

NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH ACT 1986

No. 49 of 1986

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NORTHERN TERRITORY OF AUSTRALIA

No. 49 of 1986

AN ACT

to promote occupational health and safety in the Territory to prevent industrial injuries and diseases, to promote the rehabilitation and maximum recovery from incapacity of injured workers, to provide financial compensation to workers incapacitated from industrial injuries or diseases and to the dependants of workers who die as the results of such injuries or diseases, to establish certain bodies and a fund for the proper administration of the Act, and for related purposes

[Assented to 16 December 1986]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Work Health Act 1986*.

2. COMMENCEMENT

(1) Sections 1, 2 and 194 and Part II shall come into operation on the day on which the Administrator's assent to this Act is declared.

(2) The remaining provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

3. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"act" includes an omission;

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"approved" means approved by the Authority or the Minister;

"Authority" means the Work Health Authority established by section 6;

"average weekly earnings" means the Average Weekly Earnings for Full Time Adult Persons, Weekly Ordinary Time Earnings for the Northern Territory last published by the Australian Statistician before 1 January before the date in respect of which they are required under this Act to be assessed;

"benefit" includes an advantage of any kind;

"Chief Executive Officer" means the person appointed under section 8(1) as Chief Executive Officer of the Authority and includes a person appointed under section 9(1) to act as the Chief Executive Officer while he is so acting;

"compensation" means a benefit, or an amount paid or payable, under this Act as the result of an injury to a worker and, in sections 132 to 137 inclusive and section 167, includes -

(a) an amount in settlement of a claim for compensation; and

(b) costs payable to a worker by an employer in relation to a claim for compensation;

"Court" means the Work Health Court;

"disease" includes a physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development and whether contracted before or after the commencement of Part V;

"employer" means a person by or for whom a worker is engaged or works or, in relation to a member of the Legislative Assembly, a Judge, a magistrate or a member of the Police Force, means the Territory;

"impairment" means a temporary or permanent bodily or mental abnormality or loss caused by an injury;

"incapacity" means an inability or limited ability to undertake paid work because of an injury;

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"incident" means an event occurring at, or a situation arising in, a workplace which results in an injury;

"independent contractor" means a natural person who has a current certificate of exemption issued to him under section 58 by the Authority;

"industrial agreement" means an agreement which wholly or partly regulates terms or conditions of employment;

"industrial award" means -

- (a) an award or determination relating to the terms and conditions of employment of a worker made under an Act; or
- (b) an award or a certified agreement made under the *Conciliation and Arbitration Act 1904* of the Commonwealth;

"injury", in relation to a worker, means a physical or mental injury arising before or after the commencement of the relevant provision of this Act out of or in the course of his employment and includes -

- (a) a disease; and
- (b) the aggravation, acceleration, exacerbation, recurrence or deterioration of a pre-existing injury or disease;

"insurer" means -

- (a) a body corporate authorized under the *Insurance Act 1973* of the Commonwealth to carry on insurance business; or
- (b) the Territory Insurance Office established under the *Territory Insurance Office Act*,
and includes a person who, at the time a relevant policy of insurance or indemnity was taken out, was authorized as referred to in paragraph (a);

"Registrar" means the Registrar of the Court appointed under section 100;

"repealed Act" means the Acts repealed by section 188, as in force immediately before the commencement of that section;

"seaman" means a person employed or engaged in any capacity on board a ship;

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"self-insurer" means -

- (a) an employer approved under section 120 to self-insure; or
- (b) except in Part VII, the Territory or a prescribed statutory corporation within the meaning of section 118(3) to which that Part (other than section 118) does not apply;

"ship" includes a vessel, boat or other craft;

"this Act" includes the Regulations;

"tributer" means a person who works a mine under an agreement with the lessee or owner of the mine to pay or receive from the lessee or owner a percentage of the value of the product taken from the mine;

"worker" means a natural person who, under a contract or agreement of any kind (whether expressed or implied, oral or in writing or under a law of the Territory or not), performs work or a service of any kind for another person, other than such a person who is -

- (a) employed in the service of the Commonwealth;
- (b) subject to subsection (2), a member of the immediate family of the employer;
- (c) subject to subsection (3), a director (by whatever name called) of a body corporate;
- (d) subject to subsections (7) and (8), employed in voluntary work and who receives in relation to that work, if anything, nothing more than his reasonable travelling, accommodation or other out of pocket expenses;
- (e) in relation to the work under consideration, an employer of another person engaged in the performance of that work;
- (f) where the employer is a householder, a domestic employee in his direct employment who earns less than, or is paid at a rate that would not exceed, the prescribed amount from that employer;
- (g) a person employed otherwise than for the purposes of the employer's trade or business and is so employed for a continuous period of not more than 5 days;

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- (h) an independent contractor; or
 - (j) a person, or a member of a class of persons, prescribed for the purposes of this definition,
- and includes -
- (k) a Judge as defined in section 9 of the *Supreme Court Act*;
 - (m) a member of the Legislative Assembly;
 - (n) a magistrate; and
 - (p) a member of the Police Force;

"workplace" means a place, whether or not in a building or structure, where workers work.

(2) A member of the immediate family of an employer whose name, nature of employment and estimated wages are disclosed to the employer's insurer at the time when the employment of that member is commenced or the relevant insurance or indemnity is effected, whichever is the later, and thereafter where the policy is renewed, is a worker for the purposes of this Act.

(3) A director of a body corporate, the nature of whose employment and estimated remuneration (by whatever name called) for his services as a director are disclosed to the body corporate's insurer at the time the services of that director are first rendered or the relevant insurance or indemnity is effected, whichever is the later, and thereafter where the policy is renewed, is a worker for the purposes of this Act.

(4) A natural person (other than a person referred to in paragraphs (a) to (j), inclusive, of the definition of "worker" in subsection (1)) who contracts with a person to personally perform work for a third person and who personally performs that work, shall be deemed to be employed by the person with whom he so contracted.

(5) A worker paid wholly or partly by commission shall be deemed to be employed by the person by whom the commission is paid or payable.

(6) A natural person who is a tributer or a wages man employed by a tributer shall be deemed to be a worker in the employ of the lessee or owner of the mine let on tribute.

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(7) A natural person who, without remuneration or reward, voluntarily engages in assisting in emergency services or training exercises with the consent of or under the authority and supervision of, or in co-operation with, the Director, Regional Controller or Local Controller appointed under the *Disasters Act*, shall be deemed to be a worker in the employ of the Territory.

(8) A natural person who, without remuneration or reward, voluntarily engages in fighting a fire or training exercises with the consent of or under the authority and supervision of, or in co-operation with, a volunteer fire brigade established by the Council, within the meaning of the *Bushfires Act*, or a volunteer fire brigade, within the meaning of the *Fire Service Act*, shall be deemed to be a worker in the employ of the Territory.

(9) A natural person who is authorized by a club, within the meaning of Part III of the *Racing and Betting Act*, to ride or drive a horse or pony for a fee or reward or provide services as a stablehand on a racecourse licensed under that Part shall, while he is engaged so to ride or drive or in riding, driving or working on such a racecourse that is for the time being under the control of that club, be deemed to be a worker in the employ of that club.

(10) Subject to subsection (9) but notwithstanding anything else in this Act, a person shall be deemed not to be a worker for the purposes of this Act while he is, in pursuance of a contract -

- (a) participating as a contestant in a sporting or athletic activity;
- (b) engaged in training or preparing himself with a view to his so participating; or
- (c) travelling in connection with his so participating or being so engaged,

unless, under the contract -

- (d) he is entitled to remuneration of not less than the prescribed amount per year or at a rate that, if the contract continued for a year, would result in his receiving remuneration of not less than that amount; or
- (e) he is entitled to remuneration of less than the prescribed amount or at a rate that, if the contract continued for a year, would result in his receiving remuneration of less than that amount, and that remuneration is his sole income.

(11) Where in this Act the expression "Default penalty" appears in or at the foot of a section or subsection, being a section or subsection that provides that a person is guilty of an offence against this Act or a breach of which results in such an offence, a person who has been convicted of that offence is guilty of a further offence against this Act if the offence continues after he has been so convicted and is punishable, on conviction for the further offence, by a penalty not exceeding the amount of the default penalty specified after that expression for each day during which the offence continues.

4. OUT OF OR IN COURSE OF EMPLOYMENT

(1) Without limiting the generality of the meaning of the expression, an injury to a worker shall be taken to arise "out of or in the course of his employment" if the injury occurs while he -

(a) on a working day that he attends at his workplace -

(i) is present at the workplace; or

(ii) having been present at the workplace, is temporarily absent on that day in the course of his employment or during an ordinary recess and does not during that absence voluntarily subject himself to an abnormal risk of injury;

(b) is travelling by the shortest convenient route between his place of residence and his workplace;

(c) is travelling by the shortest convenient route between -

(i) his place of residence or his workplace; and

(ii) a trade, technical or other training school which he is required to attend by the terms of his employment or as an apprentice or which he is expected to attend by his employer;

(d) is in attendance at a school referred to in paragraph (c)(ii) whilst so required to attend;

(e) is travelling by the shortest convenient route between -

(i) his place of residence or his workplace; and

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(ii) any other place for the purpose of obtaining a medical certificate, receiving medical, surgical or hospital advice, attention or treatment, or receiving a payment of compensation in connection with an injury for which he is entitled to receive compensation or for the purpose of submitting to a medical examination required by or under this Act;

(f) is in attendance at a place referred to in paragraph (e)(ii) for a purpose so referred to; or

(g) being a worker who is employed by more than one employer and has attended on a working day at a workplace for one employer, is travelling by the shortest convenient route between that place and his place of employment for another employer.

(2) Subsection (1) does not apply if an injury sustained while travelling is sustained during or after a substantial interruption of or substantial deviation from the worker's journey made for a reason unconnected with his employment or attendance at a school or place referred to in subsection (1)(c)(ii) or (1)(e)(ii), which, having regard to all the circumstances, would ordinarily have materially added to the risk of injury.

(3) In a case referred to in paragraph (g) of subsection (1), the injury shall be deemed to have occurred while the worker was being employed by the employer last mentioned in that paragraph.

(4) An injury shall be deemed to arise out of or in the course of employment even though at the time that the injury occurred the worker was acting -

(a) in contravention of a regulation (whether by or under an Act or otherwise) applicable to the work in which he is employed; or

(b) without instructions from his employer,

if the act was done by the worker for the purposes of and in connection with his employer's trade or business.

(5) An injury shall be deemed to arise out of or in the course of a worker's employment where it occurred by way of a gradual process over a period of time and the nature of the employment in which he was employed at any time during that period materially contributed to the injury.

(6) Unless the contrary is established, a disease shall be taken to have been contracted by a worker in the course of his employment if -

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(a) it is a disease, or a disease of a kind, specified in Column 1 of Schedule 1 as related to employment of a kind specified in Column 2 of that Schedule opposite to that disease in Column 1; and

(b) the worker -

(i) was, at any time before he became aware of his contraction of that disease, engaged as a worker in employment of that kind; or

(ii) died without having become so aware but was, at any time before he died, engaged as a worker in employment of that kind.

(7) In this section -

"working day", in relation to a worker, means any day on which he attends at his workplace for the purpose of working;

"workplace", where there is no fixed workplace, includes the whole area, scope or ambit of the worker's employment.

5. ACT TO BIND CROWN

This Act binds the Crown not only in right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, in all its other capacities.

PART II - WORK HEALTH AUTHORITY

6. ESTABLISHMENT OF WORK HEALTH AUTHORITY

(1) There is established by this Act an authority by the name of the Work Health Authority.

(2) The Authority -

(a) is a body corporate with perpetual succession;

(b) shall have a common seal; and

(c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall assume that it was duly affixed.

7. COMPOSITION OF AUTHORITY

(1) The Authority shall be constituted by the Chief Executive Officer.

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(2) The establishment of the Authority is not affected by reason only of there being a vacancy in the office of the Chief Executive Officer.

8. CHIEF EXECUTIVE OFFICER

(1) The Minister shall appoint a person to be the Chief Executive Officer of the Authority.

(2) The Minister may at any time, without cause and without giving reasons, terminate the appointment of the Chief Executive Officer.

(3) Subject to this section, the Chief Executive Officer holds office on such terms and conditions as the Administrator determines.

(4) Where immediately before his appointment as Chief Executive Officer a person was an employee within the meaning of the *Public Service Act*, the terms and conditions of his appointment as Chief Executive Officer shall, subject to subsection (2), be not less favourable than those then applicable to him.

9. ACTING APPOINTMENT

(1) Where the Chief Executive Officer is or is expected to be absent from duty or from the Territory, the Minister may appoint a person to act as the Chief Executive Officer during the absence.

(2) The Minister may at any time terminate an appointment made under subsection (1).

(3) The validity of a decision or action of the Authority shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment under this section had ceased to have effect.

10. FUNCTIONS OF AUTHORITY

The functions of the Authority are -

- (a) to advise the Minister on matters relating to occupational health and safety policy in the Territory;
- (b) to develop, publish and recommend occupational health and safety standards for the Territory;
- (c) to enforce, in accordance with this Act, compliance with occupational health and safety standards required by or under this Act to be observed;

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- (d) to encourage employers and workers to consult with each other about safe work practices in the workplace;
- (e) to identify priorities and needs in occupational health and safety in the Territory;
- (f) to promote a co-ordinated and integrated approach by government authorities to inspection responsibilities in occupational health and safety;
- (g) to advise and assist employers and workers on occupational health and safety matters generally and particularly in the performance of their health and safety obligations under this or any other Act and advise them of the assistance available to them in carrying out those obligations;
- (h) where the Minister so directs, to carry out investigations at a workplace;
- (j) if it thinks fit, where an incident occurs at a workplace, to carry out investigations at the workplace in relation to that incident;
- (k) to liaise with and, where required by the Minister, represent the Territory at meetings and in communicating with, Commonwealth and State occupational health and safety authorities;
- (m) to facilitate and encourage liaison between employers, workers, insurers and persons and authorities providing health and rehabilitation services to ensure and encourage the provision of appropriate and early rehabilitation treatment of workers incapacitated or impaired in a compensable incident;
- (n) to identify rehabilitation services needs in the Territory arising from compensable incidents;
- (p) to provide financial and other assistance to bodies established by this Act;
- (q) to monitor, collect and analyze data on compensable or other incidents in the Territory and recommend to the Minister appropriate priorities on the basis of such analyses;
- (r) to provide information, advice and education to employer and worker groups and government departments and authorities on matters to which this Act relates;
- (s) to approve insurers to provide workers' compensation insurance in the Territory;

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- (t) to ensure, as far as practicable, compliance with the compulsory insurance provisions of this Act;
- (u) to approve forms for the purposes of this Act;
- (w) to advise the Minister on the operation of this Act;
- (y) to prosecute persons for offences against this Act; and
- (z) to further the objects of this Act,

and such other functions as are imposed on it by or under this or any other Act.

11. POWERS OF AUTHORITY

The Authority has such powers as are necessary to enable it to perform its functions or as are conferred on it by or under this or any other Act.

12. DELEGATION

(1) The Authority may, by instrument in writing, delegate to a person any of its powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Authority.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Authority.

13. MINISTERIAL CONTROL

The Authority, in the exercise of its powers and the performance of its functions, is subject to the directions of the Minister.

14. OBTAINING OF INFORMATION BY AUTHORITY

(1) The Authority may, by notice in writing, require a person to furnish to it such information, in such form, as it reasonably requires for the purposes of this Act.

(2) A person required under subsection (1) to furnish information who, without lawful excuse, refuses or fails to furnish the information within the time specified in the notice under that subsection or such further time as the Authority allows, is guilty of an offence.

Penalty: In the case of a body corporate - \$1,000.

In the case of a natural person - \$500.

Default penalty: In the case of a body corporate - \$100.

In the case of a natural person - \$50.

(3) The Authority may, in writing, authorize a person to audit the employment, wages and other records of an employer necessary to enable it to carry out its functions under this Act and a person so authorized has such of the powers of entry or otherwise of an officer under Part IV as are necessary to enable him to perform his functions as an auditor.

15. RESTRICTIONS ON DISCLOSURE OF INFORMATION BY AUTHORITY

(1) This section applies to and in relation to information obtained under section 14 by the Authority being -

(a) information -

(i) furnished by a person involved in a business, commercial or financial undertaking;

(ii) relating to trade secrets or other matters of a business, commercial or financial nature; and

(iii) disclosure of which would be likely to expose that undertaking to competitive disadvantage; or

(b) information the disclosure of which would involve the unreasonable disclosure of information relating to the personal affairs of a natural person.

(2) The Authority shall not, except in accordance with this section, disclose information to or in relation to which this section applies.

(3) Where the Authority determines that the public interest in favour of disclosure of information to or in relation to which this section applies outweighs considerations of competitive disadvantage to an undertaking or of privacy, it may disclose that information.

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(4) In making a determination under subsection (3), the Authority shall consider whether disclosure of the information is necessary for protecting or promoting the objects of this Act.

(5) Where the Authority has determined under subsection (3) to disclose information, it shall give notice in writing of its determination to the person who furnished the information and, subject to subsection (7), shall not disclose that information until the expiration of 10 days after the person has received that notice.

(6) A person who receives a notice under subsection (5) may, within 10 days after receiving the notice, or such longer period as the Court allows, apply to the Court for a review of the determination of the Authority.

(7) A person who applies under subsection (6) to the Court shall immediately give notice of that application to the Authority and the Authority, on receiving the notice, shall not disclose the information in respect of which the application is made pending the decision of the Court.

(8) Notwithstanding anything in this section, the Authority may, at any time, disclose information referred to in subsection (1) -

- (a) to the Minister;
- (b) for the purposes of section 145;
- (c) to the Commissioner, as defined in the *Taxation Administration Act*; or
- (d) to any person if the Minister is of the opinion that it is in the public interest that the information be disclosed.

16. CONSULTANTS MAY BE ENGAGED

The Authority may engage consultants and may make arrangements to be provided with advice as it thinks fit.

17. PRESCRIBED AUTHORITY

In relation to the Chief Executive Officer and to employees within the meaning of the *Public Service Act* employed in the service of the Authority, the Authority is a prescribed authority within the meaning and for the purposes of that Act.

18. PRESCRIBED STATUTORY CORPORATION

The Authority is a statutory corporation to which Divisions 1 and 2 of Part IV of the *Financial Administration and Audit Act* apply.

PART III - MINISTERIAL ADVISORY COUNCIL

19. DEFINITIONS

In this Part, unless the contrary intention appears -

"Chairman" means the Chairman of the Council;

"Council" means the Ministerial Advisory Council constituted under section 20;

"member" means a member of the Council.

20. MINISTERIAL ADVISORY COUNCIL

(1) There shall be a council by the name of the Ministerial Advisory Council.

(2) The Council shall consist of the Chief Executive Officer, who shall be its Chairman, and not more than 10 other members appointed by the Minister.

(3) Before appointing the members of the Council the Minister shall, by notice in the *Gazette*, advertise his intention to make the appointments and invite any organization claiming to represent the interests of employers, workers, insurers or professional persons concerned with medical and rehabilitation treatment of workers, or with occupational health and safety, to submit to him the name or names of a person or persons it recommends should be appointed as a member or members.

(4) Without limiting his discretion under this section, the Minister shall, before appointing a person to be a member, consider all recommendations made to him as the result of an advertisement under subsection (3).

21. PERIOD OF APPOINTMENT

Subject to this Part, a member (other than the Chairman) holds office for such period, not exceeding 2 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

22. LEAVE OF ABSENCE

The Minister may grant leave of absence to a member on such terms and conditions as the Minister thinks fit.

23. RESIGNATION OF MEMBERS

A member may resign his office by writing signed by him and delivered to the Minister.

24. DISMISSAL OF MEMBERS

(1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) The Minister shall terminate the appointment of a member who -

- (a) is absent, except on leave granted by the Council, or under section 22 by the Minister, from 3 consecutive meetings of the Council; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit.

25. FUNCTIONS AND POWERS OF COUNCIL

(1) The functions of the Council are -

- (a) to inquire into and report to the Minister on matters referred to it by the Minister;
- (b) to investigate and make recommendations to the Minister about any matter under this Act or relating to the administration of this Act; and
- (c) such other functions as are imposed on it by or under this or any other Act.

(2) The Council has such powers as are necessary to enable it to carry out its functions or as are conferred on it by or under this or any other Act.

26. MEETINGS OF COUNCIL

(1) The Chairman shall call such meetings of the Council as are necessary for the performance of its functions and the exercise of its powers.

(2) The Minister may at any time direct the Chairman to convene a meeting of the Council and the Chairman shall convene a meeting accordingly.

(3) The Chairman shall preside at all meetings of the Council.

(4) At a meeting of the Council -

- (a) the Chairman and 50% of the other members for the time being holding office constitute a quorum;
- (b) questions arising shall be determined by a majority of the votes of the members present and voting and in the event of an equality of votes the Chairman shall have a casting vote as well as a deliberative vote; and
- (c) subject to this Act, the Council shall determine the procedure to be followed at or in connection with the meeting.

(5) The Council shall keep records of its meetings.

27. ANNUAL REPORT OF COUNCIL

(1) The Council shall, on or before 30 September in each year, prepare and submit to the Minister a report of its operations and the operation of this Act during the year ending on the preceding 30 June.

(2) The Minister shall cause the report submitted under subsection (1) to be laid before the Legislative Assembly within 6 sitting days of the Assembly after he receives the report.

PART IV - OCCUPATIONAL HEALTH AND SAFETY

Division 1 - Preliminary

28. DEFINITIONS

In this Part, unless the contrary intention appears -

"improvement notice" means an improvement notice under section 40;

"occupier", in relation to a workplace, means a person who has the management or control of the workplace;

"officer" means a work health officer appointed under section 35 and includes the Chief Executive Officer, and also includes a person authorized under section 14(3) while he is performing his functions as an auditor;

"plant" includes machinery, equipment, appliances, implements, scaffolding and tools, any component thereof and anything fitted, connected or appurtenant thereto;

"practicable", in relation to a hazard or risk, means practicable having regard to -

- (a) its severity;
- (b) the state of knowledge about the hazard or risk and the ways of removing or mitigating it;
- (c) the availability and suitability of ways to remove or mitigate it; and
- (d) the cost of removing or mitigating it;

"prohibition notice" means a prohibition notice under section 41;

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"substance" means a natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

29. DUTIES OF EMPLOYERS

(1) An employer shall provide and maintain, so far as is practicable, a working environment at a workplace that is safe and without risk to the health of his workers or any other person working at the workplace.

(2) Without limiting the generality of subsection (1), an employer contravenes that subsection if he fails to -

- (a) provide and maintain plant and systems of work that are, so far as is practicable, safe and without risk to health;
- (b) make arrangements for ensuring, so far as is practicable, safety and absence of risk to health in connection with the use, handling, storage and transporting of plant and substances;
- (c) maintain, so far as is practicable, a workplace under his control and management in a condition that is safe and without risk to health;
- (d) provide such information, instruction, training and supervision to a worker as is necessary to enable the worker to perform his work in a manner that is safe and without risk to health; or
- (e) ensure that visitors to a workplace under his control and management are aware of the safety requirements relevant to such visitors and that they abide by those requirements or remove a visitor who refuses or fails to abide by those requirements.

(3) The Regulations may provide that a prescribed employer or a member of a prescribed class of employers shall -

- (a) monitor the health of his workers;
- (b) keep information and records relating to the health and safety of his workers;
- (c) employ or engage a person who, being suitably qualified in relation to occupational health and safety, is able to provide advice to the employer in relation to the health and safety of the employer's workers;

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- (d) monitor conditions likely to affect the health and safety of his workers at a workplace under his control and management; or
- (e) prepare a written health and safety policy, or any combination of those things, and the employer shall, accordingly, do that thing or those things.

(4) An employer shall -

- (a) subject to subsection (5), where he is required under subsection (3) to monitor the health of his workers or conditions at a workplace under his control and management or keep information and records relating to the health and safety of his workers, at all reasonable times, at the request of a worker employed by him, make the results of that monitoring or the information, or those records, as the case may be, available to the worker or a person authorized in writing by the worker to receive or examine them or it;
- (b) at the request of a worker employed by him, provide the worker with a copy of the health and safety policy of the employer, if it is reduced to writing;
- (c) so far as is practicable, provide such other information as a worker employed by him requests relating to health and safety at the worker's workplace; and
- (d) so far as is practicable, consult with the relevant workers about the development of measures to promote health and safety at workplaces under his control and management.

(5) Nothing in subsection (4)(a) shall be taken to require or authorize an employer to make available to or on behalf of a worker information or a record relating to the health of any other worker or whereby a worker other than the worker to or on whose behalf the information or record is made available can be readily identified, except with the permission in writing of that other worker.

30. DUTIES OF OCCUPIERS OF WORKPLACES

An occupier of a workplace shall ensure, as far as is practicable, that the workplace and the means of access to and egress from it are safe and without risk to health.

31. DUTIES OF WORKERS

(1) A worker while at his workplace shall take appropriate care for his own health and safety and for the health and safety of all persons who may be affected by his acts at the workplace.

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(2) A worker shall, as far as is practicable, follow all reasonable directions given to him by his employer or his employer's representative in relation to his own and any other person's health and safety at the worker's workplace and shall use relevant safety equipment when provided or made available for his use.

(3) A worker shall not -

(a) wilfully or recklessly interfere with or misuse anything provided in the interests of health and safety in pursuance of this Act; or

(b) wilfully place at risk the health or safety of a person at the worker's workplace.

32. IMMEDIATE THREAT

(1) Where there is an immediate risk of severe injury to a worker at a workplace and that risk is not removed by the employer, the worker may cease work in the area in which the risk is present.

(2) During a period during which a worker has, under subsection (1), ceased work, his employer may assign him to alternative work.

(3) A dispute between a worker and his employer as to whether there is an immediate risk to the worker may be referred by either party to the Authority, or a person to whom the power of the Authority under subsection (4) is delegated, for a ruling.

(4) The Authority or its delegate shall, immediately on receiving a request for a ruling under subsection (3), investigate the matter and, where it or its delegate, as the case may be, is satisfied that -

(a) the risk exists, take action appropriate under section 41; or

(b) there is no such risk, advise the employer and the worker accordingly and the employer may require the worker to resume forthwith his usual work.

33. COMPLIANCE WITH REGULATIONS IS COMPLIANCE WITH THIS PART

Where the Regulations make provision for or in relation to a duty, obligation, act, matter or thing to which this Part applies, a person who complies with the Regulations in relation to that duty, obligation, act, matter or thing shall be deemed to have complied with this Part in relation to it.

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34. CIVIL LIABILITY NOT AFFECTED BY THIS PART

Nothing in this Part shall be construed as -

- (a) conferring a right of action in a civil proceeding in respect of a contravention of this Part;
- (b) conferring a defence to an action in a civil proceeding or as otherwise affecting a right of action in a civil proceeding; or
- (c) affecting the extent, if any, to which a right of action arises or a civil proceeding may be taken in respect of a breach of duty imposed by the Regulations.

Division 2 - Work Health Officers

35. WORK HEALTH OFFICERS

The Authority may appoint such persons as it thinks fit to be work health officers.

36. FUNCTIONS AND POWERS OF OFFICERS

(1) An officer shall perform such functions and may exercise such powers as are imposed or conferred on him by or under this or any other Act or delegated to him by the Authority.

(2) An officer may, for the purposes of performing a function or exercising a power referred to in subsection (1), seek, whenever necessary, the assistance of any person and where the function or power requires the entry of the officer to a workplace the occupier of or employer at the workplace shall also permit that person access to the workplace.

Division 3 - Investigations

37. INVESTIGATIONS

(1) An officer shall not conduct an investigation at a workplace until he has taken reasonable steps to notify the employer or the employer's representative of his having entered the workplace.

(2) On concluding an investigation at a workplace an officer shall give to the employer information about his observations and the steps, if any, he proposes to take as a result of that investigation.

(3) Where an officer proposes to take and remove a sample from a workplace for the purposes of analysis, he shall notify the employer and after having taken the sample he shall -

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- (a) where practicable, divide the sample taken into as many parts as are reasonably necessary for the analysis and for the purposes of this section and mark and seal, or mark and fasten up, each part in such manner as its nature will permit;
 - (b) where such division is practicable, deliver one part to the employer on being requested to do so by the employer; and
 - (c) retain one part for future comparison.
- (4) Where an officer takes possession of a plant, substance or thing from a workplace, the occupier of or employer at the workplace may appeal to the Court against that action or the continued possession by the Authority of that plant, substance or thing.
- (5) No person shall be required under this Division to answer a question or give information tending to incriminate himself.

38. EMPLOYERS, &c., TO ASSIST OFFICER

The owner or occupier of, or employer at, a workplace and his agents and employees shall provide such reasonable assistance as an officer requires for an entry, investigation, examination or inquiry, or for the exercise of the powers of the officer, under this or any other Act.

39. OFFENCES IN RELATION TO INVESTIGATIONS

- (1) A person who -
- (a) refuses access to a workplace to an officer;
 - (b) obstructs an officer in the exercise of his powers under this or any other Act or induces or attempts to induce a person to do so;
 - (c) fails to produce a document required under this or any other Act to be produced to an officer;
 - (d) conceals the location or existence of a person or any plant or substance from an officer;
 - (e) prevents or attempts to prevent a person from assisting an officer; or
 - (f) in any other way, hinders, impedes or opposes an officer in the performance of the officer's functions or exercising of his powers under this or any other Act,

is guilty of an offence.

Penalty: In the case of a body corporate - \$5,000.

In the case of a natural person - \$1,000,
or imprisonment for 6 months.

(2) The occupier of, and employer at, a workplace at which an offence against subsection (1) occurs is guilty of the same offence and is subject to the same penalty unless he proves that the act constituting the offence took place without his knowledge and that he did not know and could not reasonably have known of the act.

(3) In this section "officer" includes a person assisting an officer.

Division 4 - Improvement and Prohibition Notices

40. AUTHORITY MAY ISSUE IMPROVEMENT NOTICE

(1) Where the Authority is of the opinion that a person -

- (a) is contravening this Act; or
- (b) has contravened this Act in circumstances that make it likely that the contravention will continue or be repeated,

it may issue to the person an improvement notice requiring the person to remedy the contravention or the matters or activities giving rise to its opinion that the contravention will be repeated.

(2) An improvement notice shall -

- (a) state that the Authority is of the opinion that the person -
 - (i) is contravening this Act; or
 - (ii) has contravened this Act in circumstances that make it likely that the contravention will continue or be repeated;
- (b) state the reasons for that opinion;
- (c) specify the provision of this Act in respect of which that opinion is held; and
- (d) specify the day (being a day later than 7 days after the day on which the notice is issued) before which the person is required to remedy the contravention or the matters or activities giving rise to its opinion that the contravention will be repeated.

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- (3) A person -
 - (a) to whom an improvement notice is issued and in relation to which an appeal has not been made under section 43; and
 - (b) who contravenes or fails to comply with it,is guilty of a regulatory offence.

Penalty: In the case of a body corporate - \$10,000.

In the case of a natural person - \$2,000,
or imprisonment for 6 months.

Default penalty: In the case of a body corporate -
\$500.

In the case of a natural person - \$100.

41. AUTHORITY MAY ISSUE PROHIBITION NOTICE

(1) Where the Authority is of the opinion that at a workplace there is occurring or may occur an act which involves or will involve an immediate risk to the health or safety of a person, it may issue to the person who has or it reasonably believes has control over the act or the activity in which the act may occur a prohibition notice prohibiting the continuation of the act or the carrying out of the activity until the Authority certifies in writing that the immediate risk has been removed or, in its opinion, the act will not occur.

(2) A prohibition notice shall -

- (a) state that the Authority is of the opinion that in the workplace there is occurring or may occur an act which involves or will involve an immediate risk to the health or safety of a person;
- (b) state the reasons for that opinion;
- (c) specify the act which, in the Authority's opinion, involves or will involve the risk and the matters which give or will give rise to the risk; and
- (d) where in the Authority's opinion the act involves or will involve a contravention or likely contravention of this Act, specify the relevant provision and state the reasons for that opinion.

(3) A person -

- (a) to whom a prohibition notice is issued and in relation to which an appeal has not been made under section 43; and

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(b) who contravenes or fails to comply with it, is guilty of a regulatory offence.

Penalty: In the case of a body corporate - \$15,000.

In the case of a natural person - \$3,000, or imprisonment for 6 months.

Default penalty: In the case of a body corporate - \$1,000.

In the case of a natural person - \$200.

(4) Where an appeal has been made under section 43, against a prohibition notice, the Authority shall not certify under subsection (1) until after the appeal is withdrawn or decided.

42. NOTICES MAY INCLUDE DIRECTIONS

(1) The Authority may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remedy the matters to which the notice relates.

(2) A direction under subsection (1) may -

(a) refer to an approved code of practice; and

(b) offer the person to whom it is issued a choice of ways in which to remedy the matters to which the notice relates.

43. APPEALS AGAINST NOTICES

(1) A person to whom an improvement notice or a prohibition notice is issued or, where that person is a worker, that person's employer, may, within 7 days after the notice is issued or such further time as the Court allows, appeal in writing to the Court against the notice.

(2) Pending the decision by the Court on an appeal under subsection (1), the operation of the notice shall -

(a) in the case of an improvement notice - be suspended; and

(b) in the case of a prohibition notice - continue unless the Authority decides otherwise.

(3) Where -

(a) the Court affirms an improvement notice or a prohibition notice or affirms such a notice with modifications; and

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- (b) the person to whom the notice was issued does not comply with the notice as so affirmed or modified,

that person is guilty of an offence and shall be liable to the penalty applying in the case of an offence against section 40 or 41, as the case may be.

(4) In this section "improvement notice" includes a further notice referred to in section 44(1).

44. AUTHORITY MAY CARRY OUT WORK

(1) Where an improvement notice requires the doing of work by the person to whom it was issued or his employer who has the responsibility for carrying out the work and that work has not been done or carried out -

- (a) where no appeal has been lodged under section 43 against the notice - within 7 days after the date allowed by the notice; or
- (b) where an appeal has been so lodged and the Court has affirmed the notice or modified it in such a way that work is required to be done - within 7 days after the date on which the decision of the Court was made known or by such date, earlier or later than the date allowed by the notice, as the Court allows,

for doing that work, the Authority may give to the person responsible for carrying out the work a further notice advising him that after a specified day, not being earlier than 7 days after the service of the further notice on the person, it intends to carry out or cause to be carried out the work and it may after that day, on being satisfied that an appeal has not been lodged under section 43 against the further notice, carry out or cause to be carried out the work and for that purpose may enter on the land comprising the relevant workplace with such workers and machinery as are or is reasonably necessary and do all things reasonably necessary to be done.

(2) The costs reasonably incurred by the Authority in exercising its powers under subsection (1) shall be a debt due and payable to the Authority by the person required by the notice or decision to carry out the work.

Division 5 - General

45. DISCRIMINATION AGAINST WORKERS, &c.

An employer shall not -

- (a) dismiss a worker; or
- (b) act in any way detrimental to a worker in the worker's employment with the employer,

for the reason only that the worker -

- (c) assists or has assisted or gives or has given information to the Authority or an officer; or
- (d) makes or has made a reasonable complaint in relation to health and safety to the employer, the Authority or an officer.

Penalty: In the case of a body corporate - \$10,000.

In the case of a natural person - \$2,000,
or imprisonment for 12 months.

46. ORDERS IN PROCEEDINGS FOR OFFENCES AGAINST SECTION 45

Where a person is convicted of an offence against section 45, the court by which he is convicted may, in addition to imposing a penalty on the person -

- (a) order him to pay within a specified period to the person against whom the offender discriminated, such amount as it thinks fit to compensate that person; or
- (b) order that the worker be reinstated or re-employed in the worker's former position or, where that position is not available, in a similar position,

or both.

47. CODES OF PRACTICE

(1) For the purpose of providing practical guidance to employers and workers, the Minister may, on the recommendation of the Authority, by notice in the Gazette, approve a code of practice.

(2) A code of practice may consist of a code, standard, rule, specification or provision relating to occupational health or safety formulated, prepared or adopted by the Authority and may apply, incorporate or refer to a document formulated or published by a body or authority, as in force at the time the code of practice is approved or as amended, formulated or published from time to time.

(3) A notice under subsection (1) shall indicate where a copy of the approved code of practice to which it relates, and all documents incorporated or referred to in the code, may be inspected by members of the public without charge, and the times during which it may be inspected, and the Minister shall make the code and those documents available for that purpose accordingly.

(4) Subject to subsection (5), the Authority may, in writing, approve a code of practice in relation to a particular workplace presented to it by employers under whose care and management the workplace is and, on its so doing, that code of practice shall be the approved code of practice applicable to and in relation to that workplace.

(5) The Authority shall not approve under subsection (4) a code of practice which, in its opinion, adopts standards less stringent than the minimum relevant standards for the time being in a code of practice approved under subsection (1) and where at any time there is a relevant standard in a code of practice approved under subsection (1) that is more stringent than a standard in a code of practice approved under subsection (4), or a relevant standard in a code of practice approved under subsection (1) in relation to a matter that is not provided for in a code of practice approved under subsection (4), that standard in the code of practice approved under subsection (1) shall prevail or apply, as the case may be, and shall be deemed to be incorporated in the code of practice approved under subsection (4).

(6) A code of practice approved under subsection (4) shall be made available by the employer at the workplace to which it relates for inspection at all reasonable times by any person.

(7) An employer who contravenes or fails to comply with subsection (6) is guilty of a regulatory offence.

Penalty: \$500.

(8) A person shall not be liable to a civil or criminal action by reason only that he has failed to observe a provision of an approved code of practice.

48. USE OF CODES OF PRACTICE IN PROCEEDINGS

Where in proceedings under or for an offence against this Act it is alleged that a person contravened or failed to comply with a provision of this Act in relation to which an approved code of practice was in force at the time of the alleged contravention or failure -

(a) the approved code of practice shall be admissible in evidence in those proceedings; and

(b) if the court is satisfied in relation to a matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure that -

(i) a provision of the approved code of practice is relevant to that matter; and

(ii) the person failed at a material time to observe that provision of the approved code of practice,

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that matter shall be taken as proved unless the court is satisfied that in respect of that matter the person complied with that provision of this Act otherwise than by way of observance of that provision of the approved code of practice.

PART V - WORKERS COMPENSATION AND REHABILITATION

Division 1 - Preliminary

49. INTERPRETATION

(1) In this Part, unless the contrary intention appears -

"dependant", in relation to a worker, means -

- (a) a spouse or other member of the worker's family;
- (b) a person to whom the worker stood *in loco parentis* or who stood *in loco parentis* to the worker;
- (c) an ex-nuptial child or grandchild of the worker; or
- (d) if the worker was an ex-nuptial child, a parent or grandparent of the worker,

who was wholly or in part dependent on his earnings at the date of his death or who would but for the worker's incapacity due to the injury resulting in his death, have been so dependent;

"family", in relation to a person who is an aboriginal native of Australia, includes all persons who are members of his family according to the customs of the group or tribe of aboriginal natives of Australia to which he belongs;

"hospital treatment", in relation to a worker, means treatment at a hospital within or outside the Territory, and includes his maintenance as a patient at the hospital, the provision or supply by the hospital of nursing attendants, medicine, medical or surgical supplies or other curative apparatus and all other ancillary services;

"medical, surgical and rehabilitation treatment", in relation to a worker, includes -

- (a) an attendance, examination or treatment on or of the worker by a person entitled under the *Medical Practitioners Act*, the *Dental Act* or the *Health and Allied Professionals*

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"normal weekly number of hours of work" means -

- (a) in the case of a worker who is required by the terms of his employment to work a fixed number of hours, not being hours of overtime, in each week - the number of hours so fixed; or
- (b) in the case of a worker who is not required by the terms of his employment to work a fixed number of hours in each week - the average weekly number of hours, not being hours of overtime, worked by him during the period actually worked by him in the service of his employer during the 12 months immediately preceding the date of the relevant injury;

"nursing service" means a nursing service provided by a registered nurse otherwise than at a hospital or as a member of the nursing staff of a hospital;

"ordinary time rate of pay" means -

- (a) in the case of a worker who is remunerated in relation to an ordinary time rate of pay fixed by the terms of his employment - the time rate of pay so fixed; or
- (b) in the case of a worker -
 - (i) who is remunerated otherwise than in relation to an ordinary time rate of pay so fixed, or partly in relation to an ordinary time rate of pay so fixed and partly in relation to any other manner; or
 - (ii) where no ordinary time rate of pay is so fixed for a worker's work under the terms of his employment,

the average time rate of pay, exclusive of overtime, earned by him during the period actually worked by him in the service of his employer during the period of 12 months immediately preceding the date of the relevant injury;

"proceeding" means a claim before the Court for compensation or a matter or question incidental to such a claim;

"rehabilitation counsellor" means a rehabilitation counsellor appointed under section 50;

"spouse", in relation to a person, includes -

- (a) a person of the opposite sex to the person, who is not legally married to the person but who, immediately preceding the relevant time, had ordinarily lived with the person as the person's husband or wife, as the case may be, on a permanent and bona fide domestic basis; and
- (b) where that person is an aboriginal native of Australia - a person referred to in paragraph (a) or a person who is, according to the customs of the group or tribe of aboriginal natives of Australia to which either belongs, married to the first-mentioned person;

"worker", in relation to an employer, includes a person formerly employed as a worker by the employer where the worker became eligible for compensation in respect of an injury arising out of or in the course of employment with that employer.

(2) For the purposes of the definition of "normal weekly earnings" and "ordinary time rate of pay" in subsection (1), a worker's remuneration includes an over-award payment, industrial allowance, climate allowance, district allowance, leading hand allowance, qualification allowance and service grant, but does not include any other allowance.

50. REHABILITATION COUNSELLORS

(1) The Authority may appoint such rehabilitation counsellors as it thinks necessary for the purposes of this Part.

(2) Rehabilitation counsellors shall perform such functions and may exercise such powers as are delegated to them by the Authority.

(3) A rehabilitation counsellor shall not be called as a witness in a criminal or civil proceeding to which a worker, about whom the rehabilitation counsellor has gained information by reason of his office as a rehabilitation counsellor, is a party except with the permission, in writing, of the worker.

(4) A rehabilitation counsellor called as a witness in a proceeding referred to in subsection (3) is a ~~competent but not a compellable witness.~~

Division 2 - General

51. APPLICATION TO SEAMEN

(1) In this section -

"port" includes a place or harbour;

"Territory ship" means a ship -

- (a) registered in the Territory;
- (b) owned by or under charter to a body corporate or other person -
 - (i) whose principal office or place of business is in the Territory; or
 - (ii) whose principal office or place of business in respect of the management of the ship is in the Territory; or
- (c) owned by or under charter to the Territory.

(2) This Part extends and applies to and in relation to an injury to a seaman on a Territory ship sustained within the Territory or its jurisdiction or on a Territory ship the first port of clearance and the destination of which are in the Territory, subject to the following modifications:

- (a) except where the seaman is the master, the notice of injury and the claim for compensation may be served on the master of the ship as if the master were the employer;
- (b) if the injury is sustained and the incapacity commences on board the ship, it shall not be necessary to give any notice of injury;
- (c) a claim for compensation in respect of the death of a seaman shall be made within 6 months after notice of the death has been received by the claimant;
- (d) if a ship is lost with all hands, a claim for compensation in respect of the death of a seaman shall be made within 18 months after the date on which the ship shall be deemed under subsection (3) to have been lost with all hands;
- (e) if a seaman dies without leaving any dependants, compensation shall not be payable if the owner or charterer of the ship is liable to pay the expenses of burial or cremation under a law in force in the Territory;

- (f) weekly payments shall not be payable in respect of a period during which the owner or charterer of the ship is liable to pay the expenses of maintenance of an injured seaman; and
 - (g) notwithstanding any limitation of liability in any other law in force in the Territory, compensation shall be paid in full.
- (3) Without prejudice to any other means of proof available -
- (a) a ship shall be deemed to have been lost with all hands on board if it is shown by an official return produced out of official custody or other evidence that the ship left a port of departure not later than 12 months before the institution of proceedings under this Act and has not been heard of since that departure; and
 - (b) a duplicate agreement or list of the crew of a ship lost with all hands made out and produced by the proper officer out of official custody shall, in the absence of proof to the contrary, be sufficient evidence that the seamen named were on board at the time the ship was lost.

52. ABOLITION OF CERTAIN RIGHTS TO BRING ACTION

(1) Subject to section 189, no cause of action for damages in favour of a worker or a dependant of a worker shall arise or lie against the employer of the worker or the Nominal Insurer in respect of -

- (a) an injury to the worker; or
- (b) the death of the worker -
 - (i) as a result of; or
 - (ii) materially contributed to by,
an injury.

(2) The purpose of subsection (1) is to ensure that, so far as the legislative power of the Legislative Assembly permits, no action for damages at common law shall lie in the Territory or otherwise in the circumstances described in that subsection and nothing in this Act shall be construed as derogating from that purpose.

(3) Except as provided by this Act, no action for compensation or a benefit of any kind by a worker or a dependant of a worker shall lie in the Territory against the employer of the worker in respect of -

- (a) an injury to the worker; or

- (b) the death of the worker -
 - (i) as a result of; or
 - (ii) materially contributed to by,
an injury.

53. COMPENSATION IN RESPECT OF INJURIES

Subject to this Part, where a worker suffers an injury within or outside the Territory and that injury results in or materially contributes to his -

- (a) death;
- (b) impairment; or
- (c) incapacity,

there is payable by his employer to the worker or the worker's dependants, in accordance with this Part, such compensation as is prescribed.

54. ENTITLEMENT TO OTHER COMPENSATION

- (1) In this section "another law" means -
 - (a) a law of the Commonwealth; or
 - (b) a law in force in a place outside the Territory.

(2) This section applies where an injury is caused to a worker which gives him or his dependants a right to claim compensation or a right of action under another law in circumstances where the injury would otherwise have entitled him or his dependants to compensation under this Part.

- (3) Subject to subsection (4), if -
 - (a) compensation has not been paid or damages have not been recovered; and
 - (b) an award of compensation or judgment for damages has not been given or entered,

in respect of an injury to a worker, under another law, the worker is, or in the case of his death, his dependants are, entitled to compensation under this Part as if there were no right to claim compensation or right of action under another law.

- (4) Where a person -
 - (a) receives compensation under this Part in respect of an injury to a worker; and

- (b) obtains compensation or damages or an award of compensation or damages, accepts a payment into court or settles or compromises a claim in respect of the injury under another law or is paid or is entitled to receive a benefit from a superannuation scheme (not being a benefit financed by the worker's contributions) because of incapacity resulting from the injury,

the worker's employer is entitled to recover from that person an amount determined by a Fellow of the Institute of Actuaries of Australia to be the discounted present value of compensation paid or payable under this Part or an amount determined by the actuary to be equal to the damages or payment or benefit so obtained, made or payable, or settled or compromised under another law, whichever is the lesser amount.

(5) Unless it is proved to the contrary, an amount recovered or to be recovered by a worker or his dependants under another law as compensation or damages in respect of an injury to the worker shall be presumed to be compensation or damages for the same injury in respect of which the worker claims or his dependants claim compensation under this Part.

55. LIABILITY IN RELATION TO DISEASE

(1) Subject to subsection (3), where a worker was employed by 2 or more employers in employment the nature of which caused a disease, compensation shall be recoverable from the employer who last employed the worker in that employment.

(2) A claimant for compensation recoverable as provided in subsection (1) shall, if so requested by the employer from whom compensation, if payable, is recoverable, furnish that employer with such information as the claimant possesses as to the names and addresses of other employers who employed the worker in employment the nature of which caused the disease.

(3) If the employer alleges that the disease was contracted while the worker was in the employ of some other employer, he may join that other employer as a party to proceedings and, if the allegation is proved, compensation, if payable, is, subject to subsection (4), recoverable from that other employer.

(4) Where compensation is, pursuant to subsection (3), recoverable from an employer other than the employer who last employed the worker, and that first-mentioned employer proves to the satisfaction of the Court that the disease is being or was accelerated or aggravated by the worker's later employment with a particular employer or employers, the first-mentioned employer is entitled to recover from that particular employer or those particular employers, as the case may be, in respect of that acceleration or aggravation, such amount or amounts -

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(a) as agreed between the insurer of the first-mentioned employer and the insurer or insurers of that particular employer or those particular employers, as the case may be; or

(b) in the absence of such agreement, as the Court determines.

(5) For the purposes of subsection (4), "insurer" shall, in relation to an employer who is under section 120(2) approved to undertake the liability to pay compensation to his own workers, be construed as meaning that employer.

56. PAYMENT OF SALARY OR WAGES FOR DAY OF INJURY

(1) A worker is entitled to be paid his salary or wages in full for the day on which he sustained an injury in respect of which compensation is payable under this Act.

(2) An employer is not entitled to claim under his policy of insurance or indemnity in respect of a payment referred to in subsection (1).

57. COMPENSATION NOT PAYABLE IN CERTAIN CIRCUMSTANCES

(1) Compensation is not payable under this Part in respect of an injury to a worker -

(a) that was deliberately self inflicted; or

(b) (not being an injury resulting in his death or permanent or long-term incapacity) attributable to his serious and wilful misconduct.

(2) Compensation is not payable under this Part unless any 2 of the following apply:

(a) the worker to or in relation to whom it is payable was a resident of the Territory at the time the relevant incident occurred;

(b) his employer was a resident of or carrying on business in the Territory at the time the relevant incident occurred;

(c) the relevant incident occurred in the Territory.

58. EXEMPTIONS FOR INDEPENDENT CONTRACTORS

(1) A natural person who is in business on his own account may, in an approved form, apply to the Authority for an exemption under this section in respect of activities carried out for the purposes of that business.

(2) The Authority may, in its discretion, and on being satisfied that an applicant under subsection (1) -

- (a) understands the effect under this Act of being granted the exemption applied for;
- (b) has not been subjected to undue pressure by any person to make the application; and
- (c) has considered other forms of insurance cover available to him,

grant the exemption and issue to him a certificate of exemption in the prescribed form, or refuse to grant the exemption.

(3) Where the Authority refuses under subsection (2) to grant an applicant an exemption it shall, in writing, notify the applicant of its refusal and give its reasons for the refusal.

(4) An applicant aggrieved by the refusal of the Authority to grant an exemption under this section may, within 10 days after receiving the notification under subsection (3) or such longer period as the Court allows, appeal to the Court against the decision of the Authority.

(5) Neither a person to whom an exemption has been granted under this section nor a dependant of such a person shall be entitled -

- (a) to compensation under this Act; or
- (b) to make a claim under Division 7 of Part VII against the Nominal Insurer,

in respect of the death of or injury to the exempted person occurring or sustained in or as a result of an activity to which the exemption relates.

59. CONDITIONS AND TERMINATION OF EXEMPTION

(1) An exemption granted under section 58(2) is subject to the prescribed conditions, if any, and such other conditions, not inconsistent with those prescribed, as the Authority thinks fit and specifies in the certificate issued under that section.

(2) Without limiting the generality of subsection (3), a person who contravenes or fails to comply with a condition to which an exemption granted under section 58(2) is subject is guilty of an offence.

Penalty: \$1,000.

(3) The Authority may, in its discretion, revoke an exemption granted under section 58(2).

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(4) A person whose exemption has been revoked under subsection (3) shall forthwith forward to the Authority the relevant certificate of exemption issued to him under section 58(2).

Penalty: \$1,000.

60. EXCLUSION OF ENTITLEMENT IN RESPECT OF CERTAIN TRAVEL ACCIDENTS

(1) A worker is not entitled to compensation in respect of an injury sustained in travelling in circumstances referred to in section 4(1)(b), (c), (e) or (g) whilst driving a motor vehicle, as defined in the *Motor Accidents (Compensation) Act*, after having consumed alcoholic liquor where the consumption of that liquor materially contributed to the accident giving rise to the injury.

(2) Where the concentration of alcohol in the blood of a worker referred to in subsection (1) was at the time of the accident equal to 80 milligrams or more of alcohol per 100 millilitres of blood, the consumption of the alcoholic liquor shall be presumed to have materially contributed to the accident giving rise to the injury, unless the contrary is proved.

(3) Nothing in this section affects an entitlement to compensation under Subdivision A or D of Division 3 or Division 4.

61. EMPLOYER TO ENDEAVOUR TO FIND OR ASSIST INJURED WORKER TO FIND SUITABLE EMPLOYMENT, &c.

(1) An employer liable under this Part to compensate an injured worker shall take all reasonable steps to provide the injured worker with suitable employment or assist him to find such employment and, as far as practicable, participate in efforts to retrain the worker.

(2) An employer employing a worker who is receiving compensation or rehabilitation training shall allow a rehabilitation counsellor reasonable access to the workplace in which the worker is employed, to the worker and to other workers employed with the worker.

Division 3 - Amount of Compensation

Subdivision A - Death Benefits

62. LUMP-SUM COMPENSATION IN RESPECT OF DEATH

(1) Subject to subsection (2), where the death of a worker results from or is materially contributed to by an injury, there is payable -

- (a) to the person liable to meet the expense of the worker's funeral, a funeral benefit equal to -

(i) the cost of the funeral; or

(ii) the prescribed amount,

whichever is the lesser amount; and

(b) for the benefit of such of his dependants, and in such proportions, as the Court determines having regard to their relative needs and degree of dependency, an amount equal to 156 times average weekly earnings at the time the payment is made.

(2) For the purposes of subsection (1)(b), the Authority or a person claiming to be a dependant of the deceased worker may, in the prescribed form, apply to the Court for a determination under that subsection.

63. PRESCRIBED CHILDREN'S BENEFITS

(1) In addition to any amount payable under section 62(1)(b) to or for the benefit of a prescribed child who is a dependant, subject to subsection (2), there shall be paid to or for the benefit of each prescribed child of a deceased worker an amount per week equal to 7% of average weekly earnings at the time the payment is made.

(2) The aggregate of all amounts paid or payable per week under subsection (1) shall not exceed 70% of average weekly earnings and where there are more than 10 prescribed children entitled to compensation under that subsection they shall be entitled in equal shares to an amount equal to 70% of average weekly earnings at the time the payment is made.

(3) In this section -

"prescribed child" means a child of the deceased worker, or a child in relation to whom the deceased worker stood *in loco parentis*, and who -

(a) has not attained the age of 16 years; or

(b) having attained that age but not having attained the age of 21 years, is a full-time student or is physically or mentally handicapped,

other than such a child who is the spouse of another person.

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Subdivision B - Total Incapacity and Loss of Earning Capacity

64. COMPENSATION DURING FIRST 26 WEEKS OF INCAPACITY

(1) Subject to section 66, a worker who is totally or partially incapacitated for work as the result of an injury shall be paid, in addition to any other compensation to which under this Part he is entitled, compensation equal to the difference between what he actually earned in employment during a week and his normal weekly earnings, in respect of any period during which the total period, or aggregate of the periods, of his total or partial incapacity, as the case may be, arising out of or materially contributed to by the same injury does not exceed 26 weeks.

(2) A worker shall be paid compensation under subsection (1) notwithstanding that his retirement has intervened between the date he sustained the injury out of which the incapacity arose and the date on which his entitlement to the payment of the compensation would otherwise cease and, for the purposes of calculating his continuing entitlement, his normal weekly earnings applying immediately before his retirement shall be deemed to continue to be his normal weekly earnings.

65. LONG-TERM INCAPACITY

(1) Subject to this Part, a worker who is totally or partially incapacitated for work as the result of an injury out of which his incapacity arose or which materially contributed to it shall be paid, in addition to any other compensation to which under this Part he is entitled, after the first 26 weeks referred to in section 64, compensation equal to 70% of his loss of earning capacity or of 150% of average weekly earnings at the time the payment is made, whichever is the lesser amount, until -

- (a) he attains the age of 65 years; or
- (b) if the normal retiring age for workers in the industry or occupation in which he was employed at the time of the injury is more than 65 years - he attains that normal retiring age.

(2) For the purposes of subsection (1), loss of earning capacity in relation to a worker is the difference between -

- (a) his normal weekly earnings indexed in accordance with subsection (3); and
- (b) the amount, if any, he is from time to time reasonably capable of earning in a week during normal working hours in work he is capable of undertaking if he were to engage in the most

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profitable employment, if any, reasonably available to him.

(3) The normal weekly earnings of a worker for the purpose of calculating his loss of earning capacity at a particular date shall be taken to be his normal weekly earnings immediately before the date on which he first became entitled to compensation multiplied by the average weekly earnings at the particular date and divided by the average weekly earnings applying at the date on which he first became entitled to compensation.

(4) Where a worker is totally incapacitated for work, his normal weekly earnings in respect of the period of his total incapacity after the expiration of 2 years after the first day of the period in respect of which he first became entitled under section 64 or this section to compensation shall be taken to be -

(a) in the case of a worker who was an apprentice immediately before the date on which he first became entitled to compensation -

(i) as from the date on which he would otherwise have completed his apprenticeship - the full award wage for a tradesman in the trade in which the worker was an apprentice; and

(ii) until that date - the normal weekly earnings that would have been his had he continued in the apprenticeship;

(b) in any other case - his normal weekly earnings immediately before the date on which he first became entitled to compensation multiplied by the average weekly earnings at the date on which the compensation was paid and divided by the average weekly earnings applying at that first-mentioned date; or

(c) 50% of average weekly earnings from time to time,

whichever is the greater amount.

(5) For the purposes of subsections (2) and (6), the most profitable employment available includes -

(a) self employment; and

(b) employment in a geographical location (including a place outside the Territory) away from the place where the worker normally resides where it would be reasonable to expect the worker to take up that employment and the person liable to pay compensation to the worker has undertaken to meet the reasonable expenses in moving him and

his dependants to that location and other reasonable relocation expenses.

(6) For the purposes of this section, a worker shall be taken to be totally incapacitated if he is not capable of earning any amount during normal working hours if he were to engage in the most profitable employment, if any, reasonably available to him.

(7) The Regulations may prescribe, in respect of a prescribed period, a minimum rate of compensation under this section and while a minimum rate is so prescribed a worker shall be paid compensation at that rate during that period in lieu of any payment at less than that rate that would otherwise be payable to the worker under this section.

66. PRESCRIBED COMPENSATION FOR CERTAIN PERSONS

(1) A person who, by virtue of section 3(7) or (8), shall be deemed to be a worker in the employ of the Territory and who is totally or partially incapacitated for work as the result of an injury, shall be paid compensation under this Subdivision calculated as prescribed.

(2) The amount of the compensation payable to a person by virtue of this section shall not in any case be less than 50% of average weekly earnings.

67. WORKER TO UNDERTAKE REASONABLE TREATMENT AND TRAINING, OR ASSESSMENT

(1) A worker to whom compensation is payable under this Subdivision shall, at the expense of his employer, undertake reasonable medical, surgical and rehabilitation treatment or participate in rehabilitation training, or as required by his employer present himself at reasonable intervals to a person for assessment of his employment prospects.

(2) Where a worker unreasonably fails to undertake medical, surgical and rehabilitation treatment or to participate in rehabilitation training, which could enable him to undertake more profitable employment, he shall be deemed to be able to undertake such employment and his compensation under this Subdivision may be reduced or cancelled accordingly.

(3) Where a worker so required under subsection (1) unreasonably refuses to present himself for assessment of his employment prospects, he shall be deemed to be able to undertake the most profitable employment that would be reasonably possible for a willing worker with his experience and skill and who has sustained a similar injury and is in similar circumstances, and his compensation under this Subdivision may be reduced or cancelled accordingly.

- (4) The question of whether -
 - (a) medical, surgical and rehabilitation treatment;
 - (b) rehabilitation training; or
 - (c) the failure or refusal of a worker -
 - (i) to undertake such treatment or training; or
 - (ii) to present himself for assessment of his employment prospects,

as required under this section,

is reasonable is one of fact for the Court and an employer or the Authority or the worker, may, subject to section 111(1), apply to the Court for a ruling on that question.

(5) In considering an application referred to in subsection (4), the Court shall take into account the efforts, if any, made by the employee, the Authority, the worker or any other person in attempting to reach a conciliated settlement of the question.

68. ASSESSMENT OF MOST PROFITABLE EMPLOYMENT

In assessing what is the most profitable employment available to a worker for the purposes of section 65 or reasonably possible for a worker for the purposes of section 67(3), regard shall be had to -

- (a) his age;
- (b) his experience, training and other existing skills;
- (c) his potential for rehabilitation training;
- (d) his language skills;
- (e) the potential availability of such employment;
- (f) the impairments suffered by the worker; and
- (g) any other relevant factor.

69. BENEFITS NOT TO BE ALTERED EXCEPT AFTER NOTICE

Subject to this Subdivision, except where -

- (a) the person receiving it;
 - (i) ceases to be incapacitated; or
 - (ii) dies; or

- (b) the payments of compensation were obtained by fraud of the person receiving them or by other unlawful means,

an amount of compensation under this Subdivision shall not be cancelled or reduced unless the worker to whom it is payable has been given -

- (c) 14 days notice of the intention to cancel or reduce the compensation and, where the compensation is to be reduced, the amount to which it is to be reduced; and
- (d) a statement in the prescribed form setting out the reasons for the proposed cancellation or reduction and indicating that the worker has a right to appeal against the decision to cancel or reduce the compensation.

Subdivision C - Compensation for Permanent Impairment

70. DEFINITION

In this Subdivision "permanent impairment" means an impairment or impairments assessed, in accordance with the prescribed guides, as being an impairment, or combination of impairments, of not less than 15% of the whole person.

71. COMPENSATION FOR PERMANENT IMPAIRMENT

(1) In addition to any other compensation payable under this Part, a worker who suffers permanent impairment assessed at a percentage of the whole person equal to not less than 15% shall, subject to subsection (2), be paid compensation equal to that assessed percentage of 104 times average weekly earnings at the time the payment is made.

(2) A worker who suffers permanent impairment assessed at not less than 85% of the whole person shall be paid compensation of 104 times average weekly earnings at the time the payment is made.

72. ASSESSMENT OF IMPAIRMENT

(1) The Authority may, by notice in the *Gazette*, authorize a medical practitioner for the purposes of this section.

(2) The level of permanent impairment for the purposes of section 71(1) shall be assessed in the first instance by an authorized medical practitioner.

(3) Where a person is aggrieved by the assessment of the level of permanent impairment by an authorized medical practitioner, he may apply to the Authority for a reassessment of that level and the Authority shall, as

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soon as practicable, refer the matter to a panel of 3 authorized medical practitioners (who shall, where practicable, include at least one medical practitioner appearing to the Authority to have specialist knowledge of the type of impairment in question, and shall not include the medical practitioner who originally assessed the level of impairment) to reassess the level.

(4) An assessment made by a panel under subsection (3) as to the degree of permanent impairment of a worker shall be taken to be the degree of permanent impairment for the purposes of section 71(1).

(5) The costs incurred in carrying out an assessment or reassessment under this section shall be paid by the employer.

Subdivision D - Compensation for Medical, Surgical and Rehabilitation Treatment, &c.

73. COMPENSATION FOR MEDICAL, SURGICAL AND REHABILITATION TREATMENT, &c.

Subject to this Part and the Regulations, where a worker sustains an injury, his employer is liable to pay the costs reasonably incurred by the worker as a result of that injury for -

- (a) medical, surgical and rehabilitation treatment;
- (b) hospitalization and hospital treatment;
- (c) travelling, or being transported, to and from any place for the purpose of medical, surgical and rehabilitation treatment, hospitalization or hospital treatment;
- (d) where it is necessary for him to be accommodated away from his normal place of residence for the purpose of medical, surgical and rehabilitation treatment - such accommodation; and
- (e) attendance by a registered or enrolled nurse, or by some other person, where the disability is such that the worker must have nursing or personal attendance,

and such other costs as are prescribed.

Subdivision E - Commutation of Certain Entitlements

74. COMMUTATION

(1) Where it appears to the Court on the application in writing -

- (a) of or on behalf of the employer or the person to whom it is payable that, because of the small

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amount of regular payments of compensation, the administrative costs in calculating and paying the compensation is disproportionate to the benefit received; or

- (b) of a worker receiving compensation payments that -
 - (i) his condition has stabilized;
 - (ii) rehabilitation is complete;
 - (iii) he is not totally incapacitated within the meaning of section 65(6);
 - (iv) he resides permanently out of the Territory; and
 - (v) he has received financial counselling before so applying,

it may, in writing, authorize the commutation of those payments at discounted present values and those payments may be commuted and the commuted amount paid accordingly.

(2) Compensation payments shall not be commuted except in accordance with this section.

Division 4 - Other Rehabilitation

75. PURPOSE

The purpose of this Division is to ensure, as far as practicable, having regard to community standards from time to time, that an injured worker is restored to the same physical, economic and social condition in which he was before he suffered the relevant injury.

76. REHABILITATION TRAINING AND WORKPLACE MODIFICATION

(1) In addition to any other compensation under this Part, an employer shall pay the costs incurred for such rehabilitation training and workplace modification as is reasonable and necessary for the purpose of this Division for a worker who suffers or is likely to suffer a permanent or long-term incapacity.

(2) Without limiting the matters which may be taken into account in determining what is necessary and reasonable rehabilitation training and workplace modification in a particular case, there shall be taken into account -

- (a) the cost of compensation payments and medical and other expenses which will or are likely to be incurred if no rehabilitation training is provided or workplace modification carried out;

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- (b) the likely cost of the rehabilitation training and workplace modification and of alternative training or modifications, if any, available and possible;
- (c) the likely opportunities for the gainful employment of the worker after the proposed training or workplace modification compared with those if no such training was provided or modification carried out;
- (d) the likely psychological effect on the injured worker of receiving or not receiving the proposed training;
- (e) the worker's suitability for and attitude to the training, and his suitability for and attitude to any other training available and possible; and
- (f) in the case of workplace modifications -
 - (i) the likely duration of the employment by the employer of the worker;
 - (ii) the benefit or detriment to the employer, or to other workers employed at a workplace, of the workplace modifications; and
 - (iii) the ability of the employer to provide the worker with suitable employment.

77. ADDITIONAL TRAVEL COSTS

(1) In addition to any other compensation under this Part, an employer shall pay to a worker who has suffered a significant reduction in his mobility in the community as the result of his suffering a permanent or long-term incapacity and who has not received a benefit under section 78 by the modification of a vehicle, and would not safely be able to drive a motor vehicle no matter how reasonably modified the vehicle, any costs incurred by the worker (in excess of those which he would have incurred had he not suffered the incapacity) as are reasonable and necessary for the purpose of this Division to enable the worker to achieve reasonable mobility in the community.

(2) Without limiting the matters which may be taken into account in determining what is a reasonable and necessary payment referred to in subsection (1) in a particular case, there shall be taken into account -

- (a) the effect of the payments on the likelihood of the worker obtaining and retaining gainful employment;
- (b) the difficulty faced by him in achieving reasonable mobility in the community; and

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- (c) the alternative means of transport available to him.

78. OTHER REHABILITATION

(1) Subject to this section, in addition to any other compensation under this Part, an employer shall pay the costs incurred for such home modifications, vehicle modifications and household and attendant care services as are reasonable and necessary for the purpose of this Division for a worker who suffers or is likely to suffer a permanent or long-term incapacity.

(2) Without limiting the matters which may be taken into account in determining what are reasonable and necessary home modifications, vehicle modifications and household and attendant care services in a particular case, there shall be taken into account -

(a) in relation to home modifications -

- (i) the cost, and the relevant benefit to the worker, of the proposed modifications;
- (ii) the difficulties faced by him in -
 - (A) gaining access to;
 - (B) enjoying reasonable freedom of movement in; or
 - (C) living independently in, his home without the proposed modifications;
- (iii) the likely duration of his residence in the home;
- (iv) where the home is not owned by the worker, the permission of the owner;
- (v) the likely cost of reasonable alternative living arrangements; and
- (vi) the likely psychological effect on the worker of not having the proposed modifications made;

(b) in relation to vehicle modifications -

- (i) the cost and relevant benefit to the worker of the proposed modifications;
- (ii) the difficulty faced by him in -
 - (A) driving or operating;
 - (B) gaining access to; or

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- (C) enjoying freedom and safety of movement in,

the vehicle without the proposed modifications;
- (iii) alternative means of transport available to him; and
- (iv) the effect of the modifications on his likelihood of obtaining and retaining gainful employment;
- (c) in relation to household services -
 - (i) the extent to which household services were provided by the worker before the relevant injury and the extent to which he is able to provide those services after that date;
 - (ii) the number of household family members, their ages and their need for household services;
 - (iii) the extent to which household services were provided by other household family members before the relevant injury;
 - (iv) the extent to which other household family members or other family members might reasonably be expected to provide household services for themselves and for him after the relevant injury; and
 - (v) the need to avoid substantial disruption to the employment or other activities of the household family members; and
- (d) in relation to attendant care services -
 - (i) the nature and extent of the worker's injury and the degree to which that injury impairs his ability to provide for his personal care;
 - (ii) the extent to which such medical services and nursing care as may be received by him provide for his essential and regular personal care;
 - (iii) where he so desires, the extent to which it is reasonable to meet his desire to live outside an institutional environment;
 - (iv) the extent to which attendant care services are necessary to enable him to undertake or continue employment;

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- (v) any assessment made, at the request of the insurer, by persons having expertise in the worker's rehabilitation;
- (vi) any standard developed or applied by a government department or public authority in respect of the need of disabled persons for attendant care services; and
- (vii) the extent to which a relative of the worker might reasonably be expected to provide attendant care services to him.

(3) An employer shall not be liable to pay the costs incurred for home modifications except where the worker for whose benefit the modifications are or are to be carried out is severely impaired in his mobility or ability to live independently within the home.

(4) In this section "attendant care services", in relation to an injured worker, means services (other than medical and surgical services or nursing care) which are required to provide for his essential and regular personal care.

Division 5 - Claim Procedures and Determination

79. DEFINITION

In this Division "weekly payment" means a weekly payment of compensation.

80. NOTICE OF INJURY AND CLAIM FOR COMPENSATION

(1) Subject to this Act, a person shall not be entitled to compensation unless notice of the relevant injury has, as soon as practicable, been given to or served on the worker's employer.

(2) An employer who receives a claim for compensation shall be deemed to have been given notice of the injury to which it relates.

81. FORM OF NOTICE OF INJURY

- (1) Notice of an injury -
 - (a) may be given orally or in writing;
 - (b) shall, subject to section 84(2), be given to -
 - (i) the employer or, if there is more than one employer, to one of the employers;
 - (ii) a person under whose supervision the worker is employed; or
 - (iii) a person designated for the purpose by the employer;

- (c) shall include the name and address of the person injured; and
- (d) shall include the date on which the injury occurred and the cause of the injury.

(2) Where an employer has received notice of an injury, he shall record that fact in records kept for that purpose.

82. FORM OF CLAIM

- (1) A claim for compensation shall -
 - (a) be in the prescribed form;
 - (b) unless it is a claim for compensation under section 62, 63 or 73, be accompanied by a prescribed certificate from a medical practitioner or other prescribed person; and
 - (c) subject to section 84(3), be given to or served on the employer.

(2) If a claim for compensation and a medical certificate under subsection (1)(b) are not given or served at the same time, the claim for compensation shall be deemed not to have been made until the day on which the remaining document is given to or served on the employer.

(3) A defect, omission or irregularity in a claim for compensation or a medical certificate under subsection (1)(b) shall not affect the validity of the claim and the claim shall be dealt with in accordance with this Part unless the defect, omission or irregularity relates to information which is not within the knowledge of or otherwise ascertainable by, the employer or his insurer.

83. SERVICE OF CLAIM

- (1) A claim for compensation may be given or served on an employer by -
 - (a) giving it to or serving it personally on the employer; or
 - (b) placing it in a properly addressed envelope and leaving it with a person who has apparently attained the age of 16 years at, or sending it by pre-paid post to the employer at, the employer's usual or last known place of residence or business.

(2) Subsection (1) is in addition to and not in derogation of sections 528, 529 and 530 of the *Companies (Northern Territory) Code*.

84. EMPLOYER TO FORWARD INCIDENT REPORT AND CLAIM

(1) An employer shall, immediately on receiving a claim for compensation, complete the employer's report section of the prescribed form of claim and, within 3 working days after receiving the claim -

- (a) where the employer is a self-insurer or is uninsured - forward a copy of the claim to the Authority;
- (b) in all other cases - forward the claim, and a copy, to his insurer; and
- (c) in all cases - retain a copy of the claim for his own records.

(2) An insurer who receives a claim forwarded under subsection (1) shall, within 2 working days after receiving it, forward a copy to the Authority.

(3) Notwithstanding sections 81 and 82, if a person making a claim for compensation becomes aware that the employer -

- (a) has not complied or is not likely to comply with subsection (1)(a) or (b);
- (b) is refusing to receive the claim;
- (c) cannot be identified;
- (d) cannot be found;
- (e) is dead; or
- (f) is a corporation which has been wound up,

he may lodge a claim for compensation with the relevant insurer or the Authority.

(4) Where under subsection (3) a person lodges a claim for compensation with the relevant insurer or the Authority -

- (a) the insurer shall give to the Authority a copy of the claim and accompanying documents; or
- (b) the Authority shall give to the relevant insurer the claim and accompanying documents,

within 3 working days after the insurer or Authority receives them.

(4) An employer who -

- (a) refuses to receive a claim for compensation; or

- (b) dismisses a worker from employment for the reason only that the worker has given or attempted to give to the employer or the Authority a claim for compensation,

is guilty of an offence.

Penalty for an offence against this section:

In the case of a body corporate - \$10,000.

In the case of a natural person - \$2,000.

Default penalty: In the case of a body corporate - \$500.

In the case of a natural person - \$100.

85. DECISION AS TO ELIGIBILITY FOR COMPENSATION

(1) An employer shall, within 7 working days after receiving a claim for compensation -

- (a) accept liability for the compensation;
- (b) accept liability for the compensation subject to the condition that the claimant will, within a specified time, provide such further information relating to the claim as the employer requires;
- (c) require further medical information to be provided; or
- (d) dispute liability for the compensation.

(2) Where an employer accepts liability for compensation claimed, he shall immediately advise the claimant in writing of that fact and -

- (a) in the case of a claim for weekly payments - commence those payments within 10 working days after the receipt of the claim;
- (b) in the case of a claim for a lump-sum payment of compensation - advise the claimant of the arrangement for paying the amount and pay the amount accordingly; and
- (c) in the case of a claim for a benefit other than a weekly payment or lump-sum payment - advise the worker of the arrangements for providing that benefit and provide the benefit accordingly.

(3) Where an employer accepts liability for compensation claimed subject to his being provided with further information within a specified time, he shall immediately advise the claimant in writing of the conditional acceptance and the arrangements he has made for paying the compensation or providing the benefit pending the receipt of that information, and pay the amount or provide the benefit accordingly.

(4) Where after the receipt of information required under subsection (1)(b) to be provided an employer disputes liability for the compensation, moneys paid, or the cost of a benefit provided, under subsection (1)(b) before the liability is disputed may be recovered in a court of competent jurisdiction as money had and received by the claimant.

(5) Where an employer accepts liability for compensation claimed subject to conditions and the conditions include a condition that the claimant provide to the employer further information or complete required documents, any payments to be made under the arrangements referred to in subsection (3) may, without prejudice to his liability under this Act, be discontinued by the employer 14 working days after his accepting liability until the information is provided or documents are completed.

(6) A payment referred to in subsection (2)(b), a benefit referred to in subsection (2)(c) and a payment or benefit referred to in subsection (3), shall be made or provided as soon as practicable after receipt of the claim.

(7) Where an employer neither accepts nor rejects liability for compensation claimed but requires further medical information to be provided, he shall immediately advise the claimant of that fact and the additional medical information required or the arrangements he has made for obtaining the information.

(8) Where information required under subsection (1)(b) or (c) is provided to an employer, subsections (1) and (2) and section 87 apply as if the receipt of the information were the receipt of the original application.

(9) Where an employer disputes liability for compensation claimed, he shall immediately advise the claimant, in writing, of that fact and the reasons for his decision.

(10) At the same time as he advises a claimant of a fact referred to in this section the employer shall give to the claimant a statement, in the prescribed form, indicating that the claimant has a right to commence proceedings before the Court for the recovery of compensation to which he is entitled.

86. APPLICATION TO ALTER LEVEL OF WEEKLY PAYMENTS

(1) A worker who is receiving weekly payments may apply to the employer for an increase or decrease in the level of weekly payments.

(2) An employer shall, within 14 days after receiving an application under subsection (1), accept or reject the application and -

(a) if the application is accepted - advise the worker of the decision; and

(b) if the application is rejected - advise the worker of the decision and the reasons for the rejection.

(3) If an application under subsection (1) is accepted, weekly payments at the new level shall commence within the period specified in subsection (2).

87. FAILURE TO DECIDE WITHIN SPECIFIED PERIOD

Where within the time specified in section 85(1) an employer does not dispute liability for compensation claimed, he shall, subject to section 85, be deemed to have accepted it.

88. WEEKLY PAYMENTS

(1) Unless otherwise agreed in writing by the worker, a weekly payment shall be made to the worker before the expiration of 7 days after the end of the week in respect of which it is payable or, where the worker is normally paid at intervals greater than one week, before the expiration of 7 days after the end of the period in respect of which he is normally paid.

Penalty: In the case of a body corporate - \$10,000.

In the case of a natural person - \$2,000.

Default penalty: In the case of a body corporate - \$500.

In the case of a natural person - \$100.

(2) A weekly payment may be made by post by properly addressing, prepaying and posting to the worker a letter containing a cheque or other monetary instrument for the amount of the weekly payment.

(3) A weekly payment made in accordance with subsection (2) shall be deemed to have been made when the letter was posted.

(4) The liability of a person under this Part to make a weekly payment of compensation to a worker is not satisfied until the worker receives the weekly payment.

89. LATE PAYMENT OF WEEKLY PAYMENTS

Where a person liable under this Part to make a weekly payment of compensation to a worker fails to make the weekly payment on or before the day on which he is required to do so, the worker shall, in respect of that weekly payment, be paid, in addition to any other payment required to be made under this Part, an amount represented by the formula -

$$A \times \frac{\text{the prescribed rate of interest}}{52} \times \frac{B}{52}$$

where -

A is the amount of that weekly payment payable to the worker; and

B is the number of weeks (with a part of a week being counted as a whole week) occurring within the period commencing immediately after the day on which payment of that weekly payment was due and concluding at the end of the day on which payment of that weekly payment is made.

90. RETURN TO WORK

Where a worker who has been receiving weekly payments for total incapacity returns to work with an employer other than the employer in whose employment the injury occurred or his employment or other circumstances change in such a way as is likely to affect his entitlement to, or the amount of, compensation, the worker shall immediately notify the employer in whose employment the injury occurred of the return to work or those changed circumstances.

Penalty: \$1,000 or imprisonment for 6 months.

91. MEDICAL EXAMINATIONS

(1) An employer may require a worker who has made a claim for compensation to submit at reasonable intervals to an examination by a medical practitioner provided and paid for by the employer.

(2) If a worker unreasonably refuses to have, or unreasonably obstructs, an examination under subsection (1), the Court may, on an application made by the employer within the prescribed time and in the prescribed manner and form, make an order suspending the worker's right to compensation until the examination takes place.

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(3) An application under subsection (2) shall be dealt with by the Court as expeditiously as the circumstances will allow, and sections 112 and 114 shall apply as they apply to appeals referred to in section 111(1).

(4) Subsection (3) shall not apply to or in relation to a worker who believes that a requirement under subsection (1) is unreasonable and applies to the Court for a review of the requirement.

PART VI - WORK HEALTH COURT

Division 1 - Preliminary

92. DEFINITIONS

In this Part, unless the contrary intention appears -

"Assistant Registrar" means an Assistant Registrar of the Court;

"Rules" means rules made under section 95.

Division 2 - Establishment and Jurisdiction

93. WORK HEALTH COURT

(1) There is established by this Act a court to be known as the Work Health Court.

(2) Each magistrate is a magistrate of the Court.

(3) A magistrate sitting alone shall constitute the Court.

(4) The Court is a court of record and shall have a seal which shall be affixed to all process issued out of the Court.

94. POWERS OF COURT

(1) The Court has power to hear and determine -

(a) claims for compensation under Part V and all matters and questions incidental to or arising out of such claims; and

(b) all other matters required or permitted by this Act to be referred to the Court for determination,

and such other powers as are conferred on it by or under this or any other Act.

(2) The Court may expand or abridge a time prescribed by or under this Part as it thinks fit.

95. RULES AND PROCEDURES

(1) The Chief Magistrate, within the meaning of the *Magistrates Act*, may make such rules and give such practice directions, not inconsistent with this Part -

- (a) regulating the practice and procedures of the Court, including the practice and procedures to be followed in the registry;
- (b) regulating and prescribing the awarding, scales and taxation of costs (including disbursements and witnesses' expenses); and
- (c) regulating and prescribing all matters and things incidental or relating to any such practice or procedure or to such costs,

as are necessary or convenient to be prescribed for the conduct of the business of the Court.

(2) An amount provided in respect of a matter in a scale of costs in the Rules shall not exceed an amount prescribed as costs in respect of the same or a similar matter under the *Supreme Court Act*.

(3) The Rules may impose or confer on the Registrar functions and powers in relation to the Court and proceedings before the Court and the Registrar shall perform those functions and may exercise those powers accordingly.

(4) Subject to this Part, the practice and procedures of the Court in relation to a matter within its jurisdiction are in the discretion of the Court.

96. ORDERS AND COMMISSIONS FOR EXAMINATION OF WITNESS

The Court may -

- (a) order the examination of a person on oath, orally or on interrogatories, before the Court or before the Registrar, an Assistant Registrar or other person, at any place within Australia;
- (b) order a commission or letters of request to be issued to take evidence;
- (c) by the same or a subsequent order, give any necessary directions touching the time, place and manner of the examination or taking of evidence; and
- (d) empower a party to a proceeding before it to give in evidence in the proceeding the evidence taken pursuant to an order under this section on such terms, if any, as the Court directs.

97. INCIDENTAL POWERS

In addition to any other powers it or he has under this Act, the Court or a magistrate has, in and in relation to a proceeding under this Act, except to the extent that the matter is specifically provided for under this Act, all the powers of a Local Court or a magistrate, as the case may be, under the *Local Court Act*, including the power to summon and examine witnesses, call for the production of documents or other things and dispose of documents or other things produced before or delivered to it or him.

98. REPRESENTATION BEFORE COURT

(1) A party to a proceeding before the Court may appear personally or be represented by a legal practitioner or by a person who the Court is satisfied is acting on behalf, and at the request, of the party.

(2) A legal practitioner or other person representing a party to a proceeding before the Court has the same protection and immunity as a legal practitioner representing a party in a proceeding before a Local Court.

99. WITNESSES

Subject to section 50, a witness summoned to attend or appearing at a hearing before the Court has the same obligations and protection, and shall be subject to the same liabilities, as a witness in a proceeding before a Local Court.

Division 3 - Registrar

100. REGISTRAR

The Minister shall, by notice in the *Gazette*, appoint a person to be the Registrar of the Court.

101. ASSISTANT REGISTRARS, &c.

(1) Subject to subsection (2), each clerk of a Local Court is an Assistant Registrar.

(2) Where the clerk of a Local Court is appointed under section 100 as the Registrar, the assistant clerk of that Local Court is an Assistant Registrar.

(3) A clerk of a Local Court is an Assistant Registrar notwithstanding that there is no Registrar appointed or holding office.

(4) An Assistant Registrar may, subject to the directions of the Registrar, exercise a power or perform a function of the Registrar.

(5) The Minister may appoint such other officers of the Court as he thinks fit.

102. REGISTRAR MAY EXERCISE CERTAIN POWERS OF COURT

(1) The Registrar may, subject to the directions of the Court, exercise prescribed powers of the Court and while exercising those powers he shall be deemed to constitute the Court.

(2) An order made or thing done by the Registrar while exercising a prescribed power of the Court shall be deemed to be an order of or thing done by the Court.

103. RECORDS OF COURT

(1) Each Assistant Registrar shall keep and maintain a register, in a form approved by the Chief Magistrate, in which he shall cause to be entered particulars of all proceedings instituted in his registry.

(2) An Assistant Registrar shall, as soon as practicable, forward to the Registrar a copy of each entry made in the register kept and maintained by him pursuant to subsection (1).

(3) The Registrar shall keep and maintain a register, in a form approved by the Chief Magistrate, in which he shall cause to be entered particulars of all proceedings instituted in the Court compiled from -

- (a) entries made in the register kept and maintained by him pursuant to subsection (1); and
- (b) copies of entries forwarded to him pursuant to subsection (2).

Division 4 - Claims for Compensation

104. APPLICATION

(1) A person who claims to be entitled to compensation liability for which is disputed under section 85(1)(d) may, within 28 days after receiving advice of that fact under section 85(7), commence proceedings before the Court for the recovery of that compensation.

(2) Proceedings for the recovery of compensation may be commenced before the Court by application in the prescribed manner and form or, where there is no manner or form prescribed, in such manner or form as the Court approves.

105. COURT LIST

(1) Each Assistant Registrar shall keep and maintain a list for the purposes of this Division.

(2) A proceeding shall, in the first instance, be set down for hearing before the Court by the appropriate Assistant Registrar entering particulars of the proceeding in his Court list.

106. PRELIMINARY CONFERENCE

(1) Before proceeding to hear a matter in the Court list the Court or a magistrate shall, within 28 days after the particulars of the proceeding are entered under section 105(2) in the Court list or as soon as practicable thereafter, hold a preliminary conference with the parties to the application.

(2) At a preliminary conference referred to in subsection (1), a party to the proceeding may appear in person or may be represented by any person.

(3) At a preliminary conference referred to in subsection (1) -

- (a) the applicant shall, as far as practicable, be in a position to indicate the precise extent, and all the particulars, of the claim; and
- (b) the employer shall, as far as practicable, be in a position to indicate the issues, if any, on which liability is denied and the grounds on which it is denied.

107. HOLDING OF PRELIMINARY CONFERENCE

(1) Subject to this Part, a preliminary conference shall be held by the Court or a magistrate expeditiously and informally.

(2) The Court or magistrate, at the holding of a preliminary conference, may -

- (a) subject to the agreement of the parties, determine the matter and questions at issue on such information, evidence and material as is placed before it and, except as provided by subsection (4), with or without hearing evidence on oath;
- (b) give such directions as it or he thinks necessary for the expeditious determination of the proceedings;
- (c) make, vary or revoke an interim determination of a party's entitlement to compensation on such information, evidence and material as is placed before it or him and, except as provided by subsection (4), with or without evidence on oath; or
- (d) of its own motion or on application by a party -
 - (i) adjourn the conference and fix a date for the adjourned conference;
 - (ii) fix a date for a formal determination of the application; or

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- (iii) fix a date after which either party may apply for a formal determination of the application,

or any combination of those things, and give leave, on such terms and conditions as it or he thinks fit, for a party to apply.

(3) For the purposes of, but without limiting the generality of, subsection (2)(b), directions given may relate to -

- (a) the service of documents;
- (b) the settling of issues for the hearing of the application;
- (c) dispensing with compliance, either in whole or in part, with the provisions of the *Evidence Act* and the rules of evidence at common law;
- (d) particulars of the application or answers to be provided;
- (e) the attendance of the parties to give evidence, whether or not on oath, at the preliminary conference or the hearing of an application;
- (f) the facilitating of agreement between the parties;
- (g) the giving of evidence and the calling of witnesses;
- (h) discovery and inspection;
- (j) settling interrogatories;
- (k) dispensing with the requirement and delivery of pleadings, making of discovery, delivery of interrogatories and other matters of practice and procedure;
- (m) the making of admissions in relation to questions involved in the action;
- (n) the admission into evidence of facts or documents;
- (p) expediting further hearings; and
- (q) time limits for pleadings.

(4) Where a party to a proceeding in the Court list requests that evidence be taken on oath, the Court or a magistrate shall take that evidence on oath.

108. RECORDING AGREEMENT

- (1) Where an agreement is made -
 - (a) for the payment of an amount of compensation;
 - (b) for the variation of a weekly payment of compensation; or
 - (c) in respect of any other matter relating to compensation,

a memorandum of the agreement in the form prescribed by the Rules shall be sent, in the manner prescribed by the Rules, by the employer or worker to the Registrar.

- (2) On receipt of the memorandum under subsection (1), the Registrar shall -

- (a) submit it to the Court; and
- (b) within 14 days, give notice in writing of the receipt of the memorandum to all persons who, in the opinion of the Court, have an interest in the agreement.

- (3) After the expiration of 21 days after the giving of the last of the notices under subsection (2)(b), the Court shall consider the memorandum and shall -

- (a) where it considers that by reason of -
 - (i) its inaccuracy;
 - (ii) the inadequacy of the amount;
 - (iii) the agreement having been obtained by fraud, undue influence or other improper means;
 - (iv) its being inconsistent with section 74; or
 - (v) for any other reason of justice,the memorandum ought not to be recorded - direct the Registrar not to record the memorandum; or
- (b) in any other case - direct the Registrar to record the memorandum on such terms as the Court thinks fit.

- (4) Where the Court gives a direction under subsection (3), it may make such order (including an order as to an amount already paid under the agreement) as it thinks fit.

(5) Subject to the Rules, the Registrar shall, on receiving a direction under subsection (3)(b) to do so, record the memorandum in a special register in accordance with the terms of that direction.

(6) A memorandum, on being recorded under subsection (5), is enforceable as if it were a determination of the Court.

(7) The Court may, at any time within 6 months after the recording of a memorandum under subsection (5), order that the record be removed from the special register on proof that the agreement was obtained by fraud, undue influence or other improper means, and the Registrar shall remove the record accordingly.

(8) Where the Court makes an order under subsection (7), it may make such further orders (including an order as to an amount already paid under the agreement) as it thinks fit.

(9) The Court may, at any time, rectify a special register.

109. UNREASONABLE DELAY IN SETTLEMENT OF COMPENSATION

(1) If, in a proceeding before it, the Court is satisfied that the employer has caused unreasonable delay in accepting a claim for or paying compensation, it may -

(a) where it awards an amount of compensation against the employer - order that interest on that amount at a rate specified by it be paid by the employer to the person to whom compensation is awarded; and

(b) if, in its opinion, the employer would otherwise be entitled to have costs awarded to him - order that costs be not awarded to him.

(2) Where a weekly or other payment due under this Act to a person by an employer has not been made in a regular manner or in accordance with the normal manner of payment, the Court may, on an application in the prescribed form made to it by the person, order that interest at a rate specified by it be paid by the employer to the person in respect of the amount and period for which the weekly or other payment was or is delayed.

(3) Where the Court orders that interest be paid under subsection (1) or (2), it may, in addition, order that punitive damages of an amount not exceeding 100% of such interest be paid by the employer to the person to whom compensation is awarded or to whom the weekly or other payment due under this Act is payable.

110. COSTS

In awarding costs in a proceeding before the Court, the Court shall take into account the efforts of the parties made before or after the making of the application under section 104 in attempting to come to an agreement about the matter in dispute and it may, as it thinks fit, include as costs in the action such reasonable costs of a party incurred in or in relation to those efforts before the making of the application and in the relevant preliminary conference, if any, under section 107.

Division 5 - Appeals to and Review by Court

111. APPLICATION TO COURT

(1) A person who has a right to apply to the Court for a ruling or a right of appeal under this Act, or a right of review under this Act may, within the prescribed time and in the prescribed manner and form (or, where there is no manner or form prescribed, in such manner or form as the Court approves), apply to the Court for the ruling or a determination of the appeal or matter.

(2) An application referred to in subsection (1) shall be dealt with by the Court as expeditiously as the circumstances will allow.

112. APPEALS AND DISPUTES

Subject to this Act, the Court shall consider and determine all applications and appeals referred to in section 111(1) in such manner as it thinks fit.

113. REVIEW OF DETERMINATION OF AUTHORITY

The Court may hear an application relating to a review referred to in section 111(1) and may determine the application by -

- (a) confirming the determination of the Authority;
- (b) disallowing that determination; or
- (c) substituting its determination for that of the Authority.

114. ENFORCEMENT OF DECISION

(1) The Court, in relation to an appeal or application referred to in section 111 or an appeal under section 116, may make such orders (including orders as to costs) and give such direction, not inconsistent with this Act, as it thinks are reasonably necessary to enforce its decisions and determinations.

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(2) The Authority, all persons employed by or in the service of the Authority and all persons affected by a decision or determination of the Court taken or made under this Division or an order or direction referred to in subsection (1) shall do all things reasonably necessary to give effect to the relevant decision or determination.

Division 6 - Reservations of Points of Law and Appeals to Supreme Court

115. POINTS OF LAW MAY BE RESERVED FOR CONSIDERATION OF SUPREME COURT

(1) The Court may, in its discretion, reserve a question of law arising out of a proceeding under this Act for the consideration of the Supreme Court and state a special case for the opinion of the Supreme Court.

(2) The Supreme Court shall deal with a special case referred to it under subsection (1) according to the practice of the Supreme Court on such special cases and may make such order thereon (including an order as to the costs of the proceedings in the Supreme Court and in the Work Health Court) as it thinks fit.

(3) The Supreme Court may send a special case referred to it under subsection (1) back to the Court for amendment, or may itself amend it.

(4) The Court shall make a determination in respect of a matter referred under subsection (1) to the Supreme Court in conformity with a certificate of the Supreme Court.

116. APPEALS

(1) A party to a proceeding before the Court who is aggrieved by a decision or determination of the Court may appeal against the decision or determination on a question of law to the Supreme Court within the time and in the manner prescribed by the Rules of the Supreme Court.

(2) The Supreme Court shall decide the matter of appeal under this section and may either dismiss the appeal or reverse or vary the decision or determination appealed against and may make such order as to the costs of the appeal or the proceeding before the Court, or both, as it thinks fit.

PART VII - INSURANCE

Division 1 - Preliminary

117. DEFINITIONS

In this Part, unless the contrary intention appears -

"approved insurer" means an insurer approved under section 119(2);

"former Fund" means the Fund established under the repealed Act;

"Fund" means the Nominal Insurer's Fund established under section 162;

"Nominal Insurer" means the Nominal Insurer established by section 150.

118. APPLICATION OF PART

(1) This Part, other than this section, does not apply to or in relation to -

- (a) the Crown in right of the Territory; or
- (b) a prescribed statutory corporation which has not been notified under subsection (2).

(2) The Treasurer may, by notice in writing to a prescribed statutory corporation, notify it that this Part applies to and in relation to it.

(3) In this section "prescribed statutory corporation" has the same meaning as it has in the *Financial Administration and Audit Act*.

Division 2 - Approved Insurers and Self-insurers

119. APPLICATION FOR APPROVAL AS APPROVED INSURER

(1) An insurer may apply in writing to the Authority for approval by the Authority for the purposes of this Act.

(2) The Authority may, in its absolute discretion, by notice in writing to the insurer, approve an insurer who has under subsection (1) applied for approval, or refuse to approve the insurer.

(3) Without limiting its discretion under subsection (2), the Authority shall, before approving or refusing to approve an insurer, take into consideration -

- (a) the insurer's ability to provide the necessary insurance service, including its ability to meet time limits imposed by this Act;
- (b) the likely market share of the insurer and its likely effect on its cost efficiency in supplying the service;
- (c) the financial viability of the insurer;
- (d) the insurer's ability to provide the statistical and other information required or likely to be required under this Act; and
- (e) such other matters as are prescribed.

120. APPLICATION FOR APPROVAL TO SELF-INSURE

(1) An employer may apply in writing to the Authority for approval to self-insure for the purposes of this Act.

(2) The Authority may, in its absolute discretion, by notice in writing to the employer, approve an employer who has under subsection (1) applied for approval, or refuse to approve the employer.

(3) Without limiting its discretion under subsection (2), the Authority shall, before approving or refusing to approve an employer to self-insure, take into consideration -

- (a) the employer's ability to provide the necessary service;
- (b) the financial viability of the employer;
- (c) the employer's ability to provide the statistical and other information required or likely to be required under this Act; and
- (d) such other matters as are prescribed.

121. PERIOD AND RENEWAL OF APPROVAL TO INSURE OR SELF-INSURE

(1) Subject to this Part, where an insurer or employer is approved under section 119 or 120, the approval shall have effect for such period, not exceeding 12 months, as is specified in the notice of approval.

(2) An approved insurer or self-insurer may, not later than 42 days before the expiration of his approval, apply in writing to the Authority for a renewal of that approval.

(3) The Authority -

- (a) shall consider an application under subsection (2) as if it were an application under section 119 or 120, as the case may be; and
- (b) may, in its absolute discretion, renew or refuse to renew the approval.

122. ADDITIONAL INFORMATION TO BE SUPPLIED

(1) The Authority may direct an insurer or employer who has made an application under section 119 or 120, or an approved insurer or self-insurer, to provide it with such information, and at such times, as it thinks fit relating to the matters referred to in section 119(3) or 120(3) or for the purposes of 121(3).

(2) An insurer, employer, approved insurer or self-insurer referred to in subsection (1) shall not refuse or fail to comply with a direction under that subsection to the extent that he is capable of complying with it.

Penalty: \$15,000.

123. NOTICE OF REFUSAL

Where the Authority refuses under section 119 or 120 to approve an insurer or an employer, or under section 121 to renew the approval of an approved insurer or a self-insurer, it shall give to the insurer, employer, approved insurer or self-insurer, in writing, its reasons for so refusing.

124. REVOCATION OF APPROVAL

(1) The Authority may at any time, in its absolute discretion, by notice in writing to an approved insurer or self-insurer, revoke the insurer's or self-insurer's approval under this Division.

(2) A notice under subsection (1) shall be accompanied by a statement of the Authority's reasons for revoking the approval.

(3) As soon as practicable after it revokes the approval of an approved insurer or self-insurer the Authority shall cause to be published in a newspaper circulating throughout the Territory a notice of that fact.

(4) The revocation under this section of an approval shall not -

- (a) annul a policy of insurance issued before the revocation; or
- (b) diminish or otherwise affect the liability of the insurer under a policy referred to in paragraph (a) or of an employer in relation to his status under this Act as a self-insurer before the revocation.

125. OFFENCE BY INSURERS

(1) A person who is not an approved insurer shall not -

- (a) advertise or hold himself out to be -
 - (i) an approved insurer; or
 - (ii) a person who undertakes workers compensation insurance business in the Territory; or

- (b) undertake or offer to undertake workers compensation insurance business in the Territory.

Penalty: \$25,000.

(2) All moneys received in respect of the conduct of workers compensation insurance business in the Territory by a person convicted of an offence against subsection (1) are forfeited to the Territory.

(3) Nothing in this section affects the liability of a person by or under a contract of insurance or indemnity entered into by him.

Division 3 - Workers Compensation Insurance

126. COMPULSORY INSURANCE

(1) Every employer who is not a self-insurer shall obtain from an approved insurer a policy of insurance or indemnity for the full amount of his liability under this Act (other than Part IV) to all workers employed by him and for an amount of not less than the prescribed amount in respect of his liability independently of this Act for an injury to a worker in his employ, and shall maintain such policy in force.

(2) In a prosecution for an offence of contravening or failing to comply with subsection (1) in which it is alleged that an employer was not, at a particular time, the holder of a policy of insurance or indemnity or a self-insurer, the allegation of that fact in the complaint is prima facie evidence of that fact.

(3) An approved insurer shall not, except with the consent in writing of the Authority, refuse to issue or renew a policy of insurance or indemnity referred to in subsection (1) to an employer who has tendered the premium for such a policy and who has complied with the approved conditions.

(4) An approved insurer shall ensure that each policy of insurance or indemnity referred to in subsection (1) issued by him is in accordance with Schedule 2 and does not contain provisions other than those in that Schedule except in relation to the employer's liability at common law or under any other law of the Territory and which are appropriate in the particular case.

(5) A contravention of subsection (4) does not annul the policy of insurance or diminish or affect the liability of the insurer to the person insured under the policy.

(6) Notwithstanding a contravention of section 125(1)(b), an insurer under a policy of insurance or indemnity referred to in subsection (1) is liable under the policy as if the policy were in accordance with subsection (4).

(7) A person who contravenes or fails to comply with this section is guilty of a regulatory offence.

Penalty: \$15,000.

Default penalty: \$2,000.

(8) Where an employer is convicted of an offence against subsection (7) for failing to comply with subsection (1), the court may, in addition to a penalty imposed under subsection (7), impose a penalty not exceeding an amount equal to the amount of the premium that would have been payable by that employer if he had obtained, in respect of the period or, where that period exceeds 2 years the last 2 years of the period, during which he has failed to comply with subsection (1), a policy of insurance or indemnity in accordance with that subsection.

127. SUBCONTRACTING

(1) Where a person (in this section referred to as the "principal contractor"), in the course of or for the purpose of his trade or business, contracts with another person (in this section referred to as "the contractor") for the execution by or under the contractor of the whole or a part of any work undertaken by the principal contractor, the principal contractor shall be liable to pay to a worker employed in the execution of the work compensation under this Act which he would have been liable to pay if that worker had been immediately employed by him.

(2) Where compensation is claimed from or proceedings are taken against a principal contractor by a worker, a reference in this Act to the worker's employer shall be construed as including a reference to the principal contractor but any amount of compensation payable shall be calculated by reference to the earnings of the worker under the employer by whom he is immediately employed.

(3) Where the principal contractor is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this section.

(4) Nothing in this section shall be construed as preventing a worker recovering compensation from the contractor instead of the principal contractor.

128. JOINT POLICIES

(1) Where 2 or more persons may become liable under this Act in respect of an injury to the same person and they have obtained from an approved insurer a joint policy of insurance or indemnity in respect of their liability, section 126(1) is deemed to have been complied with by each of them.

(2) In respect of a joint policy referred to in subsection (1), an approved insurer shall not charge a premium in excess of prevailing rates for insurance of an employer's liability in respect of workers engaged in the same trade, occupation, calling or industry.

129. PRINCIPAL CONTROLLED SITES

(1) Where a person (in this section referred to as "the principal") intends to contract or has contracted, other than under a contract of service or apprenticeship, with another person (in this section referred to as "the contractor") for work to be done by or on behalf of the contractor, the principal may obtain from an approved insurer a policy of insurance or indemnity (in accordance with Schedule 2, with the necessary changes) which, in relation to the work specified in the policy of insurance or indemnity as work to be done by or on behalf of that contractor, covers -

- (a) the principal's liability under this Act;
- (b) the contractor's liability under this Act; and
- (c) the liability under this Act of those persons with whom the contractor intends to contract or has contracted in order to fulfil his contractual obligations with the principal.

(2) It is a defence to a prosecution for an offence against section 126 where the defendant satisfies the court that his liability under this Act is the subject of a policy of insurance or indemnity under subsection (1).

130. STATEMENT OF PAYMENTS TO WORKERS TO BE SUPPLIED TO INSURER

(1) Subject to subsection (4), an employer applying to an insurer for the issue or renewal of a policy of insurance or indemnity (for which purpose "policy of insurance or indemnity" includes a cover note) against liability under this Act shall -

- (a) not later than 28 days after -
 - (i) the issue of the policy; or
 - (ii) the date for renewal of the policy,as the case may be, give to the insurer a statement containing the information referred to in subsection (3); and
- (b) not later than 28 days after the expiration of each such period of insurance or indemnity, supply the insurer with a full and correct statement of the amounts actually paid by him during the period.

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(2) An employer who contravenes or fails to comply with subsection (1) is guilty of a regulatory offence.

Penalty: \$2,000.

(3) An employer shall include in a statement referred to in subsection (1)(a) -

- (a) a proper estimate of the payments that will be payable by him during the insurance or indemnity period to the workers in his employ in respect of whom the employer would be entitled to claim under the policy;
 - (b) a statement showing the trade, occupation and calling of such workers; and
 - (c) such other information as is prescribed.
- (4) Where the Regulations -
- (a) prescribe a form in or to the effect of which statements referred to in subsection (1) shall be supplied; or
 - (b) require the statement to be verified in a specified manner,

a statement shall not be sufficient for the purposes of that subsection unless, in addition to containing the information referred to in subsection (3), it is so supplied or verified.

(5) An employer shall keep full and correct records of, -

- (a) all wages paid to;
- (b) the trade, occupation or calling of; and
- (c) such other matters as are prescribed relating to wages paid to,

workers employed by him.

Penalty: \$5,000.

(6) An employer shall, for not less than 7 years, retain in the Territory the records referred to in subsection (5).

(7) An employer who fails to comply with subsection (6) is guilty of a regulatory offence.

Penalty: \$200.

131. PAYMENT OF PREMIUMS

(1) Where, in respect of a policy of insurance or indemnity against liability under this Act -

- (a) the insurance or indemnity period is 12 months; and
- (b) the premium payable is more than \$500 or, where some other amount is prescribed, more than that other amount,

the employer may, in such manner as is agreed on between himself and the insurer or, in default of agreement, as is prescribed, elect to pay the premium by 4 instalments, the several instalments being payable on dates that are 1, 3, 5 and 7 months after service on the employer of a demand or request by the insurer for payment of the premium.

(2) An instalment referred to in subsection (1) in respect of a premium referred to in that subsection shall be -

- (a) due on the dates that are 1, 3, 5 and 7 months after service on the employer of a demand or request for payment of the premium; and
- (b) equal to 25% of the premium.

(3) Where an employer -

- (a) has not elected under subsection (1) to pay a premium referred to in that subsection by instalments and fails to pay the full amount of the premium within one month after service on him of a notice that payment of the premium is due;
- (b) has elected under subsection (1) to pay a premium referred to in that subsection by instalments and fails to pay an instalment by the due date for the instalment; or
- (c) fails to pay an adjustment of a premium referred to in subsection (1) within one month after service on him of a notice that payment of the amount of the adjustment is due,

then -

- (d) in the case referred to in paragraph (a) - the full amount of the premium referred to in that paragraph;
- (e) in the case referred to in paragraph (b) - the balance of the premium referred to in that paragraph unpaid or, where no instalment has been paid, the full amount of that premium; and

- (f) in the case referred to in paragraph (c) - the amount of the adjustment referred to in that paragraph,

bears interest until payment is made (except to the extent that payment of interest is waived by the insurer) at the prescribed rate and is recoverable with interest as a debt due and payable.

132. RECOVERY OF COMPENSATION FROM INSURER

- (1) Where -
 - (a) a claim has been made against an employer that the employer is liable to pay compensation;
 - (b) in relation to the claim, the employer has agreed to pay compensation or the liability of the employer to pay compensation has been established in accordance with this Act;
 - (c) the employer is entitled to be indemnified against his liability to pay the compensation under a policy of insurance or indemnity obtained in accordance with this Act; and
 - (d) the employer defaults in payment of an amount of the compensation for a period exceeding one month,

the person entitled to the compensation may make a claim against the approved insurer of the employer for payment of the amounts of compensation payable and to become payable.

(2) A claim under subsection (1) shall be made within one month after the right to make the claim arose or within such further time as the Court, on an application made before or after the expiration of that period of one month, allows.

(3) The Court may allow such further time for the making of a claim under subsection (1) as it thinks fit and the claim may be made accordingly.

(4) An approved insurer shall, in writing to an employer who has defaulted in payment of the compensation, give notice of the making of a claim under subsection (1).

133. PAYMENTS BY APPROVED INSURER

(1) Where a person makes a claim against an approved insurer in accordance with section 132, the approved insurer shall pay to the person the compensation payable at the date of the claim or becoming payable after that date.

(2) An amount payable to a person by an approved insurer is a debt due and payable by the insurer.

134. EFFECTS OF PAYMENT BY APPROVED INSURER

Where an approved insurer pays an amount under section 133 in respect of a liability of an employer, the payment operates to the extent of the payment to discharge -

- (a) the liability of the employer to the person entitled to the compensation; and
- (b) the liability, if any, of the approved insurer to the employer.

135. ACT OF EMPLOYER NOT DEFENCE OF APPROVED INSURER

(1) It shall not be a defence by an approved insurer to a claim under section 132 that he is not liable under the policy of insurance or indemnity by reason of an act of the employer who has defaulted in payment of the compensation.

(2) Without limiting the generality of subsection (1), it shall not be a defence by an approved insurer to a claim under section 132 that he is not liable under the policy of insurance or indemnity by reason of the fact that -

- (a) the policy was obtained by a false statement or misrepresentation or non-disclosure, whether fraudulent, material or otherwise;
- (b) the employer who is insured under the policy has committed a breach of, or has failed to comply with, a term, condition or warranty of that policy; or
- (c) the employer who is insured under the policy has committed a breach of, or has failed to comply with, a provision of this Act or a law in force in the Territory relating to the employment of workers.

136. RECOVERY BY APPROVED INSURER FROM EMPLOYER

(1) Subject to subsection (2), an approved insurer may, in addition to any other right or remedy he may have, recover from an employer referred to in section 132(1) so much of -

- (a) an amount which the approved insurer has paid pursuant to section 133; and
- (b) the cost of expenses reasonably incurred by the approved insurer,

as the approved insurer has paid under or in consequence of a policy of insurance or indemnity where there has been -

- (c) a false statement or misrepresentation or non-disclosure in obtaining the policy; or
 - (d) a breach by that employer of a term, condition or warranty of the policy, a provision of this Act or a law in force in the Territory relating to the employment of workers or a failure by that employer to comply with such a term, condition, warranty or provision.
- (2) An approved insurer shall not be entitled to recover moneys under subsection (1) unless the court in which the proceedings for recovery of the moneys are taken is satisfied -

- (a) where there has been a false statement or misrepresentation or non-disclosure in obtaining the policy - that the false statement or misrepresentation or non-disclosure, whether fraudulent or otherwise, was in relation to some fact or thing of such a nature as would have justified the approved insurer charging a higher premium in respect of the policy than the premium paid or payable by the employer; or
- (b) where there has been a breach of or failure to comply with a term, condition, warranty or provision referred to in subsection (1)(d) - that the breach or failure was such that it contributed materially to the circumstances in which the approved insurer agreed to pay or otherwise became liable to pay the moneys sought to be recovered.

137. DEFAULT OF APPROVED INSURER

- (1) Where -
 - (a) a claim has been made against an employer that he is liable to pay compensation under this Act, or damages otherwise than under this Act, in respect of an injury, incapacity or death;
 - (b) in relation to the claim, the employer has agreed to pay compensation or damages, as the case may be, or the liability of the employer to pay compensation or damages has or has not been established or has been declined;
 - (c) the employer is entitled to be indemnified against his liability to pay the compensation, or all or part of the damages under a policy of insurance or indemnity obtained in accordance with this Act; and

(d) in the case -

- (i) of an amount of compensation or damages agreed to be paid or in respect of which the employer's liability to pay has been established - an amount payable under the policy of insurance or indemnity referred to in paragraph (c) is not paid and has remained unpaid for a period of one month;
- (ii) where the liability of an employer to pay compensation or damages claimed has not been established within one month after notice of a worker's claim has been lodged with the relative approved insurer; or
- (iii) where the liability of an employer to pay compensation or all or any damages claimed has been declined,

the Nominal Insurer shall, subject to subsection (3), have the same rights, powers, duties and liabilities in respect of the claim as the approved insurer would have had if the approved insurer had provided the indemnity referred to in paragraph (c).

(2) Where an approved insurer is unable to make a payment required to be made under a policy of insurance or indemnity issued in accordance with this Act in respect of a claim to which subsection (1) applies, the approved insurer or a person holding in relation to the approved insurer the office of liquidator, receiver, receiver and manager or official manager shall -

- (a) forthwith notify the Nominal Insurer of the claim; and
- (b) make available to the Nominal Insurer any books or papers relevant to the claim, including all agreements, contracts, treaties or other documents relating to reinsurance arrangements in effect at the time of the injury, incapacity or death giving rise to the claim.

(3) Where an approved insurer is unable to make any or complete payment required to be made under a policy of insurance or indemnity issued in accordance with this Act in respect of a claim to which subsection (1) applies and the Nominal Insurer has made a payment in respect of that claim -

- (a) the Nominal Insurer has the right to subrogation in respect of all rights that the employer may have against any person in relation to the occurrence that gave rise to the claim for compensation or damages, as the case may be;

- (b) the right to subrogation shall vest in the Nominal Insurer to the exclusion of all other rights to subrogation that would otherwise exist in favour of the approved insurer or the person, if any, holding in relation to the approved insurer the office of liquidator, receiver, receiver and manager or official manager, whether arising under a law in force in the Territory or the policy of insurance or indemnity under this Act; and
- (c) all rights which the approved insurer has to receive payments under an agreement, contract, treaty or other document relating to reinsurance in respect of a claim referred to in subsection (1) shall be deemed to be assigned to the Nominal Insurer from the date that the Nominal Insurer first makes a payment in respect of that claim, to the exclusion of any person holding in relation to the approved insurer the office of liquidator, receiver, receiver and manager or official manager, notwithstanding any rule of law or statutory provision to the contrary.

138. POLICIES DEEMED TO BE CANCELLED IN CERTAIN CASES

(1) Where an employer had a policy of insurance or indemnity under this Act with an approved insurer immediately before -

- (a) the insurer's approval as an approved insurer was revoked under section 124; or
- (b) a liquidator, receiver, receiver and manager or official manager was appointed for the insurer under a law relating to the registration of bodies corporate in the Territory or in a State or another Territory of the Commonwealth in which the insurer was incorporated,

and the employer subsequently took out a policy of insurance or indemnity under this Act with another approved insurer, the first-mentioned policy of insurance or indemnity shall be deemed to have been duly cancelled at the time that the new policy became effective.

(2) In a case referred to in subsection (1), the employer is entitled to recover from his former insurer, as a debt due and payable, the amount of all unearned premiums paid by him to the former insurer.

139. INSPECTION OF POLICIES

(1) The Authority may, by notice in writing, require an employer to -

- (a) produce for inspection a policy of insurance or indemnity indemnifying him against his liability under this Act; and

- (b) furnish such particulars in relation thereto as the Authority thinks fit.

(2) A notice under subsection (1) may be served on an employer in the same manner as a claim for compensation may be given or served under section 83.

*Division 4 - Premiums Monitoring Committee and
Premium Rates*

140. DEFINITIONS

In this Division -

"Chairman" means the Chairman of the Committee;

"Committee" means the Premiums Monitoring Committee;

"member" means a member of the Committee.

141. PREMIUMS MONITORING COMMITTEE

(1) There shall be a committee by the name of the Premiums Monitoring Committee.

(2) The Committee shall consist of the Chief Executive Officer or a person in the employ of the Authority nominated by him, who shall be its Chairman, and not more than 7 other members (one of whom shall be an actuary) appointed by the Minister.

(3) Before appointing the members of the Committee the Minister shall, by notice in the Gazette, advertise his intention to make the appointments and invite any organization claiming to represent the interests of employers, workers or insurers to submit to him the name or names of a person or persons it recommends should be appointed as a member or members.

(4) Without limiting his discretion under this section, the Minister shall, before appointing a person to be a member, consider all recommendations made to him as the result of an advertisement under subsection (3).

142. PERIOD OF APPOINTMENT

Subject to this Division, a member (other than the Chairman) holds office for such period, not exceeding 2 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

143. RESIGNATION OF MEMBERS

A member may resign his office by writing signed by him and delivered to the Minister.

144. DISMISSAL OF MEMBERS

(1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) Where a member -

(a) is absent, except on leave granted by the Committee, from 3 consecutive meetings of the Committee; or

(b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the Minister shall terminate the appointment of the member.

145. FUNCTIONS AND POWERS OF COMMITTEE

(1) The functions of the Committee are to -

(a) monitor standard premium rates offered by insurers writing workers compensation insurance in the Territory;

(b) receive submissions from persons relating to premium rates charged for workers compensation insurance policies in the Territory or elsewhere;

(c) monitor and publish data on overall underwriting results; and

(d) advise the Minister on the basis of its consideration of information obtained by it.

(2) The Committee has such powers as are necessary to enable it to carry out its functions or as are conferred on it by or under this or any other Act.

146. AUTHORITY TO PROVIDE INFORMATION TO COMMITTEE

The Authority shall provide the Committee with such information in its possession as is reasonably necessary to enable the Committee to perform its functions.

147. OBTAINING OF INFORMATION BY COMMITTEE

(1) The Committee may, by notice in writing by its Chairman, require a person to furnish to it such information as it reasonably requires to enable it to carry out its functions.

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(2) A person required under subsection (1) to furnish information who, without lawful excuse, refuses or fails to furnish the information within the time specified in the notice under that subsection or such further time as the Committee allows, is guilty of an offence.

Penalty: In the case of a body corporate - \$1,000.

In the case of a natural person - \$500.

Default penalty: In the case of a body corporate - \$100.

In the case of a natural person - \$50.

148. MEETINGS OF COMMITTEE

(1) The Chairman shall call such meetings of the Committee as are necessary for the exercise of its powers and the performance of its functions.

(2) The Minister may, at any time, direct the Chairman to convene a meeting of the Committee and the Chairman shall convene a meeting in accordance with that direction.

(3) The Chairman shall preside at all meetings of the Committee at which he is present and, in the absence of the Chairman from a meeting, the members present shall elect one of their number to preside at the meeting.

(4) At a meeting of the Committee -

(a) 50% of the members for the time being holding office constitute a quorum;

(b) questions arising shall be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the Chairman or other member presiding has a casting vote as well as a deliberative vote; and

(c) subject to this Act, the Committee shall determine the procedure to be followed at or in connection with the meeting.

(5) The Committee shall keep records of its meetings.

Division 5 - Nominal Insurer

149. DEFINITIONS

In this Division, unless the contrary intention appears -

"alternate member" means a person appointed under section 152 as an alternate member for a member;

"member" means a member of the Nominal Insurer and includes an alternate member while he is acting as a member;

"nominated member" means a member appointed on the nomination of approved insurers and self-insurers.

150. ESTABLISHMENT OF NOMINAL INSURER

(1) There is established by this Act a corporation by the name of the Nominal Insurer.

(2) The Nominal Insurer -

(a) is a body corporate with perpetual succession;

(b) shall have a common seal; and

(c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Nominal Insurer affixed to a document and shall presume that it was duly affixed.

151. COMPOSITION OF NOMINAL INSURER

The Nominal Insurer shall consist of 4 members appointed by the Minister of whom -

(a) 3 shall be appointed on the nomination, if any, of the approved insurers and self-insurers or a majority of them; and

(b) one shall be an employee within the meaning of the *Public Service Act*.

152. ALTERNATE MEMBER

(1) The Minister may appoint an employee within the meaning of the *Public Service Act* to be an alternate member for the member appointed under section 151(b).

(2) During the absence from the Territory of the member appointed under section 151(b) or where for any other reason he is unable to perform his duties as a member, the alternate member appointed under subsection (1) shall have all the functions and powers of that member and shall be counted towards a quorum at a meeting of the Nominal Insurer.

153. PERIOD OF APPOINTMENT

Subject to this Division, a member holds office for such period, not exceeding 3 years, as is specified in the instrument of his appointment but is eligible for reappointment.

154. CHAIRMAN

(1) Subject to subsection (2), the Minister shall appoint a person who is, or is to be, a nominated member to be the Chairman of the Nominal Insurer.

(2) The appointment of the Chairman shall be made on the nomination of the approved insurers and self-insurers or a majority of them or, in default of such a nomination, directly by the Minister.

155. RESIGNATION

A member may resign his office by writing signed by him and delivered to the Minister.

156. DISMISSAL OF MEMBERS

(1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) Where a member -

(a) is absent, except on leave granted by the Nominal Insurer, from 3 consecutive meetings of the Nominal Insurer; or

(b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the Minister shall terminate the appointment of the member.

157. POWERS AND FUNCTIONS

The Nominal Insurer shall perform such functions and may exercise such powers as are imposed or conferred on it by or under this Act.

158. DISCLOSURE OF INTEREST

(1) A member or alternate member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Nominal Insurer otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Nominal Insurer.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Nominal Insurer and the member or alternate member -

(a) shall not, while he has that interest, take part after the disclosure in any deliberation or decision of the Nominal Insurer in relation to that matter; and

(b) shall be disregarded for the purpose of constituting a quorum of the Nominal Insurer in relation to that matter.

159. DELEGATION

(1) The Nominal Insurer may, by instrument in writing, delegate to a person all or any of its powers and functions under this Act other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Nominal Insurer.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Nominal Insurer.

160. MEETINGS OF NOMINAL INSURER

(1) The Chairman shall call such meetings of the Nominal Insurer as are necessary for the exercise of its powers and the performance of its functions.

(2) The Chairman shall preside at all meetings of the Nominal Insurer at which he is present and, in the absence of the Chairman from a meeting of the Nominal Insurer, the members present shall elect one of their number to preside at the meeting.

(3) At a meeting of the Nominal Insurer -

(a) 3 members constitute a quorum;

- (b) questions arising shall be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the member presiding has a casting vote as well as a deliberate vote; and
- (c) subject to this Act, the Nominal Insurer shall determine the procedure to be followed at or in connection with the meeting.
- (4) The Nominal Insurer shall keep a record of its meetings.

161. VALIDITY OF ACTS OR DECISIONS OF NOMINAL INSURER

The exercise of a power of or the performance of a function by the Nominal Insurer is not affected by reason only of there being -

- (a) a defect or irregularity in or in connection with the appointment of a member; or
- (b) a vacancy in the membership of the Nominal Insurer, including a vacancy arising because of the failure to appoint a member.

Division 6 - Nominal Insurer's Fund

162. NOMINAL INSURER'S FUND

(1) The Minister shall establish a fund to be known as the Nominal Insurer's Fund.

(2) The Fund shall be administered by the Nominal Insurer.

- (3) The Fund shall consist of -
 - (a) the balance of the former Fund;
 - (b) contributions by approved insurers and self-insurers paid under section 164(3);
 - (c) moneys recovered by or on behalf of the Nominal Insurer in the performance of its functions and the exercise of its powers;
 - (d) the interest from time to time accruing from the investment of moneys standing to its credit;
 - (e) all moneys paid into it in accordance with section 177; and
 - (f) such other moneys as are lawfully paid into it.

163. PAYMENTS OUT OF FUND

There shall, from time to time, be paid out of the Fund -

- (a) the amount of all claims, including costs allowed or established against the Nominal Insurer, in accordance with this Act or the repealed Act;
- (b) the costs and expenses of its administration, including the costs and expenses of exercising the powers and performing the functions of the Nominal Insurer, the legal expenses incurred by the Nominal Insurer in applications to the Court or otherwise incurred in relation to the Fund or the former Fund; and
- (c) such other moneys as may lawfully be paid out of it.

164. ESTIMATES AND CONTRIBUTIONS TO FUND

(1) The Nominal Insurer shall, as soon as practicable in each financial year -

- (a) make an estimate of the total of the amounts already paid and the amounts to be paid from the Fund during that financial year;
- (b) determine what amounts, if any, shall be set aside as provision to meet expenditure from the Fund in future years, and specify for what purpose or purposes each such provision is being made;
- (c) make an estimate of the total amounts, including the amounts already received, to be received into the Fund during that financial year, other than contributions from approved insurers and self-insurers under this section;
- (d) determine the total amount to be contributed under this section to the Fund during that financial year by approved insurers and self-insurers, after having regard to the amount standing to the credit of the Fund at the beginning of the year, including any amounts set aside in earlier years as provision to meet expenditure in later years, and the amount estimated to be received into the Fund during the year otherwise than from approved insurers and self-insurers under this section; and
- (e) submit in writing to the Minister the estimates and determinations of the provisions referred to in paragraph (b) and the amount to be contributed to the Fund by approved insurers and self-insurers.

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(2) The estimates and determinations referred to in subsection (1) shall not have force or effect until they are approved by the Minister.

(3) Each approved insurer and self-insurer shall, in the year which commences 1 July 1986 and in each subsequent financial year, contribute to the Fund an amount that is equal to a percentage, determined by the Nominal Insurer in accordance with this section, of -

(a) in the case of an approved insurer - the premium income (whether received by or owing to the insurer) of the approved insurer in respect of policies of insurance or indemnity effected with the approved insurer by employers in the preceding financial year for the purpose of complying with section 126(1); and

(b) in the case of a self-insurer - the premium that would have been payable by the self-insurer if he had obtained, in respect of that year, or the part of that year during which he was a self-insurer, a policy in accordance with section 126(1).

(4) The percentage determined under subsection (3) by the Nominal Insurer shall be -

(a) such as, in the opinion of the Nominal Insurer, will be sufficient to yield the total amount to be contributed to the Fund by approved insurers and self-insurers during the then current financial year as determined under subsection (1)(d); and

(b) uniform for all approved insurers and self-insurers.

(5) An approved insurer or self-insurer shall pay to the Nominal Insurer an amount required by this section to be contributed by him to the Fund in such instalments, and at such times, as are determined by the Nominal Insurer.

(6) The Nominal Insurer shall, by notice in writing, notify each approved insurer and self-insurer of particulars of the contribution, including the amounts of the instalments and the times at which they are payable, required by this section to be contributed by the approved insurer or self-insurer to the Fund.

(7) Where an approved insurer or self-insurer fails to pay the full amount of an instalment within 30 days after the time specified in a notice under subsection (6) -

- (a) the full amount of the contribution referred to in subsection (3) or of the balance then remaining unpaid shall, if it is not already payable, immediately become payable and be a debt due to the Nominal Insurer by the approved insurer or self-insurer; and
- (b) the approved insurer or self-insurer is guilty of a regulatory offence.

Penalty: \$1,000.

165. REFUND OF MONEYS RECOVERED, &c.

(1) All moneys recovered by the Nominal Insurer in respect of a claim referred to in section 137(1) -

- (a) by virtue of its exercising the rights of the approved insurer under that section;
- (b) by virtue of its exercising a right of subrogation referred to in section 137(3)(a); or
- (c) under an agreement, contract, treaty or other document relating to reinsurance referred to in section 137(3)(c),

and all moneys received as a result of the winding up of a company that was an approved insurer required under section 164(6) or (7) to pay an amount to the Nominal Insurer shall, at such times as the Minister determines, be paid to the approved insurers (other than the defaulting insurer) and self-insurers by whom contributions under section 164(3) were paid for the purpose of meeting the Nominal Insurer's liability under this Act or the repealed Act arising out of the default of the defaulting insurer, in the same proportions as those contributions were made or, at the direction of the Minister, the amounts payable under this section to the approved insurers and self-insurers shall be credited against their respective obligations under section 164(5) to pay instalments referred to in that subsection that are uncalled.

(2) The Minister may, in writing, authorize the Nominal Insurer to repay to the approved insurers and self-insurers in the proportions in which they contributed to the Fund in or in relation to the relevant year, any surplus money of the Fund contributed in pursuance of section 164(6) of this Act or section 164(6) of the repealed Act but not required for the purposes for which it was contributed, and the Nominal Insurer shall repay those amounts accordingly.

166. TEMPORARY ADVANCES TO FUND

(1) Where, at any time, the amount of the Fund is insufficient to meet a payment required by this Act to be made out of the Fund, the Treasurer may make temporary advances to the Fund out of the Consolidated Fund.

(2) The Consolidated Fund is appropriated to the extent necessary for the purpose of subsection (1).

(3) Where a temporary advance is made under this section out of the Consolidated Fund, the amount of the advance, together with interest at such rate as the Treasurer determines, shall be a first charge on the Fund and shall be recouped to the Consolidated Fund progressively as moneys are paid into the Fund.

Division 7 - Claims By and Against Nominal Insurer, &c.

167. CLAIMS FOR PAYMENT AGAINST NOMINAL INSURER WHERE EMPLOYER DEFAULTS

(1) Where -

(a) a claim has been made against an employer that the employer is liable to pay compensation;

(b) in relation to the claim, the employer has agreed to pay compensation or his liability to pay compensation has been established in accordance with this Act;

(c) the liability of the employer to pay the compensation is not covered in full by a policy or policies of insurance or indemnity obtained in accordance with this Act; and

(d) the employer defaults in payment of any amount of the compensation for a period exceeding one month,

the person entitled to the compensation may make a claim against the Nominal Insurer for payment of the amounts of compensation payable and to become payable.

(2) A claim under subsection (1) shall be made within 2 months after the right to make the claim arose or within such further time as the Court, on an application made before or after the expiration of that period, allows.

(3) The Court may allow such further time for the making of a claim under subsection (1) as it thinks fit and the claim may be made accordingly.

(4) The Nominal Insurer shall give to the employer notice in writing of the making of a claim under subsection (1).

168. PAYMENTS BY NOMINAL INSURER

Subject to this Act, where a person makes a claim under section 167(1) against the Nominal Insurer, the Nominal Insurer shall pay to that person the compensation payable at the date of the claim or becoming payable thereafter.

169. WHERE LAST EMPLOYER DEAD CLAIM MAY BE MADE AGAINST NOMINAL INSURER

(1) Where the employer -

- (a) who employed a worker at the time when the worker sustained a compensable injury; or
- (b) where the compensable injury is a disease, who last employed the worker in the employment the nature of which caused the disease,

is dead, cannot be located or, in the case of a company, has been wound up, notice of the injury, death or incapacity shall be given to the Nominal Insurer.

(2) Where compensation would have been recoverable from an employer who is dead, cannot be located or, in the case of a company, has been wound up, a person who would have been entitled to that compensation may make a claim against the Nominal Insurer for payment of an amount equal to the amount of compensation that would have been recoverable from the employer if that employer were not dead, could be located or, in the case of a company, had not been wound up.

(3) Where a person who makes a claim under subsection (2) against the Nominal Insurer establishes that he is entitled to compensation from an employer who is dead, cannot be located or, in the case of a company, has been wound up, the Nominal Insurer shall pay to that person an amount equal to the amount of compensation which would have been recoverable from the employer if that employer were not dead, could be located or, in the case of a company, had not been wound up.

(4) Where -

- (a) the Nominal Insurer pays an amount under subsection (3) in respect of a liability of an employer; and
- (b) the employer was insured in respect of his liability to pay compensation,

the Nominal Insurer may recover the amount paid from the insurer with whom that employer was insured at the time of the worker's injury, death or incapacity.

170. RE-OPENING OF AGREEMENTS AND AWARDS

(1) Where a claim is made against the Nominal Insurer, it may apply to the Court for an order to re-open an agreement or award under which the compensation is payable on the ground that there is reason to believe the employer has not in good faith endeavoured to protect his own interests and taken reasonable steps to that end.

(2) The Court may, if it thinks fit, make an order to re-open an agreement or award.

(3) Where the Court makes such an order referred to in subsection (2), the claim for compensation shall be determined by proceedings brought before it.

(4) The Nominal Insurer shall be a party to the proceedings referred to in subsection (3).

(5) The Court may set aside the agreement or award referred to in subsection (1) and may make an award of compensation against the employer.

(6) Where an award of compensation is made in pursuance of subsection (5), the Nominal Insurer shall pay to the person entitled the amounts payable from time to time under the award.

(7) An agreement by a person to accept, in settlement of a claim against the Nominal Insurer, an amount less than the amount payable according to the relevant agreement or award has no force or effect unless approved by the Court.

171. AMOUNT DUE RECOVERABLE BY ACTION

(1) An amount payable to a person by the Nominal Insurer is a debt due by the Nominal Insurer to that person.

(2) The address for service of legal process on the Nominal Insurer and the procedure for the execution of a judgment or order made against the Nominal Insurer in an action for the recovery of an amount referred to in subsection (1), is as prescribed.

172. INTERVENTION BY NOMINAL INSURER

(1) Where a claim for compensation is made against an employer (not being a self-insurer at the relevant time) and there is not in force a policy or policies of insurance or indemnity in accordance with the requirements of section 126(1) and applicable to the claim, the employer shall -

(a) forthwith furnish to the Nominal Insurer full particulars of the claim; and

- (b) not make an agreement or admission in relation to the claim except with the consent of the Nominal Insurer.

(2) An employer who contravenes or fails to comply with subsection (1) is guilty of a regulatory offence.

Penalty: \$1,000.

(3) Notwithstanding that an employer against whom a claim referred to in subsection (1) has been made denies liability in relation to the claim, nothing in that subsection shall prevent the Nominal Insurer from proceeding against the employer.

173. EFFECTS OF PAYMENT BY NOMINAL INSURER

(1) Where the Nominal Insurer pays an amount under this Act in respect of a liability of an employer -

- (a) the payment operates, to the extent of the payment, to discharge the liability of the employer;
- (b) the amount of the payment (other than an amount paid in pursuance of section 136) is a debt due and payable by the employer to the Nominal Insurer; and
- (c) the Nominal Insurer has the right to subrogation in respect of all rights that the employer has against any person in relation to the incident that gave rise to the claim for compensation.

(2) Where the Nominal Insurer pays an amount under this Part in respect of the liability of an employer, the payment arising out of the employer's failure to insure under this Act or the repealed Act against his liability or any other default of the employer in obtaining adequate insurance cover in respect of the liability, the employer shall, in addition to any other amount he is required under this Act to pay, pay to the Nominal Insurer an amount equal to the highest premium payable (calculated at rates payable at the time of the relevant compensable incident) for insurance to indemnify the employer for his liability to the worker and other workers employed by him for the period and to the extent that he did not have the required insurance cover.

174. EMPLOYER TO GIVE INFORMATION AND ASSISTANCE, &c., TO NOMINAL INSURER

(1) For the purpose of the performance of its functions and the exercise of its powers under this Act, the Nominal Insurer may, by notice in writing, require an employer to -

- (a) give it such information and assistance as the Nominal Insurer considers necessary;

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- (b) furnish to it such documents in the employer's possession as the Nominal Insurer considers necessary;
 - (c) execute such documents as it is necessary for the employer to execute to enable the Nominal Insurer to exercise those powers and perform those functions; and
 - (d) allow the Nominal Insurer at all reasonable times to inspect the plant, works, machinery and appliances used in the employer's business.
- (2) An employer who contravenes or fails to comply with a requirement of the Nominal Insurer made under subsection (1) is guilty of a regulatory offence.

Penalty: In the case of a body corporate - \$1,000.

In the case of a natural person - \$500.

Default penalty: In the case of a body corporate - \$100.

In the case of a natural person - \$50.

Division 8 - General

175. WORKER'S RIGHT TO INFORMATION

(1) A worker shall be entitled to inquire of his employer the name and address of the insurer from whom the employer has obtained a policy of insurance or indemnity against his liability under this Act (and, if he so requires, to examine the policy document) or, if the employer is a self-insurer, to be so informed.

(2) An employer or a person acting for an employer in the management of the business in which a worker is employed who refuses to supply to the worker particulars requested under subsection (1) or the policy document for examination or who, in reply to an inquiry under that subsection, gives false or misleading information, is guilty of a regulatory offence.

Penalty: \$1,000.

176. REMEDIES AGAINST EMPLOYER AND A STRANGER

(1) Subject to this Act, if an injury in respect of which compensation is payable under this Act is caused under circumstances that appear to create a legal liability in some person other than the employer to pay damages in respect of the injury, the person entitled to compensation may take proceedings against that person to recover damages and may also make a claim against the employer for compensation.

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(2) Where a person receives compensation and recovers damages from another person in respect of the same injury -

- (a) he shall repay to the employer such amount of the compensation as does not exceed the amount of those damages recovered from that person; and
- (b) on notice to that other person, the employer shall have a first charge on moneys representing those damages payable by that person to the first-mentioned person to the extent of compensation which the employer has paid.

(3) Where a person has received compensation under this Act but no damages to which subsection (2) applies, or less than the full amount of those damages to which he is entitled, the person liable to pay the damages shall indemnify the employer against so much of the compensation paid to the first-mentioned person as does not exceed those damages for which the person is liable and subsequent payment of that money shall, to the extent of the amount paid, be a satisfaction of the liability of that person to the first-mentioned person.

(4) Where the Nominal Insurer makes a payment under this Act to a person, this section applies as if references to the employer included references to the Nominal Insurer, but so that -

- (a) the Nominal Insurer is not entitled to receive, under subsection (2), more than the amounts paid by it under this Act; and
- (b) the rights of the Nominal Insurer under this section shall have priority over any rights of the employer under this section arising out of payment of compensation by the employer.

177. FINES, &c., TO BE PAID INTO FUND

All fines or other pecuniary penalties recovered for an offence against or under this Part shall be paid into the Fund.

PART VIII - MISCELLANEOUS

Division 1 - Legal Proceedings

178. GENERAL PENALTIES

A person who contravenes or fails to comply with a provision of this Act in respect of which no penalty, other than by this section, is provided is guilty of an offence.

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Penalty: In the case of a body corporate - \$2,000.

In the case of a natural person - \$500,
or imprisonment for 3 months.

Default penalty: In the case of a body corporate -
\$200.

In the case of a natural person - \$50.

179. TIME LIMIT, &c., FOR COMPLAINT

No information or complaint shall be laid or made in respect of an offence against this Act except -

- (a) by or with the approval in writing of the Authority or a delegate of the Authority; and
- (b) within 3 years after the date on which the alleged offence occurred.

180. OFFENCES BY BODIES CORPORATE

(1) Where an offence against this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to a wilful neglect on the part of, an officer of the body corporate or person purporting to act as such an officer, that officer or person is also guilty of that offence and liable to the penalty for that offence.

(2) When in proceedings under this Act it is necessary to establish the intention of a body corporate, it is sufficient to show that a servant or agent of the body corporate had that intention.

(3) In subsection (1) "officer", in relation to a body corporate means -

- (a) a director, secretary or executive officer of the body corporate;
- (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
- (c) a person concerned in the management of the body corporate.

181. PROTECTION OF AUTHORITY, OFFICERS, &c.

No action or proceeding, civil or criminal, shall lie or be continued against the Authority or any other body, corporated or unincorporated, established by or under this Act, or a member, officer, employee or delegate of the Authority or such a body, for or in respect of an act or thing done in good faith by the Authority or that body, or by such member, officer, employee or delegate, in its or his capacity as such.

182. TIME FOR TAKING PROCEEDINGS

(1) Subject to subsections (2) and (3), proceedings for the recovery under this Act of compensation shall not be maintainable unless notice of the injury has been given before the worker has voluntarily left the employment in which he was injured and unless the claim for compensation has been made -

- (a) within 6 months after the occurrence of the injury or, in the case of a disease, the incapacity arising from the disease; or
- (b) in the case of death, within 6 months after advice of the death has been received by the claimant.

(2) The want of notice or a defect or inaccuracy in the notice shall not be a bar to the maintenance of the proceedings referred to in subsection (1) if it is found in the proceedings for the settling of the claim that the employer is not, or would not if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that the want, defect or inaccuracy was occasioned by mistake, absence from the Territory or other reasonable cause.

(3) The failure to make a claim within the period specified in subsection (1) shall not be a bar to the maintenance of the proceedings if it is found that the failure was occasioned by mistake, ignorance of a disease, absence from the Territory or other reasonable cause.

(4) For the purposes of subsection (1), where a worker left his employment only by reason of the fact that, because of an injury received in that employment, he was unable to continue in that employment, he shall be taken not to have voluntarily left that employment.

(5) Without limiting the generality of the meaning of "reasonable cause" in subsection (3) -

- (a) the making of a payment to a person which the person believes to be a payment of compensation; or
- (b) any conduct on the part of the employer or his insurer or agent, or on the part of an employee of any of them purporting to act on behalf of the employer, by which a person is led to believe that compensation will or will probably be paid to him or by which he is led to believe that he is not entitled to compensation,

shall be taken to be a reasonable cause within the meaning of that expression.

Division 2 - General

183. USE OF INTERPRETERS

Where the Authority, an officer or any other person performing a function under this Act uses the assistance of an interpreter in connection with its or his performance of that function, an inquiry of or request to a person made on behalf of the Authority, officer or other person by the interpreter shall be deemed to have been made by the Authority, officer or other person, as the case may be, and answers to the inquiry or request made to the interpreter shall be deemed to have been made to the Authority, officer or other person.

184. SURVIVAL OF CLAIMS

(1) This section does not apply to or in relation to compensation under section 71.

(2) Where a person who is entitled to make a claim for compensation dies, that claim may be made by his legal personal representative.

(3) A claim for compensation is not affected by the death of the claimant after the claim was given or served on the employer, the Nominal Insurer or the Authority, as the case may be.

(4) A reference in this Act to a claimant shall -

(a) in the case of a claim referred to in subsection (2) - be read as a reference to the legal personal representative who made the claim; and

(b) in the case of a claim referred to in subsection (3) - be read, in relation to any time after the death of the person who made the claim, as a reference to the legal personal representative of that person.

(5) Section 62 applies in relation to an amount payable as the result of a claim referred to in this section as if the deceased person had died after the relevant determination of the Court referred to in that section was made.

185. PROVISIONS APPLICABLE ON DEATH OF BENEFICIARY

(1) Where an amount of compensation (other than compensation under section 71) is payable to a person and the person dies before the amount is paid, the amount forms part of the estate of the person.

(2) Where an employer or the insurer of an employer holds an amount of compensation for the benefit of a person entitled under this Act to receive it and that person dies, that amount forms part of the estate of the person.

186. COMPENSATION NOT ASSIGNABLE

An assignment of compensation payable under this Act is void as against an employer or an insurer.

187. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act, prescribing matters -

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and in particular -

- (c) prescribing procedures for the medical examination of injured workers;
- (d) prescribing the duties and fees of medical referees appointed under this Act;
- (e) prescribing the procedure relating to compulsory insurance and approval of insurance companies;
- (f) relating to the furnishing of returns to the Authority by employers and approved insurers in relation to the policies of insurance or indemnity taken out by employers against their liability under this Act;
- (g) prescribing the amount of compensation payable or by reference to which compensation is to be calculated;
- (h) prescribing the rate of interest for the purpose of the formula in section 89;
- (j) relating to the information an employer is to supply an insurer for the purposes of section 130(1)(a);
- (k) prescribing the form of a statement referred to in section 130(1)(a);
- (m) relating to the manner of verification of a statement referred to in section 130(1)(a);
- (n) prescribing the particulars to be kept by an employer in relation to the wages paid to workers employed by him;
- (p) prescribing an amount of premium payable for the purposes of section 131(1)(b);

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- (q) prescribing interest to be paid for the purposes of section 131(3) by an employer on amounts owing to an insurer;
- (r) prescribing the powers of the Authority or officers in relation to investigations at workplaces; and
- (s) prescribing penalties, not exceeding \$1,000, for a breach of the Regulations.

PART IX - REPEAL, SAVINGS AND TRANSITIONAL

188. REPEAL

The Acts listed in Schedule 3 are repealed.

189. CLAIM, &c., BEFORE OR AFTER COMMENCEMENT OF ACT

(1) Where a cause of action in respect of an injury to or death of a person arising out of or in the course of his employment arose before the commencement of this section, a claim or action (including a claim or action at common law) in respect of that injury or death may be made, commenced or continued after the commencement of this section as if this Act had never commenced and for that purpose the repealed Act shall be deemed to continue in force.

(2) Notwithstanding subsection (1), a person may claim compensation under this Act in respect of an injury or death referred to in that subsection and on his so doing this Act shall apply as if the injury or death occurred after the commencement of this section, and subsection (1) shall have no effect.

190. NOMINAL INSURER CONTINUES FOR CERTAIN PURPOSES

(1) For the purposes of the commencing, continuing or enforcing of a claim or action by or against the Nominal Insurer in respect of an injury to a person, or the death of a person as the result of an injury, arising out of or in the course of the employment of the person, the Nominal Insurer established by section 150 is the same person as the Nominal Insurer established by section 16D of the repealed Act.

(2) Where before the commencement of section 164 the Nominal Insurer as then constituted made an estimate or determination under section 16Q of the repealed Act in respect of the year commencing 1 July 1986, that estimate or determination shall, for the purposes of section 164, be deemed to have been made and approved under section 164 and any amount contributed to the former Fund before that commencement as a result of such a determination shall be taken into account in determining a persons liability to contribute to the Fund after that commencement.

191. CONTINUATION, &c., OF EXISTING POLICIES

Where immediately before the commencement of Part VII there was in force a policy of insurance or indemnity issued in pursuance of the repealed Act, that policy shall, on that commencement, be deemed to have been issued in the terms of Schedule 2 and, subject to this Act, shall continue in force, and it shall not be cancelled or lapse without the approval in writing of the Authority.

192. CONTINUATION OF SELF-INSURANCE

Where immediately before the commencement of Part VII an employer was authorized under section 18(1) of the repealed Act to undertake the liability to pay compensation to his own workers he shall, on and from that commencement, for a period of 3 months, be a self-insurer for the purposes of this Act as if, on that commencement, the Authority approved the employer, under section 117, to self-insure during that period, and this Act (including the power of the Authority under section 124) shall apply accordingly.

193. TRANSITIONAL

(1) A person is not guilty of an offence against section 125(1) by reason only that he held himself out to be a person who undertakes, or undertakes or offers to undertake, workers compensation insurance business in the Territory for the purpose of discharging liabilities assumed by him before the commencement of that section.

(2) An insurer -

(a) who carried on workers compensation insurance business in the Territory before the commencement of section 125;

(b) whose period of approval under and for the purposes of the repealed Act has not expired; and

(c) who has not been refused approval under section 119,

is not guilty of an offence against section 125(1) by reason only that, not being approved under section 119 for the purposes of this Act, he carries on workers compensation insurance business in the Territory during the period of 3 months after that commencement.

(3) An insurer who -

(a) carried on workers compensation insurance business in the Territory before the commencement of section 125;

(b) has, within 3 months after that commencement and before the period of his approval under and for the purposes of the repealed Act has expired, applied under section 119(1) for approval for the purposes of this Act; and

(c) has not withdrawn the application or been refused approval under section 119(2),

is not guilty of an offence against section 125(1) by reason only that, not being approved under section 119 for the purposes of this Act, he carries on workers compensation insurance business in the Territory after the expiration of 3 months after that commencement.

194. TRANSITIONAL - INDEPENDENT CONTRACTORS

(1) A person who, after the commencement of Part V, would be entitled under section 58 to apply to the Authority for an exemption under that section may apply to the Authority before that commencement to be so exempted on that commencement and the Authority may grant the exemption and issue to the person a certificate of exemption as if that section had commenced.

(2) An exemption granted under subsection (1) takes effect on the commencement of Part V as if the certificate of exemption issued under that subsection were a certificate in the prescribed form issued on that commencement.

SCHEDULE 1
OCCUPATIONAL DISEASES

Section 4

| Column 1 | Column 2 |
|---|---|
| Occupational diseases | Work involving exposure to risk |
| 1. Pneumoconioses caused by sclerogenic mineral dust (including silicosis, anthracosilicosis and asbestosis) and silico-tuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death | All work involving exposure to the risk concerned |
| 2. Bronchopulmonary diseases caused by hard-metal dust | " |
| 3. Bronchopulmonary diseases caused by cotton dust (byssinosis) or flax, hemp or sisal dust | " |
| 4. Diseases caused by beryllium or its toxic compounds | " |
| 5. Diseases caused by cadmium or its toxic compounds | " |
| 6. Diseases caused by phosphorus or its toxic compounds | " |
| 7. Diseases caused by chromium or its toxic compounds | " |
| 8. Diseases caused by manganese or its toxic compounds | " |
| 9. Diseases caused by arsenic or its toxic compounds | " |
| 10. Diseases caused by mercury or its toxic compounds | " |

| Column 1 | Column 2 |
|--|--|
| Occupational diseases | Work involving exposure to risk |
| 11. Diseases caused by lead or its toxic compounds | All work involving exposure to the risk concerned |
| 12. Diseases caused by fluorine or its toxic compounds | " |
| 13. Diseases caused by carbon bisulphide | " |
| 14. Diseases caused by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons | " |
| 15. Diseases caused by benzene or its toxic homologues | " |
| 16. Diseases caused by nitro- and amino-derivatives of benzene or its homologues | " |
| 17. Diseases caused by nitroglycerin or other nitric acid esters | " |
| 18. Diseases caused by asphyxiants; carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulphide | " |
| 19. Hearing impairment caused by noise | " |
| 20. Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves) | " |
| 21. Diseases caused by work in compressed air | " |
| 22. Diseases caused by ionizing radiations | All work involving exposure to the action of ionizing radiations |

Work Health

| Column 1 | Column 2 |
|---|---|
| Occupational diseases | Work involving exposure to risk |
| 23. Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances | All work involving exposure to the risk concerned |
| 24. Lung cancer or mesotheliomas caused by asbestos | " |
| 25. Brucellosis, Leptospirosis and Q fever | Employment at, in, about or in connection with a meat works or involving the handling of meat, hides, skins or carcasses |
| 26. Anthrax infection | Work in connection with animals infected with anthrax. Handling of animal carcasses or parts of animal carcasses including hides, hoofs and horns Loading and unloading or transport of merchandise |
| 27. Hepatitis A and B | Employment in or connected with a hospital or other medical or dental centre or blood bank, including laboratory work |
| 28. A.I.D.S. | " |

SCHEDULE 2

EMPLOYER'S INDEMNITY POLICY

of

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extension endorsed hereon by the Insurer. And it is hereby further agreed that the above indemnity is made subject to the due and proper observance and fulfilment by the Employer of the conditions hereunder. Provided lastly that this policy shall be subject to the Act and the Rules and Regulations made thereunder, all of which shall be deemed to be incorporated in and form part of this policy.

Conditions

NOTICES

1. Every notice or communication to be given or made under this policy shall be delivered in writing at the office of the Insurer from which the policy has been issued.

CLAIMS

2. The Employer shall give notice to the Insurer of any injury to which the policy relates as soon as practicable after information as to the happening of the injury, or of any incapacity arising therefrom, comes to the knowledge of the Employer or of the Employer's representative for the time being, and shall forward to the Insurer forthwith after receipt thereof every written notice of claim, conferences or proceedings and all information as to any verbal notice of claim, conferences or proceedings.

EMPLOYER NOT TO MAKE ADMISSIONS

3. The Employer shall not, without the written authority of the Insurer, incur any expense of litigation, or make a payment, settlement or admission of liability in respect of an injury to or claim made by a worker.

DEFENCE OF PROCEEDINGS

4. The Insurer shall in respect of anything indemnified under this policy, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the Insurer, be entitled to use the name of the Employer. The Employer shall give all necessary information and assistance, and forward all documents to enable the Insurer to settle or resist a claim as the Insurer may think fit.

SUBROGATION

5. The Insurer shall be entitled to use the name of the Employer in proceedings to enforce, for the benefit of the Insurer, an order made for costs or otherwise, and shall have the right of subrogation, in respect of all rights which the Employer may have against a person or persons who may be responsible to the Employer or otherwise in respect of a claim for an injury covered by this policy, and the Employer shall as and when required execute the necessary documents for the purpose of vesting such rights in the Insurer.

Work Health

PRECAUTIONS

6. The Employer shall take all reasonable precautions to prevent injuries.

INJURIES

7. So far as practicable, no alteration or repair shall, without the consent of the Insurer, be made in any ways, works, machinery or plant after an injury to a worker occurring in connection therewith until the Insurer has had an opportunity of examining them.

INSPECTION

8. The Insurer shall have the right and opportunity at all reasonable times to inspect the works, machinery, plant and appliances used in the Employer's business.

PREMIUM

9. The first and every subsequent premium that may be accepted shall be regulated by the amount of wages, salaries and all other forms of remuneration paid or allowed to workers during each period of indemnity.

WAGES BOOKS MUST BE KEPT

10. The names and earnings of every worker employed by the Employer shall be entered regularly in a proper wages book, so that a record may exist of such workers as are entitled to call upon the Employer for compensation.

ADJUSTMENT OF PREMIUM

11. The Employer shall at all times allow a person duly authorized by the Insurer to inspect the wages book, and shall supply the Insurer with a correct account of all wages, salaries and other forms of remuneration paid or allowed during a period of indemnity within 28 days after the expiry of such period of indemnity, and if the total amount differs from the amount on which premium has been paid, the difference in premium shall be met by a further proportionate payment to the Insurer or by a refund by the Insurer, as the case may be, subject always to the retention by the Insurer of the minimum premium stated in the proposal.

ASSIGNMENT

12. No assignment of interest under this policy shall bind the Insurer unless the written consent of the Insurer is endorsed hereon.

CANCELLATION OF POLICY

13. The Insurer may at any time, by giving written notice to the Employer, cancel or lapse this policy. The notice of cancellation shall be posted to the Employer at the Employer's address shown in this policy, and the cancellation of the policy shall be effective on the expiration of 7 days after the date of posting the notice. Notwithstanding the cancellation of the policy, the Employer shall furnish a statement of wages showing the amount paid up to the time of cancellation, and the premium for the period of insurance prior to the cancellation shall be adjusted on a *pro rata* basis in the manner provided by Condition 11 of this policy; provided that the policy may not be cancelled or lapsed without the prior consent of the Authority.

NO WAIVER OF CONDITIONS

14. No condition or provision of this policy shall be waived or altered except with the prior consent of the Insurer endorsed hereon, nor shall notice to an agent, nor shall knowledge possessed by an agent, or by any person, be held to effect a waiver or alteration in this contract or any part of it.

SCHEDULE 3

Section 188

ACTS REPEALED

| Number and year | Act |
|--------------------|--|
| No. 1, 1950 | Workmen's Compensation Ordinance 1949 |
| No. 1, 1951 | Workmen's Compensation Ordinance 1950 |
| No. 21, 1952 | Workmen's Compensation Ordinance 1952 |
| No. 22, 1954 | Workmen's Compensation Ordinance 1954 |
| No. 39, 1957 | Workmen's Compensation Ordinance 1957 |
| No. 10, 1959 | Workmen's Compensation Ordinance 1959 |
| No. 22, 1960 | Workmen's Compensation Ordinance 1960 |
| No. 9, 1961 | Workmen's Compensation Ordinance (No. 2) 1960 |
| No. 37, 1962 | Workmen's Compensation Ordinance 1962 |
| No. 60, 1963 | Workmen's Compensation Ordinance 1963 |
| No. 47, 1964 | Workmen's Compensation Ordinance 1964 |
| No. 28, 1965 | Workmen's Compensation Ordinance 1965 |
| No. 54, 1965 | Workmen's Compensation Ordinance (No. 2) 1965 |
| No. 26, 1966 | Workmen's Compensation Ordinance 1966 |
| No. 32, 1967 | Workmen's Compensation Ordinance 1967 |
| No. 10, 1968 | Workmen's Compensation Ordinance 1968 |
| No. 19, 1968 | Workmen's Compensation Ordinance (No. 2) 1968 |
| No. 40, 1969 | Workmen's Compensation Ordinance (No. 3) 1968 |
| No. 41, 1969 | Workmen's Compensation Ordinance 1969 |
| No. 1, 1970 | Workmen's Compensation Ordinance (No. 2) 1969 |
| No. 11, 1970 | Workmen's Compensation Ordinance 1970 |
| No. 37, 1970 | Workmen's Compensation Ordinance (No. 2) 1970 |
| No. 11, 1972 | Workmen's Compensation Ordinance 1972 |
| No. 30, 1972 | Workmen's Compensation Ordinance (No. 2) 1972 |
| No. 40, 1972 | Workmen's Compensation Ordinance (No. 3) 1972 |
| No. 25, 1973 | Workmen's Compensation Ordinance 1973 |
| No. 33, 1973 | Workmen's Compensation Ordinance (No. 3) 1973 |
| No. 44, 1973 | Workmen's Compensation Ordinance (No. 2) 1973 |
| No. 85, 1973 | Workmen's Compensation Ordinance (No. 4) 1973 |
| No. 53, 1974 | Workmen's Compensation Ordinance 1974 |
| No. 4, 1975 | Workmen's Compensation Ordinance 1975 |
| No. 12, 1977 | Workmen's Compensation Ordinance 1977 |
| No. 14, 1977 | Workmen's Compensation Ordinance (No. 2) 1977 |

Work Health

| Number and year | Act |
|--------------------|--|
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| No. 15, 1977 | <i>Workmen's Compensation Ordinance (No. 3) 1977</i> |
| No. 56, 1977 | <i>Workmen's Compensation Ordinance (No. 4) 1977</i> |
| No. 77, 1978 | <i>Workmen's Compensation Ordinance 1978</i> |
| No. 42, 1979 | <i>Workmen's Compensation Act 1979</i> |
| No. 69, 1979 | <i>Workmen's Compensation Act (No. 2) 1979</i> |
| No. 107, 1979 | <i>Workmen's Compensation Act (No. 3) 1979</i> |
| No. 162, 1979 | <i>Workmen's Compensation Act (No. 4) 1979</i> |
| No. 53, 1980 | <i>Workmen's Compensation Act 1980</i> |
| No. 79, 1982 | <i>Workmen's Compensation Amendment Act 1982</i> |
| No. 80, 1982 | <i>Workmen's Compensation Amendment Act (No. 2) 1982</i> |
| No. 47, 1984 | <i>Workmen's Compensation Amendment Act 1984</i> |
