



WORKERS REHABILITATION AND COMPENSATION (ADMINISTRATION) AMENDMENT ACT 1994

No. 49 of 1994

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Substitution of s. 2
 2. Objects of Act
4. Amendment of s. 3—Interpretation
5. Substitution of Part II

PART II

THE WORKERS REHABILITATION AND COMPENSATION ADVISORY COMMITTEE

7. The Advisory Committee
8. Functions of the Advisory Committee
9. Term and conditions of office
10. Allowances and expenses
11. Proceedings, etc., of the Advisory Committee
12. Confidentiality
13. Immunity of members of Advisory Committee
6. Substitution of s. 30
 30. Compensability of disabilities
 - 30A. Stress-related disabilities
 - 30B. Effect of misconduct, etc.
7. Amendment of s. 31—Evidentiary provision
8. Amendment of s. 35—Weekly payments
9. Substitution of s. 42
 42. Commutation of liability to make weekly payments
10. Amendment of s. 44—Compensation payable on death
11. Amendment of s. 53—Determination of claim
12. Repeal of s. 56
13. Amendment of s. 64—The Compensation Fund
14. Amendment of s. 97—Appeals to Tribunal
15. Amendment of s. 112—Confidentiality to be maintained
16. Repeal of s. 121
17. Repeal of s. 123
18. Amendment of third schedule
19. Amendment of fourth schedule
20. Application of amendments



ANNO QUADRAGESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1994

No. 49 of 1994

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

[Assented to 16 June 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Workers Rehabilitation and Compensation (Administration) Amendment Act 1994*.

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

Commencement

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

(2) However—

(a) the day fixed for the commencement of this Act must be the same as the day fixed for the commencement of the *WorkCover Corporation Act 1994* and the *Occupational Health, Safety and Welfare (Administration) Amendment Act 1994*; and

(b) all provisions of this Act must be brought into operation simultaneously.

Substitution of s. 2

3. Section 2 of the principal Act is repealed and the following section is substituted:

Objects of Act

2. (1) The objects of this Act are—

(a) to establish a workers rehabilitation and compensation scheme—

(i) that achieves a reasonable balance between the interests of employers and the interests of workers; and

- (ii) that provides for the effective rehabilitation of disabled workers and their early return to work; and
 - (iii) that provides fair compensation for employment-related disabilities; and
 - (iv) that reduces the overall social and economic cost to the community of employment-related disabilities; and
 - (v) that ensures that employers' costs are contained within reasonable limits so that the impact of employment-related disabilities on South Australian businesses is minimised; and
- (b) to provide for the efficient and effective administration of the scheme; and
 - (c) to establish incentives to encourage efficiency and discourage abuses; and
 - (d) to ensure that the scheme is fully funded on a fair basis; and
 - (e) to reduce the incidence of employment-related accidents and disabilities; and
 - (f) to reduce litigation and adversarial contests to the greatest possible extent.

(2) A person exercising judicial or quasi-judicial powers must interpret this Act in the light of its objects without bias towards the interests of employers on the one hand, or workers on the other.

Amendment of s. 3—Interpretation

4. Section 3 of the principal Act is amended—

- (a) by inserting in subsection (1) after the definition of "actuary" the following definition:

"Advisory Committee" means the Workers Rehabilitation and Compensation Advisory Committee established under Part II;

- (b) by striking out from subsection (1) the definition of "the Corporation" and substituting the following definition:

"Corporation" means the *WorkCover Corporation of South Australia*;

- (c) by striking out from subsection (1) the definition of "journey";

- (d) by striking out from subsection (1) the definition of "place of employment" and substituting:

"place of employment" means a place where a worker is required to carry out duties of employment and, if the place is a building, includes land within the external boundaries of the land on which the building is situated;

- (e) by striking out from subsection (1) the definition of "place of pick-up";
- (f) by striking out paragraphs (a) and (b) of the definition of "registered association" in subsection (1) and substituting the following paragraphs:
- (a) an association registered under the *Industrial Relations Act (S.A.) 1972*;
 - (b) an association registered under the *Industrial Relations Act 1988* of the Commonwealth;;
- (g) by striking out from subsection (1) the definition of "unrepresentative disability" and substituting the following definition:
- "unrepresentative disability"** means a disability arising from an attendance or journey mentioned in section 30(3) or (5);;
- (h) by striking out subsection (4);
- (i) by striking out subsection (8) and substituting the following subsection:
- (8) A regulation under subsection (7) may only be made after consultation with the Advisory Committee.

Substitution of Part II

5. Part II of the principal Act (and the heading to that Part) are repealed and the following Part is substituted:

PART II THE WORKERS REHABILITATION AND COMPENSATION ADVISORY COMMITTEE

The Advisory Committee

7. (1) The *Workers Rehabilitation and Compensation Advisory Committee* is established.

(2) The Advisory Committee consists of nine members appointed by the Governor of whom—

- (a) three (who must include an expert in rehabilitation) will be appointed on the Minister's nomination made after consulting with associations representing employers and with associations representing employees (including the UTLC); and
- (b) three (who must include at least one suitable representative of registered employers and at least one suitable representative of exempt employers) will be appointed on the Minister's nomination made after consulting with associations representing employers; and

- (c) three will be appointed on the Minister's nomination made after consultation with associations representing employees, including the UTLC.

(3) One member¹ of the Committee must be appointed² by the Governor to preside at meetings of the Committee.

¹ The member is referred to in this Act as the "presiding member" of the Committee.

² The appointment must be made from among the members appointed under subsection (2)(a).

Functions of the Advisory Committee

8. (1) The functions of the Advisory Committee are—

- (a) to advise the Minister on the formulation and implementation of policies relating to workers rehabilitation and compensation; and
- (b) to advise the Minister (on its own initiative or at the request of the Minister) on—
- (i) proposals to make amendments to this Act, or to make regulations under this Act; and
- (ii) other legislative proposals that may affect the operation of this Act; and
- (c) to investigate work-related injury and disease; and
- (d) to report to the Minister (on its own initiative or at the request of the Minister) on any other matter relating to workers rehabilitation or compensation; and
- (e) to carry out other functions assigned to the Advisory Committee by the Minister.

(2) The Advisory Committee may conduct public meetings and discussions and may, with the approval of the Minister, conduct inquiries, on questions arising before the Advisory Committee.

(3) The Advisory Committee may on its own initiative, and must at the direction of the Minister, consult and co-operate with the Corporation, other government authorities at a State or national level, representatives of registered associations and other persons or bodies.

(4) The Advisory Committee may, with the approval of the Minister, establish subcommittees to assist the Committee.

(5) A subcommittee may, but need not, consist of, or include, members of the Advisory Committee.

Terms and conditions of office

9. (1) A member of the Advisory Committee will be appointed on conditions, and for a term (not exceeding three years), determined by the Governor and, on the expiration of a term of appointment, is eligible for re-appointment.

(2) The Governor may remove a member from office for—

- (a) breach of, or non-compliance with, a condition of appointment; or
- (b) mental or physical incapacity to carry out duties of office satisfactorily; or
- (c) neglect of duty; or
- (d) dishonourable conduct.

(3) The office of a member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns by written notice addressed to the Minister; or
- (d) is found guilty of an offence against subsection (5) (Disclosure of interest);
or
- (e) is removed from office by the Governor under subsection (2).

(4) On the office of a member of the Advisory Committee becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.

(5) A member who has a direct or indirect personal or pecuniary interest in a matter under consideration by the Advisory Committee—

- (a) must, as soon as practicable after becoming aware of the interest, disclose the nature and extent of the interest to the Committee; and
- (b) must not take part in a deliberation or decision of the Committee on the matter and must not be present at a meeting of the Committee when the matter is under consideration.

Penalty: \$8 000 or imprisonment for two years.

Allowances and expenses

10. (1) A member of the Advisory Committee is entitled to fees, allowances and expenses approved by the Governor.

(2) The fees, allowances and expenses are payable out of the Compensation Fund.

Proceedings, etc., of the Advisory Committee

11. (1) Meetings of the Advisory Committee must be held at times and places appointed by the Committee, but there must be at least six meetings per year.

(2) Six members of the Advisory Committee constitute a quorum of the Committee.

(3) The presiding member of the Advisory Committee will, if present at a meeting of the Committee, preside at the meeting and, in the absence of the presiding member, a member chosen by the members present will preside.

(4) A decision carried by a majority of the votes of the members present at a meeting of the Advisory Committee is a decision of the Committee.

(5) Each member present at a meeting of the Advisory Committee is entitled to one vote on a matter arising for decision by the Committee, and, if the votes are equal, the person presiding at the meeting has a second or casting vote.

(6) The Advisory Committee must ensure that accurate minutes are kept of its proceedings.

(7) The Advisory Committee may open its proceedings to the public unless the proceedings relate to commercially sensitive matters or to matters of a private confidential nature.

(8) Subject to this Act, the proceedings of the Advisory Committee will be conducted as the Committee determines.

Confidentiality

12. A member of the Advisory Committee who, as a member of the Committee, acquires information that—

- (a) the member knows to be of a commercially sensitive nature, or of a private confidential nature; or
- (b) the Committee classifies as confidential information,

must not divulge the information without the approval of the Committee.

Penalty: \$1 000.

Immunity of members of Advisory Committee

13. (1) No personal liability attaches to a member of the Advisory Committee for an act or omission by the member or the Committee in good faith and in the exercise or purported exercise of powers or functions under this Act.

(2) A liability that would, but for subsection (1), lie against a member lies instead against the Crown.

Substitution of s. 30

6. Section 30 of the principal Act is repealed and the following sections are substituted:

Compensability of disabilities

30. (1) Subject to this Act, a disability is compensable if it arises from employment.

(2) Subject to this section, a disability arises from employment if—

- (a) in the case of a disability that is not a secondary disability or a disease—it arises out of or in the course of employment; or
- (b) in the case of a disability that is a secondary disability or a disease—
 - (i) the disability arises out of employment; or
 - (ii) the disability arises in the course of employment and the employment contributed to the disability.

(3) A worker's employment includes—

- (a) attendance at the worker's place of employment on a working day but before the day's work begins in order to prepare, or be ready, for work; and
- (b) attendance at the worker's place of employment during an authorised break from work; and
- (c) attendance at the worker's place of employment but after work ends for the day while the worker is preparing to leave, or in the process of leaving, the place; and
- (d) attendance at an educational institution under the terms of an apprenticeship or other legal obligation, or at the employer's request or with the employer's approval; and
- (e) attendance at a place to receive a medical service, to obtain a medical report or certificate (or to be examined for the purpose), to participate in a rehabilitation program, or to apply for, or receive, compensation for a compensable disability.

(4) However, a disability does not arise from employment if it arises out of, or in the course of, the worker's involvement in a social or sporting activity, except where the activity forms part of the worker's employment or is undertaken at the direction or request of the employer.

(5) A disability that arises out of, or in the course of, a journey arises from employment only if—

- (a) the journey is undertaken in the course of carrying out duties of employment; or

- (b) the journey is between—
- (i) the worker's place of residence and place of employment; or
 - (ii) the worker's place of residence or place of employment and—
 - an educational institution the worker attends under the terms of an apprenticeship or other legal obligation, or at the employer's request or with the employer's approval; or
 - a place the worker attends to receive a medical service, to obtain a medical report or certificate (or to be examined for that purpose), to participate in a rehabilitation program, or to apply for, or receive, compensation for a compensable disability,

and there is a real and substantial connection between the employment and the accident out of which the disability arises.

(6) However, the fact that a worker has an accident in the course of a journey to or from work does not in itself establish a sufficient connection between the accident and the employment for the purposes of subsection (5)(b).

(7) The journey between places mentioned in subsection (5)(b) must be a journey by a reasonably direct route but may include an interruption or deviation if it is not, in the circumstances of the case, substantial, and does not materially increase the risk of injury to the worker.

Stress-related disabilities

30A. A disability consisting of an illness or disorder of the mind caused by stress is compensable if and only if—

- (a) stress arising out of employment was a substantial cause of the disability; and
- (b) the stress did not arise wholly or predominantly from—
 - (i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker; or
 - (ii) a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with the worker's employment; or
 - (iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment; or
 - (iv) reasonable action taken in a reasonable manner under this Act affecting the worker.

Effect of misconduct, etc.

30B. (1) A worker who is acting in connection with, and for the purposes of, the employer's trade or business is presumed to be acting in the course of employment despite the fact that—

- (a) the worker is acting in contravention of a statutory or other regulation applicable to the employment; or
- (b) the worker is acting without, or in contravention of, instructions from the employer.

(2) However—

- (a) a worker will not be presumed to be acting in the course of employment if the worker is guilty of misconduct or acts in contravention of instructions from the employer during the course of an attendance under section 30(3); and
- (b) a disability is not compensable if it is established on the balance of probabilities that the disability is wholly or predominantly attributable to—
 - (i) serious and wilful misconduct on the part of the worker; or
 - (ii) the influence of alcohol or a drug voluntarily consumed by the worker (other than a drug lawfully obtained and consumed in a reasonable quantity by the worker).

(3) Subsection (2)(a) does not apply in a case of death or permanent total incapacity for work and subsection (2)(b) does not apply in a case of death or serious and permanent disability.

Amendment of s. 31—Evidentiary provision

7. Section 31 of the principal Act is amended—

(a) by striking out subsections (1) to (3) and substituting the following subsections:

(1) A disability is not compensable unless it is established on the balance of probabilities that it arises from employment.

(2) However, if a worker suffers a disability of a kind referred to in the first column of the second schedule and has been employed in work of a type referred to in the second column of the second schedule opposite the disability, the worker's disability is presumed, in the absence of proof to the contrary, to have arisen from that employment.

(3) A regulation made on the recommendation, or with the approval, of the Corporation or the Advisory Committee may extend the operation of subsection (2) to disabilities and types of work prescribed in the regulation.;

(b) by striking out from subsection (4) "subsection (1)" and substituting "subsection (2)".

Amendment of s. 35—Weekly payments

8. Section 35 of the principal Act is amended by striking out subsections (6) and (6a) and substituting the following subsections:

(6) A worker is not entitled to receive for two or more disabilities weekly payments in excess of the worker's notional weekly earnings.

(6a) If a liability to make weekly payments is commuted into a liability to make a capital payment, the worker is presumed, for the purposes of this section, to be receiving the weekly payments the worker would have been receiving if there had been no commutation.

(6b) If a worker ceases to be entitled to weekly payments because the Corporation makes a capital payment for loss of earning capacity under Division 4A, the worker is presumed, for the purposes of this section, to be receiving the weekly payments the worker would have been receiving if there had been no such capital payment.

Substitution of s. 42

9. Section 42 of the principal Act is repealed and the following section is substituted:

Commutation of liability to make weekly payments

42. (1) A liability to make weekly payments under this Division may, on application by the worker, be commuted to a liability to make a capital payment that is actuarially equivalent to the weekly payments.

(2) However, the liability may only be commuted if—

(a) the incapacity is permanent; and

(b) the actuarial equivalent of the weekly payments does not exceed the prescribed sum³.

(3) The Corporation has (subject to this section) an absolute discretion to commute or not to commute a liability under this section, and the Corporation's decision to make or not to make the commutation is not reviewable (but a decision on the amount of a commutation is reviewable).

(4) If the Corporation decides to make a commutation and makes an offer to the worker, the Corporation cannot, without the agreement of the worker, subsequently revoke its decision to make the commutation.

(5) In calculating the actuarial equivalent of weekly payments, the principles (and any discount, decrement or inflation rate) prescribed by regulation must be applied.

(6) A commutation discharges the Corporation's liability to make weekly payments to which the commutation relates.

³ The reference to the prescribed sum is a reference to the prescribed sum for the purposes of Division 5—See s. 43(11).

Amendment of s. 44—Compensation payable on death**10. Section 44 of the principal Act is amended—**

- (a) by striking out subsections (13), (14) and (15) and renumbering subsection (14a) as subsection (13);
- (b) by inserting the following subsections at the end of the section—

(14) A liability to make weekly payments under this section may, on application by the person entitled to the weekly payments, be commuted to a liability to make a capital payment that is actuarially equivalent to the weekly payments.

(15) However, the liability may only be commuted if the actuarial equivalent of the weekly payments does not exceed the prescribed sum⁴.

(16) The Corporation has (subject to this section) an absolute discretion to commute or not to commute a liability under this section, and the Corporation's decision to make or not to make commutation is not reviewable (but a decision on the amount of a commutation is reviewable).

(17) If the Corporation decides to make a commutation and makes an offer under this section, the Corporation cannot, without the agreement of the applicant, subsequently revoke its decision to make the commutation.

(18) In calculating the actuarial equivalent of weekly payments, the principles (and any discount, decrement or inflation rate) prescribed by regulation must be applied.

(19) A commutation discharges the Corporation's liability to make weekly payments to which the commutation relates.

⁴ *The reference to the prescribed sum is a reference to the prescribed sum for the purposes of Division 5—See s. 43(11).*

Amendment of s. 53—Determination of claim

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

(7A) For the purposes of subsection (7), an appropriate case is one where—

- (a) the redetermination is necessary to give effect to an agreement reached between the parties to an application for review or to reflect progress (short of an agreement) made by the parties to such an application in an attempt to resolve questions by agreement; or
- (b) the claimant deliberately withheld information that should have been supplied to the Corporation and the original determination was, in consequence, based on inadequate information; or
- (c) the redetermination is appropriate by reason of new information that was not available and could not reasonably have been discovered by due enquiry at the time that the original determination was made; or

(d) the original determination was made as the result of an administrative error and the redetermination is made within two weeks of the making of the original determination; or

(e) the redetermination is made in prescribed circumstances.

(7B) A regulation made for the purposes of subsection (7A)(e) cannot come into operation until the time for disallowance has passed.

Repeal of s. 56

12. Section 56 of the principal Act is repealed.

Amendment of s. 64—The Compensation Fund

13. Section 64 of the principal Act is amended—

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

(e) to the extent provided by regulation—money received by the Corporation under, or in the administration of, another Act.;

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

(d) to the extent provided by regulation—the costs incurred by the Corporation in carrying out its functions under another Act.

Amendment of s. 97—Appeals to Tribunal

14. Section 97 of the principal Act is amended by striking out subsection (5) and substituting the following subsection:

(5) On an appeal under this section, the Tribunal may exercise any one or more of the following powers—

(a) confirm, vary, set aside or reverse the decision under appeal;

(b) refer the subject matter of the appeal, or any matter arising in the course of the appeal, back to a Review Officer with directions or suggestions the Tribunal considers appropriate;

(c) make incidental or ancillary orders.

Amendment of s. 112—Confidentiality to be maintained

15. Section 112 of the principal Act is amended—

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

(1) A person must not disclose information (except as permitted by subsection (2)) if—

(a) the person obtained the information in the course of carrying out functions in, or related to, the administration, operation or enforcement of this Act; and

- (b) the information is—
- (i) about commercial or trading operations; or
 - (ii) about the physical or mental condition, or the personal circumstances or affairs, of a worker or other person; or
 - (iii) information provided in a return or in response to a request for information under this Act.

Penalty: \$3 000.

(2) A disclosure of information is permitted if it is—

- (a) a disclosure in the course of official duties; or
- (b) a disclosure of statistical information; or
- (c) a disclosure made with the consent of the person to whom the information relates, or who furnished the information; or
- (d) a disclosure required by a court or tribunal constituted by law, or before a review authority; or
- (e) a disclosure to the Corporation or an exempt employer; or
- (f) a disclosure to a disabled worker's employer in accordance with this Act; or
- (g) a disclosure made under the authorisation of the Minister; or
- (h) a disclosure authorised by regulation.;

(b) by striking out from subsection (2a) "subsection (2)(e)" and substituting "subsection (2)(h)";

(c) by striking out subsection (3).

Repeal of s. 121

16. Section 121 of the principal Act is repealed.

Repeal of s. 123

17. Section 123 of the principal Act is repealed.

Amendment of third schedule

18. The third schedule to the principal Act is amended—

- (a) by inserting the following sentence after the first sentence of clause 2:

However, in the case of hearing loss, compensation is not payable by reference to this schedule unless the percentage loss of hearing exceeds 5%.

- (b) by inserting the following sentence after the first sentence in clause 4:

However, a percentage loss of hearing is to be determined in accordance with the principles set out in the report entitled *Improved Procedure for Determining Percentage Loss of Hearing* published by the National Acoustic Laboratories and dated January 1988 (ISBN 0 644 06884 1).

Amendment of fourth schedule

19. The fourth schedule of the principal Act is amended—

- (a) by striking out paragraphs (a) and (b) of clause 1(2) and substituting the following paragraph:

(a) two will be persons working in the field of occupational health and safety nominated by the Corporation;

- (b) by inserting after subclause (2) of clause 1 the following subclause:

(2a) The Minister will appoint one of the members of the Committee appointed under subclause (2)(a) to be the presiding member of the Committee.

Application of amendments

20. (1) The amendments made by this Act to the principal Act apply in relation to disabilities occurring on or after the commencement of this Act.

- (2) However—

(a) the amendments made by sections 8, 9 and 10 of this Act apply both prospectively and retrospectively; and

(b) the amendments made by section 18 apply to any claim for compensation for hearing loss made on or after 23 March 1994; and

(c) the amendment made by section 11 applies as from 24 February 1994.

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

ROMA MITCHELL Governor