

Return to Work Bill 2014

REPORT

Today I am introducing a Bill to enact a new scheme to support workers and employers where there is a work injury — the Return to Work Scheme — and repeal the existing scheme established by the *Workers Rehabilitation and Compensation Act 1986*.

As the House is aware, the current workers rehabilitation and compensation scheme does not best serve workers, employers or the State.

Workers experience worse return to work outcomes than in other jurisdictions and, for many, the services provided to them do not support early and effective recovery and return to work. However, it should be noted that currently there are approximately 15, 500 new claimants per year, of which about 70% receive either no income maintenance or less than two weeks income maintenance. Published in August 2013, the 2012-13 National Return to Work Survey reported that South Australia's return to work result of 82% is the highest it has been since 2008-09. Despite this relative improvement, South Australia's return to work rate remains well below that of all other States and has been consistently below the national average for many years.

Employers also pay much more than in other jurisdictions and are not sufficiently supported to provide their employees with opportunities to remain at work or return to work early. We have the highest average premium rate, at about double the rate of other jurisdictions, of 2.75% for the 2014-15 financial year, compared to 1.47% in New South Wales, 1.272% in Victoria and 1.20% in Queensland.

Self-insured employers are, generally, performing well. However, more can be done to enhance the legislative framework in which they are operating.

The Government is committed to improving workers compensation. As part of the first phase of these reforms a commercially focused Board was put in place for WorkCover in late 2013. This was supported by the Charter and Performance Statement, signed by the Premier in his then role of Treasurer and myself, in August 2013 which set out key priorities, initiatives and requirements for WorkCover.

As a result, WorkCover's financial position improved by \$96 million for the 6 months to 31 December 2013, following the independent mid-year scheme actuarial valuation. The

unfunded liability dropped to \$1.23 billion compared to \$1.37 billion at June 2013. Despite these recent improvements fundamental change is required to achieve the focus, performance and level of improvements that are necessary for a sustainable scheme.

South Australia needs a fair, effective and efficient scheme that supports injured workers with early intervention, recovery and return to work. It needs to be a scheme with clear, unambiguous boundaries and less moving parts.

The new Return to Work Scheme will clearly identify each party's role and obligations, including those of workers, employers and the Corporation. People will be clear about the part they play in assisting and achieving a return to work outcome.

The new Scheme is designed, if everything is implemented, understood and decided as expected, to have a break even premium rate of less than 2%. This is a significant change which benefits employers.

Early intervention and improving injury management approaches will be at the heart of the new Return to Work Scheme to provide improved health and life outcomes for workers. The emphasis of the new Scheme is on capacity and not incapacity, and medical certificates will need to explain what injured workers can or will be able to do rather than what they cannot.

Seriously injured workers will be supported with income maintenance payments until retirement age and lifetime care and support. Non-seriously injured workers will receive income maintenance support for up to two years and medical expenses paid for a further year after their income support ceases.

People who are seriously injured will be able to pursue common law damages where their employer's negligence caused or contributed to the injury in addition to rights of action against third parties.

People with a physical injury, excluding hearing loss, which results in a whole person impairment of between 5 and 29% inclusive, will receive additional compensation by way of a lump sum payment for economic loss.

Significant improvements in dispute resolution are required. The Return to Work Scheme seeks to minimise the potential for disputes. Improved, evidence-based decision making and active case management will also minimise the potential for disputes. Where they do occur, a new South Australian Employment Tribunal will be responsible for their resolution. These reviews will be heard quickly and dealt with fairly and effectively. Currently in South

Australia about 6% of active claims are in dispute at any one time. This is much more than comparable jurisdictions such as New South Wales and Victoria.

The proposed scheme balances the interests of workers and employers. Modelling the future impact of the changes on workers, using historical data, indicates that about 94% of people with a work injury will receive either improved or the same income support benefits. With early intervention initiatives being fully implemented it is expected that an even higher percentage of people with a work injury will receive either improved or the same benefits.

There will be an increased emphasis on early intervention, improved service delivery and support for retraining and job seeking where appropriate. These services will be intensive and targeted at the needs of the individual. There will be strengthened obligations on employers to provide work and injured workers will be able to seek, if needed, an order from the Tribunal to obtain employment with their pre-injury employer.

Useful definitions and provisions that work well in the existing Act have been replicated to maintain consistency wherever possible. Examples include the provisions relating to average weekly earnings, reduction or discontinuance of weekly payments, employer registration and funding and self-insurance.

Workers and employers will receive better service with legislated obligations and service standards with which the Corporation and its agents must comply.

The Return to Work Scheme needs an insurer that is expected and required to meet high-quality service standards focussed on early intervention. Meaningful obligations will be placed upon the Corporation to achieve this.

South Australia needs a sustainable scheme that provides quality services and support to injured workers. A scheme that has both a strong regulator and a service focused insurer. The Return to Work Corporation will take on these roles under this new legislation.

If this legislation is passed this year, the new Return to Work Scheme will commence on 1 July 2015.

Key aspects of the new Return to Work Scheme

Objects of the Act

The Return to Work Scheme has a fundamental basis of:

- people who have suffered a work injury should be provided early and appropriate treatment and support to recover and return to work; and
- employers should bear the cost of that treatment and support by way of compulsory insurance.

The objects of the Bill clearly provide that early intervention to support recovery and return to work is the primary objective of the scheme.

What injuries are covered?

A physical injury must arise out of or in the course of employment and the employment must be a significant contributing cause of the injury for the claim to be accepted.

For a claim for psychiatric injury to be accepted, employment must be the significant contributing cause and it cannot arise from any one or more of the exclusionary factors listed in the legislation.

Legislative rights and obligations

Legislative obligations are placed on workers, employers and the Corporation.

Workers have a right to:

- early intervention;
- active case management;
- expect their employer to participate and co-operate in assisting in their return to work;
- reasonably request the Corporation to review services or investigate non-compliance of their employer regarding their retention, employment or re-employment;
- apply to the Tribunal for the employer to provide work.

Workers are obliged to:

- give notice of a work injury occurring;

- participate in all activities supporting recovery and return to work (exclusion for seriously injured workers);
- provide medical certificates;
- return to suitable employment (exclusion for seriously injured workers);
- take reasonable steps to mitigate any loss.

Employers have a right to support in claims management and the right to request a medical examination of the worker.

Employers are obliged to:

- support their workers' participation in recovery and return to work activities;
- mitigate loss;
- provide suitable employment;
- pay an appropriate wage for any alternative or modified duties or return to suitable employment;
- give 28 days' notice before termination of employment;
- register with the Corporation;
- pay a premium;
- provide information as requested, keep accounts, maintain confidentiality.

An employer must also appoint (and retain) a return to work co-ordinator to assist injured workers to remain at or return to work as soon as possible and to assist in the preparation and implementation of recovery/return to work plans.

The Corporation is obliged to:

- adopt a service-oriented approach focused on early intervention;
- act professionally and promptly;
- provide face-to-face service wherever possible;
- ensure injuries and claims are actively managed;
- improve recovery and return to work outcomes.

These provisions signal a new era for recovery and return to work. The new scheme clearly outlines the responsibilities of all key parties, and in particular the Corporation. For the first time, the new Corporation can be held to account for its performance and behaviour in both regulating the scheme and providing services.

Seriously injured workers

One of the key features of the new scheme is the distinction between seriously injured workers and non-seriously injured workers.

Workers assessed with a whole person impairment of 30% or more will be treated as seriously injured. The scheme will provide income support for such workers until retirement age and lifetime care, support and medical services.

Having a distinct boundary here is essential for the scheme to be able to support those workers who need it most.

Recovery and Return to Work Plans

Injured workers who are likely to be incapacitated for work for more than 4 weeks will have a recovery/return to work plan, which combines the objectives and functions of the rehabilitation programmes and rehabilitation and return to work plans under the existing Act.

There is now a clear focus on supporting the worker and the employer along the recovery and return to work pathway.

Medical services

Workers will be entitled to be compensated for costs of medical services that are reasonable, necessary and reasonably incurred.

This entitlement ceases 12 months after income support ends (except for seriously injured workers who will receive lifetime care and support). Medical certificates will certify workers' capacity and will be required to support any periods when income support is payable.

Income support

The Corporation must offer to make interim payments if it fails to determine a claim within 10 business days.

Injured workers will be able to access:

- 100% of notional weekly earnings (NWE) capped at twice the State average from 0 - 52 weeks from the date on which the incapacity for work first occurs;
- 80% of NWE from 53 - 104 weeks for non-seriously injured workers;
- 80% of NWE from 53 weeks - retirement age for seriously injured workers.

It should be noted that weeks relates to the passing of calendar weeks rather than the previous notion of entitlement weeks.

Based on historical experience, out of the approximately 15,500 claims made each year, about 1,020 will be affected by the two year time-banding of income support for non-seriously injured workers. This is expected to reduce with improved early intervention, training and support as well as a clear understanding of the time banding.

The legislation gives the Corporation the power to designate a weekly amount that a worker could earn in suitable employment based on his or her capacity to work. This designated earnings amount will be deducted from the notional weekly earnings after a 6 month notice period. Essentially this means that weekly payments are there only to support physical or psychological incapacity, not an economic incapacity. If someone is fit to return to work but does not do so with appropriate notice, it becomes an unemployment issue and not a work-injury one.

Again based on historical experience, out of the approximately 6,500 claims in an injury year that receive income maintenance in the first 12 months, about 2,900 people will receive additional income support due to the changes in the income support step-downs.

In addition, the amount of income support provided will, where necessary, be increased so that the combined amount (the amount otherwise payable plus any designated earnings) is no less than the Federal minimum wage.

Workers may receive supplementary income support payments for incapacity outside the two year time-banding that results from surgery approved by the Corporation before the medical services entitlement concludes.

Dependency payments will no longer be affected by income earned from the investment of the lump sum payable upon a worker's death.

Redemptions

The scheme allows a liability to make weekly payments to be redeemed by a capital payment to injured workers, by agreement between the injured worker and the Corporation. The access restrictions to redemptions in the current Act have been removed.

Redemptions will be used in exceptional circumstances when recovery and return to work options have been exhausted. Careful control of redemptions is essential and is enshrined in the new scheme.

If a seriously injured worker elects to receive a redemption he or she cannot access common law.

Permanent impairment and death lump sums

Only one assessment of a worker's whole person impairment may be made in respect of impairment resulting from 1 or more injuries arising from the same trauma.

Again, this is an important element of the new scheme. Without this, the scheme will not be sustainable in the long term.

A lump sum payment for physical injuries is payable where the worker's whole person impairment is 5% or greater. Consistent with current arrangements, lump sum compensation is not payable for psychiatric injuries.

The maximum lump sum payment for death will be made to a worker's partner(s) and child(ren) regardless of their level of dependency.

Common law and lump sum payments for non-economic loss

The Government has previously talked about including access to common law damages in the new scheme. Following consultation with both employer and worker representatives, an alternative approach has been established that will largely maintain the no-fault basis of the scheme and give injured workers greater certainty about the entitlements available to them.

In addition to the lump sum payment for permanent impairment, an additional lump sum will be payable to physically injured workers (excluding hearing loss) with a whole person impairment assessed at 5% or more and less than 30%. This payment is to acknowledge the potential economic loss associated with a work injury and will be scaled to make greater payments to those furthest from retirement age.

As already mentioned, workers who are seriously injured will be entitled to income maintenance payments until retirement age. In addition, those seriously injured workers whose employer's negligence caused or contributed to the injury, will be able to pursue a common law claim against their employer. However, they will be unable to claim damages for future treatment, care and support as a consequence of the National Injury Insurance Scheme obligations and these services will continue to be provided by the scheme.

The provisions of the *Civil Liability Act 1936* apply.

Dispute resolution

The South Australian Employment Tribunal will be solely responsible for resolving disputes that arise under the new scheme.

A separate Bill is being brought to this Parliament to establish the South Australian Employment Tribunal, which will have similar powers, functions and operating arrangements to the South Australian Civil and Administrative Tribunal. The new Tribunal will be focused on resolving applications for review as quickly as possible, expediting matters where appropriate with an inquisitorial rather than adversarial approach.

Only those decisions identified in the Act as reviewable can be the subject of proceedings before the Tribunal.

Only questions of law can be appealed to the Supreme Court, with the unsuccessful party being at risk for legal costs.

At the worker's request, income support may continue pending the outcome of the review proceedings, but not beyond the date where the weekly payments would have come to an end in any event e.g. reaching the end of the time banded scheme, the worker reaching retirement age, etc.

The Tribunal will be able to access Independent Medical Advisers, operating under the direction of the Tribunal, for inquiry and report on medical questions.

Advisory Committee

A Ministerial Advisory Committee will provide advice on matters requested by the Minister.

They will also establish an accreditation scheme for permanent impairment assessors and recommend to the Minister the permanent impairment assessors to be accredited.

Recoveries

In third party recovery actions, the Corporation can enter into a deed of release with the worker who may retain the balance of the damages recovered from the third party after repayment of the workers compensation payments already paid from the settlement sum.

The deed of release will have the effect of discharging any outstanding workers compensation entitlements and extinguishing the employer's obligation to provide suitable employment.

A new provision allows the Corporation to recover as a debt any payment made to workers, employers and providers to which they are not entitled.

Self-insured employers

Self-insured employers have the same obligations as employers to support injured workers. Self-insured employers are liable for all payments of compensation for work injuries arising from employment with a self-insured employer.

An employer, or group, can apply for registration as a self-insured employer. A foreign holding company cannot be taken into account when determining whether an employer is part of a group.

The Crown and any agency or instrumentality of the Crown will be taken to be registered as self-insured employers.

Renewal of registration can be made for up to 5 years.

A self-insured employer must pay a fee to the Corporation.

Discontinuance fees have been removed from the scheme.

A self-insured employer can appeal various decisions to the Minister.

Whole Person Impairment Assessments

Whole Person Impairment Assessments form a critical part of the Return to Work Scheme. The thresholds for access to lump sum payments for permanent impairment and economic loss and being characterised as a seriously injured worker are all reliant on the whole person impairment assessment.

Whole person impairment arising from physical injuries will be assessed in accordance with the Act and by reference to the *Impairment Assessment Guidelines*. The guidelines will draw upon the *American Medical Association Guides for the Evaluation of Permanent Impairment*,

fifth edition, known as AMA 5. AMA 5 is used consistently across Australian jurisdictions for the assessment of physical injuries.

Whole person impairment arising from psychiatric injuries will be assessed in accordance with the Act and by reference to the *Impairment Assessment Guidelines* which will be informed by the Psychiatric Impairment Rating Scale, known as PIRS. PIRS is used consistently across Australian jurisdictions for the assessment of psychiatric and psychological injuries.

New Corporation

The WorkCover Corporation will be renamed as the Return to Work Corporation. This is not a superficial name change. It will send a clear message that South Australia has a focused regulator and insurer equipped to ensure the new scheme is implemented and managed as intended.

The Corporation will be responsible for administering the new scheme. It will be expected and required to meet high-quality service standards focused on early intervention. Meaningful obligations will be placed on the new Corporation.

Standards are included in the legislation about how the Corporation interacts with injured workers and meets their reasonable expectations.

Scheme bonus period

A framework is included for the spreading of the benefits available from the scheme performing financially well between workers and employers. Subject to the scheme's funding level being of at least 100% and achieving a profit from its insurance operations in 2 consecutive years and actuarial confirmation a 'scheme bonus period' would be declared.

Based on an assessment by the Corporation of how much could be paid out without affecting the sustainability of the scheme, equal amounts would be allocated to reducing the average premium rate employers pay and to a funding pool to provide job seeking services and developing skills and capacity for workers whose entitlements have ceased and who have not returned to work.

If scheme funding is below 90% for 2 consecutive years, or if declaring a 'scheme bonus period' would result in the average premium rate falling below 1.25%, a full review of the scheme will be initiated by the Minister.

Review of the Return to Work Scheme

An independent review of the reforms is required to commence three years after the commencement of the new scheme. Specifically, the review will need to consider whether the reforms and the dispute resolution approach has achieved a significant reduction in the number and duration of disputes and the success of resolving medical related matters.

Other legislative changes

Consequential changes to other Acts

This Bill makes consequential amendments to other Acts, including the *Civil Liability Act 1934*, the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*, the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*, the *Supreme Court Act 1935*, the *WorkCover Corporation Act 1994* and the *Work Health and Safety Act 2012*.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Although the measure is to commence on a day to be fixed by proclamation, certain provisions of Schedule 9 (Repeal, amendments and transitional provisions) will come into operation at a time specified in the Schedule.

3—Objects of Act

This clause specifies the object of the Act, which is to establish a scheme for the support of workers who suffer injuries at work. The primary objective of the scheme is to be the provision of early intervention in respect of claims so as to ensure that action is taken to support workers in relation to health, recovery and return to work.

Subclause (2) sets out other objectives that apply with respect to the Act, including objectives in relation to the services and support given to workers who suffer injuries at work, limitations on costs to employers, providing a reasonable balance between the interests of workers and the interests of employers and reducing disputation when workers are injured at work.

The clause requires the Corporation, the worker and the employer from whose employment a work injury arises to seek to achieve an injured worker's return to work (taking into account the objects and requirements of the Act).

4—Interpretation

This clause provides definitions of a number of terms used in the measure. For example:

Damages means damages for injury or loss sustained by a worker in circumstances creating, independently of the Act, a legal liability in the worker's employer (or a person who is vicariously liable for the acts of the worker's employer), or another person, to pay damages to or in relation to the worker or a dependant of a deceased worker. 'Damages' does not include the following:

- a sum required or authorised to be paid under an award or industrial agreement;
- a sum payable under a superannuation scheme or any life or other insurance policy;
- any amount paid in respect of costs incurred in connection with legal proceedings;
- damages of a class excluded from the ambit of this definition by the regulations.

A **dependant**, in relation to a deceased worker, is a relative of the worker who, at the time of the death, was wholly or partially dependent for the ordinary necessities of life on earnings of the worker (or would, but for the worker's injury, have been so dependent).

An **employer** is:

- a person by whom a worker is employed under a contract of service, or for whom work is done by a worker under a contract of service (but this is subject to certain exclusions);
- the Crown, where the Crown is, under Schedule 1, the presumptive employer of a person;
- in relation to persons of whom any other person is, by virtue of a provision of the Act, the presumptive employer—that other person.

The term 'employer' includes a former employer and the legal personal representative of a deceased employer.

Employment includes the following:

- work done under a contract of service;
- the work of a self-employed person to whom the Corporation has extended the protection of the Act;
- the work of persons of whom the Crown is, under Schedule 1, the presumptive employer;
- attendance by a worker at a place of pick-up.

Injury means a physical or mental injury and, where the context admits, the death of a worker. The term includes an injury that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury.

The **Tribunal** is the South Australian Employment Tribunal.

A *worker* is—

- a person by whom work is done under a contract of service (whether or not as an employee);
- a person who is a worker by virtue of Schedule 1;
- a self-employed worker.

The term includes former workers and the legal personal representatives of deceased workers.

In addition to defining terms used in the measure, this clause deals with a number of other preliminary matters.

5—Average weekly earnings

This clause provides that the average weekly earnings of an injured worker is the average weekly amount that the worker earned in relevant employment during the period of 12 months preceding the date on which his or her injury occurred. Relevant employment is employment with the employer from whose employment the injury arose. If the worker was employed by two or more employers when the injury occurred, relevant employment is constituted by employment with each of those employers.

In addition, this clause sets out rules in relation to various matters connected to the determination of a worker's average weekly earnings. For example, the clause provides that employer superannuation contributions and prescribed allowances are to be disregarded for the purposes of determining a worker's average weekly earnings and specifies how and when an overtime component of a worker's earnings is to be taken into account.

6—Act to bind Crown

This clause provides that the Act binds the Crown in right of the State and in all of its other capacities.

Part 2—Key principles, concepts and requirements

Division 1—Connection with employment

7—Injury must arise from employment

Clause 7 provides that the Act applies to an injury if (and only if) the injury arises from employment. An injury arises from employment if the injury arises out of or in the course of employment and the employment was a significant contributing cause of the injury. However, in the case of a psychiatric injury, the injury arises out of employment if it arises out of or in the course of employment and the employment was the significant contributing cause of the injury. Additionally, a psychiatric injury only arises from employment if it did not arise wholly or predominantly from—

- reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker or a decision of the employer not to renew or extend a contract of service; or

- a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with the worker's employment; or
- reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment; or
- reasonable action taken in a reasonable manner under the Act affecting the worker.

If the worker's injury is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury, employment must be a significant contributing cause of the aggravation, acceleration, exacerbation, deterioration or recurrence. In the case if a psychiatric injury, the employment must be the significant contributing cause of the aggravation, acceleration, exacerbation, deterioration or recurrence and the aggravation, acceleration, exacerbation, deterioration or recurrence must not arise wholly or predominantly from any action or decision of a kind included in the list above.

This clause includes additional provisions detailing the circumstances in which the following may arise from employment for the purposes of the Act:

- an injury attributable to surgery or other treatment;
- an injury arising out of or in the course of a social or sporting activity;
- an injury arising out of or in the course of a journey.

8—Effect of misconduct etc

This clause provides that a worker is not entitled to receive services or benefits under the Act if he or she is guilty of misconduct or acts in contravention of instructions from his or her employer. Further, services and benefits are not available if it is established on the balance of probabilities that the injury is wholly or predominantly attributable to serious and wilful misconduct on the worker's part or the influence of alcohol or a drug that he or she voluntarily consumed. This does not include a drug lawfully obtained and consumed in a reasonable quantity.

9—Evidentiary provision

Clause 9 is an evidentiary provision. For an injury to be compensable under the Act, it must be established on the balance of probabilities that it arises from employment. This provision operates subject to certain qualifications and presumptions specified in the clause and in Schedule 2 and Schedule 3.

Division 2—Connection with State

10—Territorial application of Act

This clause deals with the territorial application of the Act and provides that the Act applies to a worker's employment if the employment is connected with South Australia. The clause sets out rules for determining the State with which a worker's employment is connected. A worker's employment is connected with the State in which he or she usually works in the relevant employment. If no State, or no single State, can be identified as the State in which the worker usually works, his or her employment is connected with the State in which he or she is usually based for the

purposes of the employment or, if no such State can be identified, the State in which the employer's principal place of business is located.

The clause also deals with the application of the Act to workers working on ships where no single State can be identified as the State in which the worker usually works or is based.

11—Determination of State with which worker's employment is connected in proceedings under this Act

If the question of whether this State is connected with a worker's employment arises in proceedings before the Tribunal or a court, the Tribunal or court is required under this clause to determine the State with which a worker's employment is connected.

12—Recognition of previous determinations

If the Tribunal or a court of a kind specified under this clause makes a determination as required under clause 10, the State determined by the Tribunal or court as the State with which the worker's employment is connected is to be recognised as such for the purposes of the Act (but this does not mean that the determination cannot be the subject of an appeal).

Division 3—Fundamental principles, rights and obligations

13—The Corporation

This clause requires the Corporation to—

- adopt a service-orientated approach that is focused on early intervention and the interests of workers and employers; and
- seek to act professionally and promptly in everything that it does; and
- be responsible and accountable in its relationships with others; and
- take reasonable steps to comply with any request made by a worker for a review of the provision of any service to the worker under the Act or to investigate any circumstance where it appears that his or her employer is not complying with a requirement of the Act in relation to the retention, employment or re-employment of the worker.

Additionally, the clause sets out requirements of the Corporation in relation to maintaining plans and strategies designed to establish practices and procedures under which an injured worker's specific circumstances (and those of his or her employer) will be addressed and specifies the Corporation's objective in respect of this requirement:

- ensuring early and timely intervention occurs to improve recovery and return to work outcomes including after retraining (if required);
- achieving timely, evidence based decision making that is consistent with the requirements of the Act;
- wherever possible, providing a face to face service where there is a need for significant assistance, support or services;
- ensuring regular reviews are taken in relation to a worker's recovery and, where possible, return to work;

- ensuring the active management of all aspects of a worker's injury and any claim;
- encouraging an injured worker and his or her employer to participate actively in any recovery and return to work processes;
- minimising the risk of litigation.

It is made clear in the clause that the policies and procedures set out do not give rise to substantive rights or liabilities (compared to rights or liabilities established or prescribed under other relevant provisions of the Act).

14—Service standards

The Corporation is required under this clause to adopt and apply the service standards set out in Schedule 5.

15—Workers

This clause provides that a worker who has suffered a work injury is entitled to expect the following:

- early intervention by the Corporation in providing recovery and return to work services;
- the Corporation to actively manage the worker's injury and claim and to provide services in a manner consistent with the requirements of the Act;
- his or her employer to participate and co-operate in assisting the worker's recovery and return to work and to reasonably support the worker in receiving any benefit available under the Act.

The clause also requires a worker who has suffered a work injury to—

- participate in all activities designed to enable him or her to recover and return to work as soon as is reasonably practicable; and
- participate and co-operate in the establishment of a recovery/return to work plan; and
- comply with obligations imposed by or under a recovery/return to work plan; and
- ensure that the Corporation is provided with current medical certificates with respect to any incapacity for work for which weekly payments are being made so as to provide evidence to support the continuation of the payments; and
- return to suitable employment when reasonably able to do so; and
- take reasonable steps to mitigate any possible loss on account of the work injury.

Specified exceptions to the above apply for seriously injured workers.

16—Worker's duty to give notice of injury

This clause sets out the duty of a worker to give notice of a work injury to his or her employer (or, if the worker is not in employment or is self-employed, the Corporation).

17—Employers

This clause provides that an employer of a worker who has suffered a work injury is entitled to expect—

- early intervention by the Corporation in providing recovery and return to work services to the worker; and
- the Corporation to act fairly and reasonably in a manner consistent with the requirements of the Act; and
- support in managing claims and the provision of services available to the worker under the Act.

The clause requires the employer to, so far as is reasonably practicable—

- support the worker in the worker's participation in activities designed to enable the worker to recover and return to work; and
- participate and co-operate in the establishment of any recovery/return to work plan that is required for the worker; and
- comply with obligations imposed on the employer by or under a recovery/return to work plan for the worker; and
- take reasonable steps to mitigate any possible loss on account of the work injury.

18—Employer's duty to provide work

This clause requires the employer of a worker who has been incapacitated for work in consequence of a work injury to provide suitable employment for the worker. This obligation arises if the worker is able to return to work (whether full-time or part-time and whether or not to the previous employment). The employment must be employment for which the worker is fit and, to the extent practicable, the same as, or equivalent to, the employment in which the worker was working immediately before the incapacity. This obligation applies in relation to the employer from whose employment the injury arose (the *pre-injury employer*) and is subject to certain qualifications set out in subclause (2).

The clause also sets out a procedure for a worker incapacitated by a work injury to apply to the Tribunal for an order for the pre-injury employer to provide specified employment to the worker. The worker can make the application if—

- he or she has sought employment with the pre-injury employer (consistent with the requirements of subclause (1)); and
- in seeking the employment, he or she—
 - by written notice to the employer, confirmed that he or she is ready, willing and able to return to work with the employer and provided information about the type of employment he or she considers that he or she is capable of performing; and
 - complied with any other requirements prescribed by the regulations; and
- the employer failed, within a reasonable time, to provide suitable employment to the worker.

The clause also sets out rules in relation to the costs of applications under the section and explains what is meant by 'suitable employment' in the context of the clause.

19—Payment of wages for alternative or modified duties

The employer of a worker who has been incapacitated for work in consequence of a work injury and undertakes alternative or modified duties under employment or an arrangement that falls outside his or her contract of service for the employment from which the injury arose is required under this clause to pay an appropriate wage or salary in respect of the duties. This requirement operates subject to a determination of the Corporation.

20—Additional requirement with respect to termination of employment

This clause requires the employer of a worker who has suffered a work injury to give the Corporation and the worker at least 28 days notice if the employer proposes to terminate the worker's employment. This requirement does not apply if—

- the employment is properly terminated on the ground of serious and wilful misconduct; or
- the worker is neither participating in a recovery/return to work plan, nor receiving compensation, for the work injury; or
- the worker's rights to compensation for the injury have been exhausted or the time for making a claim for compensation has expired.

Division 4—Seriously injured workers

21—Seriously injured workers

A seriously injured worker for the purposes of the Act is a worker whose work injury has resulted in permanent impairment and the degree of whole person impairment has been assessed under Division 5 for the purposes of the Act to be 30% or more. As stated in the clause, the Act makes special provision in a number of places for seriously injured workers. The clause allows the Corporation to make an interim decision that a worker is to be taken to be a seriously injured worker. An interim decision can be made on the Corporation's own initiative or on application by the worker.

The clause provides that, in assessing whether the 30% threshold has been met (that is, whether the degree of whole person impairment resulting from a work injury is at least 30%)—

- impairment resulting from physical injury is to be assessed separately from impairment resulting from psychiatric injury; and
- in assessing impairment resulting from physical injury or psychiatric injury, no regard is to be had to impairment that results from consequential mental harm; and
- in assessing the degree of whole person impairment resulting from physical injury, no regard is to be had to impairment that results from a psychiatric injury or consequential mental harm; and

- the 30% threshold is not met unless the degree of whole person impairment resulting from physical injury is at least 30% or the degree of whole person impairment resulting from psychiatric injury is at least 30%.

Division 5—Assessment of permanent impairment

22—Assessment of permanent impairment

Clause 22 sets out a scheme for assessing the degree of impairment (that is, whole person impairment) that applies to a work injury that results in permanent impairment. An assessment under the clause is to be made in accordance with the Impairment Assessment Guidelines by a medical practitioner who holds a current accreditation under the clause.

The Impairment Assessment Guidelines are to be published by the Minister in the Gazette and must incorporate a methodology that arrives at an assessment of the degree of impairment of the whole person.

An assessment of the degree of impairment resulting from an injury—

- must not be made until the injury has stabilised; and
- must be based on the worker's current impairment as at the date of assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury; and
- must be made at a time determined or approved by the Corporation; and
- must be made by an accredited medical practitioner selected in accordance with the Impairment Assessment Guidelines.

Subclause (8) lists principles that must be taken into account in relation to an assessment of the degree of impairment resulting from an injury.

The clause provides that only one assessment may be made in respect of the degree of permanent impairment of a worker from one or more injuries (including consequential injuries) arising from the same trauma. Any injury that may subsequently develop or manifest itself or develop after the assessment of impairment is made will not be assessed. However, this rule operates subject to an assessment made under Part 8 (Independent medical advice) and the exercise of any adjudicative functions by the Tribunal or a court. Further, an interim decision under clause 21 will be taken not to constitute an assessment for the purposes of the rule that only one assessment may be made. That rule does not apply in circumstances prescribed by the regulations.

The clause also requires the Advisory Committee to establish, after consultation with the Minister, an accreditation scheme for medical practitioners who will be undertaking assessments under this provision.

Part 3—Early intervention, recovery and return to work

23—Object

This clause sets out the object of Part 3, which is to establish a system that seeks to ensure that a worker who suffers a work injury achieves the best practicable levels of

physical and mental recovery and is, if possible, restored to the workforce and the community in a timely, safe and durable way.

The clause emphasises the importance of early intervention in the provision of recovery/return to work services to injured workers and the aim of returning workers to work in their pre-injury duties or, if that is not reasonably practicable, other suitable duties or work with another employer.

24—Early intervention, recovery and return to work services

This clause provides that services provided under Part 3 (recovery/return to work services) may do one or more of the following:

- provide for the physical, mental or vocational assessment of a worker;
- provide advisory services to a worker, members of the family of a worker, an employer and others;
- assist a worker in retaining, seeking or obtaining employment;
- assist in the training or retraining of a worker;
- assist a worker to find or establish appropriate accommodation;
- provide equipment, facilities and services to assist a worker to cope with any injury at home or in the workplace;
- provide assistance to a person who may be in a position to help a worker to overcome or cope with an injury;
- provide necessary and reasonable costs (including costs of travel, accommodation and child care) incurred by a worker in order to receive or participate in any services;
- provide anything else that may assist in achieving the objects of Part 3.

Action must be taken as early as possible after a worker suffers a work injury to determine the most appropriate recovery/return to work services to be provided to the worker. The Corporation is required under the clause to take reasonable steps to ensure that a reasonable level of recovery/return to work services are provided to an injured worker. For the purposes of this Part, recovery/return to work services will be provided by persons who have been accredited, approved or appointed under schemes established by the Corporation.

25—Recovery/return to work plans

Clause 25 imposes an obligation on the Corporation to ensure that a recovery/return to work plan is prepared for a worker if it appears that the worker is (or is likely to be) incapacitated for work by a work injury for more than 4 weeks. A plan may be prepared even if the period of incapacity may be less than 4 weeks but need not be prepared for a worker if the Corporation considers that, due to the severity of his or her injuries, the focus should be on other forms of support and services. A recovery/return to work plan is to set out the actions and responsibilities of a worker, an employer and the Corporation in order to achieve the earliest possible safe return to work or, if relevant, to the community on a durable basis. The clause requires that, in preparing a recovery/return to work plan, consultation is to occur with the worker and, to the extent that it is necessary or appropriate, the employer. The clause imposes various other obligations in relation to the preparation of recovery/return to work

programs, including a requirement that plans comply with standards and requirements prescribed by regulation.

26—Return to work co-ordinators

This clause requires an employer to appoint a return to work co-ordinator and specifies the functions of a co-ordinator.

27—Standards and facilities established by Corporation

This clause authorises the Corporation to undertake various activities in relation to the provision of recovery/return to work services. For example, the Corporation may enter into arrangements with a government agency or other body under which facilities and services, including medical services, will be provided to injured workers.

28—Rates for provision of services

Under this clause, the Minister may publish scales of charges that will apply to the provision of recovery/return to work services. The scales are to be published in the Gazette on the recommendation of the Corporation. The Corporation is required under the clause to undertake consultation before making a recommendation to the Minister about the publishing of a scale of costs.

29—Related initiatives

This clause authorises the Corporation to disseminate information that relates to work related injuries, to conduct, participate in or subsidise research promoting the objects of the Part and to encourage and support the work of organisations that provide assistance to workers who have suffered work related injuries.

Part 4—Financial benefits

Division 1—Claims

30—Claims

This clause prescribes various requirements in relation to the making of claims under Part 4, including a requirement that a claim be supported by a certificate by a recognised health practitioner. The clause deals with various other matters relating to claims, including, for example, the period within which a claim must be made, to whom a claim must be given and the obligation of an employer (other than a self-insured employer) to furnish the Corporation with information the Corporation requires in order to assess or determine a claim.

31—Determination of claim

This clause provides that the Corporation may, following receipt of a claim, make the investigations and inquiries it thinks necessary to determine the claim. The Corporation may require a worker to submit to an examination by a recognised health practitioner. A claim may be rejected by the Corporation if a claimant fails or refuses to furnish information reasonably required by the Corporation or to submit to a required examination.

The Corporation is required to determine claims for compensation as expeditiously as reasonably practicable. If a claim is for compensation by way of income support, the

Corporation is to endeavour to determine the claim within 10 business days (if practicable). Notice of the rejection of any part of a claim is to include information required by the regulations as to the grounds of the rejection and a statement of the claimant's right to have the determination reviewed. The clause specifies circumstances in which the Corporation may redetermine a claim.

32—Payment of interim benefits

Clause 32 authorises the Corporation to make interim payments to a claimant pending the final determination of his or her claim. There is a requirement for the Corporation to offer to make interim payments if it fails to determine a claim within 10 business days after the date of receipt of the claim. An amount paid under this clause to which a claimant was not entitled on the final determination of the claim may be recovered by the Corporation as a debt.

Division 2—Medical expenses etc

33—Medical expenses

This clause provides that a worker is entitled to be compensated for the costs of the following services if they are reasonable and necessary and reasonably incurred by the worker:

- the cost of medical services;
- the cost of hospitalisation and all associated medical, surgical and nursing services;
- the cost of approved recovery/return to work services;
- the cost of travelling, or being transported, to and from any place for the purpose of receiving medical services, hospitalisation or approved recovery/return to work services (but not where the worker travels in a private vehicle);
- the cost of accommodation where it is necessary for the worker to be accommodated away from home for the purpose of receiving medical services or approved recovery/return to work services (but not exceeding limits prescribed by regulation);
- the cost of attendance by a registered or enrolled nurse, or by some other person approved by the Corporation or of a class approved by the Corporation, if the injury is such that the worker must have nursing or personal attendance;
- the cost of the provision, maintenance, replacement or repair of therapeutic appliances;
- the cost of medicines and other material purchased on the prescription or recommendation of a health practitioner;
- any other costs (or classes of costs) authorised by the Corporation.

The Corporation may reduce charges it considers excessive or disallow charges for services that it considers were unreasonable, unnecessary or unreasonably incurred but, if it does so, must give the provider of the service notice of the decision to reduce or disallow the charge.

The clause also provides for publication by the Minister, by notice in the Gazette, of scales of charges for the purposes of the clause. The amount of compensation for a service covered by a scale of charges must be in accordance with the scale. The notice must be made on the recommendation of the Corporation. The clause prescribes various requirements in relation to scales of charges, including a requirement for the Corporation to consult various bodies before making a recommendation to the Minister about the publishing of a scale.

This clause also provides an entitlement for workers to apply to the Corporation for approval to obtain the provision of prescribed classes of services, appliances, medicines or materials of a kind referred to in the list above.

A person's entitlement to compensation under this clause ceases if he or she has not had an entitlement to receive weekly payments in relation to the work injury for a continuous period of 12 months or has not had an entitlement to receive weekly payments and a period of 12 months has expired. However, this cessation does not apply in relation to a seriously injured worker or in other circumstances specified in subclause (21) (including in relation to therapeutic appliances required to maintain a worker's capacity and surgery that has been approved by the Corporation before the entitlement ceased) or prescribed by the regulations.

34—Transportation for initial treatment

This clause applies if a worker is injured at his or her place of employment during the course of employment and, as a consequence of the injury, requires immediate medical treatment. The employer is required to provide the worker with immediate transportation to a hospital or health practitioner for initial treatment. The transportation is to be provided at the employer's expense.

Division 3—Property damage

35—Property damage

This clause provides for compensation if a worker suffers a work injury and, in consequence of the trauma out of which the injury arose, damage occurs to therapeutic appliances, clothes, personal effects or tools of trade of the worker. The worker is entitled to compensation for the full amount of the damage (subject to prescribed limitations).

Division 4—Income support

Subdivision 1—Preliminary

36—Capacity to perform work

This clause provides that a worker's current work capacity for the purposes of the Act is constituted by a present inability arising from a work injury such that the worker is not able to return to his or her employment at the time of the injury but is able to return to work in suitable employment. It is further provided that a worker has no current work capacity if he or she has a present inability arising from a work injury such that he or she is not able to return to work in his or her employment at the time of the occurrence of the injury or in suitable employment.

37—Prescribed benefits

This clause lists *prescribed benefits* for the purposes of Division 4 as follows:

- any amount paid to the worker by the Corporation or a self-insured employer in respect of an employment program provided or arranged by the Corporation or self-insured employer for the purposes of the Act;
- any of the following received by the worker from an employer:
 - any payment, allowance or benefit related to annual or other leave;
 - any payment, allowance or benefit paid or conferred by the employer on the worker's retirement;
 - any payment, allowance or benefit paid or conferred under a superannuation or pension scheme;
 - any payment, allowance or benefit paid or conferred on the retrenchment, or in relation to the redundancy, of the worker;
- any other payment, allowance or benefit of a prescribed kind.

38—Prescribed allowances

In Division 4, a reference to weekly earnings or current weekly earnings means weekly earnings exclusive of prescribed allowances.

Subdivision 2—Entitlement to weekly payments

39—Weekly payments over designated periods for workers other than seriously injured workers

This clause sets out the principles according to which a worker (other than a seriously injured worker) who suffers a work injury that results in incapacity for work is entitled to weekly payments in respect of the incapacity.

If a period of incapacity for work occurs within the period of 52 weeks from the date on which the incapacity first occurs, the worker is entitled to weekly payments equal to his or her notional weekly earnings for a period when he or she has no current work capacity and weekly payments equal to the difference between his or her notional weekly earnings and his or her designated weekly earnings for a period when he or she has a current work capacity.

If a period of incapacity for work occurs within the period of 52 weeks beginning immediately after the end of the first 52 week period, the worker is entitled to weekly payments equal to 80% of his or her notional weekly earnings for a period when he or she has no current work capacity and weekly payments equal to 80% of the difference between his or her notional weekly earnings and his or her designated weekly earnings for a period when he or she has a current work capacity.

The *designated weekly earnings* of a worker for the purposes of the clause are the greater of the following:

- the current weekly earnings of the worker in employment or self-employment;
- the weekly earnings that the Corporation determines that the worker could earn from time to time (including, but not limited to, the amount of any

current weekly earnings) in employment, whether in the worker's employment previous to the relevant injury or in suitable employment, that the Corporation determines the worker is capable of performing despite the injury.

There is no entitlement to weekly payments under the clause following the end of the period of 104 weeks from the date on which the incapacity for work first occurs.

40—Supplementary income support for incapacity resulting from surgery

This clause provides for supplementary income support payments where an injured worker has been incapacitated for work, after the end of the period of 104 weeks from the date on which incapacity first occurs, as a result of surgery approved by the Corporation. Supplementary income support payments are not payable in respect of a period of incapacity that occurs more than 13 weeks after the surgery.

41—Weekly payments for seriously injured workers

This clause sets out the principles according to which a seriously injured worker who suffers a work injury that results in incapacity for work is entitled to weekly payments in respect of the incapacity.

If a period of incapacity for work occurs within the period of 52 weeks from the date on which the incapacity first occurs, the worker is entitled to weekly payments equal to his or her notional weekly earnings for a period when he or she has no current work capacity and weekly payments equal to the difference between his or her notional weekly earnings and his or her designated weekly earnings for a period when he or she has a current work capacity.

If a period of incapacity occurs after the end of the first 52 week period from the date on which incapacity first occurs, the worker is entitled to weekly payments equal to 80% of his or her notional weekly earnings for a period when he or she has no current work capacity and weekly payments equal to 80% of the difference between his or her notional weekly earnings and his or her designated weekly earnings for a period when he or she has a current work capacity.

If a worker who is paid weekly payments on the basis that he or she is a seriously injured worker is subsequently determined not to be a seriously injured worker, he or she is entitled to continue to receive payments as if he or she were a seriously injured worker until the expiration of 8 weeks following the date of the whole person assessment on account of which the determination was made. Any further entitlement to weekly payments will be determined on the basis that the worker is not a seriously injured worker.

42—Federal minimum wage safety net

This clause has the effect of ensuring that the amount that a worker who has suffered a work injury receives in any week (that is, from a combination of compensation and designated weekly earnings) is not less than the Federal minimum wage (as adjusted, if necessary, for part-time workers). If the combined amount would be less than the Federal minimum wage, the amount of compensation payable must be increased so that the combined amount is equal to that minimum (or, in the case of a part-time worker, to the minimum as adjusted).

43—Return to work obligations of worker

A worker who has a current work capacity is required under this clause to make reasonable efforts to return to work in suitable employment or pre-injury employment at his or her place of employment or at another place of employment.

44—Termination of weekly payments on retiring age

This clause provides that weekly payments are not payable in respect of a period of incapacity for work falling after the date on which a worker reaches his or her retiring age. Despite this, if a worker who is within 2 years of his or her retiring age or above his or her retiring age becomes incapacitated for work while still in employment, weekly payments are payable (subject to other provisions of the Act) for any period of incapacity falling within 104 weeks after the date on which the incapacity first occurred.

Subdivision 3—Adjustment of weekly payments**45—Adjustments due to change from original arrangements**

This clause authorises the Corporation to review the calculation of the average weekly earnings of a worker for the purposes of making an adjustment. A review may be undertaken on the Corporation's own initiative or at the request of the worker. The Corporation may make an adjustment if it finds that there has been a change that warrants the adjustment. An adjustment may be made if there has been—

- a change in a component of the worker's remuneration used to determine average weekly earnings (including a component constituted by a non-cash benefit); or
- a change in the equipment or facilities provided or made available to the worker (if relevant to average weekly earnings).

An adjustment under the clause takes effect as an adjustment to the worker's notional weekly earnings. The adjustment may therefore have the effect of increasing or reducing weekly payments.

46—Review of weekly payments

This clause authorises the Corporation to review the amount of the weekly payments made to a worker who has suffered a work injury. A review under this clause may be undertaken on the Corporation's own initiative, but must be undertaken if a worker or employer requests the review. If the Corporation finds on the review that the worker's entitlement to weekly payments has ceased, increased or decreased, it must adjust or discontinue the weekly payments accordingly.

47—Economic adjustments to weekly payments for seriously injured workers

The Corporation is required under this clause to review the weekly payments of a seriously injured worker who is incapacitated for work or appears likely to be incapacitated for work for more than 1 year. A review must be undertaken during the course of each year of incapacity. The purpose of the review is to make an adjustment to the amount of the worker's weekly payments to reflect changes in rates of remuneration.

Subdivision 4—Reduction or discontinuance of weekly payments

48—Reduction or discontinuance of weekly payments

This clause provides that weekly payments to a worker who has suffered a work injury may not be reduced or discontinued except specified circumstances.

If the Corporation decides to reduce or discontinue weekly payments under the clause, it must give notice in writing to the worker. The notice must contain the information required by the regulations as to the reasons for the decision, must inform the worker of his or her right to have the decision reviewed and must be given as required under subclause (6).

If a worker applies to the Tribunal for a review of a decision to reduce or discontinue weekly payments under this clause within one month of receipt of the decision, and the worker makes an election under subclause (9), the operation of the decision is suspended. Weekly payments must then continue or be reinstated until the matter first comes before a member of the Tribunal. The Tribunal may then further suspend the operation of the decision from time to time to allow a reasonable opportunity for resolution of the dispute by conciliation or determination if the suspension is reasonably necessary in order to avoid undue financial hardship being suffered by the worker. This power operates subject to the principle that the Tribunal should give extra weight to taking such action if it appears to the Tribunal that it is reasonably open to the worker to dispute the relevant decision. The Tribunal may vary or revoke a decision to suspend the operation of a decision and may also make an order for the payment of an amount to represent some or all of any of the weekly payments that have not been made to the worker during the period of the dispute. If a dispute is ultimately resolved in favour of the Corporation and the worker has been paid an amount in excess of his or her lawful entitlement to weekly payments, the Corporation may recover the amount of the excess (plus interest) from the worker as a debt or set off the amount recoverable against liabilities of the Corporation to make payments to the worker. This ability to recover or set off the excess payment operates subject to the regulations.

This clause also makes provision for review of a worker's circumstances with a view to reducing or discontinuing weekly payments at the request of an employer who believes that reasonable grounds exist for a reduction or discontinuance.

Subdivision 5—Related matters

49—Protection from excess payments

This clause provides that a worker is not entitled to receive, in respect of 2 or more injuries, weekly payments in excess of his or her notional weekly earnings.

50—Weekly payments and leave entitlements

This clause deals with the effect of leave entitlements on weekly payments. A liability to make weekly payments in respect of a period of incapacity is not affected by a payment, allowance or benefit for annual leave or long service leave to which a worker is entitled for that period. Various other matters relating to leave entitlements and weekly payments are dealt with under the clause.

51—Absence of worker from Australia

A worker who has suffered a work injury and is receiving weekly payments must give the Corporation details of any proposed absence from Australia that is to be for a period of more than 28 days. This clause authorises the Corporation to suspend or reduce weekly payments being made to a worker who is absent from Australia if certain circumstances specified in the clause apply.

52—Reports of return to work etc

This clause places an obligation on an employer to notify the Corporation of a worker's return to work. The Corporation must also be notified if there is a change in the weekly earnings of, or a change in the type of work performed by, a worker who is receiving weekly payments for partial incapacity. A worker who has been receiving weekly payments for total incapacity must notify the Corporation if he or she returns to work with an employer that is not the employer from whose employment the injury arose.

Division 5—Redemptions**53—Redemptions—liabilities associated with weekly payments**

This clause allows for the redemption of a liability to make weekly payments by a capital payment to the worker. A redemption must be by agreement between the worker and the Corporation. An agreement for the redemption of weekly payments cannot be made unless the worker has received competent professional and financial advice, and unless the Corporation has consulted with the relevant employer, as required under the clause. There must also be certification from a recognised health practitioner that the extent of the worker's incapacity resulting from the work injury can be determined with a reasonable degree of confidence.

For a seriously injured worker, this clause applies subject to any election made by the worker under Part 5 Division 1.

54—Redemptions—liabilities associated with medical services

This clause allows for the redemption of a liability to make payments of a kind referred to in clause 33 (that is, payments in relation to certain medical and therapeutic services) by a capital payment to the worker. The liability may only be redeemed if the worker has received competent professional advice and advice from a recognised health practitioner about the future medical services he or she will or is likely to require on account of the work injury and any related surgery, treatment or condition. The clause does not apply in relation to seriously injured workers.

Division 6—Permanent impairment—economic loss**55—Preliminary**

This clause sets out a number of terms and references (or factors) for the purpose of forming the basis of the calculation required to determine the lump sum payment for loss of future earning capacity to an injured worker.

56—Lump sum payments—economic loss

This clause establishes an entitlement to a lump sum for loss of future earning capacity for a worker (other than a seriously injured worker) who suffers a work injury resulting in permanent impairment. The lump sum is determined according to a formula set out in the clause. No entitlement arises under the clause if the degree of whole person impairment from physical injury is less than 5% or in relation to psychiatric injury, consequential mental harm or noise induced hearing loss. The maximum amount payable under this provision will be \$350 000 (indexed), with the actual amount being determined according to the degree of whole person impairment, the age of the worker, and the status of the worker's employment as a full-time or part-time worker at the time of the injury. A worker's degree of impairment is to be assessed in accordance with Part 2 Division 5 (and the Impairment Assessment Guidelines). Only 1 claim may be made in respect of any impairment or impairments that result from 1 or more injuries (including consequential injuries) arising from the same trauma.

Division 7—Permanent impairment—non-economic loss

57—Prescribed sum

This clause provides that the prescribed sum for the purposes of Division 7 is \$472 000 (indexed). However, if a greater amount is prescribed by regulation for the purposes of the definition, the prescribed sum is the greater amount.

58—Lump sum payments—non economic loss

This clause provides a worker who has suffered a work injury resulting in permanent impairment with an entitlement to compensation for non-economic loss by way of a lump sum. However, if a worker's degree of whole person impairment from physical injury is less than 5%, there is no entitlement to compensation under the clause. Further, there is no entitlement under the clause in relation to psychiatric injury or consequential mental harm.

The lump sum to which a worker is entitled will be an amount that represents a portion of the prescribed sum calculated in accordance with the regulations. The regulations made for those purposes must provide for compensation that at least satisfies the requirements of Schedule 8 taking into account the assessment of whole person impairment.

A worker's degree of impairment is to be assessed in accordance with Part 2 Division 5 (and the Impairment Assessment Guidelines).

Only 1 claim may be made in respect of any impairment or impairments that result from 1 or more injuries (including consequential injuries) arising from the same trauma.

Division 8—Payments on death

59—Weekly payments

This clause provides an entitlement to compensation in the form of weekly payments for spouses, domestic partners and dependent children of workers who die as a result

of work injuries. There is also an entitlement for a dependent relative of a deceased worker who is not a spouse, domestic partner or child.

60—Review of weekly payments

This clause provides for review by the Corporation of weekly payments payable to a person under Division 8. A review may be undertaken on the Corporation's own initiative, but must be undertaken at the request of the employer or the person to whom the weekly payments are payable.

61—Lump sums

This clause provides for the payment of compensation in the form of a lump sum to spouses, domestic partners and dependent children of workers who die as a result of work injuries.

62—Funeral benefits

A funeral benefit is payable under this clause where a worker dies as a result of a work injury. The benefit is to be paid to the person who conducted the funeral or to a person who has paid, or is liable to pay, the funeral expenses of the deceased worker.

63—Counselling services

This clause provides an entitlement to compensation for the cost of approved counselling services for family members of workers who die as the result of work injuries.

Division 9—Rules as to liability

64—Incidence of liability

The Corporation is liable under this clause for the compensation that is payable under Part 4. However, if a work injury arises from employment by a self-insured employer, the self-insured employer is liable to make all payments of compensation to which any person becomes entitled because of the injury.

This clause also makes further provision in relation to the liability of the Corporation and employers with respect to compensation under the Act.

This clause requires the Corporation to pay compensation on behalf of an employer that fails to make the payment as required under the Act. The Corporation is then entitled to recover the amount of the payment plus an administration fee from the employer as a debt.

65—Augmentation of weekly payment in consequence of delay

This clause makes provision for the payment of interest if a weekly payment is not paid as and when required under the Act or there is a delay in the making of a weekly payment pending the resolution of a dispute.

Division 10—Related matters

66—Rights of action and recovery against third parties

This clause deals with certain matters relating to rights of action and recovery where a right of action exists (or would exist but for this clause) against a person other than the employer for damages in respect of a work injury.

Subclause (7) sets out rules and requirements that apply where compensation is paid or payable under the Act to a person who has received, or is entitled to, damages from another person, and the person by whom the compensation under the Act is paid or payable is entitled (under subclause (5) or (6)) to recover the amount of compensation.

67—Prohibition of double recovery

This clause provides that compensation is not payable under the Act in respect of an injury to the extent that compensation has been received in respect of the same injury under the laws of another place.

68—Injuries arising from employment on ships

This clause provides that the amount of compensation payable in relation to a work injury arising from employment on a ship is not subject to any limitation imposed by the *Merchant Shipping Act 1894* of the United Kingdom.

69—Sporting injuries

Under subclause (1) of this clause, if a worker is employed solely to participate as a contestant, or act as a referee or umpire, in a sporting or athletic activity or contest, and remuneration is not payable under the contract of employment except in respect of that employment, the worker is not entitled to compensation for an injury arising out of or in the course of that employment. This principle operates subject to exceptions specified in subclause (2).

Part 5—Common law

Division 1—Preliminary

70—Preliminary

This clause deals with some preliminary matters in respect of Part 5, as follows:

- a reference to a worker's employer includes a reference to a person who is vicariously liable for the acts of the employer and a person for whose acts the employer is vicariously liable;
- a reference to a percentage (or degree) of permanent impairment is a reference to a percentage (or degree) of whole person impairment;
- a reference to compensation payable under the Act includes a reference to compensation that would be payable under the Act if a claim for that compensation were duly made.

71—Application of Part in relation to damages and scope and limitation of liability

This clause provides, in subclause (1), that Part 5 of the Act applies to an award of damages in respect of a work injury to a worker, or the death of a worker resulting from a work injury, if the injury is caused by the negligence or other tort of the worker's employer and arises from employment.

That subclause operates subject to a further principle, specified in subclause (2), that an employer is not liable to an award of damages in respect of a psychiatric injury unless that injury is primarily caused by the negligence or other tort of the worker's employer. Further, an employer is not liable to an award of damages in respect of consequential mental harm.

Subclause (5) makes it clear that Part 5 applies to an award of damages in respect of an injury caused by the negligence or other tort of the worker's employer even though the damages are recovered in an action for breach of contract or in another action based on the same act or omission of the employer that would have founded an action for negligence or on account of another tort

The clause provides that a worker cannot commence proceedings in a court for damages within the scope of subclause (1) unless or until an assessment of the degree of permanent impairment of the worker has been undertaken under Part 2 Division 5.

An employer is not liable to an award of damages in respect of a work injury to a worker or the death of a worker resulting from a work injury unless the damages fall within the scope of subclause (1), (2) or (5) of the clause or the damages constitute motor vehicle damages. A liability under subclause (1), (2) or (5) does not arise unless a successful claim for compensation has been made under Part 4 of the measure.

Further, an employer is not liable to an award of damages in respect of a work injury to a worker or the death of a worker resulting from a work injury if the employer is a body corporate and the worker is a director who has a defined interest in the body corporate as well as being an employee of the employer.

72—No damages unless whole person impairment of at least 30%

Under clause 72, no damages may be awarded against an employer except in circumstances that are consistent with the operation of Part 5 and unless the injury results in a degree of permanent impairment of at least 30% or death.

73—Seriously injured workers—special provisions

This clause applies in relation to a seriously injured worker (if the seriously injured worker has a right of action against the employer) and provides that—

- the worker is not entitled in an action against an employer to damages in respect of any treatment, care or support services; and
- the worker is not entitled to both a redemption of a liability to make weekly payments under Part 4 Division 5 and damages for future economic loss due to the deprivation or impairment of earning capacity in an action against an employer; and
- the worker is not entitled in an action against an employer to damages for any loss other than economic loss; and

- the worker must elect to claim damages for future economic loss due to the deprivation or impairment of earning capacity or to enter into an agreement under Part 4 Division 5; and
- the worker cannot commence an action for damages for future economic loss or enter into an agreement under Part 4 Division 5 unless or until the election has been made (and cannot make such an election unless he or she has received legal advice about the consequences of the election).

74—General regulation of court awards

This clause provides that a court may not award damages to a person contrary to Part 5.

Division 2—General principles

75—Effect of recovery of damages on compensation

Clause 75 deals with the situation where a worker or other person recovers damages in respect of an injury from the employer and the relevant compensating authority (that is, the Corporation or self-insured employer) is liable to pay compensation under the Act in respect of the same injury.

In that situation, the person ceases to be entitled to any further compensation under the Act in respect of the injury. Further, the amount of compensation already paid is to be deducted from the damages and the person ceases to be entitled to receive recovery/return to work services under the Act. This does not include an entitlement of a seriously injured worker to receive services under Part 3 (Early intervention, recovery and return to work) or to receive compensation for medical and other expenses under Part 4 Division 2. Similarly, if a person recovers damages as a dependant of a worker in respect of proceedings in respect of the death of the worker, the relevant compensating authority is not liable to pay compensation, or further compensation, in respect of the death and the amount of any compensation already paid to the dependant under Part 4 Division 8 in respect of the death of the worker is to be deducted from the damages.

Similar principles apply in respect of a person's entitlement to compensation under the Act (and the deduction of compensation already paid) if the person recovers motor accident damages, or other damages, in respect of an injury under the Act.

76—Retirement age

A court is required under this clause, when awarding damages for future economic loss due to deprivation or impairment of earning capacity or loss of expectation of financial support in a case where Part 5 applies, to disregard any earning capacity of the injured worker after pension age (as defined in the *Social Security Act 1991* of the Commonwealth for persons other than veterans).

77—Mitigation of damages

This clause requires a court that is assessing damages in a case where Part 5 applies to consider the steps that have been taken, and that could reasonably have been or be taken by an injured worker, to mitigate the damages.

78—Payment of interest—limited statutory entitlement

This clause specifies a plaintiff's right to interest on damages in a case where Part 5 applies. The clause provides that interest is not payable unless—

- information that would enable a proper assessment of the plaintiff's claim has been given to the defendant and the defendant has had a reasonable opportunity to make an offer of settlement (where it would be appropriate to do so) in respect of the plaintiff's full entitlement to all damages of any kind relevant to the operation of this Act but has not made such an offer; or
- the defendant has had a reasonable opportunity to make a revised offer of settlement (where it would be appropriate to do so) in the light of further information given by the plaintiff that would enable a proper assessment of the plaintiff's full entitlement to all damages of any kind relevant to the operation of this Act but has not made such an offer; or
- the defendant has made an offer of settlement, the amount of all damages of any kind awarded by the court (without the addition of any interest) is more than 20% higher than the highest amount offered by the defendant and the highest amount is unreasonable having regard to the information available to the defendant when the offer was made.

79—Contributory negligence

This clause provides that the common law and enacted law in relation to contributory negligence apply to an award of damages under Part 5.

80—Defence of voluntary assumption of risk

Although the defence of voluntary assumption of risk is not available in an action for the award of damages where Part 5 applies, if that defence would otherwise have been available, the amount of any damages is to be reduced to an extent that is just and equitable on the presumption that the injured or deceased person was negligent in failing to take sufficient care for his or her own safety.

81—Exemplary or punitive damages

Exemplary and punitive damages are not available in an award of damages to which Part 5 applies.

82—Court to apportion damages etc

This clause provides that if a judgment is obtained for payment of damages to which Part 5 applies as well as for other damages, the court is required, as part of the judgment, to declare what portion of the sum awarded by the judgment is damages to which Part 5 applies.

83—Abolition of doctrine of common employment

An employer who is sued in respect of personal injury caused by the negligence of a person employed by the employer cannot rely on the defence that the employed person was, at the time of the injury, in common employment with the injured person.

84—No damages for nervous shock injury to non-workers

This clause prohibits the awarding of damages for pure mental harm against an employer in respect of the death of or injury to a worker where Part 5 applies if the pure mental harm arises wholly or partly from mental or nervous shock in connection with the death or injury. This does not apply if the pure mental harm is in itself a work injury under the Act.

Division 3—Procedural matters and costs

85—Compulsory mediation

Where an action for damages to which Part 5 applies is brought before a court, a pre-trial mediation must be conducted before the matter proceeds to trial. The clause sets out certain requirements in relation to compulsory mediation.

86—Costs

This clause applies in relation to an action for damages brought under Part 5 if the proceedings are settled or judgment is given or the proceedings are otherwise brought to an end. A legal practitioner acting on behalf of a party is required to declare the legal costs that he or she has charged, or intends to charge, the party.

Division 4—Choice of law

87—The applicable substantive law for work injury claims

This clause provides that where there is an entitlement to compensation under the statutory workers compensation scheme of a State in respect of an injury to a worker, the substantive law of that State is the substantive law that governs whether or not a claim for damages in respect of the injury can be made and, if so, the determination of the claim. However, if compensation is payable in respect of the injury under the statutory workers compensation scheme of more than one State, Division 4 of Part 5 (dealing with choice of law) does not apply.

88—Claims to which Division applies

Division 4 of Part 5 applies to a claim for damages or recovery of contribution—

- brought against a worker's employer in respect of an injury caused by the negligence or other tort (including breach of statutory duty) of the employer or a breach of contract by the employer; or
- brought against a person other than a worker's employer in respect of an injury if—
 - the worker's employment is connected with this State; and
 - the negligence or other tort or the breach of contract on which the claim is founded occurred in this State.

89—What constitutes injury and employment

This clause assists in the interpretation of the terms *injury*, *employer* and *worker*, and the determination of what constitutes employment, for the purposes of the Division.

90—Claim in respect of death included

This clause provides that, for the purposes of the Division, a claim for damages in respect of death resulting from an injury is to be considered as a claim for damages in respect of the injury.

91—Meaning of substantive law

This clause provides definitions of *a State's legislation about damages for a work related injury* and *substantive law*.

92—Availability of action in another State not relevant

This clause provides that it does not matter for the purposes of the Division if, under the substantive law of another State—

- the nature of the circumstances is such that they would not have given rise to a cause of action had they occurred in that State; or
- the circumstances on which the claim is based do not give rise to a cause of action.

Division 5—Related matters**93—Ability of Corporation to conduct and settle proceedings**

Under this clause, if a proceeding is brought for damages, and Part 5 applies, the proceeding must be against the employer and not against the Corporation. Despite this, the Corporation may (if the employer is not a self-insured employer) conduct the proceedings for the employer and settle any matter that is the subject of the proceedings.

94—Interaction with *Civil Liability Act 1936*

The Act will prevail to the extent of any inconsistency with the *Civil Liability Act 1936* but does not otherwise limit the operation of the *Civil Liability Act 1936* in respect of a cause of action for damages under Part 5.

Part 6—Dispute resolution**Division 1—Preliminary****95—Specific object**

This clause makes it clear that the vesting of jurisdiction in the Tribunal under this Part is intended to achieve an outcome in any proceedings that is based on quick and efficient decision making that resolves disputes expeditiously and fairly.

96—Interpretation

This clause provides definitions of several terms used in the Part.

97—Reviewable decisions

This clause identifies the types of decisions that are reviewable.

Division 2—Conferral of jurisdiction

98—Conferral of jurisdiction

This clause confers jurisdiction on the proposed new South Australian Employment Tribunal to deal with a reviewable decision.

Division 3—Institution of proceedings

99—Application to Tribunal

This clause establishes that a person who has a direct interest in a reviewable decision may commence proceedings for a review of the reviewable decision by the Tribunal.

100—Time for making application

This clause sets a time limit of 1 month (subject to extension) within which an application may be made to the Tribunal after the applicant receives notice of the reviewable decision.

101—Notice to be given by Registrar

Provision is made for the Registrar of the Tribunal to send copies of the application to the other parties to the proceedings.

Division 4—Initial reconsideration

102—Initial reconsideration

This clause establishes a scheme for the reconsideration of the decision to which the application relates by the relevant compensating authority.

The relevant compensating authority must (on completion of the reconsideration) confirm or vary the decision to conform with the result of the reconsideration and give the Registrar written notice of the result of the reconsideration and whether the compensating authority has confirmed or varied the decision as a result of the reconsideration and, if the decision has been varied, how the decision has been varied.

The clause provides that the reconsideration is not to be regarded as a redetermination of a claim under the other provisions of this Act and that a decision on a claim by the Tribunal itself, made in the exercise of the Tribunal's special jurisdiction to expedite decisions on claims, is not liable to reconsideration under this section and if such a decision is the subject of an application under this Part, the matter will immediately proceed to be reviewed under Part 3 of the proposed *South Australian Employment Tribunal Act 2014*.

103—Proceedings on application

This clause provides that if the relevant compensating authority confirms a decision on reconsideration, or a party to the dispute expresses dissatisfaction (in accordance with the rules) with the variation of a decision on reconsideration, the matter will be dealt with under Part 3 of the proposed *South Australian Employment Tribunal Act 2014*. The reconsideration of a matter under this Division should not unduly delay

proceedings before the Tribunal and the Tribunal must, so far as is reasonably practicable, undertake its processes pending the outcome of the reconsideration.

Division 5—Related matters—Tribunal proceedings

104—Pre-hearing conference

This clause provides that before the Tribunal proceeds with the hearing of a matter, a compulsory conference between the parties must be held under the proposed *South Australian Employment Tribunal Act 2014*. Although the Tribunal must not dispense with a conference under that Act, the member of the Tribunal presiding at the conference may close the conference at any time if it appears to him or her that the matter should immediately be referred to the Tribunal for hearing and determination.

105—Representation

This clause makes it clear that a party to proceedings before the Tribunal is entitled, without leave, to be represented by an officer or employee of an industrial association acting in the course of employment with that industrial association.

106—Costs

This clause sets out the nature and extent of the entitlement of a party (other than the relevant compensating authority) to costs, subject to the Act and the regulations.

The clause also gives the Tribunal power to decline to make an award of costs in favour of a party and make an award of costs against the party or reduce the amount of the award to which the party would otherwise have been entitled, if the Tribunal is of the opinion that the party acted unreasonably in various respects, or frivolously or vexatiously in bringing or in relation to the conduct of proceedings before the Tribunal.

The clause further provides that an award of legal costs cannot exceed 85% of the amount that would be allowable under the relevant Supreme Court scale if the proceedings were in the Supreme Court.

The clause also establishes that if the amount of permanent impairment compensation is disputed by a worker and the amount the Tribunal awards is less than, or the same as, or less than 10% above, an amount offered by the relevant compensating authority to settle the matter before the matter proceeds to a hearing before the Tribunal, the worker is not entitled to costs under the clause.

107—Costs liability of representatives

This clause gives the Tribunal power to make various orders for the payment or repayment of costs by a professional representative that has caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay or negligence or other misconduct or default.

108—Recovery of costs of representation

This clause makes it an offence for a representative of a party to proceedings before the Tribunal to charge or seek to recover for work involved in, or associated with, that representation an amount exceeding the amount allowable under a scale fixed by regulation.

109—Ministerial intervention

The power for the Minister to intervene in proceedings before the Tribunal or the Supreme Court under this Part, if satisfied that intervention is justified in the public interest, is established.

110—Power to amend or set aside decisions or orders

This clause enables the Tribunal to amend or set aside a decision or order of the Tribunal.

111—Regulations concerning medical evidence

This clause provides for the making of regulations in relation to the provision of reports and expert medical evidence before the Tribunal and the disclosure of medical reports.

112—Payment to child

This clause makes provision for the order of payments of money to a child.

Part 7—Special jurisdiction to expedite decisions

113—Special jurisdiction

A worker or employer who believes there has been undue delay in deciding a claim or other matter affecting the worker or employer (being a claim or matter that would, once determined or decided, constitute a reviewable decision) may apply to the Tribunal, in the manner and form prescribed by regulation, for expedited determination of the matter.

114—Timing of application

An application for expedited determination of a matter cannot be made until at least 10 business days after the day the matter was placed before the relevant decision-maker.

115—Powers of Tribunal on application

This clause sets out the powers of the Tribunal on an application for expedited determination of a matter.

116—Costs

This clause gives power for regulations to be made about the costs of proceedings under this Part.

Part 8—Independent medical advice

Division 1—Interpretation

117—Interpretation

This clause defines the term *medical question* for the purposes of the Part.

Division 2—Appointment of independent medical advisers

118—Constitution of board

This clause constitutes the *Independent Medical Advisory Board* (or *IMAB*). It provides that the Board will be constituted by medical practitioners appointed by the Minister on the recommendation of a selection committee established under this clause.

119—Independent medical advisers

A member of IMAB will be called an *independent medical adviser* for the purposes of this Act.

120—Related appointment provisions

This clause provides that the terms and conditions for the appointment of an independent medical adviser is to be determined by the Minister. The clause specifies the circumstances in which the office of a person appointed to be an independent medical adviser becomes vacant.

Division 3—Referrals

121—Referral by Tribunal or court

This clause provides for the referral, by the Tribunal or a court, of any question or questions arising in proceedings to 1 or more independent medical advisers specified by the Tribunal or court for inquiry and report.

122—Powers and procedures on a referral

This clause sets out the procedures to be followed by an independent medical adviser to whom a medical question has been referred under this Division. It also gives the Tribunal or a court the power to make certain orders. Proposed subclause (6) also specifies a number of principles to be taken into account if a medical question relates to any matter that is relevant to the assessment of whole person impairment (including as to whether an impairment is permanent).

Division 4—Related matters

123—Provision of report

Proposed section 123 sets out that a report is to be prepared by an independent medical adviser at the conclusion of his or her consideration of a medical question and that the report is to be in a form specified by the rules of the Tribunal or court and is to set out a number of specified matters. The clause further provides for the admission of the report as evidence in proceedings.

124—Competency to give evidence

This clause provides that an independent medical adviser is competent to give evidence as to any matter in a report furnished by the independent medical adviser (and any other relevant matter, as appropriate).

125—Further referrals

This clause provides that the Tribunal or a court may, if it thinks fit, refer any matter (in the nature of a medical question or in connection with a medical question) back to an independent medical adviser who has furnished a report to the Tribunal or court for further report to the Tribunal or court (and then this Division will apply in relation to the reference as if it were a new reference of a medical question).

126—Staff and facilities

This clause establishes the basis of a scheme to provide staff or facilities that may be required to support IMAB or independent medical advisers in the performance of their functions under this Part.

127—Recovery of costs

This clause ensures that the costs associated with IMAB, independent medical advisers and any staff or facilities provided under this Part are payable out of the Compensation Fund.

Part 9—Registration and funding

Division 1—Registration of employers

128—Registration of employers

The scheme under the current Act for the registration of employers and the imposition and recovery of premiums is essentially re-enacted as Part 9 of this Act. This clause is the principal section with respect to the registration of the employers for the purposes of the Act.

129—Self-insured employers

The scheme under which an employer or group of employers may apply for registration as a self-insured employer or as a group of self-insured employers is to continue. A new aspect of this scheme will be that it will be a condition of registration as a self-insured employer that the employer must adopt and apply the service standards set out in Schedule 5. Another change is that the maximum period for a renewal of registration as a self-insured employer will be 5 years under the new Act (rather than the current period of 3 years). New provisions will exclude foreign companies that are holding companies from being a member of a group of self-insured employers. A specific provision allowing a self-insured employer to cease being such an employer under an agreement between the Corporation and the employer is also to be included under the new Act.

130—Crown and certain agencies to be self-insured employers

This clause continues the current scheme for the Crown and agencies and instrumentalities of the Crown to be self-insured employers.

131—Applications for registration

This clause continues the current scheme for registration.

132—Changes in details for registration

This clause continues the current scheme for employers to notify the Corporation if there is any change in any details or information relevant to a registration under the Act.

133—Ministerial appeal on decisions relating to self-insured employers

This clause continues the current scheme under the Act under which certain decisions of the Corporation with respect to the registration of an employer are reviewable by the Minister.

Division 2—Delegation to self-insured employers**134—Delegation to self-insured employers**

This clause continues the current scheme under which the powers and discretions of the Corporation under specified provisions of the Act are delegated to a self-insured employer.

Division 3—Compensation Fund**135—Compensation Fund**

The Compensation Fund will continue to be maintained by the Corporation. One change to the provision will be to allow a contribution to be made towards advocacy services for the benefit of injured workers (as determined by the Minister from time to time after consultation with the Corporation).

Division 4—Premiums**Subdivision 1—Preliminary****136—Interpretation**

This clause is in the same terms as section 65 of the current Act.

137—Average premium rate ceiling

As a general rule, the Corporation will be required to achieve an average premium rate that does not exceed 2%.

Subdivision 2—Premiums (terms and conditions)**138—Premiums (terms and conditions)**

This clause continues the scheme under which the Corporation establishes a set of terms and conditions that apply to employers in relation to the calculation, imposition and payment of premiums under the Act. These provisions will now be called "RTWSA premium provisions". Different sets of provisions will continue to be able to be set in relation to different categories of employers. These provisions underpin the arrangements for the purposes of the premiums that apply under the Act.

Subdivision 3—Premiums (general principles)

139—Liability to pay premiums

This clause sets out the requirement for employers to pay premiums under the Act. An employer who is a self-insured employer, exempt from the requirement to be registered, or exempt under the regulations, is not required to pay a premium under this Division.

140—Employer categories

This clause continues the scheme for the division of workers into various categories for the purposes of this Part. The categories will be determined by the Corporation (rather than prescribed by the regulations).

141—Classes of industry

This clause continues the scheme that allows the Corporation to divide the industries carried on in the State into various classes. One change that has been made is to provide specifically that if an employer employs workers at a workplace for the purpose of supporting a predominant class of industry carried on at 1 or more other workplaces, that predominant class of industry will, if the Corporation so determines, apply in relation to those workers at that workplace.

142—Industry rates and base premiums

This clause continues the scheme for the fixing of industry premium rates. Section 70(3) and (5) of the current Act, relating to fixing a percentage rate not exceeding 7.5%, will not apply under the new provisions.

Subdivision 4—Premiums (calculation and application)

143—Premium orders

This clause continues the scheme for publishing premium orders.

144—Premium stages

This clause continues the scheme for the imposition and payment of premiums in stages.

145—Grouping provisions

This clause continues the scheme for the grouping of employers for the determination and payment of premiums under this Division.

Division 5—Self-insured employers—fees

146—Self-insured employers—fees

This clause continues the scheme for the payment of a fee by a self-insured employer.

Division 6—Remissions and supplementary payments

147—Remissions and supplementary payments

This clause continues the scheme for the remission of a premium or fee otherwise payable by an employer or the imposition of supplementary payments.

Division 7—Administration of premiums/fees scheme

148—Interpretation

149—Provision of information (initial calculations)

150—Provision of information (on-going requirements)

151—Revised estimates or determinations

152—Further adjustments

153—Deferred payment

154—Recovery on default

155—Penalty for late payment

156—Exercise of adjustment powers

157—Review

158—Payments to be made to Corporation

159—GST

160—Transfer of business

161—Reasonable mistake about application of Act

These clauses set out various ancillary or related provisions associated with the calculation and payment of premiums and other relevant amounts. They are based on the provisions of the current Act.

Division 8—Miscellaneous

162—Separate accounts

This clause is similar to section 73 of the current Act, except that "secondary" injuries will no longer be separately listed in the account of an employer.

163—Liability to keep accounts

164—Person ceasing to be an employer

165—Certificate of registration

These are also ancillary provisions that replicate provisions from the current Act.

166—Insurance of registered employers against other liabilities

This clause is based on section 105 of the current Act so that an employer registered under the Act, or who is not required to be registered under the Act, is insured by the Corporation, subject to terms and conditions prescribed by the regulations, against any liability that may arise apart from this Act in respect of a work injury arising from employment (being employment to which the Act applies) by the employer. The basic insurance scheme does not extend to a self-insured employer and will not extend to a liability excluded by the regulations.

167—Corporation as insurer of last resort

This clause is based on section 50 of the current Act so that the Corporation may undertake the liabilities of a self-insured employer in certain circumstances (and will do so if the employer becomes insolvent or ceases to carry on business in the State and does not make adequate provision for relevant liabilities under the Act).

Part 10—Scheme adjustment mechanisms

168—Preliminary

This clause sets out the definitions and concepts that need to be included or explained for the purposes of this Part.

169—Scheme adjustment/review events

A scheme/adjustment review event will occur if, in respect of each of 2 consecutive financial years—

- the Corporation has achieved a funding level of at least 100% at a probability of sufficiency of 75%; and
- the Corporation has achieved a profit from its insurance operations,

and an actuary has confirmed the ongoing viability of the scheme during a declared scheme bonus period.

If such an event occurs, a payment will be made into a special account that is to be established to assist certain categories of injured workers and the Corporation will apply an equal amount so as to achieve a reduction in the premiums paid by employers under the Act. However, this is subject to the qualification that if such a course of action would result in the average premium rate falling below 1.25%, then the Minister must instead initiate a review of the scheme established by the Act.

170—Scheme funding/review events

This clause will require a review of the scheme established by the Act if, in respect of each of 2 consecutive financial years, the Corporation has been operating at a funding level below 90% at a probability of sufficiency of 75%.

Part 11—The Minister's Advisory Committee

171—Advisory Committee

This clause establishes the *Minister's Advisory Committee* and provides for its membership.

172—Functions of Advisory Committee

This clause sets out the functions of the *Minister's Advisory Committee*, which include the investigation and provision of advice about any matter relating to early intervention, recovery, return to work or compensation with respect to injured workers.

173—Proceedings etc of Advisory Committee

This clause sets out the proceedings in relation to Advisory Committee meetings.

174—Related provisions

It will be an offence for members of the Advisory Committee to divulge information without the approval of the Committee that is commercially sensitive, private, or that the Committee has classified as confidential.

This clause also makes provision in relation to committee members' duties under the *Public Sector (Honesty and Accountability) Act 1995* by providing that they will not be taken to have an interest in a matter if they only have an interest that is shared in common with employers generally or employees generally, or a substantial section of employers or employees.

Part 12—Miscellaneous**175—Extension of the application of Act to self-employed persons**

This clause enables the Corporation, on the application of a person who is self-employed, to extend to that person the protection of the Act (or of specified parts of this Act), subject to conditions and limitations determined by the Corporation.

176—Agreements with LSS Authority

The proposed section provides a scheme for the making of agreements between a prescribed authority and the LSS Authority for the provision of services to persons who have suffered work injuries and who, in the opinion of the prescribed authority, would benefit from participating in certain aspects of the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* relating to treatment, care and support needs and in having other services (whether under that Act or this Act) provided by the LSS Authority.

177—Payment not to constitute an admission of liability

This clause makes it clear that a payment by the Corporation or an employer to a worker does not constitute an admission of liability or estop a subsequent denial of liability.

178—Employer may request progress report

This clause establishes that an employer may request (from the Corporation) the provision of a report on the medical progress being made by a worker and the worker's capacity for work.

179—Copies of medical reports

This clause provides that the Corporation must, within 7 days after receiving a request from a worker's employer, provide the employer with copies of reports in the Corporation's possession prepared by health practitioners and relevant to the worker's medical condition, the worker's progress in recovery, or the extent of the worker's capacity for work.

180—Worker's right of access to claims file

This clause sets out the nature and extent of the right of a worker to access copies of documentary material relevant to a claim by the worker and the right of a worker to inspect all non-documentary material in the possession of the Corporation or a delegate of the Corporation (subject to certain exceptions). The clause requires the worker to return the material if the Corporation or a delegate of the Corporation mistakenly provides material to a worker to which the worker is not entitled.

181—Medical examination at request of employer

This clause provides that the employer of a worker who has made a claim under the Act may require the Corporation to have the worker submit to an examination by a recognised health practitioner nominated by the Corporation.

182—Worker to be supplied with copy of medical report

A copy of a report obtained for the purposes of the Act by the Corporation or an employer concerning findings made, or the opinions formed, by a health practitioner on the examination of a worker, must be sent to the worker.

183—Powers of entry and inspection

This clause sets out various powers of entry, inspection and seizure of authorised officers for the purposes of the Act.

184—Inspection of place of employment by recovery or return to work adviser

The proposed section allows for the inspection of the place of employment of an injured person by a designated adviser provided the power to inspect is exercised so as to avoid any unnecessary disruption of, or interference with, the performance of work at a place of employment.

185—Confidentiality to be maintained

Subject to the disclosure of specified matters outlined in proposed subsection (3), this clause makes it an offence for a person to disclose information if the person obtained the information in the course of carrying out functions in, or related to, the administration, operation or enforcement of this Act and the information is about commercial or trading operations, the physical or mental condition, or the personal circumstances or affairs, of a worker or other person or information provided in a return or in response to a request for information under this Act.

186—Confidentiality—employers

Except as specified, a registered employer or a person employed by a registered employer must not disclose information about the physical or mental condition of a worker.

187—Employer information

This clause provides for the disclosure of certain specified matters in relation to a registered employer by the Corporation.

188—Injuries that develop gradually

This clause makes specific provision for injuries that develop gradually and for claims in respect of noise induced hearing loss. The clause also enables the Corporation to require employers to carry out tests on classes of workers determined by the Corporation. Furthermore, if it is established that a worker was, at the time of undertaking employment with the employer, suffering from a particular injury, the clause establishes a scheme by which a self-insured employer may recover a contribution towards an amount of compensation from another self-insured employer from whose employment the injury arose or if there is no such self-insured employer—the Corporation.

189—Certain payments not to affect benefits under this Act

This clause established that the payment of certain types of compensation under the Act must not be reduced or otherwise affected by an *ex gratia* payment, an accident insurance payment or a payment or benefit of a class prescribed by regulation for the purposes of this section.

190—No contribution from workers

The proposed section ensures that the liability of an employer under this Act must not be deducted from the wages of a worker and that an employer must not discriminate against a worker on the ground that the employer is liable to pay any sum under this Act to or in relation to the worker.

191—No contracting out

Proposed subsection (1) ensures that the Act applies despite any contract to the contrary (subject to the matters set out in proposed subsection (2)).

192—Non-assignability of benefits

This clause provides that compensation is not capable of being assigned, charged or attached and does not pass to any other person.

193—Payments if worker in prison

This clause provides for the suspension of weekly payments to a person who is convicted of an offence and committed to prison for the period of imprisonment subject to the Corporation determining that they should be paid to the dependents of the prisoner.

194—Service of documents

This clause provides for the service of documents under the Act.

195—Service of documents on Corporation

This clause sets out the requirements for the effective service of documents on the Corporation.

196—Dishonesty

The proposed section makes it an offence to behave dishonestly in relation to a number of specified matters. The clause also ensures that where a court convicts a person of an offence against the proposed section or makes a finding of guilt, the court must, on application by the Corporation or a self-insured employer, order the person who committed the offence to make good any loss to the applicant as a result of the offence and reimburse costs incurred by the applicant in investigating and prosecuting the offence.

197—Evidence

This clause provides for certain evidentiary matters for the purpose of legal proceedings under the Act.

198—Offences

This clause creates an offence provision in respect of the requirement to comply with the Act.

199—Expiation fees

The proposed section provides for the fixing of expiation fees, by regulation, for alleged offences against the Act.

200—Right of intervention

The clause creates a right of intervention for the Corporation in respect of proceedings under the Act before the Tribunal or certain proceedings before a court.

201—Recovery of payments

This clause provides for the recovery (as a debt) from a worker, an employer or any other person any payment of compensation or other amount to which the worker, employer or other person is not entitled. The recovery extends to a situation where it is correcting an error, mistake or oversight, or revising an assessment, previously made by the Corporation under the Act.

202—Regulations

This clause provides a regulation making power.

203—Review of Act

The proposed section provides for the conduct of a review into the Act and its administration and operation on the expiry of 3 years from its commencement and for a report that forms the basis of the review to be laid before both Houses of Parliament.

The review must include an assessment of the extent to which the scheme established by this Act and the dispute resolution processes under this Act and the *South Australian Employment Tribunal Act 2014* have achieved a reduction in the number of disputed matters and a decrease in the time taken to resolve disputes and the extent to which there has been an improvement in the determination or resolution of medical questions arising under this Act (especially when compared to the scheme and processes applying under the repealed Act).

Schedule 1—Presumptive employment

1—Presumptive employment

This clause establishes the concept of the Crown as the presumptive employer for persons of a prescribed class who voluntarily perform work of a prescribed class that is of benefit to the State.

Schedule 2—Injuries presumed to arise from general employment

This Schedule contains a list of injuries presumed to arise from general employment.

Schedule 3—Injuries presumed to arise from employment as a firefighter

1—Substantive provisions

This Schedule contains a list of injuries presumed to arise from employment as a firefighter.

Schedule 4—Adjacent areas

1—Interpretation

2—Adjacent areas

This Schedule establishes the adjacent area for a State or Territory.

Schedule 5—Statement of service standards

Part 1—Introduction

1—Aim of these standards

2—Interpretation

3—Spirit of these standards

This Schedule sets out a statement of service standards to be met by the Corporation in its relationship with workers and employers

Part 2—The standards

4—The standards

This clause sets out the individual standards to be observed by the Corporation.

Part 3—Complaints about breaches of these standards

5—Overview

6—Procedures for the Corporation to deal with a complaint

This clause sets out the various procedures to be followed by the Corporation following its receipt of a complaint concerning the Corporation's compliance with the service standards.

7—Remedies

This clause sets out the remedies available following a finding that the Corporation has breached any of the standards.

Part 4—Wider issues

8—Wider issues

This clause provides that the Corporation will consider and address the wider implications associated with the operation and effectiveness of the standards and any complaints that arise under them.

Schedule 6—Age factor

This Schedule inserts a table of values that determine the age factor. The age factor forms part of the formula that determines the lump sum payment in clause 56 of the Act.

Schedule 7—Prescribed sum—economic loss

This Schedule inserts a table that determines the prescribed sum according to the degree of whole person impairment for the purposes of the formula used to determine the lump sum payment in clause 56 of the Act.

Schedule 8—Minimum amounts of compensation according to degree of impairment under regulations

This Schedule provides for the minimum amounts of compensation payable according to the degree of whole person impairment.

Schedule 9—Repeal, amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Repeal

2—Repeal

This clause repeals the *Workers Rehabilitation and Compensation Act 1986*.

Part 3—Amendment of *Civil Liability Act 1936*

3—Amendment of section 4—Application of Act

This clause makes changes to substitute a reference to the *Workers Rehabilitation and Compensation Act 1986* with a reference to Part 4 of the *Return to Work Act 2014*.

Part 4—Amendment of *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*

4—Amendment of section 2—Interpretation

This clause deletes the reference to "the office of Deputy President of the Workers Compensation Tribunal" from the definition of *judicial office* in section 2 of the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988* and substitutes a reference to the office of Deputy President of the South Australian Employment Tribunal.

Part 5—Amendment of *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*

5—Amendment of section 24—Eligibility for participation in Scheme

This clause substitutes the reference to a compensable injury under the *Workers Rehabilitation and Compensation Act 1986* with a reference to a work injury under the *Return to Work Act 2014* (other than to such extent as applies under section 55) for the purposes of determining the coverage of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*.

6—Amendment of section 55—Agreements with prescribed authorities

This clause makes further consequential changes to the principal Act in line with the substitution of references to the *Workers Rehabilitation and Compensation Act 1986* with the *Return to Work Act 2014*.

Part 6—Amendment of *Supreme Court Act 1935*

7—Amendment of section 39—Vexatious proceedings

This clause deletes the reference to the Workers Compensation Tribunal in the definition of *prescribed court* for the purposes of section 39 of the *Supreme Court Act 1935*.

Part 7—Amendment of *WorkCover Corporation Act 1994*

8—Amendment of long title

9—Amendment of section 1—Short title

10—Amendment of section 3—Interpretation

11—Amendment of section 4—Continuation of Corporation

12—Amendment of section 7—Allowances and expenses

13—Amendment of section 12—Primary objects

14—Amendment of section 13—Functions

15—Amendment of section 14—Powers

16—Amendment of section 14A—Direction of Minister

17—Amendment of section 16—Committees

18—Amendment of section 17A—Corporation's charter

19—Amendment of section 20—Annual reports

20—Amendment of section 21—Chief Executive Officer

21—Amendment of section 26—Protection of special names

Consequential amendments are made to reflect the passage of the *Return to Work Act 2014* and the repeal of the *Workers Rehabilitation and Compensation Act 1986*.

The amendments, where necessary, substitute references to the WorkCover Corporation of South Australia with the Return to Work Corporation of South Australia (ReturnToWorkSA).

Amendments to the *Return to Work Corporation of South Australia Act 1994* are made, where appropriate, to support the emphasis on early intervention, recovery and return to work in the *Return to Work Act 2014*.

22—Insertion of section 27A

This clause inserts a section that applies provisions of the *Public Corporations Act 1993* to the Corporation with respect to tax equivalence payments, subject to specified modifications.

Part 8—Amendment of *Work Health and Safety Act 2012*

23—Amendment of section 4—Definitions

24—Amendment of Schedule 2—Local tripartite consultation arrangements

25—Amendment of Schedule 5—Provisions of local application

These clauses contain a number of consequential amendments and include changes that substitute references to the *Workers Rehabilitation and Compensation Act 1986* and the WorkCover Corporation of South Australia with references to the *Return to*

Work Act 2014 and the Return to Work Corporation of South Australia (ReturnToWorkSA) respectively. The contribution payment associated with the administration of the Act under clause 3 of this Schedule is to be combined with the amount payable under clause 2.

Part 9—Transitional provisions

Division 1—Interpretation

26—Interpretation

This clause provides definitions of a number of terms used in Part 9. The *designated day* is a day appointed by proclamation as the designated day for the purposes of the provision in which the term is used. This clause also provides that a reference in Part 9 to the Corporation in a prescribed clause will be taken to include a reference to a self-insured employer.

Division 2—CPI adjustment

27—CPI adjustment

This clause, which will come into operation on 1 January 2015, makes provision for the indexation of sums of money fixed by the Act at the time of enactment that are followed by the word "(indexed)". The provisions of this clause providing for indexation apply to a sum fixed by a provision that has not come into operation on 1 January 2015 so that the sum as adjusted will apply when the provision comes into operation.

Division 3—Application of Act

28—General provision

Clause 28, which is subject to the other provisions of Part 9, deals in general terms with the application of the Act and provides that the Act applies to—

- an injury that is attributable to a trauma that occurred before the designated day and that is a compensable injury under the repealed Act (an *existing injury*); and
- an injury that is attributable to a trauma that occurred on or after the designated day (a *new injury*).

If an injury is partially attributable to a trauma that occurred before the designated day and partially attributable to a trauma that occurred on or after the designated day, the injury will be taken to be a new injury.

29—Connection with employment

Under this clause, although sections 30 and 30A of the repealed Act will apply for the purposes of determining whether an existing injury is compensable, section 7(3) of the Act will extend to an injury that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury if the prior injury is wholly or partially attributable to a trauma that occurred before the designated day and the later injury is wholly or partially attributable to a trauma that occurred on or after that day.

30—Notice of injury

If a worker has given a notice of injury under section 51 of the repealed Act, the notice will be taken under this clause to be a notice under section 16 of the proposed Act.

31—Employer's duty to provide work

This clause makes it clear that section 18(3) of the Act applies to a worker who has been incapacitated for work before the designated day.

32—Recovery and return to work

This clause continues rehabilitation programs and rehabilitation and return to work plans in force under the repealed Act immediately before the designated day. The latter are to be taken to be recovery/return to work plans under the proposed Act. A person who held an appointment as a co-ordinator under the repealed Act immediately before the designated day will be taken to be an accredited return to work co-ordinator under the proposed Act.

33—Seriously injured workers

If a person's degree of whole person impairment has been assessed as 30% or more under the repealed Act, he or she will be taken to be a seriously injured worker under the proposed Act. The Corporation may also determine that a worker who has an existing injury will be taken to be a seriously injured worker for the purposes of the Act.

34—Medical expenses

Under this clause, the continuous period of 12 months referred to in subclause (20) of clause 33 (that is, the period, where there has been no entitlement to weekly payments, at the end of which an entitlement to compensation under clause 33 comes to an end (subject to subclause (21)) will, in respect of an existing injury, be a period of 12 months that runs from the designated day or that commences on or after the designated day.

35—Provisional liability for medical expenses

This clause provides that a right of set off under section 32A(8) of the repealed Act may be exercised in relation to a right to the payment of compensation under the proposed Act.

36—Weekly payments for workers

This clause sets out the principles according to which a worker who is incapacitated for work in respect of an existing injury during the period beginning on the designated day and ending 104 weeks after the designated day is entitled to weekly payments in respect of the incapacity. It is made clear in this clause that a worker has no entitlement to weekly payments under the proposed Act or the repealed Act in respect of an existing injury after the end of the second transitional period (that is, the period of 52 weeks beginning after the end of the period of 52 weeks from the designated day). This does not apply in relation to a seriously injured worker.

37—Federal minimum wage safety net

This clause extends the minimum wage safety net provided by clause 42 to the amount of compensation payable under Part 4 Division 4 Subdivision 2 of the Act on account of the operation of transitional provisions.

38—Management of transitional arrangements for income support

This clause authorises the Corporation to establish a scheme to provide for the transition from making weekly payments under the repealed Act to making weekly payments in accordance with the transitional provisions and more generally.

39—Retirement age

It is made clear by this clause that clause 44 of the Act (Termination of weekly payments on retiring age) extends to weekly payments being paid to a worker under the transitional provisions.

40—Discontinuance of weekly payments

The provision of the Act allowing for suspension of a decision to reduce or discontinue weekly payments on the application by the worker for review of the decision applies under this clause to a notice of a decision under section 36 of the repealed Act. This does not apply if the worker has lodged a notice of dispute in relation to the decision before the designated day. Subclauses (2) and (3) of this clause deal with the situation where the worker has lodged a notice of dispute under the repealed Act before the designated day.

41—Redemptions

Nothing in Part 9 affects the application of section 42 of the repealed Act with respect to negotiations, and any agreement for, a redemption if entered into in accordance with that section before the designated day. Apart from that, section 42 of the repealed Act does not apply to or in relation to a liability under that Act with respect to an existing injury.

42—Loss of future earning capacity

This clause puts it beyond doubt that Part 4 Division 6 of the Act does not apply to or in relation to an existing injury.

43—Permanent impairment assessment

Under this clause, if a person's entitlement to compensation for non-economic loss has been determined under the repealed Act in respect of an existing injury, the person is not entitled to an assessment under this Act in relation to the same injury (or any other injury arising from the same trauma). That principle does not apply in prescribed circumstances.

44—Payments on death—lump sums

The Corporation is authorised under this clause to make *ex gratia* payments on the application of a person who was the spouse or domestic partner of a worker who died on or after 1 July 2008. A payment is to be made (in the absolute discretion of the Corporation) on the application of the person who was the spouse or domestic partner of the worker. The Corporation is to take into account the amount (or additional

amount) that would have been payable under section 59 of the Act if that section had been in operation before the trauma.

Under this clause, the Corporation may deal with a claim in relation to the death of a worker under section 45A of the repealed Act that has not been determined before the designated day in all respects under clause 59 of the proposed Act. Clause 59 provides for the payment of compensation in the form of a lump sum to spouses, domestic partners and children of workers who die as a result of work injuries.

45—Incidence of liability

This clause extends clauses 64(3) and (4) of the proposed Act to outstanding payments of compensation under the repealed Act. Clause 64(3) provides that a self-insured employer is liable to make all outstanding payments of compensation to which a person is entitled in consequence of the occurrence of a work injury arising from employment by the employer that occurred before the employer became a self-insured employer. Clause 64(4) requires the Corporation to pay a self-insured employer an amount, to be determined in accordance with the code of conduct for self-insured employers, to offset the self-insured employer's liability under subclause (3).

46—Payments by employers

This clause makes provision for the recovery by an employer from the Corporation of amounts paid by the employer as compensation for income maintenance under the repealed Act where the employer would have a right of recovery from the Corporation under clause 64 of the proposed Act if that clause has been in operation at the time of the payment.

47—Provisional payments

This clause provides for the exercise of a right of set off under section 50H of the repealed Act in relation to a right to the payment of compensation under the Act.

Division 4—Common law

48—Common law

This clause provides that Part 5 of the Act does not apply to or in relation to an existing injury or the death of a worker resulting from an existing injury.

Division 5—Dispute resolution

49—Existing proceedings etc

This clause provides for the continuation and completion of applications or other proceedings commenced before the Workers Compensation Tribunal under the repealed Act before the designated day. An application or proceeding that is not commenced before the designated day will proceed before the South Australian Employment Tribunal (SAET) rather than WCT.

50—Adoption of WCT decisions

This clause authorises SAET to draw conclusions of fact from evidence before WCT, adopt findings, determinations decisions, directions or orders of WCT and set aside any decision, direction or order of WCT.

51—Dissolution of WCT

The clause provides for the dissolution of WCT by proclamation of the Governor when he or she thinks that it is appropriate to do so. When a proclamation is made, the following will occur:

- members of WCT holding office under the repealed Act will cease to hold that office;
- any contract, agreement or arrangement relating to the office will be terminated (and there will be no right of action against the Minister or the State on account of the termination);
- proceedings before WCT will be dealt with in accordance with provisions made by the regulations;
- a member of WCT who is a Judge of the Industrial Relations Court of South Australia will continue as a member of SAET under the provisions of the *South Australian Employment Tribunal Act 2014*.

Division 6—Registration and funding**52—Continuation of registration**

This clause provides for the continuation of the registration of employers registered under the repealed Act immediately before the designated day.

53—Premiums and payments

Under this clause, RTWSA premium orders may take into account the claims experience of employers under the repealed Act. A hindsight premium under the repealed Act is payable as if the relevant period applied under the proposed Act and is to be paid by a date specified by the Corporation. This clause also provides for continuity of groups constituted under section 72A of the repealed Act.

54—Scheme reviews

A financial year relevant to the operation of Part 10 will be a financial year commencing on or after the designated day.

Division 7—Medical panels**55—Medical panels**

There is a requirement under this clause for proceedings before Medical Panels under the repealed Act immediately before the designated day to be concluded as quickly as is reasonably practicable after that day. Such proceedings will, in any event, be brought to an end 60 days after that day.

Division 8—WorkCover Ombudsman**56—WorkCover Ombudsman**

This clause provides that the person holding office as the WorkCover Ombudsman immediately before the designated day will cease to hold office on that day.

Division 9—1971/1986 Acts

57—Interpretation

For the purposes of the provisions of Division 9, the *appointed day* is the day on which the *Workers Compensation Act 1971* (the *1971 Act*) was repealed.

58—Application of 1971 Act

The 1971 Act will continue to apply in respect of injuries that are attributable to traumas that occurred before the appointed day. The new Act applies where an injury is partially attributable to a trauma that occurred before the appointed day and partially attributable to an injury that occurred on or after the appointed day, but this clause sets out various provisions that apply in respect of such injuries.

59—Mining and Quarrying Industries Fund

This clause provides for the continuation of the scheme established under Part 9 of the 1971 Act for the settlement of claims and other matters arising in relation to death or disablement from silicosis suffered before the appointed day. The Corporation will be liable to satisfy any claim made under the scheme

60—Statutory Reserve Fund

There is a requirement under this clause for the Statutory Reserve Fund to continue to be held as a separate part of the Compensation Fund.

61—Insurance Assistance Fund

This clause requires that the Insurance Assistance Fund continue to be held as a separate part of the Compensation Fund.

62—Management of funds

This clause authorises investment of the Statutory Reserve Fund and the Insurance Assistance Fund in common with the Compensation Fund as if they formed part of the Compensation Fund.

63—Entitlement to documents

The Corporation is entitled under this clause to possession of all documents and other materials in the possession or power of the Motor Accident Commission relevant to claims against the Statutory Reserve Fund or to liabilities under policies of insurance transferred to the Corporation in connection with the scheme continued under the Schedule.

Division 10—Work health and safety administration costs

64—Work health and safety administration costs

This clause requires that the prescribed percentage of the prescribed amount under Schedule 5 clause 2(7) and (8) of the *Work Health and Safety Act 2012* for the 2015/2016 financial year be at least equal to the total of the prescribed percentage of the prescribed amount under those provisions for the 2014/2015 financial year and the amount payable under Schedule 5, clause 3 of the WHS Act for the

2014/2015 financial year. This relates to the percentage of registration fees that are to be paid to the Department.

Division 11—Renewal of authorised contracts

65—Renewal of authorised contracts

This clause will allow a regulation under section 14(4)(d) of the *WorkCover Corporation Act 1994* which authorises a contract to be entered into under that section to come into operation on 1 July 2015 and without the need for its commencement to be delayed pending any possible motion of disallowance.

Division 12—Regulations

66—Additional transitional provisions—regulations

This clause provides that the Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of the Act.