overtime in accordance with a regular and established pattern;

(ii) the pattern was substantially uniform as to the number of hours of overtime worked;

and

(iii) the worker would have continued to work overtime in accordance with the established pattern if he or she had not been disabled;

and

(b) any prescribed allowances will be disregarded.

#### **Substitution of s. 21**

5. Section 21 of the principal Act is repealed and the following section is substituted:

##### **Chief Executive Officer**

21. (1) There will be a Chief Executive Officer of the Corporation.

(2) The Chief Executive Officer is responsible to the board for—

(a) the implementation of its policies and decisions;

(b) the efficient and effective management of the Corporation's business;

and

(c) the supervision of the Corporation's staff.

(3) A person cannot be appointed as the Chief Executive Officer of the Corporation unless the Corporation has first consulted with the Minister in relation to the proposed appointment and the proposed terms and conditions of appointment.

(4) A reference in any other Act to the General Manager of the Corporation will be taken to be a reference to the Chief Executive Officer.

#### **Compensation for medical expenses, etc.**

6. Section 32 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

(1a) For the purposes of subsection (1), the amount of compensation will be determined—

(a) according to scales published by the Corporation in the *Gazette*,  
or

(b) if a particular cost is not fixed by such a scale—according to what is a reasonable amount for the provision of the service in respect of which compensation is payable.;

(b) by inserting at the end of paragraph (d) of subsection (2) “(but not where the worker travels in a private vehicle)”;

and

(c) by striking out subsections (3) and (4) and substituting the following subsections:

(3) Compensation in respect of costs to which this section applies may be paid—

(a) to the worker;

or

(b) directly to the person to whom the worker is liable for those costs.

(4) Where—

(a) a worker has been charged more than the amount that the worker is entitled to claim for the provision of a service in respect of which compensation is payable under this section;

and

(b) the Corporation considers that the amount charged is unreasonable, the Corporation may reduce the charge by the amount of the excess.

(5) Where—

(a) services of a kind to which this section applies were provided to a worker in relation to a compensable disability;

and

(b) the Corporation considers that the services were, in the circumstances of the case, inappropriate or unnecessary,

the Corporation may disallow charges for the services.

(6) Where the Corporation disallows or reduces a charge under this section—

(a) it must give to the provider of the service a notice setting out—

(i) the basis of the Corporation’s decision to disallow or reduce the charge;

and

(ii) the provider’s right to have the decision reviewed under this Act;

and

(b) the worker is not liable to the provider for the disallowed charge, or for more than the reduced charge, (as the case requires) and, if the worker has in fact paid an amount for which he or she is not liable, the Corporation will reimburse the worker for that amount and may recover it from the provider as a debt.

(7) Where a worker travels in a private vehicle to or from any place for the purpose of receiving medical services, hospitalization or approved rehabilitation, and the travel is reasonably necessary in the circumstances of the case, the worker is entitled to a travel allowance at rates fixed by a scale published under this section.

(8) A reference in this section to approved rehabilitation is a reference to rehabilitation programmes or services of a kind approved by the Corporation for the purposes of this section.

(9) Subject to subsection (10), the Corporation—

(a) will, by notice published in the *Gazette* fix scales of charges for the purposes of this section (ensuring so far as practicable that the scales comprehensively cover the various kinds of services to which this section applies);

and

(b) may, by subsequent notice in the *Gazette*, vary the scales so published.

(10) The Corporation must, before fixing or varying a scale under this section, consult with associations or persons who, in the opinion of the Corporation, represent persons who provide the kinds of services to which this section applies.

#### **Weekly payments**

7. Section 35 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2a) Where—

(a) a period of incapacity for work exceeds two years;

(b) an assessment of the weekly earnings that the worker is earning or could earn in suitable employment is made under subsection (1) (b) (ii);

and

(c) the worker's actual weekly earnings subsequently exceed the amount so assessed,

the Corporation cannot reduce the weekly payments to reflect the worker's actual weekly earnings except to the extent that the aggregate of the weekly payment plus the actual weekly earnings (excluding prescribed allowances) exceeds the notional weekly earnings of the worker.

#### **Discontinuance of weekly payments**

8. Section 36 of the principal Act is amended—

(a) by striking out from paragraph (b) of subsection (1) “that the worker has ceased to be incapacitated for work” and substituting “that the worker has ceased to be incapacitated for work by the compensable disability”;

(b) by inserting “compensable” after “certifying that the” in subparagraph (ii) of paragraph (c) of subsection (1);

(c) by striking out from paragraph (b) of subsection (2) “of the worker's incapacity for work” and substituting “the worker is incapacitated for work by the compensable disability”;

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

- (ba) the reduction is necessary to correct an arithmetical or clerical error;
- (bb) where the weekly payments include a component for overtime—the Corporation is satisfied that if the worker had continued in the work in which he or she was last employed before becoming incapacitated, he or she would not have continued to work overtime or the pattern of overtime would have changed so that the amount of overtime would have diminished;;

(e) by striking out subsections (3) and (4) and substituting the following subsections:

(3) Where the Corporation decides to discontinue or reduce weekly payments in pursuance of this section, the Corporation must give notice in writing to the worker stating the reasons for the Corporation's decision and informing the worker of the worker's right to have the decision reviewed.

(3a) The notice must be given at least 21 days before the decision is to take effect in any of the following cases:

(a) where a decision to discontinue weekly payments is made, without the consent of the worker, on the ground that—

(i) the Corporation is satisfied that the worker has ceased to be incapacitated for work by the compensable disability (although the worker has not returned to work);

or

(ii) the worker has failed to submit to an examination by a recognized medical expert or to provide a medical certificate as required by the Corporation;

(b) where a decision to reduce weekly payments is made, without the consent of the worker, on the ground that—

(i) the Corporation is satisfied that there has been a reduction in the extent the worker is incapacitated for work by the compensable disability;

or

(ii) the Corporation is satisfied, in the case of a worker whose weekly payments include a component for overtime, that the worker would not have continued to work overtime or the pattern of overtime would have changed so that the amount of overtime would have diminished;

or

(c) where a decision to discontinue or reduce weekly payments is made under section 37 or 38,

and in any other case the notice must be given as soon as practicable after the decision is made (but not necessarily before it takes effect).

(4) Where a Review Officer is, on the application of a worker, to review the Corporation's decision under this section, the decision is inoperative until the review is completed and if the decision has already taken effect, the Corporation must immediately—

(a) reinstate the weekly payments to their previous level;

and

(b) pay to the worker any amounts withheld in consequence of the decision under review;

and

(f) by inserting after subsection (6) the following subsections:

(7) If the Corporation overpays a worker by way of weekly payments in consequence of—

(a) an arithmetical or clerical error;

or

(b) an assumption, subsequently found to be incorrect, that a particular pattern of overtime would have continued if the worker had continued in the work in which he or she was last employed before becoming incapacitated,

the Corporation may, subject to and in accordance with the regulations, recover the amount overpaid as a debt.

(8) An employer who believes that reasonable grounds exist for the discontinuance or reduction of weekly payments under this section to a worker employed by, or formerly employed by, the employer may, in a manner determined by the Corporation, request the Corporation to review the circumstances of the case and to discontinue or reduce the weekly payments.

(9) The Corporation must carry out the review as soon as practicable after receipt of the request unless the request is, in the Corporation's opinion, unreasonable.

(10) If the Corporation declines to carry out a review in pursuance of a request under subsection (8), or it appears that there has been undue delay in carrying out the review, a Review Officer may, on application by the employer, direct the Corporation to carry out the review, or give such directions as appear reasonable in the circumstances to expedite the review (as the case may require).

(11) The Corporation must comply, or take steps to ensure compliance, with such a direction.

(12) On completing the review, the Corporation must give the employer notice in writing—

(a) of the Corporation's decision on the review, and the reasons for its decision;

and

(b) of the employer's right to have the Corporation's decision reviewed.

#### **Review of weekly payments**

9. Section 38 of the principal Act is amended—

(a) by striking out "6" from subsection (2) and substituting "three";

(b) by striking out subsection (4);

and

(c) by striking out subsection (7).

**Compensation payable on death**

**10.** Section 44 of the principal Act is amended—

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

(c) a dependent child (being an orphan child) is entitled to—

(i) a lump sum equal to—

(A) where the child is the only orphan child—50 per cent of an amount arrived at by subtracting from the prescribed sum the amount (if any) that the worker received as compensation for non-economic loss under Division V;

(B) where the child is one of two or more orphan children— an amount determined by dividing 50 per cent of the amount referred to above equally between the orphan children;

and

(ii) weekly payments equal to—

(A) in the case of total dependency—25 per cent;

(B) in the case of partial dependency— such lesser percentage as may be fixed by the Corporation having regard to the extent of the dependency,

of the amount of the notional weekly earnings of the deceased worker;;

(b) by inserting after subsection (4) the following subsection:

(4a) The Corporation may, in its discretion, in a case of extraordinary hardship, increase the lump sum paid to an orphan child of a deceased worker under this section (but the total amount paid by way of lump sum to the deceased worker's orphan child or children under this section cannot exceed an amount arrived at by subtracting from the prescribed sum the amount (if any) that the worker received as compensation for non-economic loss under Division V).;

(c) by striking out “dependent spouse” from paragraphs (a) and (b) of subsection (5) and substituting, in each case, “spouse”;

and

(d) by striking out subsection (10) and substituting the following subsection:

(10) Where a person who is entitled to a payment (either by way of lump sum or weekly payment) under this section is under the age of 18 years, the payment may, if the Corporation so determines, be made wholly or in part to a guardian or trustee for the benefit of that person.

**Corporation as insurer of last resort**

**11.** Section 50 of the principal Act is amended by striking out subsections (1) and (2) and substituting the following subsections:

(1) Where an exempt employer has ceased to be exempt, the Corporation may, in its discretion, undertake, in whole or part, liabilities related to compensable disabilities arising from employment during the period of the exemption.

(2) The Corporation must undertake the liabilities of a formerly exempt employer under subsection (1) if—

(a) the employer becomes insolvent;

or

(b) ceases to carry on business in the State and fails to make provision that the Corporation considers adequate for dealing with claims, and meeting liabilities and responsibilities related to compensable disabilities arising from employment during the period of exemption.

### **Claim for compensation**

12. Section 52 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) Notwithstanding subsections (1) and (2)—

(a) the absence of, or a defect in, a notice of disability is not a bar to the making of a claim if—

(i) the proper determination of the claim has not been substantially prejudiced;

or

(ii) the failure to give the notice, or the defect in the notice, was occasioned by ignorance of the claimant, mistake or absence from the State, or other reasonable cause;

and

(b) a failure to make a claim within the prescribed period is not a bar to the making of a claim if—

(i) the proper determination of the claim has not been substantially prejudiced;

or

(ii) the failure to make the claim within the prescribed period was occasioned by ignorance of the claimant, mistake or absence from the State, or other reasonable cause.

### **Registration of employers**

13. Section 59 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) No offence is committed by an employer against this section if the employer applies for registration within 14 days after the obligation to be registered arises.

### **Exempt employers**

14. Section 60 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

(a) in the case of an application by an individual employer—

(i) the employer is a body corporate employing more than the prescribed number of workers;

or



- (ii) the employer is an indemnified maritime employer;;
- (b) by striking out subsections (4), (5), (5a) and (6) and substituting the following subsections:
- (4) A registration under this section—
- (a) is subject to—
- (i) a condition that the exempt employer must not exercise any power or discretion delegated to the exempt employer under this Act unreasonably;
- and
- (ii) such other terms and conditions as the Corporation determines from time to time or as are prescribed by the regulations;
- (b) where the exemption was granted on the ground that the employer is an indemnified maritime employer—is subject to a condition limiting the effect of the exemption to the workers, or a specified class of the workers, to whom the relevant indemnity relates;
- (c) takes effect on a date fixed by the Corporation;
- and
- (d) subject to this section—
- (i) has effect for an initial period (not exceeding three years) determined by the Corporation;
- and
- (ii) may, on further application to the Corporation, be renewed from time to time for a further period (not exceeding three years) determined by the Corporation at the time of the renewal.
- (5) The Corporation may revoke the registration of an exempt employer, or reduce the period of registration if the employer breaches or fails to comply with this Act or a term or condition of registration.
- (6) In deciding whether to grant, renew, revoke, or reduce the period of registration as an exempt employer or group of employers under this section the Corporation may have regard to such matters as it considers relevant and will have regard to the following:
- (a) whether the employer or group is, and is likely to continue to be, able to meet its liabilities;
- (b) the resources that the employer or group has for the purpose of administering claims for compensation;
- (c) the incidence and severity of compensable disabilities arising from employment by the employer or employers;
- (d) the effect, or likely effect, of the working conditions under which workers are employed by the employer, or any of the employers, on the health and safety of those workers;
- (e) the record of the employer or employers in relation to the rehabilitation of disabled workers;

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

(g) the views of any registered association that has, in the opinion of the Corporation, a proper interest in the matter,

but once an employer or group has been registered as exempt, the Corporation must not, in deciding whether to renew the registration, consider the effect of the registration on the Compensation Fund.;

and

(d) by inserting in subsection (9) the following definition:

“indemnified maritime employer” means an employer that has the benefit of an indemnity granted by a member of the International Group of Protection and Indemnity Associations.

#### **The Crown and certain agencies to be exempt employers**

15. Section 61 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) In this section—

“agency or instrumentality of the Crown” includes any body, or body of a specified class, prescribed by regulation for the purposes of this definition.

#### **Delegation to exempt employer**

16. Section 63 of the principal Act is amended—

(a) by inserting in paragraph (a) of subsection (1) the following items:

Section 26

Section 32;

(b) by striking out from subsection (3) “The Corporation” and substituting “Subject to subsection (3a), the Corporation”;

(c) by inserting after subsection (3) the following subsection:

(3a) The Corporation may direct an exempt employer how the employer is to exercise its discretion regarding the maximum lump sum to be paid to an orphan child, or to orphan children.;

and

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

(7) Where an employer ceases to be an exempt employer, the delegation to the employer under this section will, if the Corporation so determines, continue to such extent as the Corporation thinks fit in relation to disabilities that occurred before cessation of the exemption (and any act or omission of the employer within the scope of the delegation will be taken for the purposes of this Act, to be the Act or omissions of an exempt employer).

#### **Imposition of levies**

17. Section 66 of the principal Act is amended by inserting after subsection (12) the following subsection:

(13) Subject to any remission of levy granted by the Corporation where—

(a) the amount of levy payable by an employer in a financial year would, apart from this subsection, be less than the prescribed minimum levy;

or

- (b) an employer is registered but no levy would, apart from this subsection, be payable by the employer for that financial year,

the levy payable by the employer for that financial year is the prescribed minimum levy.

#### **Substitution of s. 67**

18. Section 67 of the principal Act is repealed and the following section is substituted:

##### **Adjustment of levy in relation to individual employers**

67. (1) The Corporation may, in relation to a particular employer, having regard to all or any of the following matters—

- (a) the adequacy or inadequacy of measures taken by the employer to reduce the incidence of work related traumas;
- (b) the incidence or costs of claims in respect of compensable disabilities suffered by the employer's workers (disregarding unrepresentative disabilities and secondary disabilities);
- (c) the rehabilitation facilities or services for disabled workers provided by the employer, or the absence or inadequacy of such facilities or services provided by the employer;
- (d) the employer's practices as to the retention, employment or re-employment of disabled workers (and, in particular, any failure on the employer's part to provide, in accordance with this Act, employment to a worker who has suffered a compensable disability in the employer's employment);
- (e) such other matters (whether similar or dissimilar to those referred to above) as the Corporation considers relevant,

grant to the employer a remission of the levy that would be otherwise payable or impose on the employer a supplementary levy (as the case may require).

(2) If the Corporation imposes a supplementary levy on an employer under subsection (1), it may also require the employer to observe conditions stipulated by the Corporation in a written notice given by the Corporation to the employer.

(3) If an employer fails to comply with a condition imposed under this section, the Corporation may impose on that employer a further supplementary levy.

(4) The Corporation may, for any proper reason—

- (a) vary or revoke a condition imposed under this section;

or

- (b) revoke or reduce a supplementary levy imposed, or a remission of levy granted, under this section.

##### **Special levy for exempt employers**

19. Section 68 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) Where the measures taken by an exempt employer—

- (a) to reduce the incidence of work related traumas and disabilities;

- (b) to provide for the rehabilitation of disabled workers;

and

- (c) to provide for the administration of claims,

conform to or exceed standards determined by the Corporation for the purposes of this subsection, the Corporation may grant to the exempt employer such remission of the levy that would otherwise be payable by the exempt employer as the Corporation thinks fit.

#### **Penalty for late payment**

20. Section 71 of the principal Act is amended by striking out from paragraph (a) of subsection (1) "shall" and substituting "will, unless the Corporation determines otherwise,".

#### **Substitution of s. 72**

21. Section 72 of the principal Act is repealed and the following section is substituted:

##### **Review of levy, penalty interest or fine**

72. (1) Where an employer considers that a decision of the Corporation as to—

(a) the fixing or assessment of a levy;

(b) the imposition of penalty interest or a fine;

or

(c) the imposition or variation of a condition of a kind that may lead to the imposition of a supplementary levy,

is unreasonable, the Board must, on application by the employer, review the decision.

(2) An application for review does not suspend a liability to pay a levy, penalty interest or a fine.

(3) The review will be conducted, in accordance with procedures determined by the Board, by the Board itself, or by a committee or person to whom the Board has delegated its powers of review under this section, and the Board has an absolute discretion as to whether it will permit the employer or a representative of the employer to be heard orally on the review.

(4) On review, the Board may—

(a) alter a levy or an assessment;

(b) quash or reduce penalty interest or a fine;

(c) direct the repayment of amounts overpaid;

(d) quash or vary a condition imposed by the Corporation.

(5) An application under this section for review of a decision of the Corporation—

(a) must, if the decision relates to a class of employers, be made within four months after notice of the decision was given;

or

(b) must, if the decision relates to an individual employer, be made within two months after the employer was given notice of the decision,

unless the Board (or its delegate) allows an extension of time for making the application.

**Insertion of s. 82a**

22. The following section is inserted after section 82 of the principal Act:

**The Registrar**

82a. (1) The Office of Registrar of the Tribunal is established.

(2) The Registrar is the chief executive officer of the Tribunal.

(3) The person holding office as Registrar of Appeal Authorities immediately before the commencement of this section will be taken to have been transferred to the office of Registrar of the Tribunal on the commencement of this section.

**Amendment of heading**

23. The heading immediately preceding section 83 of the principal Act is repealed and the following heading is substituted:

DIVISION III—MEDICAL ADVISORY PANELS

**Medical Advisory Panels**

24. Section 83 of the principal Act is amended by striking out “Medical Review Panels” and substituting “Medical Advisory Panels”.

**Constitution of Medical Advisory Panels**

25. Section 84 of the principal Act is amended—

(a) by striking out “Medical Review Panel” wherever it occurs and substituting, in each case, “Medical Advisory Panel”;

and

(b) by striking out from subsection (4) “Medical Review Panels” and substituting “Medical Advisory Panels”.

**Procedure of Medical Advisory Panels**

26. Section 85 of the principal Act is amended—

(a) by striking out “Medical Review Panel” wherever it occurs and substituting, in each case, “Medical Advisory Panel”;

and

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

(3) A Medical Advisory Panel may require a worker on whose medical condition the Panel has been asked to advise to undergo a medical examination by the Panel or a member of the Panel, or by a medical expert nominated by the Panel and approved by the Corporation.

(4) A member of a Medical Advisory Panel who examines a worker under subsection (3) cannot be subsequently called to give evidence in any proceedings related to the worker’s claim.

(5) When a Medical Advisory Panel completes its consideration of a matter referred for its advice, the Panel must—

(a) give its advice in writing to the review authority by which the matter was referred;

and

(b) provide the parties to the proceedings before the review authority with copies of the advice.

**Enactment of s. 85a**

27. The following section is inserted after section 85 of the principal Act:

**Confidentiality**

85a. A person must not disclose a matter arising before a Medical Advisory Panel except—

- (a) in the course of the administration of this Act or for the purposes of proceedings under this Act;
- (b) in the course of proceedings before a court or a tribunal constituted by law;
- or
- (c) if the disclosure is required by or under another Act or law.

**Immunity**

28. Section 86 of the principal Act is amended by striking out “Medical Review Panel” and substituting “Medical Advisory Panel”.

**Repeal of s. 87**

29. Section 87 of the principal Act and the heading immediately preceding that section are repealed.

**Notice of proceedings, etc.**

30. Section 89 of the principal Act is amended—

- (a) by inserting at the end of subsection (2) “(but a Review Officer is not obliged to hear evidence from a witness—either generally or on a particular subject—if satisfied that the evidence is not relevant, or if of the opinion that the evidence would merely provide unnecessary corroboration of other evidence admitted by the Review Officer)”;

and

- (b) by inserting after subsection (2) the following subsection:

(2a) A review authority may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.

**Powers of Review Authority**

31. Section 90 of the principal Act is amended by striking out subsections (2) and (2a).

**Substitution of s. 92**

32. Section 92 of the principal Act is repealed and the following section is substituted:

**Representation**

92. (1) A person is entitled to appear personally, or by representative, in proceedings before a review authority subject to the qualification that a person is not entitled to be represented by—

- (a) a member of the board;
- or

(b) a person whose name has been struck off the roll of legal practitioners or who, although a legal practitioner, is not entitled to practice the profession of law because of disciplinary action taken against him or her.

(2) Representation will not be allowed before a Medical Advisory Panel (although a worker who is to appear before a Medical Advisory Panel is entitled to be accompanied by a relative or friend to provide advice and moral support).

#### **Insertion of s. 92a**

33. The following section is inserted after section 92 of the principal Act:

##### **Costs**

92a. (1) Subject to this section, a review authority must observe the following principles in relation to awarding costs:

- (a) an unrepresented party is entitled, subject to limits fixed by the regulations, to reimbursement of expenses;
- (b) a party (other than the Corporation or an exempt employer) who is represented by a legal practitioner or an officer or employee of a registered association is entitled, subject to limits fixed by the regulations, to the cost of representation;
- (c) if the proceedings are frivolous or vexatious, costs (which may exceed the limits fixed by the regulations) may be awarded against the party by whom the proceedings were brought.

(2) The award may cover not only costs related to proceedings before the review authority but also (where relevant) related conciliation proceedings.

(3) A review authority may decide against awarding costs to which a party would otherwise be entitled under this section, or reduce the amount of such costs, if of the opinion that the party acted unreasonably in bringing, or in relation to the conduct of, the proceedings.

(4) Where costs of representation are awarded, the award may be made, if the review authority thinks fit, in favour of the representative.

(5) Unless otherwise ordered by the review authority, costs awarded under subsection (1) (a) or (b) are payable by the Corporation or an exempt employer (according to whether the Corporation or the exempt employer is the compensating authority).

(6) Costs awarded under this section may be recovered as a debt.

#### **Statement of appeal rights, etc.**

34. Section 93 of the principal Act is amended by striking out from subsection (2) “(other than a Medical Review Panel)”.

#### **Substitution of s. 94**

35. Section 94 of the principal Act is repealed and the following section is substituted:

##### **Reference of matters to Medical Advisory Panels**

94. (1) A review authority may, on its own initiative, or on the application of a party to proceedings before the authority, refer—

- (a) a medical question arising in the proceedings;

or

(b) a decision by the Corporation to disallow or reduce a charge for a service under section 32,

to a Medical Advisory Panel for advice.

(2) If a review authority differs from the advice provided by a Medical Advisory Panel, the authority must state its reasons for doing so in the reasons for its decision.

#### **Application for review**

36. Section 95 of the principal Act is amended by inserting after paragraph (c) of subsection (2) the following paragraphs:

(d) a decision on an application by an employer under section 36 to have weekly payments payable to a worker employed by, or formerly employed by, that employer reviewed;

(da) a decision by the Corporation to disallow or reduce a charge for a service under section 32;.

#### **Review by Review Officer**

37. Section 96 of the principal Act is amended by striking out subsection (3).

#### **Appeals to the Tribunal**

38. Section 97 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) An appeal lies to the Tribunal against a decision by a Review Officer on a review.

(2) Such an appeal may be instituted by—

(a) any person directly affected by the decision;

(b) the employer, or former employer, of a worker directly affected by the decision;

or

(c) the Corporation.;

(b) by striking out “appellate authority” wherever it occurs in subsections (3), (4c), (4d), (4e), (4f) and (5) and substituting, in each case, “Tribunal”;

(c) by striking out from subsection (4a) “of Review Authorities”;

and

(d) by striking out subsections (6) and (7).

#### **Repeal of s. 98**

39. Section 98 of the principal Act is repealed.

#### **Decisions relating to exempt employers**

40. Section 98a of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) If the Corporation—

(a) refuses the registration of an employer or group of employers as an exempt employer or group of exempt employers;



(b) grants or renews registration as an exempt employer or group of exempt employers for a period of less than three years;

or

(c) 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.

#### **Repeal of s. 104 of the principal Act**

41. Section 104 of the principal Act is repealed.

#### **Insurance of registered employers against other liabilities**

42. Section 105 of the principal Act is amended—

(a) by striking out “(not being an exempt employer)”;

and

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

(2) Where an employer participates in the provision of a rehabilitation programme under this Act, and in consequence of that participation provides work for a person who is not a worker employed by that employer, that person will be taken to be in the employment of the employer for the purposes of subsection (1).

(3) The insurance provided by subsection (1) does not extend to an exempt employer except in relation to persons of the class referred to in subsection (2).

#### **Medical examination at request of employer**

43. Section 108 of the principal Act is amended by inserting after subsection (3) the following subsections:

(4) If it appears that there has been undue delay in having a worker examined under this section, a Review Officer may, on application by the employer, give such directions to the Corporation as appear reasonable in the circumstances to expedite the examination.

(5) The Corporation must comply, or take steps to secure compliance, with such a direction.

#### **Powers of inspectors**

44. Section 110 of the principal Act is repealed and the following section is substituted:

##### **Powers of entry and inspection**

110. (1) For the purposes of this Act, an authorized officer may, at any reasonable time—

(a) enter any workplace;

(b) inspect the workplace, anything at the workplace and work there in progress;

(c) require a person who has custody or control of books, documents or records relevant to any matter arising under this Act to produce those books, documents or records;

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- (d) examine, copy and take extracts from any such books, documents or records, or require an employer to provide a copy of any such books, documents or records;
- (e) take photographs, films or video or audio recordings;
- (f) take measurements, make notes and records and carry out tests;
- (g) require (directly or through an interpreter) any person to answer, to the best of that person's knowledge, information and belief, any question relevant to any matter arising under this Act;
- (h) require an employer to produce any document, or a copy of any document, that is required to be prepared or kept under this Act.
- (2) Where—
- (a) a person whose native language is not English is suspected of having breached this Act;
- (b) the person is interviewed by an authorized officer in relation to that suspected breach;
- and
- (c) the person is not reasonably fluent in English,
- the person is entitled to be assisted by an interpreter during the interview.
- (3) A person is not required—
- (a) to provide information under this section that is privileged on the ground of legal professional privilege;
- or
- (b) to answer a question under this section if the answer would tend to incriminate that person of an offence.
- (4) An authorized officer, who suspects on reasonable grounds that an offence against this Act has been committed, may seize and retain anything that affords evidence of that offence.
- (5) An authorized officer must, at the request of any person from whose possession evidentiary material is seized under subsection (4), provide a receipt for that material.
- (6) Where anything has been seized under subsection (4) the following provisions apply:
- (a) the thing seized must be held pending proceedings for an offence against this Act related to the thing seized, unless the Minister, on application, authorizes its release to the person from whom it was seized, or any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b) (ii));
- (b) where proceedings for an offence against this Act relating to the thing seized are instituted within six months of its seizure and the person charged is found guilty of the offence, the court may—
- (i) order that it be forfeited to the Crown;
- or
- (ii) where it has been released pursuant to paragraph (a)—order that it be forfeited to the Crown or that the person to whom it was

released pay to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit;

(c) where—

(i) proceedings are not instituted for an offence against this Act relating to the thing seized within six months after its seizure;

or

(ii) proceedings having been so instituted—

(A) the person charged is found not guilty of the offence;

or

(B) the person charged is found guilty of the offence but no order for forfeiture is made under paragraph (b),

the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Minister, by action in a court of competent jurisdiction, the thing itself, or if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the time of its seizure.

(7) In the exercise of powers under this section, an authorized officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.

(8) An employer whose workplace is subject to an inspection under this section must provide such assistance as may be necessary to facilitate the exercise of the powers conferred by this section.

(9) A person must not—

(a) hinder or obstruct an authorized officer in the exercise of a power conferred by this section;

or

(b) refuse or fail, without lawful excuse, to comply with a requirement under this section.

Penalty: \$10 000.

(10) An authorized officer, or a person assisting an authorized officer, who in the course of exercising powers under this section in relation to an employer—

(a) unreasonably hinders or obstructs the employer in the day to day running of his or her business;

(b) addresses offensive language to the employer or to any other person at the workplace;

(c) assaults the employer or any other person at the workplace,

is guilty of an offence.

Penalty:

(a) for an offence against paragraph (a) or (b)—\$6 000;

(b) for an offence against paragraph (c)—\$6 000 or imprisonment for one year.

#### **Substitution of ss. 119a and 120**

45. Sections 119a and 120 of the principal Act are repealed and the following section is substituted:

**Dishonesty**

120. (1) A person who—

- (a) obtains by dishonest means any payment or other benefit under this Act;
  - (b) dishonestly claims to be entitled to a payment or other benefit under this Act;
- or
- (c) dishonestly makes a statement in relation to a claim under this Act knowing the statement to be false or misleading,

is guilty of an offence.

Penalty: \$10 000 or imprisonment for one year.

(2) A person who—

- (a) aids, abets, counsels or procures the commission of an offence against subsection (1);
- or
- (b) solicits or incites the commission of any such offence,

is guilty of an offence.

Penalty: \$10 000 or imprisonment for one year.

(3) Where a court convicts a person of an offence against this section, or finds a person guilty of such an offence without recording a conviction, the court must, on application by the Corporation or an exempt employer, order the person who committed the offence—

- (a) to make good any loss to the applicant resulting from the commission of the offence;
- and
- (b) to reimburse costs incurred by the applicant in investigating and prosecuting the offence.

**Offences**

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

(3a) A prosecution for an offence against this Act must be commenced within three years after the date on which the offence is alleged to have been committed.

**Insertion of s. 122a**

47. The following section is inserted after section 122 of the principal Act:

**Expiation of offences**

122a. Where it is alleged that a person has committed an offence against this Act (other than an offence involving dishonesty), the Corporation may cause to be served personally or by post on that person a notice to the effect that the offence may be expiated by payment to the Corporation of the expiation fee specified in the notice (being a fee fixed by the regulations) within 60 days of the date of the notice and, if the offence is so expiated, no prosecution of the alleged offence may be commenced.

**Insertion of s. 123**

48. The following section is inserted after section 123 of the principal Act:

**Right of intervention**

123a. The Corporation has a right to intervene and be heard in—

(a) any proceedings under this Act before a Review Officer, or the Tribunal;

or

(b) any proceedings before a court—

(i) in which the interpretation or application of this Act is in issue;

or

(ii) in which the Corporation's interests may be directly or indirectly affected.

**Transitional provision**

49. (1) The amendments effected by this Act to those provisions of the principal Act that relate to weekly payments of compensation apply as from the commencement of this Act to persons whose entitlements to weekly payments arose before or after the commencement of this Act.

(2) Where a worker became entitled to weekly payments before the commencement of this Act, the Corporation or an exempt employer may assess or reassess the amount of the weekly payments as from the commencement of this Act on the basis of the provisions of the principal Act as amended by this Act.

(3) Where such a reassessment is made, it cannot give rise to a right to repayment of any amount paid on the basis of a former assessment.

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

ROMA MITCHELL Governor