

# WORKERS' COMPENSATION ACT

## No. 110 of 1990

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No. 110 of 1990

An Act to provide for compensation and rehabilitation of  
injured workers and for related purposes

[ASSENTED TO 18TH DECEMBER, 1990]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

### PART 1—PRELIMINARY

**1.1 Short Title.** This Act may be cited as the *Workers' Compensation Act 1990*.

**1.2 Commencement.** (1) Section 1.1 and this section commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act commence on 1 January 1991.

That date is in this Act referred to as the commencement of this Act.

**1.3 Repeals.** (1) Each of the following Acts is repealed:—

*The Workers' Compensation Act of 1916*

*The Workers' Compensation Act Amendment Act of 1916*

*The Workers' Compensation Acts Amendment Act of 1918*

*The Workers' Compensation Acts Amendment Act of 1921*

*The Workers' Compensation Acts Amendment Act of 1923*

*The Workers' Compensation Acts Amendment Act of 1925*

*The Workers' Compensation Acts Amendment Act of 1926*

*The Workers' Compensation Acts Amendment Act of 1929*

*The Workers' Compensation Acts Amendment Act of 1934*

*The Workers' Compensation Acts Amendment Act of 1935*

*The Workers' Compensation Acts Amendment Act of 1936*

*The Workers' Compensation Acts and Another Act Amendment Act of 1939*

*The Workers' Compensation Acts and Another Act Amendment Act of 1941*

*The Workers' Compensation Acts Amendment Act of 1943*

*The Workers' Compensation Acts Amendment Act of 1943 (No.2)*

*The Workers' Compensation Acts Amendment Act of 1944*

*The Workers' Compensation Acts Amendment Act of 1946*

*The Workers' Compensation Acts Amendment Act of 1947*

*The Workers' Compensation Acts Amendment Act of 1948*

*The Workers' Compensation Acts Amendment Act of 1949*

*The Workers' Compensation Acts Amendment Act of 1951*

*The Workers' Compensation Acts Amendment Act of 1952*

*The Workers' Compensation Acts Amendment Act of 1954*

*The Workers' Compensation Acts Amendment Act of 1955*

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*The Workers' Compensation Acts Amendment Act of 1956*  
*The Workers' Compensation Acts Amendment Act of 1959*  
*The Workers' Compensation Acts Amendment Act of 1959 (No.2)*  
*The Workers' Compensation Acts Amendment Act of 1960*  
*The Workers' Compensation Acts Amendment Act of 1960 (No.2)*  
*The Workers' Compensation Acts Amendment Act of 1961*  
*The Workers' Compensation Act Amendment Act of 1962*  
*The Workers' Compensation Act Amendment Act of 1964*  
*Workers' Compensation Act Amendment Act of 1966*  
*Workers' Compensation Act Amendment Act 1973*  
*Workers' Compensation Act Amendment Act 1978*  
*Workers' Compensation Act Amendment Act 1979*  
*Workers' Compensation Act Amendment Act 1980*  
*Workers' Compensation Act Amendment Act 1982*  
*Workers' Compensation Act Amendment Act 1983*  
*Workers' Compensation Act Amendment Act 1986*  
*Workers' Compensation Act Amendment Act 1988*  
*The Workers' Compensation (Lead Poisoning, Mount Isa) Act of 1933*  
*The Workers' Compensation (Lead Poisoning, Mount Isa) Amendment Act of 1961*

(2) Part III of The State Government Insurance Office (Queensland) Act and Another Act Amendment Act of 1965 is repealed.

**1.4 Objects of Act.** The objects of this Act are—

- (a) to provide for the maintenance of a system of accident insurance providing adequate and suitable cover for workers who suffer injury and for dependants of workers whose deaths result from injury;
- (b) to meet the needs of workers and dependants, such as are referred to in paragraph (a), including the need for adequate income and appropriate medical treatment;
- (c) to seek the participation of injured workers in suitable rehabilitation programmes with a view to their early return to productive work;
- (d) to encourage safety in industry;
- (e) to protect the interests of employers in relation to claims for damages on account of injury to a worker;
- (f) to provide for the efficient and economic administration of the system of accident insurance referred to in paragraph (a).

**1.5 Application of Act to workers.** (1) This Act applies so as to confer an entitlement in respect of injury suffered by a worker—

- on the worker;



or

- if the injury is, or results in, the worker's death, on the worker's dependants;

if—

(a) the worker is in Queensland at the time the injury is suffered;

or

(b) the worker is not in Queensland at the time the injury is suffered, if—

(i) the worker entered into the contract of service or apprenticeship (in respect of the employment out of, or in the course of, which the injury arose) in Queensland with an employer who, at the time the contract was entered into, had a place of employment, or was present, in Queensland;

and

(ii) the worker commenced employment under the contract in Queensland;

and

(iii) employment under the contract is, or was, with the knowledge and consent of the employer, carried out partly in Queensland and partly outside Queensland;

unless, in the Board's opinion, the worker has been continuously employed outside Queensland for longer than 2 years;

and in no other case.

(2) This Act applies in relation to a worker whose employment is in a department of government or by or under the Crown in right of the State as if the employment were with a person engaged in private enterprise.

(3) Notwithstanding any provision of this Act, if the Board makes payment of compensation under this Act to or on account of a worker employed—

- in a department of government;
- or
- by the Crown in right of the State;

the Board may recover from the department or, as the case may be, the Crown—

- the amount so paid by the Board;
- and
- an amount determined by the Board as its charge for administering the claim for such compensation.

The sum recoverable by the Board under this subsection may be paid—

- with the authority of the Minister of the Crown administering the department concerned, from moneys available to the department for the purpose;
- from moneys specifically appropriated by Parliament.

**1.6 Application of Act to existing policies.** This Act applies in relation to every policy of accident insurance or of other insurance subsisting immediately before the commencement of this Act, being—

(a) a policy issued by the Board under the *Workers' Compensation Act 1916-1978*, or that Act as amended and in force for the time being;

or

(b) a policy issued by the Insurance Commissioner or the State Government Insurance Office (Queensland), which, pursuant to the *Workers' Compensation Act Amendment Act 1978*, is to be deemed to be a policy issued by the Board.

**1.7 References in other Acts etc.** A reference in any Act or in any Proclamation, Order in Council, regulation, rule, by-law or ordinance made under any Act, or in any document, to the Insurance Commissioner or the State Government Insurance Office (Queensland), so far as it relates to the carrying on of the business of accident insurance or other insurance under *The Workers' Compensation Act of 1916* or that Act as amended and in force for the time being, is to be read and construed as a reference to the Board.

**1.8 Continuance of existing offices.** A person who, immediately before the commencement of this Act holds an office for the purposes of the *Workers' Compensation Act 1916-1988* continues to hold the office for the purposes of this Act until the person ceases to hold the office in accordance with law.

**1.9 Claims relating to injury pre-dating Act.** (1) An application for compensation, which—

(a) having been made under *The Workers' Compensation Act of 1916* as amended and in force for the time being, has not been determined at the commencement of this Act;

or

(b) being made after the commencement of this Act, relates to a death that occurred before the commencement of this Act, or to an incapacity, disability or loss resulting from injury suffered before the commencement of this Act;

is to be determined, and benefits (if any) are to be paid in respect of it in accordance with *The Workers' Compensation Act of 1916* as amended and in force at the time the injury to which the application

relates was suffered, subject to subsection (2).

(2) A person who has an entitlement to weekly payments of compensation under the *Workers' Compensation Act 1916-1988*, which entitlement has not terminated at the commencement of this Act, continues to have that entitlement, but in respect of such weekly payments, or other payments, made to or on account of that person after the commencement of this Act—

- (a) that person is to be given the benefit of every increase in the amount of compensation, or other payments, prescribed by this Act in relation to an entitlement of a like description, before that entitlement terminates;
- (b) if that entitlement is to weekly payments for a period of 26 weeks and has not terminated before 1 March 1991, that person is to be given the benefit of the increase to 39 weeks for which weekly payments of compensation under this Act are payable;
- (c) if that entitlement is to weekly payments for a period of 26 weeks and terminates before 1 March 1991, the period for which such weekly payments are payable to that person is limited to 26 weeks, in accordance with the *Workers' Compensation Act 1916-1988*.

This subsection does not apply to an entitlement to weekly payments of compensation in respect of the injury silicosis or anthraco-silicosis.

(3) If a person who, at the commencement of this Act, is in receipt of compensation under the *Workers' Compensation Act 1916-1988* dies leaving a relict or dependant who would, under that Act, have an entitlement to further benefits, that entitlement continues, and an application in respect thereof is to be determined under that Act: Provided that the applicant is to be given the benefit of every increase in the amount of compensation—

- (a) prescribed by this Act in relation to that entitlement before the entitlement terminates, in the case of an entitlement to periodic payments;
- (b) prescribed by this Act in relation to that entitlement at the time the entitlement arises, in the case of an entitlement to payment of a lump sum.

## PART 2. PROVISIONS FOR INTERPRETATION OF ACT

2.1 Interpretation. (1) In this Act, except where a contrary intention appears—

“accident insurance” means insurance by which an employer is indemnified against all sums for which the employer may become legally liable, in respect of injury to a worker employed by the employer, in respect of—

- (a) compensation under this Act;
- and

- (b) damages arising under circumstances creating also, independently of this Act, a legal liability in the employer to pay such damages, other than a liability against which the employer is required to provide in accordance with some other Act of Queensland or a law of another State or a Territory of the Commonwealth, or of the Commonwealth or of another country;

“accident pay” means a weekly payment of an amount that is the difference between the weekly rate of compensation payable to an injured worker, which rate consists of the prescribed base rate together with such allowances as are payable to the injured worker under section 8.4, and the weekly rate of wages payable to the injured worker under the industrial award or registered industrial agreement that governs the calling in which the injured worker was engaged at the time of the injury, or that award or agreement as varied and in force for the time being;

“average weekly earnings” means the average weekly earnings of an injured worker from employment (continuous or intermittent) had by the worker—

- (a) in the period of 12 months;

or

- (b) if the worker has not had such employment over so long a period, in the period in which the worker has had such employment;

immediately preceding the day on which the worker suffered the injury.

“Board” means the Workers' Compensation Board of Queensland preserved, continued in existence and constituted under this Act;

“coaster” means a ship, wherever registered, that for the time being voyages only between two or more ports in the State;

“Crown ship” means a ship that is owned by, or is in the possession (under charter) of, the Crown in right of the State, on which are employed mariners in employment by a department of government or by or under the Crown in right of the State;

“department of government” means a department within the meaning of the *Public Service Management and Employment Act 1988-1990*, and includes—

- Queensland Railways;
- Queensland Electricity Commission;

“dependants” means such members of the family of a worker as—

- (a) in the case of a deceased worker, were wholly or partially dependent on the earnings of the worker at the time of the worker's death, or, but for the worker's incapacity due to injury, would have been so dependent;

- (b) in the case of an injured worker, were wholly or partially dependent on the earnings of the worker at the time the worker suffered the injury;
- “director” in relation to a corporation, includes—
- (a) a person holding or acting in the position of a director thereof, by whatever name called, whether or not the person was validly appointed to hold, or is duly authorized to act in, the position;
  - and
  - (b) a person in accordance with whose directions or instructions the corporation is ordinarily controlled;
- “employer” means a person (whether an individual or a corporation), or any association or group of persons, or a partnership that employs a worker or workers, and includes—
- (a) a person prescribed by this Act to be an employer for the purposes of this Act;
  - (b) a person declared by section 2.2 to be an employer in the circumstances prescribed by that section;
  - (c) a person by whom a worker is declared by section 2.2 to be employed;
  - (d) the legal personal representative of a deceased employer;
- “Fund” means the Workers’ Compensation Fund kept at the Treasury pursuant to this Act;
- “General Manager” means the General Manager of the Board;
- “hospitalisation” means medical treatment provided to a person as an inpatient at a hospital;
- “Industrial Magistrate” means an Industrial Magistrate for the purposes of the *Industrial Relations Act 1990*;
- “Industrial Relations Commission” means the Court of Record prescribed, continued in existence and constituted by Part 4 of the *Industrial Relations Act 1990* under the name—The Industrial Relations Commission—and includes that body exercising jurisdiction in its previous name;
- “injury” means personal injury arising out of or in the course of employment, and includes—
- (a) death arising out of or in the course of employment;
  - (b) a disease that is contracted in the course of employment, whether at or away from the place of employment, to which the employment was a contributing factor;
  - (c) a disease that has been aggravated or accelerated, if the employment was a contributing factor to the aggravation or acceleration;
  - (d) loss of hearing resulting in the condition known as industrial deafness;
- “jockey” means a person who ordinarily is held out as available to ride or drive, for a fee or reward, in a horse race or

- trotting race within the meaning of the *Racing and Betting Act 1980-1990*, and who is authorized to so ride or drive by a principal club within the meaning of that Act or, as the case may be, The Queensland Harness Racing Board;
- “mariner” means a worker employed on a ship by the owner or charterer thereof—
- as a master or an officer;
  - as crew or an apprentice;
  - in any other capacity;
- “medical treatment” includes—
- (a) treatment by—
- a registered medical practitioner;
  - a registered dentist;
  - a registered physiotherapist;
  - a registered occupational therapist;
  - a registered psychologist;
  - a registered chiropractic manipulative therapist;
  - a registered podiatrist;
  - a registered speech therapist;
- (b) provision of diagnostic procedures or skiagrams;
- (c) provision of nursing, medicines, medical or surgical supplies, curative apparatus, crutches or other devices of assistance;
- “member of the family” means—
- a spouse;
  - a parent, grandparent and step-parent;
  - a child, grandchild and stepchild;
  - a brother, sister, half-brother and half-sister;
- and includes a person who stands in loco parentis to another person and that other person;
- “Minister” includes any Minister of the Crown for the time being performing the duties of the Minister;
- “place of employment” means the premises, works, plant, or place for the time being occupied by, or under the control or management of, the employer by whom a worker concerned is employed, and in, on, at, or in connexion with which the worker was working at the time the worker suffered injury;
- “policy” means a policy that relates to a contract of accident insurance, and includes every policy of accident insurance or other insurance to which this Act is expressed by section 1.6 to apply;
- “port” includes any harbour;
- “prescribed base rate” means a weekly rate of compensation under this Act that is 65 per centum of the weekly minimum rate of wages for the time being provided by the Engineering Award—State, made by the Industrial Relations Commission, in relation to employees of the class “Wage Group C10” in the Southern Division;
- “prescribed disfigurement” means severe facial disfigurement or severe bodily scarring;

“private hospital” means a hospital other than a public hospital;

“public hospital” means a hospital to which the *Hospitals Act 1936-1988* applies and includes a hospital referred to in Part IV of that Act;

“Queensland ship” means a ship—

(a) that is a Crown ship;

or

(b) that is a coaster;

or

(c) whose first port of clearance and whose destination are in the State;

or

(d) that, being engaged in fishing operations, discharges its catch at a port in the State, or to a mother-ship that discharges its cargo at a port in the State, and does not engage in those operations within the territorial waters of a country other than Australia;

“record” means any collection of data, in whatever form it is held, whether in books, documents, papers, or visual representation, or on film, disc, tape, perforated roll or other device in which visual representations or sounds are embodied so as to be capable of reproduction therefrom, with or without the aid of another process or instrument;

“registered” in relation to a person who is held out as providing, or qualified to provide, medical treatment, means registered under the law of the place where the medical treatment is provided as a person lawfully entitled to provide that medical treatment in that place;

“registered person” means a registered person of a description referred to in the definition “medical treatment”;

“relict” in relation to a deceased worker, means the surviving spouse of the worker;

“ship” means a ship, boat, or vessel of any kind designed for use in or on water;

“spouse” in relation to any injured or deceased worker, includes a person who has lived in a connubial relationship with the worker for a continuous period of one year, at the least, immediately preceding the time of the injury to, or the death of, the worker and who, in the case of an injured worker, continues in that relationship;

“uninsured worker” means a worker in respect of whom a policy is not maintained;

“worker” means a person who works under a contract of service or apprenticeship or otherwise with an employer in work

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of any description, whether the contract is oral or written, express or implied, and includes—

- (a) a person declared by section 2.2, or otherwise prescribed, to be a worker for the purposes of this Act;
- (b) a person to whom, or on whose account, compensation under this Act is payable in respect of an injury suffered by the person as a worker;

but does not include a person declared by section 2.3 not to be a worker for the purposes of this Act.

(2) A reference in this Act to a worker who has suffered injury includes, if the worker is deceased, reference to—

- (a) a legal personal representative of the worker;
- (b) dependants of the worker;
- (c) any other person to whom or for whose benefit compensation is payable under this Act because of the injury.

(3) A reference in this Act to compensation under this Act includes—

- (a) expenses paid or payable under this Act to or on account of a worker in respect of an injury;
- (b) expenditure by the Board in securing—
  - medical treatment or assessment of a worker;
  - any other treatment of or benefit for a worker;
  - rehabilitation of a worker;
- (c) amounts paid by the Board by way of deductions for taxation or other obligations of a worker.

(4) A reference in this Act to the chair-member or deputy chair-member of the Board includes reference to the deputy of the member of the Board who is chair-member or, as the case may be, deputy chair-member whenever such deputy of the member is duly acting under the authority of this Act in place of that member.

(5) A reference in this Act to the clerk of the Magistrates Court includes reference to an officer, other than such a clerk, appointed for the time being by the Governor in Council to exercise and discharge powers, authorities, functions and duties assigned to such a clerk by this Act within any locality in the State.

(6) In the application of a provision of this Act in relation to oral injury, or in respect of a worker who has suffered such injury, a reference in that provision to a registered medical practitioner includes reference to a registered dentist, who in respect of such injury may lawfully issue a prescribed certificate of medical practitioner.

(7) For the purposes of this Act, damage to or destruction of—

- (a) a prosthesis actually fitted to a person;
- (b) a device of assistance being—
  - crutches;



- spectacles;
- medical aids;

while in actual use by a person for a purpose for which the device is intended;

is taken to be personal injury to that person.

**2.2 Persons declared to be employers or workers.** (1) For the purposes of this Act, a person declared by a provision of this section to be an employer or a worker is an employer or, as the case may be, a worker in the circumstances prescribed by the provision.

(2) Where a holding company lets on hire the services of a waterside worker or a foreman stevedore—

- (a) the holding company is the employer of the waterside worker or foreman stevedore before the worker or stevedore commences work for the person to whom the services are let on hire, and after the termination of the hire;
- (b) the person to whom the services are let on hire is the employer of the waterside worker or the foreman stevedore upon the worker or stevedore commencing work for that person under the hire, until the termination of the hire.

The expression “holding company” means—

- (a) in relation to a waterside worker, Stevedoring Employers of Australia Limited, or its successor;
- (b) in relation to a foreman stevedore, the Association of Employers of Waterside Labour, or its successor.

(3) Except as prescribed by subsection (2), a person who lends or lets on hire the services of a worker who is party to a contract of employment with that person continues to be the employer of the worker while the worker's services are so lent or let on hire.

(4) A person who works under a contract, or at piecework rates, for labour only or substantially for labour only, including one who supplies tools of trade designed for use by hand, is a worker for the purposes of this Act, employed by the person for whom the labour is provided.

(5) A tributer working in a mine within the meaning of the *Mines Regulation Act 1964-1989*, and any wages-worker employed by the tributer therein, is a worker employed by the person with whom the tributer has made the tribute agreement.

(6) A jockey riding or driving a horse on a racecourse or doing on the racecourse anything incident thereto is a worker employed by the club or association for the time being in occupation of the racecourse.

(7) A person who works a farm as a share-farmer, and any wages-worker employed by that person, is a worker employed by the owner of the farm except where—

- (a) the share-farmer provides and uses in the share-farming operations farm machinery driven or drawn by mechanical power;

and

- (b) the share-farmer is entitled to not less than two-thirds of the proceeds of the share-farming operations pursuant to the share-farming agreement;

in which excepted case the share-farmer is not a worker and the owner of the farm is not the employer of any such wages-worker.

(8) A salesperson, canvasser, collector, or other person paid wholly or partly by commission is a worker employed by the person by whom the commission is payable, except where the commission is received for or in connexion with work incident to a trade or business regularly carried on by the salesperson, canvasser, collector, or other person, individually or by means of a partnership.

(9) If a contract is made with a contractor (other than a person declared by section 2.3 not to be a worker) for the performance of work that is not incident to a trade or business regularly carried on by the contractor, individually or by means of a partnership, and the contractor—

- (a) neither sublets the contract nor employs a wages-worker;  
or
- (b) although employing a wages-worker, performs part of the work personally;

the contractor, and any wages-worker employed by the contractor in performance of the work, is a worker employed by the person who makes the contract with the contractor.

**2.3 Persons declared not to be workers.** For the purposes of this Act, a person of a description specified in a provision of this section is not a worker except in circumstances prescribed by the provision—

- (a) a police officer in the Queensland Police Service;
- (b) a person who—
  - (i) is participating in any sporting or athletic activity as a contestant or in training or preparing for so participating;  
or
  - (ii) engages upon any daily or other periodic journey in connexion with so participating;

if the person's only remuneration under a contract pursuant to which the person so participates or engages is in respect of so participating or engaging, unless the relevant activity is such that the person is a worker because of section 2.2 (6);

- (c) a member of the crew of a fishing vessel, if the member's entitlement to remuneration is contingent upon the working of the vessel producing gross earnings or profits and the remuneration is wholly or mainly a share of the gross earnings or profits;
- (d) a person who supplies any material used in performance of a contract or in provision of the person's labour at piecework

rates, being material incorporated in the product of the work performed;

- (e) a person who works under a contract, other than a contract of service or apprenticeship, in a calling governed by any industrial award or registered industrial agreement, and who supplies and uses in performance of the contract—
  - (i) equipment, plant, machinery (other than tools designed for use by hand), or a motor vehicle (being a commercial motor vehicle fitted with a commercial type body) used for carrying goods (other than tools designed for use by hand) or animals;
    - or
    - (ii) a motor vehicle of any kind used for driving tuition;
- (f) a member of a partnership as defined in section 5 of the Partnership Acts 1891 to 1965 and as determined in accordance with rules specified in section 6 of those Acts;
- (g) a director of a corporation, unless, where the director works for the corporation under a contract of service or apprenticeship, the director is specially insured under or is specially covered by a policy pursuant to the director's election to be so insured or covered;
- (h) a trustee, unless the trustee is specially insured under or is specially covered by a policy pursuant to the trustee's election to be so insured or covered.

**2.4 Presumption as to work incident to trade or business.** If pursuant to a contract—

- (a) work is performed by a contractor who regularly carries on a trade or business such that work of the kind performed under the contract is ordinarily performed in or in connexion with that trade or business;
  - and
- (b) in the performance of the contract the contractor supplies materials or uses equipment, plant, machinery (other than tools designed for use by hand) or a motor vehicle (being a commercial motor vehicle fitted with a commercial type body) used for carrying goods (other than tools designed for use by hand) or animals;

it is to be conclusively presumed that the work performed pursuant to the contract is work incident to the trade or business regularly carried on by the contractor.

**2.5 Computation of average weekly earnings.** For the purposes of this Act, the computation of average weekly earnings of a worker for work performed is to be made in accordance with the following provisions:—

- (a) in such computation—
  - sums paid by way of overtime may be taken into account;

- sums paid to the worker for special expenses entailed on the worker by the nature of the employment are not to be taken into account;
- (b) if, because of—
- the period of time for which a worker has been employed; or
  - the terms of a worker's employment;
- it is impracticable, at the date of injury to the worker to compute the rate of the worker's remuneration, regard is to be had to the average weekly earnings during the period of 12 months immediately preceding such date of a person in the same grade, employed in the same work, by the same employer, as that of the worker, or, if there be no such person, of a person in the same grade, employed in the same class of employment, and in the same district as that of the worker;
- (c) if a worker has worked under concurrent contracts of service with two or more employers, whereby the worker has worked at one time for one and at another time for another of the employers, the worker's average weekly earnings are to be computed as if earnings under all such contracts were earnings in the employment of the employer for whom the worker was working when the injury was suffered;
- (d) if computation as prescribed of average weekly earnings would, in the General Manager's opinion, be unfair to a worker concerned, the average weekly earnings may be computed in a manner considered by the General Manager to be fair to the worker, and, as so computed, are to be taken as the average weekly earnings of the worker.

## PART 3—WORKERS' COMPENSATION BOARD

### *Division 1—Constitution of Board*

**3.1 Continuance of Board.** (1) The body corporate constituted immediately before the commencement of this Act under the name and style "Workers' Compensation Board of Queensland" is preserved and continued in existence under this Act and is to be constituted from time to time as prescribed.

(2) The Board has perpetual succession and a common seal and, subject to this Act, is capable in law of suing and being sued, of compounding or proving in a court of competent jurisdiction all debts and sums due to it, of acquiring, holding, demising, letting, and alienating property, real and personal, and of doing and suffering all such acts and things as bodies corporate may in law do and suffer.

(3) The Board has the functions and duties and may exercise the powers and authorities conferred on it by this Act.

(4) The Board represents the Crown in right of the State and, except as prescribed, is entitled to the rights, privileges and immunities of the Crown.

**3.2 Composition of Board.** The Board consists of 7 members appointed by the Governor in Council by notification published in the Queensland Government Industrial Gazette, as follows:—

- (a) one person nominated by the Minister to be both a member and chair-member;
- (b) one person, representing the Government of the State, nominated by the Minister, who is deputy chair-member;
- (c) a registered medical practitioner who—
  - is an officer of the Department of Health of the State; and
  - is nominated by the Minister, with the consent of the Minister for Health of the State first obtained;
- (d) 2 persons representing employers, nominated by the Minister, each being a person whose name—
  - is submitted under section 3.3 to the Minister, for the purpose of such nomination, by an industrial organization, or other association, of employers;
  - or
  - is to be taken pursuant to section 3.3(4) to have been so submitted;
- (e) 2 persons representing workers, nominated by the Minister, each being a person whose name—
  - is submitted under section 3.3 to the Minister, for the purpose of such nomination, by an industrial organization of employees, or an association of such organizations;
  - or
  - is to be taken pursuant to section 3.3(4) to have been so submitted.

**3.3 Selection of employers' and workers' representatives on Board.**

(1) At least 6 weeks before the Minister proposes to nominate for appointment to the Board a person representing the class referred to in section 3.2(d) or (e) the Minister is to require—

- industrial organizations or other associations of employers;
- and
- industrial organizations of employees, or associations of such organizations;

to submit to the Minister, within a time specified in the requisition, the name of a person, or names of persons, suitable for nomination for appointment as a member of the Board under paragraph (d) or (e) of section 3.2, as the case may be.

(2) Notice of a requisition under subsection (1) may be given—

- in writing, by such means as the Minister considers appropriate;
- to such bodies of persons as the Minister considers appropriate.

(3) If upon expiry of the time limited in a requisition under subsection (1) for submission of names to the Minister there has not been received by the Minister—

- the names of at least 3 persons submitted for nomination for appointment under section 3.2(d);
- or
- the names of at least 3 persons submitted for nomination for appointment under section 3.2(e);

the Minister may proceed to nominate for appointment under paragraph (d) or, as the case may be, paragraph (e), of section 3.2 such person as the Minister considers suitable, whether or not the nominated person's name has been duly submitted in response to the requisition under subsection (1), without further reference to the organizations, or associations, that have failed to ensure the submission of the names of at least 3 persons in response to the requisition.

(4) If pursuant to subsection (3), the Minister nominates for appointment to the Board a person whose name was not submitted by an organization or association required under subsection (1) so to do, it is to be taken that such person's name was duly submitted to the Minister, for such nomination, by the organizations, or associations, that have failed to ensure the submission of the names of at least 3 persons in response to the requisition.

**3.4 Deputies of members.** (1) The Governor in Council may at any time appoint a person who is not a member of the Board to be a deputy of a member of the Board.

(2) A person appointed as deputy of a member of the Board is entitled to attend meetings of the Board in the absence of the member whose deputy the person is, and while so attending has the functions, duties, powers and authorities of that member.

(3) Appointment of a deputy of a member of the Board is to be made on the nomination of the Minister and as far as practicable such nomination must satisfy the requirements of this Act applicable to the nomination of the member whose deputy is to be appointed, except that it is not mandatory to carry out the procedure prescribed by section 3.3(1).

**3.5 Disqualifications from Board membership.** A person who—

- (a) is a patient within the meaning of the *Mental Health Services Act 1974-1989*;
- (b) is an undischarged bankrupt or takes advantage of the laws in force for the time being relating to bankruptcy;
- (c) has been convicted in the State of an indictable offence or elsewhere than in the State in respect of an action or omission such that had it occurred in the State it would have constituted an indictable offence, except where the Minister certifies in writing that in the Minister's opinion the circumstances of the offence, action or omission do not warrant disqualification from membership of the Board;

is disqualified from being, or continuing as, a member of the Board.

**3.6 Term of office.** (1) A member of the Board holds office for a term of 5 years, but if by the expiry of that term a successor has not been duly appointed, the member, subject to this Act, continues to hold office until a successor is duly appointed.

A member of the Board who is not disqualified as prescribed is eligible for re-appointment as a member.

(2) The Governor in Council may, at any time, remove from office a member of the Board by notification published in the Queensland Government Industrial Gazette.

(3) A member of the Board as constituted immediately before the commencement of this Act continues to hold office as such member subject to the provisions of this Act.

**3.7 Vacating office.** (1) The office of a member of the Board becomes vacant if—

- (a) being an office held by a person specified in paragraph (b), (d), or (e) of section 3.2, that person attains the age of 70 years, notwithstanding that the term of appointment has not then expired;
- (b) the member—
  - dies;
  - resigns from office by writing signed by the member and furnished to the Minister;
  - is absent, without prior leave of the Board, from 3 consecutive meetings of the Board of which due notice has been given to the member;
  - becomes disqualified as prescribed from continuing as a member;
  - is removed from office as a member by the Governor in Council.

(2) A member of the Board is taken not to have been absent from a meeting of the Board by reason of a failure to attend at the time and

place notified to the member for the meeting unless a meeting of the Board is actually held at that time and place, or at a later hour on the same day and the member has been given due notice of the later hour.

**3.8 Casual vacancy.** (1) When a vacancy occurs in the office of a member of the Board before the expiry of the term of appointment, the Governor in Council may appoint as prescribed another person to the office for the balance of the term of appointment.

(2) If the member in whose office a vacancy has occurred was also chair-member of the Board, the successor appointed under subsection (1) is also chair-member.

*Division 2—Conduct of Board's Affairs*

**3.9 Board meetings.** (1) The Board is to meet as often as is necessary for the discharge of its functions and duties and the exercise of its powers and authorities under this Act.

The chair-member may convene a meeting of the Board at any time.

(2) Notice of a meeting, or an adjourned meeting, must be in writing given by the chair-member to each member of the Board at least 7 days before the day appointed for the meeting, except where, in the case of an adjourned meeting, the adjournment is to a later hour on the same day as that appointed for the meeting, in which event oral or written notice must be given by the chair-member to each member at least one hour before the hour to which the meeting is adjourned.

**3.10 Adjournment of meetings.** (1) The members present at a meeting may adjourn the meeting at any time.

(2) If a quorum is not present at a meeting within 15 minutes after the time appointed for commencement of the meeting, the member or members present, or the majority of them if there be more than two present, or the secretary to the Board if no member is present or the members present are equally divided on the question, may adjourn the meeting—

(a) to a time and day not later than 14 days after the date of the adjournment;

or

(b) to a later hour on the date of the adjournment.

**3.11 Procedure at meetings.** (1) The chair-member of the Board is to preside at all meetings at which that person is present and, in that person's absence, the deputy chair-member of the Board is to preside.

When the deputy chair-member presides at a meeting that person has all the functions, duties, powers and authorities of the chair-member conferred by this Act.

(2) A quorum of the Board consists of 4 members, including the chair-member or deputy chair-member, and business is not to be conducted at a meeting of the Board unless a quorum is present.



(3) Business at a meeting is to be decided by majority vote of the members present and voting on the business in question.

(4) Business of the Board decided by reference in writing to the members of the Board is to be decided by majority vote of the members voting on the business in question in response to the reference.

(5) A member who refrains from voting is to be taken to have cast a vote in the negative except if the member refrains because of a conflict of interest declared by the member.

(6) The person who presides at a meeting, or, where business of the Board is decided by a reference in writing, the chair-member has a deliberative vote and also, in the event of an equality of votes, a casting vote.

(7) Subject to this Act, the Board may conduct its business generally, and proceedings at its meetings, in such manner as it determines from time to time.

**3.12 Minutes.** (1) The chair-member of the Board is to cause a record of every decision of the Board, whether made at a meeting or by reference in writing to the members, to be kept.

(2) The record of each decision of the Board must be presented to the meeting of the Board next following the taking of the decision for confirmation by the Board and, if it is so confirmed, must be signed by the person presiding at that meeting and thereupon will form part of the minutes of that meeting.

**3.13 Custody and affixing of seal.** (1) The common seal of the Board is in the custody of the secretary to the Board or, where there is a temporary vacancy in that position, of the chair-member of the Board.

The common seal can be lawfully affixed to a document only in pursuance of a resolution of the Board by the person having custody of the seal in accordance with this section.

Where that person is the secretary to the Board, the common seal is to be affixed in the presence of the chair-member or, in the absence of the chair-member, of the deputy chair-member.

(2) Judicial notice is to be taken of the common seal of the Board affixed to any document or other writing and, until the contrary is proved, it is to be presumed that the seal has been duly affixed thereto.

**3.14 Execution of contracts, agreements.** Contracts or agreements may be made, varied or discharged on behalf of the Board in the following manner:—

(a) a contract or agreement that, if made between private persons, would be required by law to be in writing under seal may be made, varied or discharged in the name and on behalf of the Board, in writing under the common seal of the Board;

(b) a contract or agreement that, if made between private persons, would be required by law to be in writing signed

by the parties to be charged therewith and not required to be under seal may be made, varied or discharged in the name and on behalf of the Board, in writing signed by any person acting under the express or implied authority of the Board;

- (c) a contract or agreement that, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made, varied or discharged by parol in the name and on behalf of the Board, by any person acting under the express or implied authority of the Board.

**3.15 Authentication of documents.** Except as is otherwise prescribed, a document made or issued by the Board for the purposes of this Act is sufficiently authenticated if it is made or, as the case may be, signed by the chair-member, or in the absence of the chair-member, by the deputy chair-member.

**3.16 Validity of actions.** Any action, proceeding, decision or determination of the Board is not invalid or unlawful by reason only of any defect in the qualification, membership or appointment of any member thereof or a vacancy in the membership of the Board at the time of that action, proceeding, decision or determination.

**3.17 Remuneration of members.** (1) A member of the Board is to be paid such fees, remuneration and allowances in respect of the discharge of duties as a member as are approved by the Governor in Council.

(2) A payment with respect to a member, as a member or in any other capacity, may differ according to class of payment or rate or both class and rate from a payment with respect to any other member.

(3) A provision in any Act requiring the holder of an office specified therein to devote the whole of the holder's time to the duties of office or prohibiting engagement in employment outside the duties of office does not operate to disqualify the holder from holding that office and also the office of a member of the Board or from accepting and retaining any fees, remuneration or allowances payable pursuant to this section.

(4) A fee, remuneration or an allowance is not to be paid to a member of the Board who is an officer of the Public Service of Queensland for attendance at a meeting of the Board held during the ordinary office working hours of that officer.

*Division 3—Administration of Act by Board*

**3.18 Administration subject to Minister.** The Board, subject to the Minister, is to administer this Act and to that end, with the approval of the Minister first obtained—

- (a) may establish and maintain district offices and agencies of the Board in any part of the State;

- (b) may close any district office or agency so established;
- (c) may re-open any district office or agency so closed.

**3.19 Appointment of officers to administer Act.** (1) Appointment is to be made from time to time under the *Public Service Management and Employment Act 1988-1990* of a General Manager of the Board.

(2) Appointment as officers of the Board may be made from time to time under the *Public Service Management and Employment Act 1988-1990* of such number of persons of relevant competence as is necessary for the effectual administration of this Act.

(3) Persons appointed to the office referred to in subsection (1), and persons of any description referred to in subsection (2) and appointed for the purposes of this Act, hold office subject to and in accordance with the *Public Service Management and Employment Act 1988-1990*.

**3.20 Functions of General Manager.** (1) Except as is otherwise prescribed, the General Manager, subject to the direction of the Board, is to conduct the business of the Board.

(2) If under this Act the Board is required or authorized—

- to do any act or thing;
  - to be of a prescribed state of mind in relation to any matter;
- it is sufficient compliance with this Act, subject to any direction of the Board to the contrary, if the General Manager does the act or thing or is of the prescribed state of mind, on the Board's behalf.

Subject as aforesaid, the General Manager is to be taken as having the powers, authorities, functions and duties committed to the Board by this Act.

**3.21 General Manager's power of delegation.** (1) In respect of a particular matter or class of matter, or in respect of a particular place, the General Manager may, in writing, delegate to any officer of the Board such of the General Manager's powers, authorities, functions and duties under this Act (other than this power of delegation) as the General Manager thinks fit so that the power, authority, function or duty delegated may be exercised or discharged, subject to this Act, by the delegate in respect of the matter or class of matter, or the place specified in the instrument of delegation.

(2) A delegation is revocable by the General Manager at will, and does not prevent or hinder the exercise or discharge of the delegated power, authority, function or duty by the General Manager.

(3) The exercise of a power or authority or the discharge of a function or duty under this Act by an officer of the Board is to be presumed to be duly authorized by delegation from the General Manager, until the contrary is proved.

**3.22 Judicial notice of signatures.** Judicial notice is to be taken of the signature of the General Manager or of a delegate of the General Manager affixed to any document or other writing, and until the contrary is proved it is to be presumed that the signature has been duly affixed thereto.

**3.23 Use of services of Crown employees.** (1) With the approval of the Minister, and of the Minister of the Crown responsible for the department of government concerned, the Board may utilize the services of any officer or employee in any department of government on such terms as are arranged.

(2) The amount of salaries, wages or allowances paid from the Consolidated Revenue Fund to an officer or employee in a department of government who is engaged in the business of the Board must be recouped to the Consolidated Revenue Fund from the Fund to the extent that reflects the proportion of the working-time of the officer or employee spent in the business of the Board.

**3.24 Engagement of consultants.** The Board may engage the services of such consultants of relevant competence as it considers necessary to aid it in the conduct of the business of the Board and in the proper administration of this Act.

**3.25 Annual report and financial statement.** (1) As soon as practicable after 30 June in each year the Board is to furnish to the Minister a report of its administration of this Act and its operations under this Act during the period of 12 months last preceding that date.

(2) The Board is to prepare and furnish with the report—

(a) a statement of accounts for the relevant period of 12 months and a balance sheet, each in such form and containing such particulars as the Minister requires;  
and

(b) a certificate of the Auditor-General stating whether—

(i) all information and explanations sought by or on behalf of that officer were duly furnished;

(ii) the statement and balance sheet are, in that officer's opinion, in agreement with the accounts and have been properly drawn up so as to present a true and fair view of the transactions for the relevant period of 12 months and the financial position of the Board at the end of that period.

(3) The Minister is to lay the report, statement of accounts, and balance sheet before the Legislative Assembly within 14 sitting days following their receipt by the Minister.

## PART 4. ACCIDENT INSURANCE

### *Division 1—Involvement of the State*

**4.1 The Fund.** (1) The Fund called the "Workers' Compensation Fund" kept at the Treasury as a fund of the Trust and Special Funds immediately before the commencement of this Act is to be continued in existence and kept at the Treasury as a fund of the Trust and Special Funds.

Subject to this or any other Act or law, the Treasurer is to administer, manage and control the Fund.

(2) All premiums and other moneys received by the Board under this Act are to be paid into the Fund.

(3) Moneys standing to the credit of the Fund are to be applied in making—

- (a) all payments in respect of policies, whether of accident insurance or other insurance business under this Act;
- (b) all payments in respect of the administration of accident insurance business or other insurance business undertaken by or on behalf of the Board under this Act;
- (c) all payments required by any provision of this Act to be made from the Fund.

**4.2 Policies guaranteed by State.** (1) Every policy is hereby guaranteed by the Government of the State.

(2) Such sums as the Treasurer certifies to be required to secure payment of moneys legally payable by the Board under policies or other insurance contracts, so far as such sums cannot be paid out of the Fund, are to be paid from the Consolidated Revenue Fund, which to that extent is hereby appropriated accordingly.

(3) Any sum paid from the Consolidated Revenue Fund pursuant to subsection (2) is an advance to the Fund and a charge thereon, and is to be recouped to the Consolidated Revenue Fund from the Fund when money is available therein.

**4.3 Stamp duty etc. payable.** (1) The Board is required to comply with the provisions of the *Stamp Act 1894-1990* that require the making of returns of premiums charged and the provisions of that Act apply in respect of such returns made by the Board and in respect of other insurance business undertaken by the Board under this Act.

(2) An Act that imposes taxation in relation to the business of accident insurance or other insurance applies to such business undertaken by the Board under this Act.

**4.4 Board's recommendations to Minister.** (1) The Board is, from time to time, to make recommendations to the Minister—

(a) as to the bases on which—

- rates of premium to be charged in connexion with policies and other insurance contracts under this Act;
- benefits to be paid to injured workers and their dependants under this Act;
- merit or other bonus payments under this Act;
- demerit charges under this Act;

may be fixed;

- (b) as to the circumstances in which employers are entitled to merit or other bonus payments or liable to pay demerit charges under this Act;
- (c) on matters of policy in relation to the administration of this Act;
- (d) as to services that the Board might provide to promote improved safety performance by employers.

**4.5 Surplus or deficit of Board.** (1) As soon as practicable after 30 June in each year, the Board is to forward to the Minister a report stating the amount that, in the Board's opinion, is the net surplus or deficit of the Board for the period of 12 months last preceding that date, and making recommendations as to any amount available for distribution under this section.

The Board may establish and maintain such reserves as it considers appropriate in the conduct of its business and the amount of a surplus or deficit to be stated in such a report is to be computed after such sums as the Board considers proper are appropriated to the reserves maintained by the Board.

(2) The Minister may obtain the opinion of any actuary or other competent person as to any recommendation made in a report furnished under subsection (1).

(3) The Minister may present to the Governor in Council a scheme for distribution under this section of a sum recommended therein for such distribution and, if the Governor in Council approves, that sum is to be distributed in accordance with the scheme among holders of policies subsisting at any time during the period of 12 months to which the report furnished under subsection (1) relates.

*Division 2—Policies with Board.*

**4.6 Board's powers to undertake insurance.** (1) The Board is authorized—

- (a) to undertake the business of accident insurance;
- (b) to undertake such business of insurance of persons, whether or not employers, in respect of injury suffered by them and of liability incurred by them in respect of injury suffered by other persons as is provided for by this Act;
- (c) to do all such acts and things as are necessary and incidental to the exercise of the authority conferred by paragraph (a) or (b).

**4.7 Board as provider of accident insurance.** (1) Accident insurance is to be undertaken only by the Board.

(2) Policies are to be issued by or on behalf of the Board and no other person or association or group of persons.

(3) A policy issued in breach of this section is unenforceable at law.

**4.8 Board's powers to reinsure.** (1) The Board may, on such terms and conditions as it considers equitable, reinsure the whole or part of any risk accepted by it under this Act.

(2) Moneys payable in respect of reinsurance are to be paid from the Fund.

**4.9 Employer's legal liability and obligation to insure.** (1) An employer is legally liable to pay the compensation prescribed to be payable from the Fund in respect of injury suffered by a worker employed by the employer.

(2) Subject to subsection (3), every employer is to insure and remain insured with the Board under a policy in respect of—

(a) the employer's legal liability to pay compensation under this Act;

and

(b) the employer's legal liability existing independently of this Act to pay damages in respect of injury to a worker employed by the employer, being a liability within the cover of accident insurance as defined in section 2.1.

(3) An employer is not required by subsection (2) to insure against legal liability in respect of injury to a mariner employed by the employer, unless the mariner is employed on a Queensland ship.

**4.10 Policy cover on directors and trustees.** Cover under a policy does not extend to a director of a corporation, or a trustee, who is to be specially insured under, or specially covered by, the policy pursuant to the director's, or trustee's, election until a date stipulated by the Board and notified in writing by the Board to the director or trustee.

**4.11 Policy cover on worker on loan.** (1) If an employer uses the labour of a worker whose services are lent or hired to the employer by another, cover under a policy maintained by the employer extends to indemnify the employer against legal liability existing independently of this Act to pay damages in respect of injury to the worker arising out of or in the course of work for which the worker's labour is being so used.

(2) If a person who is not an employer uses the labour of a worker whose services are lent or hired to the person by another, cover under a policy maintained by the worker's employer extends to indemnify the person against legal liability existing independently of this Act to pay damages in respect of injury to the worker arising out of or in the course of work for which the worker's labour is being so used.

**4.12 Extent of indemnity for principals and contractors.** (1) In this section—

“contractor” means a person who by a contract undertakes to carry out, or to secure the carrying out of, work for another;

“principal” means a person for whom work is to be carried out by another under a contract to which the person is a contracting party.

A contractor under a contract for performance of work can also be a principal under any other contract for performance of the same work or any part of that work.

(2) When a contract is made between a principal and a contractor for work to be carried out and workers are used in carrying out the work, or any part of it—

- (a) the principal is hereby declared to be an employer of every such worker used in carrying out work in performance of the contract, or in performance of any other contract made with a view to carrying out the work for which the first-mentioned contract is made, or any part of that work;
- (b) the cover of a policy maintained by the principal with the Board extends to indemnify the principal against the principal's legal liability existing independently of this Act to pay damages in respect of injury to any such worker while used in carrying out work for which the contract is entered into, or any part of that work.

(3) The declaration of a principal to be an employer of a worker by subsection (2) (a) does not affect the relationship of employer and employee existing between the worker and the actual employer of the worker.

(4) If in the case of a contract such as is referred to in subsection (2) the principal is not indemnified against the legal liability referred to in paragraph (b) of that subsection, under—

- a policy maintained by the principal with the Board;
- or
- a contract of insurance made independently of this Act;

the cover of a policy maintained with the Board by the contractor extends to indemnify the principal against the principal's legal liability referred to in subsection (2) (b).

**4.13 Obligation to establish existence of policy.** (1) In this section the expressions “principal” and “contractor” have the meanings assigned to them respectively by section 4.12(1).

(2) If a principal contracts with a contractor for the carrying out of work, and the contractor employs, or proposes to employ, any workers therein, the contractor, if requested to do so by the principal, is to produce to the principal for inspection the policy, or policy renewal certificate, issued by the Board, for the period then current covering the contractor's workers.

(3) If the contractor fails to comply with the principal's request, as prescribed by subsection (2), it is to be presumed that the contractor



does not have a policy covering the contractor's workers for the relevant period.

(4) If the contractor does not have a policy, or it is to be presumed that the contractor does not have a policy, covering the contractor's workers for the relevant period, the Board is entitled to recover from the principal the premium payable under this Act, appropriate to the work to be carried out under the relevant contract, unless, in the case of the contractor's failure to comply with the principal's request as prescribed by subsection (2), the principal has, within 14 days following commencement of work under the relevant contract, given notice in writing to the Board of such failure, stating therein the name and business address of the contractor as known to the principal.

(5) If the principal gives notice to the Board within the time specified in subsection (4), the Board is not entitled to recover from the principal any premium, penalty or other moneys in respect of the contractor's workers.

**4.14 Employer's failure to fulfil obligation to insure.** (1) An employer fails to comply with section 4.9(2)—

(a) if, before or immediately after the employer commences to employ any worker or workers, the employer does not make application in the prescribed form to the Board for a policy in accordance with this Act;

or

(b) if, having taken out a policy in accordance with this Act, the employer does not maintain it in force at all times whilst being an employer by—

(i) making at the time and in the manner prescribed every prescribed annual or other periodic return in respect of workers employed by the employer;

and

(ii) paying at the time and in the manner prescribed every premium prescribed as payable in respect of the policy or of the renewal thereof for any year.

(2) An employer who fails to comply with section 4.9 (2) commits an offence against this Act and is liable to a penalty of 100 penalty units.

If, after being convicted of such offence the employer continues the failure to comply, the employer commits a continuing offence against this Act for which the employer may be prosecuted from time to time, and is liable to a penalty of 20 penalty units for every week during which the failure to comply continues.

**4.15 Recovery of moneys paid in respect of uninsured worker.** If an employer has failed to comply with section 4.9 (2) in respect of all workers employed by the employer and moneys have been paid from

the Fund in respect of injury to any of the workers, the Board may recover from the employer—

- (a) the amount so paid from the Fund;  
and
- (b) the amount of all premiums that should have been paid by the employer (and were not paid) to the Board during the period of the employer's failure to comply with section 4.9 (2).

**4.16 Board's power to seek and obtain information.** (1) The General Manager, or the manager or officer in charge of any district office of the Board, or any officer of the Board authorized in writing by the General Manager in that behalf, either generally or in respect of a particular person, may, by notice in writing, require any person—

- (a) to furnish in writing to the person specified in the notice on or before the date specified therein;  
or
- (b) to attend on the date and at the time and place specified in the notice, and then and there to give to the person specified in the notice;

information of a kind prescribed by subsection (2).

(2) A notice under subsection (1) may require of the person to whom it is addressed (hereinafter in this section called "the recipient") such information as is necessary or desirable to determine—

- (a) whether the recipient is or is not, or at any time was or was not, an employer, or a person who has contracted with another person for performance of work;  
and
- (b) if the recipient is, or was, an employer or a person who has so contracted—
  - (i) the worker or workers of whom the recipient is, or was, the employer or the other person or persons with whom the recipient has so contracted;  
and
  - (ii) all such particulars of employment of such worker or workers, or such other person or persons as are relevant to the administration of this Act.

(3) A notice of a kind referred to in subsection (1) (b) may require the recipient to produce to the person to whom information is thereby required to be given, on the date and at the time and place specified therein, all records in the recipient's custody or control relating to employment by the recipient of any worker or workers, or to contracts made by the recipient with any person or persons, at any time or during any period specified in the notice.

(4) A person to whom records are produced in response to a notice under subsection (1) may cause to be made such number of copies

thereof or extracts therefrom as that person requires for the purposes of this Act.

**4.17 Offence not to comply with notice.** A person to whom a notice under section 4.16 (1) is addressed who—

- (a) fails to comply in all respects with the notice;  
or
- (b) knowingly furnishes or gives, in response to the notice, information that is false in any material particular;  
or
- (c) knowingly produces in response to the notice, records that are false in any material particular;

commits an offence against this Act and is liable to a penalty of 50 penalty units.

**4.18 Offence to obstruct obtaining information.** A person who obstructs, or attempts to obstruct, the making by a person authorized by section 4.16(4) so to do, of a copy of, or an extract from, records produced in response to a notice under section 4.16 (1) commits an offence against this Act and is liable to a penalty of 20 penalty units.

**4.19 Continuing offence following conviction.** A person who—

- (a) after being convicted of an offence defined in section 4.17, continues in the failure to furnish or give information that is true and correct in every material particular or to produce records that are true and correct in every material particular;  
or
- (b) after being convicted of an offence defined in section 4.18, continues in obstructing the making of a copy of or an extract from relevant records;

commits a continuing offence against this Act, for which the person may be prosecuted from time to time, and is liable to a penalty of 5 penalty units for each day on which the failure or obstruction continues.

It is immaterial to the commission of a continuing offence defined in paragraph (a) that the date and time specified in the notice requiring the furnishing or giving of information or production of records have passed.

**4.20 Audit of wages and contracts.** The Board may engage the services of a person who in the Board's opinion has relevant competence to carry out an audit of—

- (a) wages paid by or on behalf of an employer to or on account of workers employed by the employer;
- (b) contracts let by or on behalf of an employer for performance of work.

**4.21 Discounting of premiums.** (1) It is competent to the Board, with the Minister's approval first obtained, to issue in relation to a

policy a premium notice that requires the employer to pay a renewal premium discounted by a merit bonus applicable to the policy—

- (a) before the surplus arising from the Board's operations, from which such bonus is payable, has been confirmed by the Auditor-General;
- and
- (b) before a scheme for distribution of such surplus or part thereof has been approved by the Governor in Council.

(2) The Board may allow a discount at a rate for the time being prescribed to an employer who pays the full amount of premium assessed in relation to a policy (other than a premium on a default assessment under section 4.22) within such time following the date of the assessment as is prescribed.

**4.22 Default assessment.** (1) If it comes to the knowledge of the Board, or the Board suspects on reasonable grounds, that an employer has failed to comply with section 4.9 (2), the Board may cause to be made a default assessment of premium based on such sums as the Board considers to be adequate cover, having regard to—

- the probable salaries, wages, and other earnings paid or to be paid by the employer (in money or in money's worth) during the period in respect of which the default assessment is made; and
- the nature of the employer's business.

The amount of the premium to be paid by the employer under the default assessment is to be calculated in accordance with the rates of premium prescribed by the regulations.

(2) As soon as practicable after a default assessment is made, the Board is to cause written notice of the assessment and of the amount of premium to be given to the employer.

(3) The employer to whom the notice is given is liable to pay to the Board the amount of premium so notified, unless the employer establishes, on objection or appeal under this Part, that the default assessment is excessive.

(4) If the employer does not serve on the Board a notice of objection to the default assessment within the time prescribed, the amount of premium assessed and notified to the employer, becomes due and payable immediately upon expiry of that time.

(5) Payment by an employer of the amount of a default assessment, or that amount as varied as prescribed on objection or appeal by the employer, does not debar the Board from recovering moneys paid from the Fund in respect of injury to any of the employer's workers, by action authorized by section 4.15.

**4.23 Objection to default assessment.** (1) An employer who is dissatisfied with a default assessment by the Board may, within 21 days

after notice of assessment is given to the employer, give to the Board a written objection that states fully and in detail the facts and grounds on which the employer relies.

(2) The Board—

- (a) is to consider every objection duly made under subsection (1) and may confirm, reduce, increase, vary or cancel the relevant default assessment;
- (b) is to cause written notice of its decision to be given to the employer concerned.

(3) Except where the Board, on objection by the employer, confirms or cancels a default assessment, the amount of premium as notified to the employer in the notice of the Board's decision, is taken to be the amount of the default assessment, in lieu of that notified to the employer under section 4.22 (2).

**4.24 Appeal to Industrial Magistrate from decision on default assessment.** (1) An employer who is dissatisfied with the Board's decision on the employer's objection to a default assessment may appeal to an Industrial Magistrate in accordance with this section.

(2) An employer who wishes to appeal must, within 30 days after notice of the Board's decision on the objection is given to the employer—

- (a) pay to the Board the amount of premium specified in the notice of the Board's decision;  
and
- (b) give to the Board written notice of intention to appeal against the Board's decision, which notice sets out fully and in detail the grounds of appeal;  
and
- (c) give a written statement, which sets out fully and in detail the grounds of appeal, to the Industrial Magistrate in whichever of the following Magistrates Courts Districts is nearest to the employer's ordinary place of residence or of business, that is—

the Magistrates Courts Districts of—Ayr, Bundaberg, Cairns, Central Division of Brisbane, Dalby, Gladstone, Gympie, Ipswich, Kingaroy, Mackay, Maryborough, Mount Isa, Rockhampton, Roma, Southport, Toowoomba, Townsville, Warwick.

(3) If an employer does not appeal as prescribed within the time prescribed, the amount of premium assessed by the Board on objection and notified to the employer becomes due and payable immediately upon expiry of that time.

(4) An employer who does appeal as prescribed within the time prescribed is limited to the grounds of appeal set out in the statement given to the Industrial Magistrate under subsection (2) (c), and bears the onus of proving all or any of those grounds.

**4.25 Appeal to Industrial Court from decision of Industrial Magistrate.** (1) If aggrieved by the decision of an Industrial Magistrate on an appeal under section 4.24, the Board, or an employer, may appeal to the Industrial Court in accordance with the Rules of Court governing the practice of that court.

(2) Unless the Industrial Court orders that additional evidence be heard, the appeal is by way of rehearing on the evidence and proceedings before the Industrial Magistrate.

(3) The decision of the Industrial Court is final.

**4.26 Powers of appellate courts.** (1) On an appeal with respect to a default assessment an Industrial Magistrate or the Industrial Court—

(a) may confirm the decision appealed from;

or

(b) may reduce or increase the amount of the assessment.

(2) If an amount of an assessment is reduced or increased on appeal, the amount of premium assessed by the Industrial Magistrate or, as the case may be, Industrial Court is the amount of premium payable by the employer on the default assessment in lieu of that previously notified to the employer.

**4.27 Refund of overpaid premiums.** (1) If the amount of premium paid by an employer under section 4.24 (2) as a condition of an appeal to an Industrial Magistrate exceeds the amount of premium assessed by the Industrial Magistrate or, on appeal to the Industrial Court, by the court, the Board is to cause the amount of the excess to be refunded to the employer.

**4.28 Employer's separate liabilities for one period of default.** An employer is liable—

(a) to prosecution proceedings for an offence of failing to comply with section 4.9 (2) in respect of any period;

and

(b) in addition, to proceedings by way of default assessment to recover an amount of premium, with or without a charge imposed by the Board, in respect of the same period or part thereof, or a period that includes the same period or part thereof.

**4.29 Additional premium payable upon non-payment of premium.**

(1) If an employer to whom is given—

- a notice of acceptance under this Act;
- a notice of adjustment of premium;
- a notice of default assessment;
- a notice of the Board's decision on objection;

does not pay to the Board the amount specified therein upon or before its becoming due and payable as specified in the notice (in the case of

a notice of acceptance or adjustment), or as prescribed by this Act (in the case of a notice of default assessment or the Board's decision), the employer is to pay to the Board an additional premium calculated as prescribed by the regulations.

(2) The Board may recover the amount of premium and additional premium payable to it by an employer as prescribed by subsection (1).

(3) Until an employer has paid to the Board the full amount of premium specified in the notice given ( being a notice referred to in subsection (1) ) and any additional premium payable, the employer is not covered by a policy.

**4.30 Additional premium payable upon non-payment of excess amount due by employer.** (1) Where an employer's liability in respect of a default assessment has been finally determined by decision of an Industrial Magistrate or the Industrial Court, and the employer fails to pay to the Board the amount by which the final assessment exceeds the amount of premium paid under section 4.24 (2) as a condition of the appeal to an Industrial Magistrate, within 21 days following the day on which the decision is pronounced, the employer is to pay to the Board an additional premium calculated as prescribed by the regulations.

(2) The Board may recover the amount of such excess assessment and additional premium payable to it by an employer as prescribed by subsection (1).

(3) Until an employer has paid to the Board the full amount of such excess assessment and any additional premium payable, the employer is not covered by a policy.

**4.31 Additional premiums for out-of-State workers.** The Board may, from time to time, charge an additional premium on a policy issued to an employer of a worker whose employment is not wholly performed in the State in such amount as the Board finds necessary towards providing compensation payable under this Act in respect of injury to that worker and covering the cost of administration of this Act in relation to that worker.

## PART 5. ENTITLEMENT TO COMPENSATION

**5.1 Compensation to injured worker.** A worker who suffers an injury arising out of or in the course of the worker's employment is entitled (and, in the case of the worker's death being or resulting from the injury, the worker's dependants are entitled), subject to this Act, to be paid from the Fund, compensation in accordance with this Act.

**5.2 Effect on entitlement of exercising rights under other laws.** (1) If in respect of an injury payment (by whatever name called) that corresponds to compensation under this Act is made to or on account of a person pursuant to an entitlement had under a law of the Commonwealth or of a place other than Queensland, an entitlement of that person to compensation under this Act in respect of the injury thereupon ceases.

(2) If in respect of an injury payment of compensation under this Act is made to or on account of a person and subsequently payment (by whatever name called) that corresponds to compensation under this Act is made to or on account of that person pursuant to an entitlement had under a law of the Commonwealth or of a place other than Queensland in respect of the injury, the Board may recover the amount paid as compensation under this Act from the person to whom or on whose account it was paid.

(3) If in respect of an injury a person is entitled to—

- payment of compensation under this Act;  
and
- payment that corresponds to compensation under this Act pursuant to an entitlement had under a law of the Commonwealth or of a place other than Queensland;

an application by or on behalf of the person for compensation under this Act is not duly made, and is not to be acted on, unless the person—

- (a) furnishes to the Board a statement by the person, in writing under oath or affirmation or by way of statutory declaration in accordance with the *Oaths Act 1867-1988*, that a claim for such payment in respect of the injury pursuant to entitlement under such a law has not been made;  
and
- (b) covenants with the Board that a claim referred to in paragraph (a) will not be made.

**5.3 Where right to damages exists.** If in respect of an injury suffered by a worker there is—

- an entitlement to compensation under this Act;  
and
- a right of action against the worker's employer, or other person, to recover damages independently of this Act;

a claim for compensation under this Act may be made and proceedings to recover such damages may be taken but an entitlement to such compensation does not exist at any time, or in respect of any period, after judgment for damages is given, or settlement is agreed, in such proceedings.

**5.4 Injuries that arise out of or in the course of employment.** (1)

This section does not operate so as to limit the circumstances in which an injury to a worker arises out of or in the course of the worker's employment.

(2) An injury to a worker is taken to arise out of or in the course of the worker's employment if it occurs—

- (a) on a day on which the worker has attended at the place of employment as required pursuant to the terms of the worker's employment or apprenticeship—
  - (i) while the worker is at that place and is engaged in an activity for the purposes of or in connexion with the employer's trade or business;



- (ii) while the worker is temporarily absent from that place during an ordinary recess if the injury is not due to—
    - the worker voluntarily being subjected to an abnormal risk of injury during the recess;
    - or
    - the worker's wilful misconduct of a serious kind;
  - (iii) while the worker is away from that place in the course of the worker's employment or apprenticeship or under the instructions of the worker's employer or other person having, for the time being, control of the worker's service;
- (b) while the worker—
- (i) is travelling between the worker's place of abode and place of employment;
  - (ii) is travelling between the worker's place of abode or place of employment and any trade, technical or other training school that the worker is required by the terms of employment or as an apprentice to attend, or that the employer expects the worker to attend;
  - (iii) is in attendance at a school such as is referred to in paragraph (ii);
  - (iv) is travelling between the worker's place of abode or place of employment and any other place for the purpose of the worker's—
    - rehabilitation;
    - obtaining a medical certificate, or medical or hospital advice, attention or treatment;
    - submitting to examination by a registered person pursuant to a provision of this Act or to a requirement under this Act;
    - receiving payment of compensation;in respect of an injury for which the worker is entitled to compensation under this Act;
  - (v) is in attendance at a place for a purpose referred to in paragraph (iv);
  - (vi) is travelling between the worker's place of abode and place of employment for the purpose of receiving payment of wages or other moneys due to the worker under the terms of employment that, pursuant to those terms, or any agreement or arrangement between the worker and the employer, are available, or the worker reasonably expects to be available, for collection at the place of employment;
  - (vii) is travelling between the worker's place of employment with one employer and the worker's place of employment with another employer.

(3) A person who, for the purposes of being selected for employment, attends at any place that, in respect of the person and the person's attendance at that place, is a place of pick-up is, for the purposes of this Act, taken to be working under a contract of service with an employer while the person—

- (a) is travelling between the person's place of abode and the place of pick-up;
- (b) is in attendance at the place of pick-up before being selected for employment;
- (c) is travelling between the place of pick-up and the person's place of abode, if the person is not selected for employment, or the engagement for employment for which the person is selected is to commence on a later day.

(4) In this section—

“place of abode” includes the place where the worker in question has spent the night immediately preceding the worker's travelling referred to in this section and from which the worker is so travelling, and the place to which the worker is travelling as referred to in this section with the intention of spending the night there following such travelling;

“place of pick-up” means—

- (a) in respect of a person ordinarily engaged in employment in connexion with which persons customarily attend pre-arranged places at which employers select and engage persons for employment, any such pre-arranged place;
- (b) in respect of a person who, in answer to a notification or advertisement stating that at a specific time and place persons will be selected and engaged for employment, attends at that time and place for the purpose of being so selected and engaged, that specified place;
- (c) in respect of a person who attends at a place and at a time or during a period arranged or appointed pursuant to an industrial award or registered industrial agreement, for the purpose of being selected and engaged for employment governed by the award or industrial agreement, where the award or industrial agreement provides that persons available for employment thereunder are to be selected and engaged by employers for that employment at certain pre-arranged or appointed places, that place so arranged or appointed.

**5.5 Compensation not payable in certain cases.** (1) Compensation under this Act is not payable in respect of injury to a worker caused by a deliberate action of the worker intending to inflict injury on the worker.

(2) Compensation under this Act is not payable in respect of an injury—

(a) suffered by a worker, or person to whom section 5.4(3) applies,—

(i) if there has been substantial delay before commencement of the travelling referred to in that section to a place of abode;

(ii) if the injury has occurred during or after a substantial interruption of or substantial deviation from (but before completion of) any travelling referred to in that section; unless, in the case referred to in paragraph (ii), the interruption or deviation has arisen from circumstances beyond the control of the worker or person who has suffered the injury in question;

or

(b) suffered by a person to whom section 5.4(3) applies, if the injury occurs while the person is out of the State.

**5.6 Compensation entitlements of mariners.** (1) A provision of this Act that confers an entitlement to compensation on a worker, or a worker's dependants, is subject to this section if the worker is, or was, a mariner.

Subject to the preceding paragraph, the provisions of section 5.4(1) and (2) apply in respect of injury suffered by a mariner.

(2) Compensation under this Act is payable in respect of injury suffered by a mariner only if—

(a) at the time the injury is suffered, the mariner is employed on a Queensland ship;

and

(b) at the time the injury is suffered, the ship—

(i) is in a Queensland port;

or

(ii) being other than a Crown ship, is not on a voyage interstate or to or from a country other than Australia and is not within territorial waters of a country other than Australia for any reason other than mishap, stress of weather or offering assistance to a ship in distress.

**5.7 Compensation entitlements of miners.** (1) A provision of this Act that confers an entitlement to compensation in respect of injury suffered by a worker is subject to this section if the injury is a disease referred to in subsection (2).

(2) If the injury suffered by a worker is the disease, silicosis or anthraco-silicosis, caused by employment in mining, quarrying, stone crushing, or stone cutting, compensation under this Act is not payable in respect of the injury unless—

- (a) the worker has been continuously resident in the State during the 5 years immediately preceding—
  - the onset of incapacity due to the disease;
  - or
  - death due to the disease, if it occurs without the onset of such incapacity;and has been employed in such employment in the State for 300 days at least;
- or
- (b) the worker has been resident in the State for periods aggregating 5 years at least during the 7 years immediately preceding—
  - the onset of incapacity due to the disease;
  - or
  - death due to the disease, if it occurs without the onset of such incapacity;and has been employed in such employment in the State for 500 days at least.

**5.8 Special provision concerning compensation for loss of hearing.**

(1) The following provisions of this section do not apply to an entitlement to compensation had in respect of the injury referred to in subsection (2) by a worker who makes a claim for compensation in respect thereof before 1 March 1991.

Such claim is to be determined and such entitlement is to be paid in accordance with the *Workers' Compensation Act 1916-1988*: Provided that the worker is to be given the benefit of every increase in the amount of compensation prescribed by this Act in relation to such injury before such entitlement terminates.

(2) If the injury suffered by a worker is loss of hearing (other than total loss of hearing in either ear) caused by excessive noise resulting in the condition known as industrial deafness—

- (a) the worker's entitlement to compensation in respect of the injury is subject to this section;
- and
- (b) for the purpose of the proper application of section 1.9 and of determining the worker's entitlement to payment of compensation in accordance with the Table in section 8.6 the injury is taken to have occurred at the time the worker makes a claim for compensation in respect thereof.

(3) A worker is not entitled to compensation under this Act in respect of the injury referred to in subsection (2) unless—

- (a) during the period of 7 years immediately preceding the making of the claim for compensation, the worker has been

employed in the State at a location, or at locations, where the noise level caused, or contributed to, the condition for which compensation is claimed—

- (i) for a period of, or for periods aggregating, 3 years at least, in the case of employment in a seasonal industry; or
  - (ii) for a period of, or for periods aggregating, 5 years at least, in the case of employment in any other industry; and
- (b) the claim for compensation is made—
- (i) at a time when the claimant is a worker; or
  - (ii) at a time when the claimant, being other than one who has formally retired from employment, is temporarily unemployed, if the claimant would ordinarily be a worker; or
  - (iii) at a time within 12 months following the claimant's formal retirement from employment.

(4) The Board, in its discretion, may allow a claim for compensation under this Act in respect of industrial deafness made by a worker who does not satisfy the requirements of subsection (3) (a) if the Board is satisfied that at some time the claimant has worked—

- for 3 years at least in a seasonal industry; or
- for 5 years at least in any other industry;

in the State and at a location, or at locations, specified in that subsection, and, if the Board allows the claim, the claimant is entitled to payment of compensation under this Act in respect of the industrial deafness.

(5) A worker who suffers the injury referred to in subsection (2) is not entitled to compensation under this Act in respect of the first one per centum of the worker's diminution of hearing.

(6) A worker who suffers the injury referred to in subsection (2) is in no case entitled to a weekly payment of compensation under this Act.

(7) The percentage of the diminution of hearing to be determined for the purposes of a claim for compensation in respect of the injury referred to in subsection (2) is to be assessed by reference to the hearing loss tables recommended and published for the time being by the National Acoustic Laboratories of the Department of Community Services and Health of the Commonwealth.

**5.9 Time from which compensation payable.** (1) Subject to this section, entitlement of a worker to compensation under this Act in

respect of an injury arises on the day next following the day on which the worker suffers the injury.

(2) If the injury suffered by the worker results in total or partial incapacity for work at a time later than the day on which the injury is suffered, the incapacity is an injury in respect of which compensation under this Act is payable, which injury—

- (a) in the case of an incapacity that causes the worker to cease work, is taken to have been suffered on the day on which the worker last worked;
- (b) in the case of an incapacity that does not cause the worker to cease work, is taken to have been suffered on the day on which the worker last worked before seeking assessment by a registered medical practitioner in relation to the incapacity.

(3) Notwithstanding any other provision of this section, entitlement of a worker to compensation under this Act in respect of an injury suffered does not arise until the day on which the worker is assessed by a registered medical practitioner as incapacitated for work by reason of the injury.

**5.10 Right to claim compensation cannot be relinquished.** Any contractual provision whereby a person purports to relinquish a right to claim, as a worker, compensation under this Act in respect of injury that would entitle the person to such compensation is of no force or effect.

## PART 6. CLAIMS FOR COMPENSATION

**6.1 Making of claim.** (1) A claim for compensation under this Act is made by application completed in accordance with the regulations by the person claiming entitlement thereto and lodged in the State at—

- the office of the Board at Brisbane;
- or
- a district office of the Board;
- or
- the office of the clerk of the Magistrate's Court, if there be no convenient district office of the Board;

together with a certificate of a registered medical practitioner who attended the injured worker, and such other proofs and particulars as are prescribed.

(2) The clerk of the Magistrate's Court in whose office an application is lodged is to forthwith submit the application and all documents received in connexion therewith to the Board at Brisbane, or to a district office of the Board.

(3) If the physical or mental condition of a person seeking compensation under this Act is such that the person is unable to complete an application therefor, the application may be completed by another on that person's behalf.

**6.2 Limitation of time for applying.** (1) An application for compensation is not valid and the claim thereunder is unenforceable unless the application is lodged as prescribed within 6 months following the day on which the injury occurs or the entitlement to compensation arises.

(2) The extent of the Board's liability to pay compensation is, in any case other than where death is, or results from, the injury, limited to a period commencing no earlier than 4 weeks before the day on which a valid application for compensation is lodged.

(3) In relation to a particular application, the Board may—

(a) waive the provisions of subsection (1), if the Board is satisfied that failure to lodge the application in the prescribed period was due to—

- mistake;
- absence from the State of the applicant;
- a reasonable cause;

(b) waive the provisions of subsection (2) for any cause that the Board considers to be reasonable;

whereupon the provisions so waived do not apply to the application.

**6.3 Public Trustee may act for claimant.** Upon request made of it by a person who wishes to claim compensation under this Act the Public Trustee of Queensland may make and prosecute an application for compensation under this Act, and act on behalf of that person for any of the purposes of this Act.

**6.4 Duty to report injury.** (1) The employer of a worker who suffers an injury in respect of which compensation under this Act is payable is to report in the prescribed form—

- to the Board at Brisbane;
- or
- to a district office of the Board;

in respect of the occurrence of the injury, forthwith and in any case within 10 days following the occurrence.

(2) An employer who fails to comply with subsection (1) within the period of 10 days following the occurrence of an injury to the employer's worker commits an offence against this Act and is liable to a penalty of 20 penalty units, unless the employer has a reasonable excuse for the failure.

**6.5 Medical examinations.** (1) The Board may require a worker who has applied for, or is in receipt of, compensation under this Act to submit to a personal examination by a registered person at any time, or from time to time, at a place reasonably convenient for the worker.

(2) If the matter of an application for compensation under this Act is to be heard and determined by an Industrial Magistrate, the magistrate

may, at any time before or after commencement of the hearing, order the injured worker concerned to submit to a personal examination, on behalf of the Board, by one or more registered persons specified in the order, and further order in relation to—

- the manner, time and place of such examination;
- costs of the application for such an order and of such examination or examinations;

as the magistrate thinks fit.

(3) The opinions formed upon any examination or examinations conducted pursuant to this section are to be furnished to the Board, and if the opinion relates to an examination ordered by an Industrial Magistrate, the Board is to make the opinion available to the worker or the worker's representative or agent.

(4) If a worker required under this section to submit to a personal examination—

- (a) refuses or fails to submit to the examination;
- or

- (b) obstructs the conduct of the examination;

the worker's entitlement (if any) to compensation under this Act is thereby suspended until the examination is conducted.

**6.6 Determination of claims.** (1) Except where the procedure prescribed by subsection (2) is followed, an application for compensation under this Act is to be allowed or rejected in the first instance by the Board.

(2) An application for compensation under this Act is to be heard and determined by an Industrial Magistrate in accordance with this Act if—

- (a) the Board requires that the application be heard and determined by an Industrial Magistrate;

or

- (b) within 60 days following receipt by the claimant of notice in writing of the Board's decision on the application under subsection (1), by which decision the claimant is aggrieved, the claimant requires that the application be heard and determined by an Industrial Magistrate;

or

- (c) at anytime after the expiry of 6 months following the making of the application, where the Board—

- has not notified the claimant of its decision on the application under subsection (1);

and

- has not required that the application be heard and determined by an Industrial Magistrate;



the claimant requires that the application be heard and determined by an Industrial Magistrate.

(3) A requirement referred to in subsection (2) is to be made by notice in writing given—

- by the Board to the claimant for compensation;
- or
- by the claimant to the Board;

as the case may be.

(4) The hearing and determination by an Industrial Magistrate of the matter of an application for compensation is to be initiated and conducted in accordance with the regulations and, subject to the regulations, the Industrial Magistrate may make such order as to costs thereof as the magistrate thinks fit.

**6.7 Appeal from Industrial Magistrate to Industrial Court.** (1) If aggrieved by a decision of an Industrial Magistrate in the matter of an application for compensation under this Act, the Board, or the claimant for the compensation, may appeal to the Industrial Court in accordance with the Rules of Court governing the practice of that court.

(2) Unless the Industrial Court orders that additional evidence be heard, the appeal is to be by way of re-hearing on the evidence and proceedings before the Industrial Magistrate.

(3) Subject to the regulations, costs of appeal are in the discretion of the Industrial Court.

(4) The decision of the Industrial Court is final.

## PART 7. PAYMENT OF COMPENSATION

**7.1 Advances on account.** (1) If the Board is satisfied that an application for compensation under this Act is well founded, it may from time to time advance to the worker such sum or sums on account of compensation as it thinks proper in the circumstances.

(2) The Board may exercise the power conferred by subsection (1) at any time before the amount of compensation is ascertained, or pending the outcome of an appeal as to the amount.

**7.2 Regard to other benefits for workers.** In assessing the amount of weekly payment of compensation under this Act the Board—

- (a) may have regard to the amount of any entitlement had by the worker independently of this Act by way of—
- payment or other benefit that is being, has been, or will be received by the worker;
  - payment that is being, has been, or will be made on account of the worker;

- (b) may reduce the weekly payment of compensation under this Act by an amount no greater than the amount that bears to the whole of the worker's entitlement referred to in paragraph (a) the proportion that one week bears to the period for which the entitlement is had by the worker.

**7.3 Entitlement of State employees to compensation.** (1) A worker who suffers injury arising out of or in the course of employment in a department of government or by the Crown in right of the State is not entitled to compensation under this Act in respect of any period during which the worker is entitled to receive, and receives, full salary or wages by way of sick pay.

(2) If a worker employed in a department of government or by the Crown in right of the State receives part of salary or wages in respect of any period and is entitled to compensation under this Act for the same period in respect of an injury suffered, the amount of compensation payable together with the amount of that part of salary or wages received by the worker must not exceed the amount that would have been received by the worker in respect of that period as full salary or wages at the rate payable to the worker at the time the injury occurred.

(3) No deduction is to be made from compensation under this Act to which a worker employed in a department of government or by the Crown in right of the State is entitled on account of any payment received by the worker pursuant to the *Public Service Superannuation Act 1958-1990* or the *State Service Superannuation Act 1972-1990*, or any Act passed in substitution therefor.

(4) Payment of salary or wages, or other payment referred to in this section, is taken to be received by a worker if the payment is not made to the worker but is made on the worker's account.

**7.4 Reviews of weekly payments.** (1) The Board may, from time to time, review any entitlement to weekly payment of compensation under this Act, and upon such review may terminate, decrease, or, subject to complying with any prescribed maximum therefor, increase such payment.

(2) If a worker in respect of whose injury compensation under this Act is payable was under the age of 18 years at the time the injury occurred and a review under subsection (1) takes place at a time more than 12 months after the injury occurred, the amount of future weekly payment may be increased to an amount not exceeding whichever of the following amounts is less:—

- (a) 80 per centum of the weekly sum that the worker would probably have been earning in the relevant employment at the date of the review had the worker not been injured;
- (b) the maximum weekly payment prescribed for a worker referred to in paragraph (f) of the Table in section 8.1.

**7.5 Misconduct of worker.** If it appears to the Board that, because of indulgence in alcohol or other drug, neglect of spouse or children

who is or are dependent on the earnings of the worker, or other sufficient misconduct on the part of a worker to whom a sum is payable as compensation under this Act—

- (a) the worker ought to be deprived of the whole or part of the sum;  
or
- (b) the manner in which the sum is payable to the worker ought to be varied;

the Board may cease, or refuse, payment of the sum to the worker to such extent as the Board determines, and, if in its opinion the circumstances warrant, may pay the amount of which the worker has been deprived to or for the benefit of the spouse or children who is or are so dependent, as the Board considers just.

**7.6 Remarriage or misconduct of relict.** If a sum is payable to or on account of a relict as compensation under this Act in respect of the death of a worker and because of—

- the relict's remarriage, or living in a connubial relationship with another person;  
or
- the relict's indulgence in alcohol or other drug, neglect of children who were dependent on the earnings of the deceased worker, or other sufficient misconduct;

it appears to the Board that—

- (a) the relict ought to be deprived of the whole or part of the sum;  
or
- (b) the terms on which or the manner in which the sum is payable to the relict ought to be varied;

the Board may cease, or refuse, payment of the sum to the relict to such extent as the Board determines, and, if in its opinion the circumstances warrant, may pay the amount of which the relict has been deprived to or for the benefit of any children who were dependent on the earnings of the deceased worker, as the Board considers just.

**7.7 Payment of lump sum.** (1) The Board's liability to make weekly payments of compensation under this Act or under a corresponding previous enactment may, at any time, be discharged by payment of a lump sum in an amount agreed between the Board and the worker or other person entitled thereto or, in default of agreement, ordered by an Industrial Magistrate upon the request of either of them.

Any such lump sum may, at the request of the Board or the worker, be reviewed by an Industrial Magistrate within 12 months after it has been so agreed or ordered.

(2) Upon a review under subsection (1) of a lump sum the Industrial Magistrate may decrease or, subject to complying with any prescribed maximum therefor, increase such sum.

(3) If a lump sum payable under this section, or under any other provision of this Act, is not to be paid directly to the person entitled thereto, it may be invested or otherwise applied for the benefit of that person as agreed between that person and the Board or, in default of agreement, as ordered by an Industrial Magistrate upon a reference by the Board.

(4) A person to whom or on whose account payment is made of a lump sum—

- agreed or ordered pursuant to this section;
- or
- payable under any other provision of this Act;

in respect of an injury is not entitled to payment of compensation under this Act or expenses of whatever description in respect of the injury for any period after the lump sum is agreed, ordered or, as the case may be, paid.

**7.8 Lump sum upon worker moving abroad.** (1) A worker in receipt of weekly payments of compensation under this Act who ceases to ordinarily reside in Australia or New Zealand, thereupon ceases to be entitled to such weekly payments.

(2) If a worker, such as is referred to in subsection (1), proves to the Board that incapacity resulting from the injury, whereby the worker became entitled to compensation, is of a permanent nature, the worker is entitled to a lump sum not exceeding 156 times the prescribed base rate, less the total weekly payments already paid.

(3) Any question arising under this section is, in default of agreement, to be determined by an Industrial Magistrate at the request of either the Board or the worker.

**7.9 To whom payments made in case of death.** Compensation under this Act payable in respect of the death of a worker is payable—

- (a) to the worker's legal personal representative, who is to pay or apply the same to or for the benefit of the worker's dependants or other persons entitled thereto under this Act;
- or
- (b) if there be no legal personal representative—
  - (i) in so far as the payment is to recoup expenses to which a person is entitled under this Act, to the person who has incurred those expenses;
  - (ii) in so far as the payment is by way of compensation to dependants of the worker, to the dependants entitled thereto.

**7.10 Total and partial dependants.** If compensation under this Act is payable in respect of the death of a worker who is survived by persons totally dependent on the worker and persons partially dependent on the worker, the compensation may be allotted partly to the total dependants and partly to the partial dependants.

**7.11 Investment of compensation.** A sum allotted as compensation payable to a dependant may be invested or applied by the Board for the benefit of the person entitled thereto as agreed between the Board and the person, or, in default of agreement, as ordered by an Industrial Magistrate at the request of the Board.

**7.12 Payment to minors.** (1) If a person entitled to payment of moneys under this Act is under the age of 18 years, then, notwithstanding the person's minority—

- (a) the person is capable in law of agreeing with the Board as to the amount of such moneys payable;
- and
- (b) the person is capable in law of giving a good and valid discharge for such moneys paid.

(2) The Board may pay to the Public Trustee of Queensland moneys due under this Act to a person under the age of 18 years, other than compensation payable during and in respect of any period of total or partial incapacity resulting from the injury in question to that person, whereupon the provisions of the *Public Trustee Act 1978-1988* relating to property held by the Public Trustee upon trust for infants apply in relation to the moneys so paid.

**7.13 Suspension of entitlement.** If pursuant to this Act an entitlement to compensation is suspended, no compensation is payable in respect of the period of suspension.

**7.14 Appeals against decisions under this Part.** Within 60 days following receipt by a worker, or relict, of notice in writing of the Board's decision—

- on review of an entitlement to weekly payment of compensation, under section 7.4(1);
- in respect of the worker's misconduct, under section 7.5;
- in respect of the relict's remarriage, living in a connubial relationship, or misconduct, under section 7.6;

the worker or relict may, by notice in writing given to the Board, require the matter to be heard and determined by an Industrial Magistrate, whereupon the Board must forthwith refer the matter to an Industrial Magistrate, who is to proceed to hear and determine the matter and to that end may revoke, confirm or vary the Board's decision, as the magistrate considers just.

**7.15 Special provision concerning payment on account of mariners.**

(1) No compensation is payable under this Act in respect of the death of a mariner who leaves no dependants, if the owner or charterer of the ship on which the mariner was employed at the time the relevant injury was suffered is, pursuant to any Act, or law in force in the State, liable to pay the expenses of the mariner's funeral.

(2) No weekly payment of compensation is payable under this Act in respect of injury suffered by a mariner for any period during which the owner or charterer of the ship on which the mariner was employed at the time the injury was suffered is, pursuant to any Act, or law in force in the State, liable to defray the expenses, maintenance or wages of the mariner.

(3) Subject to section 5.2, compensation under this Act payable in respect of injury suffered by a mariner is to be paid in full, notwithstanding any limitation of liability prescribed by any other law.

**7.16 Recovery of compensation over-paid.** (1) If in respect of a claim for compensation under this Act a payment has been made to or on account of a person of an amount in excess of the amount to which the person is entitled under this Act, the Board—

- (a) may recover the amount of the difference between such payment and such entitlement from that person;
- (b) may from time to time deduct from moneys that become payable to or on account of that person, whether in respect of that claim or a subsequent claim for compensation, the difference between such payment and such entitlement, or any part of that difference.

(2) If the payment of an excess amount has resulted from the provision of false information by the employer of a worker, the Board may recover such excess amount from that employer.

**7.17 Compensation entitlement not assignable or subject to execution.**

(1) Subject to section 7.16 and subsection (2), moneys payable as compensation under this Act are not capable of being assigned, charged, taken in execution, or attached, and the entitlement thereto of a person cannot pass to any other person by operation of law or otherwise, and no claim can be set off against such moneys.

(2) If, on or after 1 July 1991, an employer pays to or on account of a worker who has suffered an injury in respect of which compensation under this Act is payable—

- moneys to which the worker is entitled from the Fund in respect of that injury, or any part of those moneys;
- wages of the worker, or any part of those wages;

the Board may recoup the employer therefor to the extent of the worker's entitlement under this Act in respect of the injury in lieu of payment to or on account of the worker.

## PART 8—QUANTUM OF COMPENSATION

*Division 1—Compensation for Total or Partial Incapacity Generally*

**8.1 Total incapacity.** Subject to this Part, if total incapacity of a worker of a description specified in the first column of the following Table results from an injury suffered, the compensation under this Act payable to or on account of the worker is a weekly payment, during incapacity, of that specified in the second column of the Table opposite that description of worker:—

TABLE

Description of Worker	Compensation Payable
(a) a worker employed under any industrial award or registered industrial agreement.	(a) for a period of 39 weeks, the weekly rate of salary or wages provided for the time being by the industrial award or registered industrial agreement that for the time being governs the calling in which the worker was engaged at the time the injury was suffered; (b) thereafter, the prescribed base rate, together with such allowances as are prescribed by section 8.4.
(b) a worker employed— (i) in a department of government as an officer; (ii) by any university or college of advanced education in Queensland; (iii) as a salaried employee in the electricity supply industry in Queensland; (iv) by any hospital board constituted under the <i>Hospitals Act 1936-1984</i> ; whose employment is not governed by any industrial award or registered industrial agreement.	(a) for a period of 39 weeks, the weekly rate of salary or wages provided for the time being by the contract of service under which the worker was employed at the time the injury was suffered; (b) thereafter, the prescribed base rate, together with such allowances as are prescribed by section 8.4.

TABLE—continued

Description of Worker	Compensation Payable
(c) a worker whose employment is not governed by any industrial award or registered industrial agreement, other than a worker referred to in paragraph (b) of this column.	(a) for a period of 39 weeks, <ul style="list-style-type: none"> <li>(i) the weekly minimum rate of wages for the time being provided by the Engineering Award—State, made by the Industrial Relations Commission, in relation to employees of the class “Wage Group C10” in the Southern Division;</li> <li>or</li> <li>(ii) 80 per centum of the weekly rate of wages provided for the time being by the contract of service under which the worker was employed at the time the injury was suffered;</li> </ul> whichever is greater; (b) thereafter, the prescribed base rate, together with such allowances as are prescribed by section 8.4.
(d) a worker employed as a waterside worker in the port of Bowen, Bundaberg, Cairns, Gladstone, Mackay, Townsville, or Urangan.	(a) for a period of 39 weeks, <ul style="list-style-type: none"> <li>(i) the guaranteed weekly wage pursuant to the relevant industrial award or registered industrial agreement;</li> </ul>



TABLE—continued

Description of Worker	Compensation Payable
	<p>or</p> <p>(ii) whichever is less—</p> <ul style="list-style-type: none"> <li>• the prescribed base rate, together with such allowances as are prescribed by section 8.4;</li> <li>or</li> <li>• the worker's average weekly earnings;</li> </ul> <p>whichever is greater;</p> <p>(b) thereafter, the prescribed base rate, together with such allowances as are prescribed by section 8.4.</p>
(c) a worker who receives an amount determined by the Industrial Relations Commission in lieu of accident pay.	the prescribed base rate, together with such allowances as are prescribed by section 8.4.
(f) a worker whose average weekly earnings are less than the prescribed base rate.	<p>(a) where the worker was in receipt of an age, invalid, or widow's pension under a law of the Commonwealth at the time the injury was suffered, an amount not exceeding \$40;</p> <p>(b) in any other case, an amount not exceeding the worker's average weekly earnings.</p>

**8.2 Compensation for particular persons other than workers.** (1) Subject to this Part, if total incapacity of a person of a description specified in the first column of the following Table results from an injury suffered, the compensation payable under this Act to the person is a weekly payment, during incapacity, of that specified in the second column of the Table opposite that description of person:—

TABLE

Description of Person	Compensation Payable
(a) a person who is not a worker and who is a member of a local emergency service or a body that acts under the authority of the State Counter-Disaster Organisation or the State Emergency Service within the meaning of the <i>State Counter-Disaster Organisation Act 1975</i> , injured while engaged in counter-disaster operations or participating in counter-disaster training as prescribed by section 36 of that Act.	an amount in respect of loss suffered as a result of the injury determined by the Board, but not exceeding the prescribed base rate.
(b) a person who is not a worker and who is a member of a bush fire brigade registered by The Rural Fires Board under the <i>Rural Fires Act 1946-1984</i> , injured while discharging duties, or participating in training as a member of the bush fire brigade.	an amount in respect of loss suffered as a result of the injury determined by the Board, but not exceeding the prescribed base rate.
(c) a person referred to in paragraph (a) or (b) of this column who is self-employed.	(a) for a period of 39 weeks, (i) the weekly minimum rate of wages for the time being provided by the Engineering Award—State, made by the Industrial Relations Commission, in relation to employees of the class "Wage Group C10" in the Southern Division;

TABLE—continued

Description of Person	Compensation Payable
	<p style="text-align: center;">or</p> <p>(ii) 80 per centum of the reasonable cost of labour paid to replace the self-employed person; whichever is greater, if such reasonable cost of labour equals or exceeds such weekly rate of wages;</p> <p style="text-align: center;">or</p> <p>(iii) if such reasonable cost of labour is less than such weekly rate of wages—the reasonable cost per week of such labour;</p> <p>(b) thereafter,</p> <p style="padding-left: 2em;">(i) the prescribed base rate, together with such allowances as are prescribed by section 8.4;</p> <p style="text-align: center;">or</p> <p style="padding-left: 2em;">(ii) the reasonable cost per week of labour paid to replace the self-employed person;</p> <p style="text-align: center;">whichever is less.</p>

(2) A person to whom compensation is payable under subsection (1) is included in the expression “worker” in the following provisions of this Part.

### 8.3 Provisions as to maximum compensation under ss.8.1 and 8.2.

(1) The weekly payment made to a worker referred to in paragraph (a) of the Table in section 8.1 must not exceed—

- (a) if the worker was permanently employed at the time the injury was suffered, the weekly rate of salary or wages provided for the time being by the industrial award or registered industrial agreement that for the time being governs the calling in which the worker was engaged at that time;
- (b) if the worker was casually employed at the time the injury was suffered, the weekly rate of salary or wages referred to in paragraph (a) or the worker’s average weekly earnings, whichever is less.

(2) The weekly payment made to a worker referred to in paragraph (b) or (c) of the Table in section 8.1 must not exceed—

(a) if the worker was permanently employed at the time the injury was suffered, the weekly rate of salary or wages provided for the time being by the contract of service under which the worker was employed at that time;

(b) if the worker was casually employed at the time the injury was suffered, the worker's average weekly earnings.

(3) The weekly payment made to a worker referred to in paragraph (d) of the Table in section 8.1 must not exceed the worker's average weekly earnings or the worker's guaranteed weekly wage, whichever is greater.

(4) The weekly payment made to a worker referred to in paragraph (e) of the Table in section 8.1 must not exceed the weekly rate of wages provided for the time being by the industrial award or registered industrial agreement that for the time being governs the calling in which the worker was engaged at the time the injury was suffered.

(5) Compensation payable under section 8.1 or 8.2 must not exceed the maximum amount prescribed by section 8.31(a) and, subject thereto, weekly payments of compensation continue to be made until—

(a) the incapacity terminates;

or

(b) a lump sum settlement is made with the worker or a payment in accordance with section 8.6 is made to the worker, in respect of the injury;

whichever event first occurs.

**8.4 Allowances payable as compensation under s.8.1.** The allowances referred to in the Table in section 8.1 are, in respect of a person of a description specified in the first column of the following Table, those specified in the second column of the Table, opposite that description of person:—

TABLE

Description of Person	Allowances
(a) a spouse of a worker who is totally or mainly dependent on the worker's earnings.	a weekly payment of 20 per centum of the prescribed base rate in respect of one person only.
(b) where a worker has no spouse, a person who is totally or mainly dependent on the worker's earnings and who—	a weekly payment of 20 per centum of the prescribed base rate in respect of one person only.

TABLE—continued

Description of Person	Allowances
<p>(i) is caring for the worker's child or step-child who is under the age of 16 years or who is of or over that age and under the age of 21 years and is receiving full-time education at a school, college, university, or similar institution;</p> <p>or</p> <p>(ii) is a member of the family of the worker and—</p> <ul style="list-style-type: none"> <li>• is of or over the age of 16 years;</li> <li>and</li> <li>• is not receiving full-time education at a school, college, university or similar institution;</li> <li>and</li> <li>• is caring for the worker's household.</li> </ul> <p>(c) each—</p> <ul style="list-style-type: none"> <li>• child or step-child of a worker;</li> <li>• child of a worker's spouse within the extended meaning of that term in this Act;</li> <li>• brother or sister of a worker; who is totally or mainly, dependent on the worker's earnings and is under the age of 16 years, or is of or over that age and under the age of 21 years and is receiving full-time education at a school, college, university, or similar institution.</li> </ul>	<p>a weekly payment of 10 per centum of the prescribed base rate.</p>

**8.5 Compensation for partial incapacity.** (1) If partial incapacity of a worker results from an injury suffered, the compensation under this Act payable in respect of the injury is a weekly payment calculated—

- (a) in a case where the calling in which the worker is engaged at the time the injury occurred is at that time governed by any industrial award or registered industrial agreement, in accordance with the formula—

$$PC = MC \times \frac{LE}{WR};$$

- (b) in any other case, in accordance with the formula—

$$PC = MC \times \frac{LE}{AE};$$

where—

- (c) PC represents the compensation under this Act, expressed as a weekly rate, payable in respect of the injury on account of the partial incapacity;
- (d) MC represents the maximum compensation under this Act, expressed as a weekly rate, that would have been payable in accordance with the provisions of this Division had total incapacity of the worker resulted from the injury;
- (e) LE represents the worker's loss of earnings, expressed as a weekly rate, as a result of the injury;
- (f) WR represents the weekly rate of salary or wages provided for the time being by such industrial award or industrial agreement as payable to an employee of the worker's description;
- (g) AE represents the worker's average weekly earnings in such calling at the time the injury occurred.

(2) In subsection (1), the expression "loss of earnings" means the difference between the worker's average weekly earnings at the time of injury and the weekly earnings that are derived by the worker from employment during the period of partial incapacity, or, if the worker is not in employment during that period, that could be reasonably expected to be derived by the worker during that period having regard to the worker's incapacity and the availability of employment.

(3) The Board may from time to time require a worker referred to in subsection (1) to furnish to it within a time specified in the requisition information as to, and particulars of, the worker's employment and earnings during a period specified in the requisition.

If a worker fails to comply with a requisition directed to the worker, the Board may suspend the worker's entitlement to weekly payments of compensation until full compliance with the requisition.

*Division 2—Compensation for Permanent Partial Disabilities*

**8.6 Compensation for permanent disability of bodily members or faculties.** (1) Subject to the following provisions of this Division, the maximum amount of compensation under this Act payable in respect of an injury specified in the first column of the following Table is the amount calculated by using the percentage specified in the second column of the Table opposite the reference to the injury—100 per centum being equivalent to the maximum amount prescribed by section 8.31(b):—

TABLE

Nature of Injury	Percentage
Loss of both eyes . . . . .	100
Loss of an only eye . . . . .	100
Loss of both hands . . . . .	100
Loss of both feet . . . . .	100
Loss of a hand and a foot . . . . .	100
Total and incurable loss of mental powers involving inability to work . . . . .	100
Total and incurable paralysis of the limbs or of mental powers . . . . .	100
Loss of the sight of one eye together with the serious diminution of the sight of the other eye . . . . .	75
Loss of the sight of one eye . . . . .	40
Loss of sight of one eye and eyeball . . . . .	45
Loss of hearing . . . . .	50
Loss of speech . . . . .	70
Complete deafness of one ear . . . . .	20
Loss of an arm . . . . .	80
Loss of a hand or five fingers of a hand or of the lower part of an arm . . . . .	70
Loss of a thumb . . . . .	30
Loss of a joint of a thumb . . . . .	16
Loss of a forefinger . . . . .	20
Loss of the distal joint of a forefinger . . . . .	10
Loss of two joints of a forefinger . . . . .	15
Loss of the middle or ring or little finger . . . . .	10
Loss of the distal joint of the middle or ring or little finger . . . . .	6
Loss of two joints of the middle or ring or little finger . . . . .	10
Loss of a leg . . . . .	75
Loss of the lower part of a leg . . . . .	70
Loss of a foot . . . . .	60
Loss of a great toe . . . . .	20
Loss of a joint of a great toe . . . . .	10
Loss of any other toe . . . . .	10
Loss of binocular vision . . . . .	40
Loss of smell . . . . .	15
Loss of taste and smell . . . . .	25
Loss of genital organs . . . . .	50

TABLE—*continued*

Nature of Injury	Percentage
Loss of one breast . . . . .	30
Loss of both breasts . . . . .	50
Loss of bodily function . . . . .	100

- (2) For the purposes of the Table contained in subsection (1)—
- (a) any bodily member is deemed lost if it is rendered permanently and wholly useless;
  - (b) the expression “loss of” includes permanent loss of the efficient use of the bodily member in relation to which the expression is used, but in that case a percentage of the amount of compensation calculated in accordance with subsection (1), being the percentage of diminution in the efficient use of the bodily member in question, is the maximum amount of compensation under this Act payable in respect of the loss.

**8.7 Declaration of additional injuries that attract compensation under s.8.6.**(1) Section 8.6 applies in relation to a loss or condition suffered by a worker that is declared for the time being, by Order in Council, to be an injury in respect of which compensation may be paid under that section.

(2) An Order in Council that declares a loss or condition to be such an injury must also prescribe the percentage by use of which the amount of compensation is to be calculated in accordance with that section, and is to be given effect.

(3) If section 8.6 is extended by Order in Council to apply to any loss or condition, then for the purpose of applying the following provisions of this Division it is to be taken—

- (a) that the loss or condition specified in the order is specified in the first column of the Table in that section;  
and
- (b) that the percentage prescribed by the order in accordance with subsection (2) is specified in the second column of that Table opposite to that loss or condition.

**8.8 Application of s.8.6 in particular cases.** (1) Section 8.6 does not apply in relation to an injury until the expiry of the period of total incapacity resulting from the injury in respect of which period compensation is paid otherwise than in accordance with that section, except where the worker concerned accepts payment of compensation in accordance with that section in respect of the injury.



(2) Except as otherwise prescribed by this section, an amount of compensation under this Act paid other than in accordance with section 8.6 in respect of an injury to which that section applies (by weekly payments, lump sum payment or otherwise) is not to be deducted from compensation payable in respect of the injury in accordance with that section, but the total amount of compensation payable to a worker in respect of the injury must not exceed the amount prescribed by section 8.31(c).

(3) There is to be deducted from compensation payable in accordance with section 8.6 in respect of loss of, or permanent loss of efficient use of—

- a bodily member;
- a faculty;
- bodily function;

specified in the Table in Section 8.6, compensation previously paid, under that section or under a corresponding provision of a previous enactment, in respect of permanent loss of efficient use of such bodily member, faculty or bodily function, or in respect of loss of any part of such bodily member.

(4) If section 8.6 applies in relation to an injury consisting in loss of hearing due to the condition known as industrial deafness or other loss of hearing, suffered by a worker who has previously suffered a like injury in respect of which compensation was paid under this Act, or under a previous enactment that corresponds to this Act, the compensation payable in accordance with section 8.6 in respect of the injury is reduced by the percentage loss of hearing for which the worker was previously so compensated.

**8.9 Compensation for permanent partial disability.** (1) If a medical assessment tribunal has determined on a reference under Part 9 that an injury suffered by a worker that consists in a loss or condition specified in the first column of the Table in section 8.6 has resulted in a permanent partial disability of the worker, the General Manager may make to or on account of the worker a payment, as compensation in respect of the injury, of a proportionate amount of the maximum quantum of liability specified in the second column of that Table opposite the reference to that loss or condition.

(2) A worker to whom or on whose account payment is made under subsection (1) in respect of an injury is not entitled to compensation in respect of that injury under any other provision of this Part for any period after the payment is made.

**8.10 When compensation payable for loss of bodily function.** (1) No amount of compensation is payable under this Act in respect of loss of bodily function unless—

- (a) a medical assessment tribunal has determined the loss of bodily function on a reference under Part 9;

and

- (b) the General Manager has decided under section 8.9 to make payment of compensation to or on account of the worker of a proportionate amount of the maximum quantum of liability specified in the second column of the Table in section 8.6.

(2) Compensation is not payable in accordance with section 8.6 in respect of loss of bodily function specified in the Table in that section if that loss is attributable to any other loss or condition specified in that Table.

**8.11 Maximum compensation for multiple s.8.6 injuries.** If in one incident a worker suffers injuries consisting in more than one loss or condition specified in the Table in section 8.6, or to which that section is made applicable by Order in Council, the worker is not entitled under that section to compensation under this Act in an amount greater than the maximum amount prescribed by section 8.31(b).

**8.12 No further compensation after settlement under s.8.6.** A worker to whom or on whose account payment of compensation is made in accordance with section 8.6, or by whom payment in accordance with that section is accepted, in settlement of a claim for compensation in respect of an injury is not entitled—

- (a) to compensation under any other provision of this Part in respect of the injury;  
or  
(b) to payment of expenses of whatever description in respect of the injury;

for any period after the payment or, as the case may be, acceptance of the compensation.

*Division 3—Compensation upon Death of Worker*

**8.13 Benefits for total or partial dependants.** (1) If the death of a worker is, or has resulted from, an injury in respect of which compensation under this Act is payable, the compensation payable in each case specified in the first column of the following Table is that specified in the second column of the Table opposite the specification of that case:—

TABLE

Circumstances and Description of Persons	Compensation
(a) where the worker has left any dependants who at the time of the worker's death were totally dependent on the worker's earnings.	the sum of \$89 000, which is subject to reductions as prescribed by section 8.14.

TABLE—*continued*

Circumstances and Description of Persons	Compensation
<p>(b) where the worker has left—</p> <ul style="list-style-type: none"> <li>• a child or step-child of the worker;</li> <li>• a child of the worker's spouse within the extended meaning of that term in this Act;</li> <li>• a brother or sister of the worker;</li> </ul> <p>who, at the time of the worker's death was totally or mainly dependent on the worker's earnings and is under the age of 16 years, or is of or over that age and under the age of 21 years and is receiving full-time education at a school, college, university or similar institution.</p>	<p>a weekly amount in respect of each child, step-child, brother or sister of 10 per centum of the prescribed base rate commencing at the time of the worker's death and terminating at the time he or she ceases to be of a description of person specified in the first column opposite this paragraph.</p>
<p>(c) where the worker has left a relict who, at the time of the worker's death, was totally dependent on the worker's earnings, and a child, step-child, brother or sister, such as is referred to in paragraph (b) of this column.</p>	<p>the sum of \$1 200 in respect of each child, step-child, brother or sister left by the worker for the calendar year in which the worker's death occurs and for each calendar year thereafter until he or she ceases to be of a description of person specified in paragraph (b) in the first column of this Table, but so that the total amount payable in respect of any such child, step-child, brother or sister must not exceed \$5 000.</p>
<p>(d) where the worker has left any dependants who, at the time of the worker's death, were partially dependent on the worker's earnings but has left no dependants who at that time were totally dependent on the worker's earnings.</p>	<p>a sum that in the Board's opinion is reasonable and proportionate to the monetary value of the loss of dependence by such partial dependants, being a sum—</p> <p>(a) not exceeding the sum specified in this column opposite paragraph (a) in the first column of this Table or that sum reduced as prescribed by section 8.14;</p>

TABLE—*continued*

Circumstances and Description of Persons	Compensation
	<p style="text-align: center;">and</p> <p>(b) not less than 15 per centum of the sum specified in this column opposite paragraph (a) in the first column of this Table.</p>
(e) where the worker has left dependants consisting of or including a child, step-child, brother or sister, such as referred to in paragraph (b) of this column, except that he or she, at the time of the worker's death, was only partially dependent on the worker's earnings but has left no dependants who at that time were totally or mainly dependent on the worker's earnings.	a weekly payment in respect of each child, step-child, brother or sister not exceeding 10 per centum of the prescribed base rate, that in the opinion of the Board is reasonable and proportionate to the monetary value of the loss of dependence by such partial dependants, but not less than 6 per centum of that rate, commencing at the time of the worker's death and terminating at the time he or she ceases to be of a description of person specified in paragraph (b) in the first column of this Table, as modified by paragraph (e) in the first column opposite this paragraph.
(f) where the worker had not attained the age of 21 years, and has left any parent or parents ordinarily resident in the State but no dependants.	the sum of \$10 000.
(g) whether the worker has left dependants or no dependants.	<p>the reasonable expenses of—</p> <ul style="list-style-type: none"> <li>• the medical treatment of, or attendance on, the worker;</li> <li>• the funeral of the worker.</li> </ul>

(2) Compensation specified in the Table in subsection (1) opposite paragraph (b) or (c) in the first column of the Table is payable in addition to the compensation specified in the Table opposite paragraph (a) in the first column of the Table.

(3) Compensation specified in the Table in subsection (1) opposite paragraph (c) in the first column of the Table is payable in addition to the compensation specified in the Table opposite paragraph (d) in the first column of the Table.

**8.14 Reduction of sum payable upon death.** If in respect of an injury suffered by a worker, there has been made—

- (a) weekly payments of compensation under this Act;  
or
- (b) payment of a lump sum in discharge of the liability to make weekly payments of compensation under this Act;  
or
- (c) payment of a lump sum of compensation under this Act;

there is to be deducted from the sum specified in the Table in section 8.13(1) opposite paragraph (a) in the first column of the Table as payable in the event of the worker's death from that injury the amount of all such payments referred to in paragraph (a), (b) or (c) of this section, but so that the sum as so reduced must not be less than 50 per centum of the sum specified opposite paragraph (a) in the first column of the Table in section 8.13(1).

**8.15 Reduced benefit to dependant who dies before payment of compensation.** (1) If a dependant of a worker whose death is, or has resulted from, an injury in respect of which compensation under this Act is payable dies after the worker's death and before payment of the dependant's benefit of compensation that, but for this section, would be payable under this Division for the benefit of the dependant (either alone or with another or others), the dependant is, for the purposes of this Act, taken to have predeceased the worker but nevertheless there is payable to the legal personal representative of the dependant, for the benefit of the dependant's estate, an amount of compensation based on the prescribed payments for the period commencing on the date of the worker's death and terminating on the date of the dependant's death.

(2) For the purposes of subsection (1) the prescribed payments are, in respect of a person of a description specified in the first column of the following Table, those specified in the second column of the Table opposite that description of person:—

TABLE

Description of person	Prescribed Payments
(a) a relict of the worker who at the time of the worker's death was totally or mainly dependent on the worker's earnings.	a weekly payment of 20 per centum of the prescribed base rate.
(b) where the worker has left no relict, a person who at the time of the worker's death, was totally or mainly dependent on the worker's earnings and who—	a weekly payment of 20 per centum of the prescribed base rate.

TABLE—continued

Description of person	Prescribed Payments
<p>(i) is caring for the worker's child or step-child who is under the age of 16 years, or who is of or over that age and under the age of 21 years and is receiving full-time education at a school, college, university, or similar institution;</p> <p>or</p> <p>(ii) is a member of the family of the worker and—</p> <ul style="list-style-type: none"> <li>• is of or over the age of 16 years; and</li> <li>• is not receiving full-time education at a school, college, university or similar institution; and</li> <li>• is caring for persons who at the time of the worker's death were totally or mainly dependent on the worker's earnings.</li> </ul> <p>(c) each—</p> <ul style="list-style-type: none"> <li>• child or step-child of the worker;</li> <li>• child of the worker's spouse within the extended meaning of that term in this Act;</li> <li>• brother or sister of the worker;</li> </ul> <p>who, at the time of the worker's death, was totally or mainly dependent on the worker's earnings and is under the age of 16 years, or is of or over that age and under the age of 21 years and is receiving full-time education at a school, college, university, or similar institution.</p>	<p>a weekly payment of 10 per centum of the prescribed base rate.</p>

*Division 4—Compensation for Prescribed Disfigurement*

**8.16 Application of Division.** The provisions of this Division apply in respect of all prescribed disfigurement resulting from an injury in respect of which compensation under this Act is payable, other than prescribed disfigurement incident to an injury in respect of which compensation under this Act is payable under section 8.6.

**8.17 Entitlement to additional compensation.** (1) A worker who suffers injury resulting in prescribed disfigurement is entitled to compensation under this Division in addition to compensation to which the worker is entitled under any other provision of this Act.

In no case is weekly payment of compensation to be made in respect of prescribed disfigurement.

(2) Compensation under this Act payable in respect of prescribed disfigurement may vary in amount according to the severity of the prescribed disfigurement but must not exceed 50 per centum of the maximum amount prescribed by section 8.31(b): Provided that the maximum compensation under this Act payable under this Division and all other provisions of this Act (including section 8.6) in respect of all injuries suffered by a worker in any one incident must not exceed the maximum amount of total compensation prescribed by section 8.31(c).

**8.18 Assessment of additional compensation.** (1) The General Manager may refer to a Prescribed Disfigurement Assessment Tribunal constituted under Division 3 of Part 9 an application for compensation under this Act to the extent that the application relates to disfigurement.

(2) The tribunal is to assess, by personal examination of the claimant worker—

- (a) whether the disfigurement in question is sufficiently severe to be prescribed disfigurement;  
and
- (b) if it assesses the disfigurement to be prescribed disfigurement, the severity of the disfigurement expressed as a percentage.

(3) The tribunal is to issue a written determination of its assessment on each reference to it.

**8.19 Suspension of entitlement to compensation under Division.** If a worker whose claim for compensation in respect of disfigurement is referred to the tribunal under section 8.18—

- (a) fails to attend at a sitting of the tribunal of which the worker has been given at least 7 days prior notice in writing on behalf of the tribunal;  
or
- (b) having attended at such sitting, refuses to be examined by the tribunal or any member thereof;

or

- (c) obstructs, or attempts to obstruct, examination of the worker by the tribunal or any member thereof;

the worker's entitlement (if any) to compensation under this Division is suspended until the worker undergoes examination required by the tribunal.

*Division 5—Board's Liability for Expenses*

**8.20 Board's liability for treatment.** If hospitalisation or medical treatment of a worker is necessary for an injury in respect of which compensation under this Act is payable, the Board is to pay, in addition to compensation otherwise payable under this Act, the cost of such hospitalisation or treatment as is reasonable in the General Manager's opinion, having regard to the injury in question, in accordance with the provisions of this Division.

**8.21 Extent of liability for medical treatment.** (1) The fees and costs that the Board is liable to pay under this Division in respect of medical treatment for an injury suffered by a worker, whether the treatment is provided at one time or at different times, are—

- (a) for medical treatment by a registered person the cost thereof accepted by the General Manager to be reasonable having regard to the relevant table of costs for the time being notified by the Board as acceptable for the purposes of this Act;
- (b) for treatment at a public hospital, the fees lawfully charged therefor by the hospital;
- (c) for nursing, medicines, medical or surgical supplies, curative apparatus, crutches or other devices of assistance provided to the worker otherwise than as an inpatient at a hospital, the cost thereof accepted by the General Manager to be reasonable.

(2) The Board's liability for the cost of treatment by a registered chiropractic manipulative therapist extends only to the cost of such treatment that involves the manual mobilisation of the joints of the vertebrae column (including its immediate articulations) of the human body.

(3) The Board's liability for the cost of attendance following a surgical operation extends only to the cost of such attendance for a period not exceeding 3 months.

**8.22 Board's liability for prosthetic expenses.** (1) If a worker—

- (a) is fitted with a prosthesis;
- or
- (b) is dependent on support of a medical aid, or crutches or other device of assistance;

because of a condition resulting from an injury in respect of which compensation under this Act is payable, the Board is liable to pay reasonable expenses necessarily incurred by the worker on account of—

- reasonable wear and tear of the prosthesis, medical aid or device;



or

- replacement of the prosthesis, medical aid or device due to reasonable wear and tear thereof.

(2) Compensation under this Act payable in respect of injury consisting in damage to or destruction of a prosthesis or device of assistance consists in payment of expenses necessarily incurred by the worker on account of the injury in an amount accepted by the General Manager as reasonable.

**8.23 Accounts for medical treatment, medical certificate.** (1) Accounts for medical treatment, for the cost of which the Board is liable, are to be rendered to the Board promptly and within 2 months following completion of the treatment, and must specify—

- the item number (if any) relevant to the treatment in the relevant table of costs for the time being notified by the Board as acceptable for the purposes of this Act.
- the date of each attendance;
- detailed particulars of treatment;
- the name and place of residence of the injured worker;
- the name and place of business of the injured worker's employer.

(2) An injured worker who receives medical treatment is to be furnished with the prescribed medical certificate free of charge.

**8.24 Review of fees or costs payable.** (1) A person who provides medical treatment and who considers that the fee or cost accepted by the General Manager as reasonable, in a particular case, is inadequate because of special circumstances may apply to the General Manager for an increase in such fee or cost.

(2) Every such application must specify the special circumstances relied on in support thereof and the reasons the fee or cost should be increased in the particular case.

(3) If upon consideration of an application the General Manager accepts that an increase is justified, the General Manager may approve the increase accepted as reasonable, whereupon the Board is liable to pay the fee or cost as so increased in that particular case.

**8.25 Extent of Board's liability for hospital treatment.** (1) The Board's liability for the cost of hospitalisation of a worker who has suffered injury extends only to the cost of such treatment provided to the worker—

- as an inpatient in a public ward of a public hospital;  
or
- except in a case to which subsection (2) applies, as an inpatient at a private hospital or in a ward or room of a public hospital that is not a public ward for a period not exceeding 4 days.

(2) If—

- (a) a public hospital is not reasonably available to an injured worker or a public hospital that is reasonably available is unable to admit the injured worker to a public ward therein as an inpatient;
- or
- (b) it appears to the General Manager that admission of an injured worker to a private hospital or to a ward or room of a public hospital that is not a public ward—
  - (i) would relieve prolonged pain and suffering to the worker;
  - or
  - (ii) would result in material saving of costs to the Fund;and prior arrangements are entered into between the General Manager and the worker (or someone on the worker's behalf);

the Board's liability for the cost of hospital treatment of the injured worker extends to the cost of such treatment provided to the worker as an inpatient at a private hospital or in a ward or room of a public hospital that is not a public ward.

(3) The cost for which the Board is liable for hospitalisation of an injured worker as an inpatient is the cost to the hospital of the treatment calculated at the weekly rate of hospital charges current at the material time: Provided that—

- (a) if the Crown in right of the State or of the Commonwealth makes a payment in respect of hospitalisation of an injured worker as an inpatient at a private hospital or in a ward or room of a public hospital that is not a public ward, the amount of such payment (expressed as a weekly rate) is to be deducted from the cost for which the Board would be liable under this subsection for hospitalisation of the injured worker as an inpatient at a private hospital or in a ward or room of a public hospital that is not a public ward;
- (b) if a fee or charge is not payable to a public hospital for hospitalisation of any person in a public ward of that hospital, the cost to that hospital of hospitalisation of an injured worker as an inpatient in a public ward of that hospital is taken to be nil.

(4) A person authorized in writing by the governing body of any hospital to collect moneys on behalf of the hospital may recover from the Board any sum for which the Board becomes liable to the hospital under this Division in respect of hospitalisation of an injured worker, or in respect of any prosthesis supplied by the hospital to an injured worker, by action in a court of competent jurisdiction as a debt due and payable by the Board to the governing body and unpaid.

**8.26 Maximum liability for hospitalisation.** The maximum sum that the Board is liable to pay for hospitalisation of an injured worker

in respect of injury suffered in any one incident, whether the hospitalisation occurs at one time or at different times, is \$5 000.

**8.27 Extent of Board's liability for travelling expenses.** (1) Subject to this section, the Board is liable to pay travelling expenses necessarily and reasonably incurred by a worker for obtaining medical treatment for an injury in respect of which compensation under this Act is payable.

(2) The Board is liable to pay the cost of transportation by ambulance vehicle of a worker who has suffered such an injury, irrespective of distance if—

- (a) the worker is not entitled to ambulance transportation pursuant to a subscription to the Queensland Ambulance Transport Brigade;
- and
- (b) the transportation—
  - (i) being that first provided forthwith following occurrence of the injury—is from the place where the injury occurred to a place where appropriate medical treatment is available, for the purpose of seeking such treatment;
  - or
  - (ii) being that subsequently provided—is certified in writing by a registered medical practitioner as necessary because of the worker's physical condition resulting from the injury;

or if the Board approves in writing of such transportation because of other circumstances that in the Board's opinion renders such transportation necessary.

(3) Except as prescribed by subsection (2), the Board is not liable for travelling expenses incurred by an injured worker—

- (a) in travelling a distance less than 20km to or from a place where the worker is to obtain or has obtained medical treatment for the injury;
- (b) in any case where medical or hospital treatment for the injury was reasonably available to the worker nearer than the place to which the worker has travelled to seek such treatment.

(4) If a worker who, because of subsection (3) (a), is not entitled to be recouped by the Board for travelling expenses, incurs travelling expenses in reasonably travelling at least 150 km in a period of 7 consecutive days to and from a place for the purpose of seeking medical or hospital treatment for an injury suffered by the worker, the Board is liable to recoup the worker for those travelling expenses.

#### *Division 6—Board's Liability for Rehabilitation*

**8.28 Responsibility of Board.** (1) It is the responsibility of the Board to take such steps as appear to it to be practicable to secure—

- rehabilitation;

- early return to productive work;

of workers who have suffered injury in respect of which compensation under this Act is payable, and to that end the Board—

- (a) may establish and maintain, or participate in and support, programmes for rehabilitation, or retraining, of injured workers;
- (b) is to provide artificial aids or appliances to injured workers who, in the Board's opinion, need them, and maintain such aids or appliances as are provided.

(2) In discharge of the responsibility imposed by subsection (1) the Board may require a worker to undertake such programmes of rehabilitation as are specified in the requisition.

(3) If a worker required as prescribed by subsection (2) fails to undertake a specified programme to the satisfaction of the General Manager the worker's entitlement to compensation under this Act may be suspended by the General Manager until the worker satisfactorily complies with the requisition.

(4) Within 60 days following receipt by a worker of notice in writing of the General Manager's decision to suspend the worker's entitlement to compensation the worker may, by notice in writing given to the Board require the matter of the suspension to be heard and determined by an Industrial Magistrate, whereupon the General Manager must forthwith refer the matter to an Industrial Magistrate, who is to proceed to hear and determine the matter and to that end may revoke or confirm the General Manager's decision, as the magistrate considers just.

**8.29 Board's liability for cost.** If a rehabilitation programme is accepted by the General Manager as necessary for a worker in respect of whose injury the Board has accepted a liability under this Act, the Board is to pay such cost of the programme as the General Manager accepts to be reasonable, having regard to the injury, in addition to compensation under this Act otherwise payable.

**8.30 Board's liability for caring allowance.** If the General Manager is satisfied that a worker entitled to compensation under this Act in respect of an injury is so severely incapacitated by the injury that the worker's survival depends on constant day to day care for the worker, which care is to be provided at home on a voluntary basis by another person in relation to whom compensation under this Act is not payable, the Board may accept liability to pay to or on account of that other person an allowance, called a caring allowance, in an amount considered by the General Manager to be appropriate in the circumstances.

*Division 7—Maximum Compensation not Otherwise Prescribed*

**8.31 Maximum entitlement for one incident.** Except where it is otherwise prescribed, the maximum amount of compensation under this

Act payable in respect of all injuries suffered by a worker in any one incident is—

- (a) in respect of compensation payable as weekly payments or as a lump sum in settlement of an entitlement to weekly payments—\$67,000;
- (b) in respect of compensation payable under section 8.6 or 8.17—\$67,000.
- (c) in respect of total compensation, being that referred to in paragraph (a) together with that referred to in paragraph (b)—\$67,000.

*Division 8—Variation of Compensation Payable*

**8.32 Variation of payments for mining diseases.** Whenever the prescribed base rate is varied or the amount of age, invalid, or widows' pension payable pursuant to the *Social Services Act 1947* of the Commonwealth (as amended and in force for the time being), or pursuant to any law of the Commonwealth enacted in substitution therefor, is varied, the Governor in Council may, by Order in Council published in the Queensland Government Industrial Gazette, vary any payment or sum to which a person is entitled under the *Workers' Compensation Act 1916-1988* in respect of the disease silicosis or anthraco-silicosis.

**8.33 Variation of payments for other injuries.** Whenever the prescribed base rate varies every payment or sum specified in Division 1, 2, 3, 4 or 7 of this Part, that is not expressed as a percentage of that rate, is to be varied by adding thereto, or as the case may require, subtracting therefrom, an amount (calculated, in the case of a weekly payment, to the nearest 10 cents and, in any other case, to the nearest \$10) that bears to that payment or sum the same proportion as the amount of the variation in question of the prescribed base rate bears to that rate subsisting immediately before the variation therein.

Notification of every variation under this section is to be published in the Queensland Government Industrial Gazette.

**8.34 Construing entitlements in light of variation.** Upon variation of any payment or sum as permitted by section 8.32 or required by 8.33—

- (a) an entitlement to the payment or sum referred to in section 8.32;
- or
- (b) a reference in Division 1, 2, 3, 4 or 7 of this Part to the payment or sum;

is to be construed as an entitlement, or, as the case may be a reference, to that payment or sum as varied for the time being under section 8.32 or, as the case may be, section 8.33.

**8.35 Existing prescribed base rate.** For the purposes of this Division the amount of the prescribed base rate as at the commencement of this Act is \$254.80 per week.

**8.36 Application of Division to existing benefits.** The provisions of this Division apply in relation to benefits being paid, and entitlements accrued under, the *Workers' Compensation Act 1916-1988*, as if they were benefits paid or entitlements accrued under this Act, and to that end the reference in paragraph (b) of section 8.34 to Division 1, 2, 3, 4 or 7 of this Part is to be construed as a reference to the corresponding provisions of that Act under which the benefit is paid or the entitlement arose or the limitation is prescribed.

## PART 9—MEDICAL ASSESSMENT TRIBUNALS

### *Division 1—Composition and Proceedings of Tribunals*

**9.1 Assessment tribunals to be maintained.** (1) There are to be maintained for the purposes of, and in accordance with, this Act a General Medical Assessment Tribunal and the following Specialty Medical Assessment Tribunals:—

- Cardiac Assessment Tribunal;
- Orthopaedic Assessment Tribunal;
- Dermatology Assessment Tribunal;
- Ear, Nose and Throat Assessment Tribunal;
- Neurology Assessment Tribunal;
- Ophthalmology Assessment Tribunal.

(2) Each of the tribunals referred to in subsection (1) is a continuance in existence of the corresponding medical board established and maintained for the purposes of the *Workers' Compensation Act 1916-1988*.

**9.2 General Medical Assessment Tribunal.** (1) The General Medical Assessment Tribunal consists of a chair-member and two other members appointed as prescribed.

(2) With a view to constituting the General Medical Assessment Tribunal the Governor in Council, by Order in Council, is to appoint from time to time, for such period not exceeding 3 years as is specified in the order, a panel of 16 medical practitioners.

Every such appointee must be a medical practitioner who is registered under the *Medical Act 1939-1988* as a specialist in the speciality in relation to which the appointment is made.

(3) The panel must comprise—

- 5 physicians;
- 1 vascular surgeon;
- 3 general surgeons;
- 1 urologist;
- 3 psychiatrists;
- 1 gynaecologist

- 1 thoracic physician;
- 1 rheumatologist.

(4) The persons constituting the panel in existence immediately before the commencement of this Act are taken to have been duly appointed under subsection (2) (in accordance with the terms of appointment of those persons) unless or until a panel is appointed pursuant to this Act.

(5) The Governor in Council, by Order in Council, may appoint for such period not exceeding 3 years as is specified in the order, an alternate panel of 16 medical practitioners.

The alternate panel must comprise the number of specialists of the descriptions prescribed by subsection (3) and every appointee must be a medical practitioner who is registered under the *Medical Act 1939-1988* as a specialist in the speciality in relation to which the appointment is made.

**9.3 Conditions of appointment to panels.** (1) An appointee to the panel or alternate panel holds the appointment for the term specified in the Order in Council by which the appointment is made unless the appointee sooner—

- (a) dies;  
or
- (b) resigns by writing signed by the appointee and given to the Minister;  
or
- (c) becomes incapable of discharging the duties of a member of the General Medical Assessment Tribunal.

(2) As often as a vacancy occurs in the membership of the panel or alternate panel the Governor in Council, by Order in Council, may appoint a medical practitioner to that vacancy for the remainder of the term of appointment of the predecessor.

Every such medical practitioner appointed must be qualified as prescribed by section 9.2.

**9.4 Chair-member and deputy chair-member of General Medical Assessment Tribunal.** (1) The Governor in Council, by the Order in Council by which the panel is appointed, or by another such order, or other such orders, is to appoint one physician appointed to the panel to be chair-member, and another 2 physicians appointed to the panel to be deputy chair-members, of the General Medical Assessment Tribunal.

(2) Whenever the chair-member is not available to attend to the business of the General Medical Assessment Tribunal, a deputy chair-member is to act as chair-member of the tribunal, and while so acting has and may exercise all the powers and authorities and discharge all the duties of the chair-member, including the power of designating prescribed by section 9.5, where necessary.

Until the contrary is proved, it is to be presumed that a deputy chair-member has acted with due authority on each occasion of the deputy chair-member's acting as chair-member of the tribunal.

(3) Except when acting under the authority of subsection (2), a person who is deputy chair-member is not to act as a member of the General Medical Assessment Tribunal unless the chair-member has designated that person for that purpose.

**9.5 Constitution of General Medical Assessment Tribunal for purpose of reference.** (1) For the purpose of determining a matter referred to it, the General Medical Assessment Tribunal is constituted by the chair-member and two members of the panel designated by the chair-member.

In so designating, the chair-member is to have regard to the branch of medicine that is a speciality, within the meaning of the *Medical Act 1939-1988*, and is relevant to the matters referred to the medical board for determination.

(2) Whenever it is impracticable to supply from appointees to the panel two appropriate persons to constitute, with the chair-member, the General Medical Assessment Tribunal for the determination of a particular matter, the chair-member may designate an appointee or, as the case requires, appointees on the alternate panel to be a member or, as the case may be, two members of the tribunal for the determination of that matter.

Until the contrary is proved, it is to be presumed—

- (a) that an appointee on the alternate panel who acts as a member of the tribunal has been duly designated to do so;
- (b) that the tribunal whose members include any such appointee or appointees, and the chair-member, is duly constituted.

(3) The chair-member is to preside over meetings of the General Medical Assessment Tribunal.

**9.6 Specialty Medical Assessment Tribunal.** (1) Every Specialty Medical Assessment Tribunal consists of three members, each of whom must be a medical practitioner who is registered under the *Medical Act 1939-1988* as a specialist in the speciality with which the tribunal is concerned.

(2) The General Manager may nominate a medical practitioner, who is qualified to be a member, for appointment as a member of a Specialty Medical Assessment Tribunal, and may so nominate in respect of each such tribunal.

The General Manager is not to nominate a medical practitioner who is an employee of the Board.

(3) The Governor in Council, by Order in Council, is to appoint the members of each Specialty Medical Assessment Tribunal for such period not exceeding 3 years as is specified in the order.



(4) The Governor in Council, by Order in Council, may appoint for such period not exceeding 3 years as is specified in the order, and for each Specialty Medical Assessment Tribunal, alternate members not exceeding 25 for each such tribunal.

Each alternate member so appointed must be a medical practitioner who is registered under the *Medical Act 1939-1988* as a specialist in the speciality with which the tribunal, for which the appointee is an alternate member, is concerned.

Alternate members for different tribunals may be appointed at different times and for different terms of appointment.

**9.7 Conditions of appointment of specialty tribunal members and alternate members.** (1) An appointee to a Specialty Medical Assessment Tribunal, or as an alternate member for such a tribunal, holds the appointment for the term specified in the Order in Council by which the appointment is made unless the appointee sooner—

- (a) dies;
- or
- (b) resigns by writing signed by the appointee and given to the Minister;
- or
- (c) becomes incapable of discharging the duties of a member of the Specialty Medical Assessment Tribunal concerned;
- or
- (d) in the case of a member of the tribunal nominated by the General Manager, becomes an employee of the Board.

(2) As often as a vacancy occurs in the membership of a Specialty Medical Assessment Tribunal, the Governor in Council, by Order in Council, may appoint a medical practitioner, who is qualified to be a member, to that vacancy for the remainder of the term of appointment of the predecessor.

**9.8 Constitution of Specialty Medical Assessment Tribunal in absence of members.** Whenever—

- (a) a member of a Specialty Medical Assessment Tribunal is unavailable to attend to the business of the tribunal;
- or
- (b) there is a vacancy in the membership of a Specialty Medical Assessment Tribunal;

an alternate member for that tribunal designated by the General Manager is to act as a member of the tribunal, and while the designated person so acts, has and may exercise all the powers and authorities and discharge all the duties of a member of the tribunal.

Until the contrary is proved, it is to be presumed—

- (c) that an alternate member for a Specialty Medical Assessment Tribunal who acts as a member of the tribunal has been duly designated to do so;
- (d) that the tribunal whose members include any such alternate member or members is duly constituted.

**9.9 Chair-member of Specialty Medical Assessment Tribunals.** The persons who are to constitute a Specialty Medical Assessment Tribunal are to appoint from their number a chair-member of that tribunal.

The chair-member is to preside over the meeting of that tribunal.

**9.10 Proceedings of medical assessment tribunals.** This section applies to the General Medical Assessment Tribunal and each Specialty Medical Assessment Tribunal.

In respect of each tribunal to which this subsection applies—

- (a) the General Manager may appoint a secretary;
- (b) meetings are to be held at such places and times as the tribunal resolves, or, in the absence of the tribunal's resolution, as the General Manager directs;
- (c) in the event of disagreement among the persons constituting the tribunal, a determination of the tribunal is that of the majority of those persons.

#### *Division 2—Jurisdiction of Tribunals*

**9.11 Meaning of term.** In this Division the expression “tribunal” means the General Medical Assessment Tribunal and each of the Specialty Medical Assessment Tribunals referred to in section 9.1.

**9.12 Reference to tribunals.** (1) The General Manager may refer to the appropriate tribunal—

- (a) any claim for compensation under this Act made in respect of an alleged injury;
- (b) the matter of the fitness for work of a worker whose claim for compensation under this Act has been allowed.

A reference under paragraph (b) may be made at any time and from time to time.

(2) On a reference to it under subsection (1) (a)—

- (a) if the General Manager has not admitted that an injury has been suffered by a worker to whom the claim relates, and the nature of the injury, the tribunal is to determine—
  - (i) whether the matters alleged in the claim constitute an injury to the worker to whom the claim relates and, if so, the nature thereof;
  - and

- (ii) whether any incapacity for work resulting from the injury—
    - is total or partial;
    - is permanent or temporary;
  - (b) in any other case, the tribunal is to determine—
    - (i) whether any incapacity for work resulting from the injury—
      - is total or partial;
      - is permanent or temporary;
    - and
    - (ii) if the worker has suffered a permanent partial disability resulting from the injury, the nature and extent of the disability.
- (3) On a reference to it under subsection (1) (b) the tribunal is to determine—
- (a) whether, at the time it makes its determination, there exists in the worker to whom the claim relates an incapacity for work, resulting from the injury in respect of which the claim was made;
  - and
  - (b) whether any such incapacity is total or partial;
  - and
  - (c) if the worker has suffered a permanent partial disability resulting from the injury, the nature and extent of the disability.

(4) A tribunal may, from time to time, defer its determination on a reference to it but a deferral must not be for longer than 3 months at any one time.

**9.13 Limitation of tribunals' jurisdiction.** (1) A tribunal has no jurisdiction to determine whether a person to whom a claim for compensation under this Act relates is or is not, or was or was not, a worker at any time material to the claim.

(2) A determination of a tribunal is not admissible in evidence as proof, or as tending to prove, that a person to whom a claim for compensation under this Act relates, or who has suffered an injury, is or is not, or was or was not, a worker at any time material to the claim.

**9.14 Powers of tribunal to examine worker etc.** (1) On a reference to it in respect of a non-fatal injury, a tribunal or any persons then and there constituting the tribunal, may make, at any time and from time to time, a personal examination of the worker who claims compensation under this Act, or who is in receipt of compensation under this Act, or the tribunal may arrange for such an examination to be made by a medical practitioner nominated by it.

(2) If a worker of whom an examination may be made under subsection (1)—

- (a) fails to attend on the date and at the time and place of which the worker has been given at least 7 days prior notice in writing by the secretary to the tribunal or by the General Manager;
- or
- (b) having so attended, refuses to be examined as prescribed by subsection (1) by the tribunal, a member thereof, or a medical practitioner nominated by the tribunal;
- or
- (c) obstructs, or attempts to obstruct, an examination such as is referred to in subsection (1);

the claim for compensation under this Act is to be deferred or, as the case may be, the worker's entitlement to compensation under this Act is suspended until the worker undergoes the examination or the tribunal, with the General Manager's concurrence, exempts the worker from the examination.

#### *Division 3—Prescribed Disfigurement Assessment Tribunal*

**9.15 Tribunal to be constituted.** (1) In addition to the tribunals prescribed by section 9.1, there is to be constituted as occasion requires, a tribunal called the Prescribed Disfigurement Assessment Tribunal.

(2) For the purpose of determining any matter referred to it, a Prescribed Disfigurement Assessment Tribunal is constituted by—

- a medical practitioner, who is registered under the *Medical Act 1939-1988* as a specialist in the speciality of plastic surgery, nominated by the Director-General of Health and Medical Services;
- and
- a medical practitioner nominated by the General Manager;
- and
- a medical practitioner nominated by the claimant for compensation concerned in the reference to the tribunal.

The medical practitioner nominated by the Director-General is the chair-member of the tribunal.

**9.16 Proceedings of tribunal.** (1) The General Manager may appoint a secretary to a Prescribed Disfigurement Assessment Tribunal.

(2) A Prescribed Disfigurement Assessment Tribunal is to meet at such places and times as it resolves or, in the absence of its resolution, as the General Manager directs.

(3) The chair-member of a Prescribed Disfigurement Assessment Tribunal is to preside over all meetings of the tribunal.

(4) In the event of disagreement among members of a Prescribed Disfigurement Assessment Tribunal, a determination of the tribunal is that of the majority of its members or, if no two members are of the same opinion, of the chair-member of the tribunal.

**9.17 Jurisdiction of tribunal.** The jurisdiction of a Prescribed Disfigurement Assessment Tribunal is that prescribed by Division 4 of Part 8.

*Division 4—Proceedings for Exercise of Tribunals' Jurisdiction*

**9.18 Meaning of term.** In this Division the expression "tribunal" means—

- the General Medical Assessment Tribunal referred to in section 9.1;
- each of the Specialty Medical Assessment Tribunals referred to in section 9.1;
- each Prescribed Disfigurement Assessment Tribunal referred to in section 9.15.

**9.19 Determinations in writing with reasons.** A tribunal—

- (a) is to furnish to the Board the determination, in writing, of the tribunal in relation to a matter referred to it under this Act;
- (b) is to include in such determination the reasons therefor.

**9.20 Further reference on fresh evidence.** (1) If a claimant for compensation under this Act whose claim, or any matter in respect thereof, has been determined by a tribunal produces to the Board, within 12 months of the making of such determination, medical evidence that is adjudged as prescribed by subsection (2)—

- to be relevant to the claim or matter so determined;
- and
- to be factual medical data not known in relation to the claimant at the time of such determination;

the General Manager is to again refer the claim or, as the case may be, matter to the appropriate tribunal for further determination.

(2) To warrant action required by subsection (1) the adjudgment of medical evidence referred to therein must be agreed by 2 persons, namely the chair-member of the General Medical Assessment Tribunal or, if the chair-member is unavailable, a deputy chair-member of that tribunal and one of the following, whichever is appropriate—

- (a) the chair-member of the Specialty Medical Assessment Tribunal that determined the claim or matter in question;

- (b) the chair-member of the Prescribed Disfigurement Assessment Tribunal that determined the claim or matter in question;
- (c) a deputy chair-member of the General Medical Assessment Tribunal, if the claim or matter in question was determined by that tribunal.

An adjudgment made in accordance with this subsection is final and cannot be questioned in any proceedings whatever, before a tribunal or a court.

(3) Wherever practicable, a claim or matter referred under subsection (1) is to be further determined by a tribunal constituted by the same persons as constituted the tribunal that previously determined the claim or, as the case may be, matter.

**9.21 Finality of tribunal's determination.** A determination of a tribunal in relation to a matter that the tribunal is required by this Act to determine in respect of a claim for compensation under this Act is final and cannot be questioned in any proceedings whatever, before a tribunal or a court, except pursuant to section 9.20(1).

**9.22 Right to be heard before tribunals.** On a reference under this Part to a tribunal the claimant for compensation is entitled to be heard before the tribunal—in person, or by counsel, solicitor or agent.

**9.23 Determinations notified to claimant.** The Board is to notify—

- a claimant for compensation under this Act to whom a tribunal's determination relates;

or

- such claimant's representative or agent;

of the tribunal's determination (and the reasons therefor), as soon as practicable after the Board has received the determination.

## PART 10. ENTITLEMENT TO DAMAGES INDEPENDENTLY OF ACT

**10.1 Reduction of damages recoverable at law.** (1) If an injury in respect of which compensation under this Act is payable is suffered by a worker in circumstances creating, independently of this Act, a legal liability in the worker's employer who is—

- indemnified by the Board under a policy in respect thereof;

or

- required by this Act to be so indemnified;

to pay damages in respect of the injury, then—

- (a) the amount of such damages that the employer is legally liable to pay is reduced by the total amount paid or payable from the Fund, by way of compensation under this Act in respect of the injury;
- (b) subject to this Part, the worker is, or the worker's dependants are, to receive from the Fund such reduced amount.

(2) The expression "injury" in subsection (1) does not include an injury in respect of which the employer is required by—

- some other Act of Queensland;
- or
- a law enacted by any other State or Territory of the Commonwealth, or by the Commonwealth or any other country;

to provide against the employer's legal liability in respect thereof.

(3) If the injury arises out of or in the course of work for which the worker's labour is being used by a person to whom the worker's services are lent or hired by another, the provisions of this section apply as if the person were the worker's employer, and in this Part the expression "employer" includes such a person as if the person were the employer of the worker in question.

#### **10.2 Assessment by court of total liability of Fund. If—**

(a) damages are awarded in an action in respect of an injury to which section 10.1(1) applies;

or

(b) damages are to be paid in settlement of a claim in an action in respect of an injury to which section 10.1(1) applies;

the court in which is the action, on application of the plaintiff, the defendant, or the Board, is to determine the total amount prescribed to be paid from the Fund, by way of compensation under this Act in respect of the injury, and its determination is binding on the Board and all persons entitled to payment by the Board in respect of the injury.

**10.3 Notice to Board of claims for damages.** (1) When in court proceedings relating to an injury in respect of which compensation under this Act is payable a claim for damages in respect of the injury is made against an employer who—

- is indemnified by the Board;
- or
- is required by this Act to be indemnified by the Board;

under a policy against liability for such damages, the claimant—

(a) must serve on the Board a copy of the writ or other process by which the claim is made;

and

(b) before any further step is taken by the claimant in the proceedings, must file in the court in the proceedings an affidavit of such service.

Service on the Board under this subsection must be effected no later than 28 days following service of the writ or other process by which the claim is made on the other party or parties to the proceedings.

(2) The Board may, at any time during the proceedings in which a claim referred to in subsection (1) is made, elect to be joined with

the employer against whom the claim is made, as a party to the proceedings, by filing in the court a notice to that effect.

(3) This section does not apply—

- (a) where the proceedings in question are taken outside Queensland;
- or
- (b) to an application for leave of a court to issue any process of which a copy is required by this section to be served on the Board.

**10.4 Recovery of damages from Board if employer not available.**

(1) If a worker suffers injury in respect of which compensation under this Act is payable in circumstances conferring a right of action for damages in respect of the injury against the worker's employer who—

- has died;
- being a corporation, has ceased to exist;
- cannot be served with process;

a person who might have obtained judgment for damages against the employer in respect of the injury may recover by action against the Board, as if the Board were the employer, the sum that would have been payable by way of damages to that person by the Board pursuant to section 10.1(1) had judgment been given against the employer.

(2) The entitlement conferred by subsection (1) cannot be exercised by court proceedings unless the person seeking the damages proves that notice of the person's claim for damages and a short statement of the grounds thereof were given to the Board—

- as soon as practicable after the person became aware of the fact giving rise to the entitlement;
- or
- at such time thereafter that the Board would not be prejudiced by want of such notice and statement.

(3) Subsection (1) does not confer on a person any right or advantage that the person would not have had if action had been brought or pursued against the employer of the worker who has suffered injury.

**10.5 Board's carriage of proceedings in which it is joined.** (1) If the Board elects under section 10.3 to be joined as a party to proceedings—

- (a) it is entitled to conduct, on behalf of the employer with whom it is joined, all proceedings taken to enforce the claim in question or to settle any matter in respect thereof, unless it permits, by writing, the employer to conduct the proceedings;
- (b) the employer, forthwith upon being required by the Board so to do, is to execute all such documents as the Board considers necessary to allow the proceedings to be conducted by the Board.



(2) If an employer with whom the Board is joined in proceedings—

(a) is absent from Queensland or, after reasonable enquiry, cannot be found by the Board;

or

(b) refuses, fails, or is unable to execute documents referred to in subsection (1);

the Board is hereby authorized to execute on behalf of the employer all such documents as it requires the employer to execute for the purposes of subsection (1).

**10.6 Court procedures on claims affected by ss.10.3 or 10.4** (1) A claim to which section 10.3 or 10.4 applies that is made in proceedings in the Supreme Court, or in a District Court of Queensland, is to be heard and determined by a judge without a jury.

(2) If a claim to which section 10.3 or 10.4 applies is made by a worker who has suffered the injury to which the claim relates, the court may, on application by any party to the proceedings in which the claim is made and on such terms as the court considers just, order the worker to submit to a personal examination by a registered person named in the order.

The court may at any time discharge or vary an order made under this subsection.

(3) If, in the opinion of the court that has made an order under subsection (2), the worker required by the order to submit to a personal examination has wilfully failed to comply with the order, without reasonable excuse, the court may enter judgment against the claimant on such terms as it considers just.

**10.7 Status of worker or employer extends to claims for damages.**

(1) A person declared by this Act to be, for the purposes of this Act, a worker is a worker for the purposes of an action to recover damages in respect of an injury to which section 10.1(1) applies.

(2) A person or body declared by this Act to be, for the purposes of this Act—

- an employer;

or

- a person or body by which a worker is employed;

is an employer for the purposes of an action to recover damages in respect of an injury to which section 10.1(1) applies.

**10.8 Board's charge on damages for compensation paid.** (1) This section applies to an injury suffered by a worker in circumstances creating—

- an entitlement to compensation under this Act;

and

- a legal liability in the worker's employer, or other person, to pay damages in respect of the injury, independently of this Act.

(2) An amount paid as compensation under this Act to or on account of a person in respect of an injury to which this section applies, at a time or in respect of a period before the person becomes entitled to payment of damages by—

- the worker's employer who is not indemnified by the Board against liability therefor;
- or
- any person other than the worker's employer;

constitutes a first charge on those damages.

Such an employer, or other person, from whom such damages are recoverable is to pay to the Board the amount of such first charge or, if such damages do not exceed the amount of such first charge, the whole of such damages.

Payment to the Board in accordance with this subsection, to the extent thereof, satisfies the liability of such employer or other person for payment of such damages.

(3) If a person to whom or on whose account compensation under this Act is paid in respect of an injury to which this section applies has not recovered, or taken proceedings to recover, damages in respect of the injury from a person other than the worker's employer, the Board is entitled to be indemnified for the amount of such compensation by such last-mentioned person to the extent of such person's liability for such damages, so far as the amount of damages payable in respect of the injury by such person extends and, to that end, the Board is hereby subrogated to the rights of the first-mentioned person in respect of the injury.

Payment made as indemnity pursuant to the preceding paragraph, to the extent thereof, satisfies the liability of the other person upon any judgment for damages in respect of the injury in question obtained against the person.

(4) It is not competent to a person to settle, for a sum less than the amount that is a first charge on damages pursuant to subsection (2), a claim for damages had by the person independently of this Act in respect of an injury to which this section applies without the Board's consent in writing first obtained.

If, without the Board's consent, such a settlement is made, then to the extent that the damages recovered are insufficient to meet all payments due to the Board under this section, the Board is entitled to be indemnified by the employer or other person who is required by the settlement to pay the damages and, to that end, the Board is hereby subrogated to the rights of the person who has sought the damages, as if the settlement had not been made.

(5) In addition to all rights of action had by the Board to give effect to its right to indemnity prescribed by this section, all questions

as to that right and the amount of such indemnity may, in default of agreement, be determined by an Industrial Magistrate if the persons concerned in the indemnity consent.

**10.9 Requirements of Part to prevail.** A provision of any other Act or rule of law that is inconsistent with a requirement of any provision of this Part applies subject to this Part.

## PART 11. MISCELLANEOUS PROVISIONS

**11.1 Offence to charge worker for compensation for injury.** (1) A person is not, directly or indirectly, to take or receive from a worker, whether by way of deduction from wages or otherwise, money in respect of—

- a liability or possibility of liability arising under this Act;  
or
- a liability or possibility of liability to pay damages independently of this Act.

(2) Money taken or received from a worker in contravention of subsection (1), with or without the consent of the worker, may be recovered by the worker by action in a court of competent jurisdiction as a debt due and owing to the worker, and unpaid, from—

- the person who so took or received the money;  
and
- where that person was acting on behalf of the employer of the worker in taking or receiving the money, the employer of the worker.

A worker is not entitled to recover such money more than once.

(3) Subsection (1) does not apply to money taken from a share-farmer by or on behalf of an employer of the share-farmer in respect of the premium payable for any period of insurance for the full amount of the employer's liability to pay compensation under this Act to the share-farmer and to all workers employed by the share-farmer if—

- (a) the money is taken by way of deduction from moneys payable to the share-farmer under the share-farming agreement;  
and
- (b) the amount taken in respect of the premium for a particular period does not exceed the part of the premium that is proportionate to the share received by the share-farmer.

**11.2 Offences involving fraud.** (1) A person who—

- (a) with intent to defraud, makes an application for compensation under this Act in respect of an injury for which compensation under this Act is not payable;

- (b) obtains, or attempts to obtain, compensation, or a benefit, under this Act by means of a statement or representation that the person does not believe to be true;
- (c) obtains, or attempts to obtain, compensation, or a benefit, under this Act by malingering;
- (d) in any manner, defrauds or attempts to defraud the Board;

commits an offence against this Act and is liable to a penalty of 50 penalty units or 2 months imprisonment.

(2) A person to whom or on whose account compensation under this Act is being paid on account of total incapacity for work who engages in any calling without informing the Board of the person's return to work, or intention of returning to work, is to be taken to have thereby defrauded the Board of all payments made by the Board to or on account of such person after commencement of such engagement in the calling and before the Board is so informed.

(3) If on a complaint of an offence defined in subsection (1) it is proved that the defendant obtained payment by the Board, by conduct constituting the offence, then whether or not a conviction is recorded, or a penalty is imposed, the court may order the defendant to repay to the Board the amount of such payment whereupon the Board may recover such amount from the defendant as prescribed.

(4) If conduct that constitutes an offence defined in subsection (1) is recurrent so that, but for this subsection, each instance of such conduct would constitute a separate offence, two or more instances of such conduct are to be taken to constitute but one offence committed over a period specified in the complaint laid in relation to such conduct, and may be charged and be dealt with on one complaint.

**11.3 Board's liability confined to compensation.** The Board is not to be taken to be—

- an employer of a worker;
- or
- liable to pay moneys on account of a worker as an employer, or other person in a contractual relationship with the worker;

by reason that the Board has paid, is paying, or is liable to pay compensation under this Act to or on account of the worker.

**11.4 Proceedings for offence.** (1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act (whether or not a right to recover moneys also exists in respect of the contravention or failure) and, if a penalty is not expressly prescribed therefor, is liable to a penalty of 20 penalty units.

(2) Proceedings in respect of an offence against this Act are to be taken in a summary way before an Industrial Magistrate on the complaint of—

- the General Manager;

or

- a delegate of the General Manager;

or

- a person authorized for the purpose by the General Manager, generally or in a particular case.

A person described in a complaint as authorized to lay the complaint is to be taken as so authorized in the absence of evidence to the contrary.

(3) Proceedings in respect of an offence against this Act may be commenced within one year following the commission of the offence, or within 6 months after the commission of the offence comes to the knowledge of the General Manager, whichever period is the longer.

(4) All penalties recovered under this Act are to be paid into the Fund.

(5) The provisions of subsection (1) and of any other section of this Act that prescribe a penalty for an offence are to be construed, in relation to an offence alleged to have been committed before 1 July 1991, as if the penalty prescribed for the offence by those provisions were the penalty prescribed for the corresponding offence under the *Workers' Compensation Act 1916-1988* in lieu of the penalty actually prescribed by those provisions.

**11.5 Recovery of debts under this Act.** (1) The Board may engage the services of debt collecting agencies for the purpose of recovering debts due and payable to the Board.

(2) Every sum—

- prescribed to be payable to the Board as a premium, additional premium or charge;
- prescribed to be recoverable by the Board on any account whatever;

constitutes a debt due and payable to the Board by each person liable to pay such premium or charge, or from whom the sum is recoverable, under this Act.

(3) A debt due and payable to the Board may be recovered—

- (a) on the complaint of the General Manager, or a delegate of the General Manager, before an Industrial Magistrate;

or

- (b) by action for debt, at the suit of the General Manager, or a delegate of the General Manager, in a court of competent jurisdiction.

(4) Proceedings for recovery of a debt due and payable to the Board may be taken in accordance with both paragraphs (a) and (b) of subsection (3): Provided that the amount of such debt may be recovered only once.

(5) If in respect of any contravention or failure to comply with a provision of this Act there exists—

- (a) a right to recover moneys as a debt;
- and

- (b) a right to proceed for a penalty as for an offence;

the right to recover moneys may be pursued and enforced notwithstanding that the right to proceed for a penalty has not been pursued.

(6) Payment of a penalty under this Act does not relieve a person from liability to be assessed and to pay any premium, or from liability to pay any other moneys, for which the person is liable under this Act.

**11.6 Powers of Industrial Magistrate.** For the purposes of this Act, an Industrial Magistrate has all the powers and authorities conferred on an Industrial Magistrate by the *Industrial Relations Act 1990* or by the Rules of Court or the regulations made for the purposes of that Act, so far as those powers and authorities are appropriate in respect of matters arising under this Act.

**11.7 Evidentiary value of certificates.** (1) In proceedings relating to a matter arising under this Act a certificate purporting to be signed by the General Manager, or a delegate of the General Manager, or a person authorized for the purpose by the General Manager, generally or in a particular case, is admissible in evidence in accordance with the following provisions of this section.

(2) A certificate—

- (a) that notice of acceptance of a risk, or of adjustment of a premium, was duly sent on a date specified therein to a person specified therein and as to the amount of premium demanded by such notice;

or

- (b) that a default assessment, or a decision on an objection made to a default assessment, was duly made, and that notice thereof was duly sent on a date specified therein to a person specified therein at an address that is the person's place of business or place of residence last known to the Board, and as to the amount of premium demanded by such notice of default assessment, or of decision on objection;

or

- (c) that commission of an offence against this Act came to the knowledge of the General Manager on a date specified therein;

or

- (d) that an address to which any notice or other document was sent by post to any person is that person's place of business or place of residence last known to the Board;

is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

## (3) A certificate—

- (a) that no objection has been received from a person specified therein against a default assessment within 21 days after notice of the assessment was given to the person;
- (b) that an amount specified therein is due and payable to the Board and unpaid by a person specified therein in respect of premium or a charge;
- (c) that an amount specified therein is due and payable to the Board and unpaid by a person specified therein in respect of an overpayment of compensation under this Act or under any previous enactment corresponding to this Act;
- (d) that a person specified therein and stated therein to be an employer has failed to comply with section 4.9, and as to the manner in which the person has so failed to comply;

is prima facie evidence of the matters contained therein.

(4) A certificate that an amount specified therein is due and payable to the Board and unpaid by a person specified therein and stated therein to be an employer who has failed to comply with section 4.9 in respect of any worker employed by the person, and that the amount is due and payable on account of moneys paid to or on account of such uninsured worker from the Fund, is prima facie evidence of the matters contained therein.

**11.8 Entitlements to compensation independently of Act prohibited and void.** (1) It is not competent to the Industrial Relations Commission to include in an award made by it, or to approve in relation to an industrial agreement submitted to it, a provision for accident pay, or other payment, on account of a worker's suffering an injury.

(2) The Registrar of the Industrial Relations Commission is not to register an industrial agreement or any other agreement submitted to the registrar that provides for payment of accident pay, or other payment, on account of a worker's suffering an injury.

## (3) A provision of—

- (a) an award or industrial agreement made, or approved under the *Industrial Relations Act 1990*;
- (b) an award or agreement continued in force by the *Industrial Relations Act 1990*;

being, in the case referred to in paragraph (b), a provision inserted in the award or agreement after the passing of the Workers' Compensation Act Amendment Act 1982, is of no force or effect to the extent that it provides for payment by, or on behalf of an employer, of accident pay, or other payment, on account of a worker's suffering an injury.

**11.9 Disclosure of information.** (1) Notwithstanding the provisions of any other Act a person who is—

- the Commissioner of Pay-roll Tax appointed for the purpose of the *Pay-roll Tax Act 1971-1988*;

- the Director of Accident Prevention holding office for the purposes of the *Workplace Health and Safety Act 1989* (including any officer declared by the Governor in Council, by notification published in the Queensland Government Industrial Gazette to be the Director for the time being) or any inspector or other officer concerned in the administration of that Act;

may disclose to the Board any information in the person's possession, or facts of which the person has knowledge, relating to any matter under this Act or touching the administration of this Act.

(2) Notwithstanding any provision of this Act or any other Act, the Board—

- (a) may disclose to the Commissioner of Pay-roll Tax, any information in its possession or facts of which it has knowledge, relating to any matter under the *Pay-roll Tax Act 1971-1988* or touching the administration of that Act;
- (b) may disclose to such officers of the department of government within which this Act is administered as are designated for the time being in that behalf by the Board, statistical or other information of assistance to that department in the discharge of its administrative functions.

(3) A member of the Board or a member of the staff of the Board is not to disclose information that comes to the member's knowledge by reason of holding an appointment on or with the Board except—

- (a) where the disclosure is for the purposes of the Board or of this Act;  
or
- (b) where the disclosure is authorised by subsection (2);  
or
- (c) where the disclosure is required or authorized by any other Act to be made;  
or
- (d) where the disclosure is authorized by the General Manager, generally or in a particular case.

**11.10 Board's information not actionable.** (1) Action for damages or proceedings for other redress cannot be brought by any person claiming to be thereby aggrieved on account of material being an opinion, comment or information concerning—

- the physical or mental condition;
- the capacity or incapacity for work;
- the credence to be given to statements or behaviour;

of a person for whom compensation under this Act is sought, or is being paid, which material is in the possession of the Board and the disclosure of which can be traced to that possession.



(2) A court in which any action or proceedings of a description referred to in subsection (1) is or are brought, contrary to that subsection, is to order the action or proceedings to be struck out.

**11.11 General Manager may waive or reduce prescribed addition to premium.** If, pursuant to this Act, an employer is liable to pay the Board an additional premium, the General Manager is authorized—

- to waive the payment of such part of the premium as is additional;
- to reduce the amount of the additional premium to such amount as the General Manager considers appropriate;

if, in either case, the General Manager considers such waiver or reduction is justified, having regard to all the circumstances of the case.

**11.12 Service of documents.** A notice or other document to be given by the Board to any person for the purposes of this Act may be given—

- by service personally on the person to whom it is to be given, or on the person's agent;
- or
- by post addressed to the person to whom it is to be given, at the person's place of business or place of residence last known to the Board.

## PART 12—REGULATIONS AND ORDERS IN COUNCIL

**12.1 Regulations.** The Governor in Council may make regulations not inconsistent with this Act with respect to—

- (a) fixing and varying—
  - rates of premium;
  - demerit charges;
 to be paid or made in relation to policies, including providing for an increase in such a rate or charge in any case where, because of want of care on the part of the insured or for other reason appearing to the Board to be sufficient, the risk carried by the Board is greater than that usually carried in cases of accident insurance of a similar description;
- (b) providing for payment of additional premiums in relation to policies, and fixing the rates thereof, in cases where employers fail to furnish to the Board the prescribed annual returns within the time determined and notified by the Board;
- (c) extension of cover under policies to self-employed persons, the conditions or provisions to be contained or implied in policies, and the nature and extent of risk covered by policies;
- (d) acceptance by the Board of risk under insurance contracts other than policies, the conditions or provisions to be

- contained or implied in such contracts, the nature and extent of risk covered by such contracts;
- (e) the basis for fixing, as may be practicable, amounts of compensation payable under this Act, having regard to age, debility, infirmity or other factor appearing to the Board to be relevant;
  - (f) the proper conduct generally, by or on behalf of the Board of the business of accident insurance;
  - (g) the duties of and fees payable to registered persons under this Act;
  - (h) the proceedings of medical assessment tribunals constituted for the purposes of this Act including—
    - (i) securing attendance before such tribunals of persons whose attendance is required by—
      - the General Manager or a delegate of the General Manager;
      - or
      - a claimant for compensation under this Act;
    - (ii) taking of evidence before such tribunals on oath or affirmation, or by way of statutory declaration, and administration of an oath or affirmation for the purpose;
    - (iii) remuneration of members of such tribunals;
    - (iv) the effectual operation of such tribunals for the purposes for which they are constituted;
  - (i) empowering the Board—
    - (i) to review and, if the Board considers it just, to reduce charges made by registered persons for medical treatment of injured workers;
    - (ii) to enter into agreements or arrangements with registered persons, or the management bodies of hospitals or other institutions for provision of medical treatment, other treatment, or rehabilitation of, or aid to, injured workers;
  - (j) recovery of costs of proceedings under this Act and limitation of costs recoverable in proceedings conducted for the purposes of this Act;
  - (k) returns to be furnished to the Board including—
    - the persons by whom they are to be furnished (whether employers or other persons);
    - the form and contents thereof;
    - the time and manner in which they are to be furnished;
  - (l) empowering the Board to assess premiums to be paid, as the Board directs, by—
    - employers;
    - other persons with whom the Board has made contracts of insurance;

- persons required to furnish returns;
  - persons whom the Board believes to be employers;
- and to increase, reduce and enforce payment of such assessments;
- (m) the hearing and determination of objections to any assessment of the Board and of appeals in relation to such determinations and the payment of costs in respect thereof;
- (n) the time in which and place where any assessment of the Board is to be paid;
- (o) the payment to, and acceptance by, the Board of assessments by instalments and the conditions thereof including—
- payment of interest;
  - the rate and calculation of interest;
  - security to the Board for payment of instalments and interest;
- and the consequences of and remedies upon a failure to make payment due or to honour obligations under any security given to the Board for payment thereof;
- (p) investment of moneys payable under this Act by way of compensation to, or on account of, minors or other persons under any disability;
- (q) providing for extension of time limited by this Act for requiring any matter to be referred to an Industrial Magistrate for hearing and determination;
- (r) empowering the General Manager, a delegate of the General Manager or an officer authorized by the General Manager for the purpose to summon and examine any person in relation to any matter arising under this Act; the administration of an oath or taking of an affirmation or statutory declaration for the purpose of taking evidence on such an examination; procedures for enforcement of such a summons in the event of a person's failure to obey the summons;
- (s) the mode of service of process in legal proceedings, or of any notice or document, for the purposes of this Act, which is not provided for in Part 11;
- (t) the evidentiary value and, where necessary, the admissibility into evidence, in proceedings before any court, tribunal or person for the purposes of this Act of any certificate, or copy of or extract from any record kept under this Act in respect of any matter under this Act, which is not provided for by Part 11;
- (u) breaches of any regulation and penalties therefor, not exceeding in any case 4 penalty units;
- (v) all matters that—
- (i) are required or permitted by this Act to be prescribed

- and in relation to which no other means of such prescription is specified;
- (ii) in the opinion of the Governor in Council, are necessary or convenient for the administration of this Act or to achieve the objects and purposes of this Act.

**12.2 Board's power to fix premiums and charges when regulations silent.** If in respect of any class of policy the regulations are silent as to the rate of premium to be charged or demerit charge to be made, or as to an increase in such rate or charge on account of relevant factors, it is to be taken that the Board is authorized to fix the amount of such premium, demerit charge, or increase in such premium or charge in the case of a policy of that class.

**12.3 Tabling of orders.** Section 28A of the *Acts Interpretation Act 1954-1989* applies in relation to Orders in Council made under this Act as if such orders were regulations.