



WORKERS REHABILITATION AND COMPENSATION (MISCELLANEOUS) AMENDMENT ACT 1992

No. 84 of 1992

SUMMARY OF PROVISIONS

Section

1. Short title
2. Commencement
3. Amendment of s. 4—Average weekly earnings
4. Amendment of s. 30—Compensability of disabilities
5. Amendment of s. 34—Compensation for property damage
6. Amendment of s. 35—Weekly payments
7. Amendment of s. 36—Discontinuance of weekly payments
8. Amendment of s. 37—Suspension of weekly payments
9. Amendment of s. 39—Economic adjustments to weekly payments
10. Insertion of new Division

DIVISION IVA—COMPENSATION FOR LOSS OF EARNING CAPACITY

- 42a. Loss of earning capacity
- 42b. Power to require medical examination, etc.
11. Amendment of s. 43—Lump sum compensation
12. Amendment of s. 44—Compensation payable on death
13. Amendment of s. 45—Review of weekly payments
14. Amendment of s. 46—Incidence of liability
15. Amendment of s. 53—Determination of claim
16. Amendment of s. 54—Limitation of employer's liability
17. Amendment of s. 63—Delegation to exempt employer
18. Amendment of s. 92a—Costs
19. Insertion of s. 112a
 - 112a. Employer information
20. Substitution of third schedule
21. Fourth schedule
22. Application of amendments



ANNO QUADRAGESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1992

No. 84 of 1992

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

[Assented to 3 December 1992]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Workers Rehabilitation and Compensation (Miscellaneous) Amendment Act 1992*.

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

Commencement

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

(2) Section 3 will be taken to have come into operation at 4.00 p.m. on 30 September 1987.

(3) Section 18 (a) will be taken to have come into operation on 8 April 1991.

Amendment of s. 4—Average weekly earnings

3. Section 4 of the principal Act is amended by inserting after paragraph (a) of subsection (8) the following paragraph:

(ab) any contribution paid or payable by an employer to a superannuation scheme for the benefit of the worker will be disregarded;

Amendment of s. 30—Compensability of disabilities

4. Section 30 of the principal Act is amended—

(a) by striking out from subsection (2) "A disability" and substituting "Subject to subsection (2a), a disability";

and

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

(2a) A disability that consists of an illness or disorder of the mind caused by stress is compensable if and only if—

(a) stress arising out of employment was a substantial cause of the disability;

and

(b) the stress did not arise wholly or predominantly from—

(i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker;

(ii) a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with the worker's employment;

or

(iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment.

Amendment of s. 34—Compensation for property damage

5. Section 34 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) An entitlement under subsection (1) does not extend to compensation for damage to a motor vehicle.

Amendment of s. 35—Weekly payments

6. Section 35 of the principal Act is amended—

(a) by striking out from subsection (1) "Subject to this section" and substituting "Subject to this Act";

and

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

(6a) A worker's entitlement to weekly payments under this section in respect of a disability that occurs after the Corporation has decided to pay compensation under Division IVA in respect of a prior disability will be reduced to such extent as may be fair and reasonable in view of the payment of compensation under Division IVA.

Amendment of s. 36—Discontinuance of weekly payments

7. Section 36 of the principal Act is amended—

(a) by striking out from subsection (3) "stating the reasons" and substituting "containing such information as the regulations may require as to the reasons";

(b) by striking out subsections (4) and (5) and substituting the following subsections:

(4) Where a worker applies for the review of a decision by the Corporation to discontinue or reduce weekly payments under this section within one month after the worker receives notice of the decision, the operation of the decision is suspended, and the weekly payments must continue or, if the decision has already taken effect, be reinstated (to their previous level), until the matter is first brought before a Review Officer.

(4a) If any proceedings before a Review Officer that relate to a decision of the Corporation under this section are adjourned, the Review Officer may, subject to subsection (4b), on such terms and conditions as the regulations may prescribe, order that weekly payments be made to the worker for the duration of the adjournment.

(4b) A Review Officer should, in considering whether or not to make an order under subsection (4a), take into account—

(a) the reason or reasons for the adjournment;

and

(b) the conduct of the parties to the proceedings,

and may take into account such other matters as the Review Officer thinks fit.

(4c) Any period between the conclusion of a hearing before a Review Officer and the handing-down of the Review Officer's decision is to be regarded as an adjournment for the purposes of subsections (4a) and (4b).

(5) Where, on a review, the Corporation's decision under this section is confirmed, any amounts to which the worker would not have been entitled but for the operation of subsection (4) or (4a) may, at the Corporation's discretion (but subject to the regulations)—

(a) be recovered by the Corporation from the worker as a debt;

or

(b) be set off by the Corporation against liabilities of the Corporation to make payments to the worker under this Act.;

and

(c) by inserting after subsection (12) the following subsection:

(13) This section does not apply in relation to the discontinuance of payments pursuant to Division IVA.

Amendment of s. 37—Suspension of weekly payments

8. Section 37 of the principal Act is amended by striking out from paragraph (a) of subsection (3) "stating the ground" and substituting "containing such information as the regulations may require as to the grounds".

Amendment of s. 39—Economic adjustments to weekly payments**9. Section 39 of the principal Act is amended—**

(a) by striking out from paragraph (b) of subsection (2) “the third and subsequent years” and substituting “a subsequent year”;

and

(b) by striking out paragraph (a) of subsection (3) and substituting the following paragraph:

(a) containing such information as the regulations may require as to the grounds on which the adjustment is being made;

Insertion of new Division**10. The following Division is inserted after Division IV of Part IV:****DIVISION IVA—COMPENSATION FOR LOSS OF EARNING CAPACITY****Loss of earning capacity**

42a. (1) Where a worker suffers a compensable disability that results in incapacity for work for a period exceeding two years, the Corporation may assess the worker’s loss of future earning capacity as a capital loss.

(2) In making the assessment, the following principles will be applied:

(a) the worker’s notional weekly earnings (less an estimation of income tax) will be projected forward over the remainder of the worker’s notional working life;

(b) in the case of partial incapacity, the amount the worker could earn in suitable employment that the worker has a reasonable prospect of obtaining by way of average weekly earnings (less an estimation of income tax) will be projected forward over the remainder of the worker’s notional working life and subtracted from the amount projected under paragraph (a);

(c) the worker’s capital loss will be taken to be 80 per cent of the present value of the loss indicated by the above projections (and in determining the present value of that loss a prescribed discount rate must be applied).

(3) For the purposes of subsection (2)—

(a) the projections referred to in that subsection will be made on the basis of rates of earnings current at the date of the assessment and without regard to possible future changes in those rates;

(b) the worker’s notional working life is the period over which the worker would have worked assuming that he or she had not been incapacitated and that period will be assessed having regard to the contingencies and vicissitudes of life that might in any event have prevented the worker from continuing in employment but the period will not, in any event, be taken to extend beyond the date on which weekly payments would (assuming no assessment of capital loss were made under this section) cease to be payable (see section 35 (5));

and

(c) in assessing what a partially incapacitated worker could earn in suitable employment, the following factors must be considered, and given such weight as may be fair and reasonable:

- (i) the nature and extent of the worker's disability;
- (ii) the worker's age, level of education and skills;
- (iii) the worker's experience in employment;
- (iv) the worker's ability to adapt to new employment.

(4) The Corporation may make one or more interim assessments of loss as to nominated portions of the worker's notional working life before making a final assessment of loss under this section.

(5) An amount assessed under this section becomes due and payable from the date of the assessment but may be paid, at the discretion of the Corporation, in a single lump sum or in instalments that are actuarially equivalent to the lump sum (and in determining actuarial equivalence any principles, and any discount, decrement or inflation rates, prescribed by the regulations must be applied).

(6) Subject to subsection (7), where the Corporation pays or commences to pay compensation under this section, the worker ceases to be entitled to weekly payments under Division IV.

(7) The Corporation must give the worker at least 21 days notice of the cessation of payments under Division IV.

(8) The Corporation may establish principles to be applied in relation to—

- (a) the making of interim assessments under this section;
- (b) the payment of amounts assessed under this section in instalments (including the amounts and frequency of any such instalments);
- (c) any other matter relevant to the operation of this section.

(9) The following decisions of the Corporation are not reviewable—

- (a) a decision of the Corporation to make or not to make an assessment under this section (but an assessment is reviewable);
- (b) a decision of the Corporation as to whether to make a final assessment or one or more interim assessments;
- (c) a decision of the Corporation as to whether to pay an amount assessed under this section in a single lump sum or in instalments and, if the Corporation decides to pay in instalments, the Corporation's decision as to the frequency of those instalments.

Power to require medical examination, etc.

42b. (1) For the purposes of this Division, the Corporation may, by notice in writing to the worker—

(a) require the worker to submit to an examination by a medical expert nominated by the Corporation;

or

(b) require the worker to furnish such information, relevant to the operation of this Division, as the Corporation thinks fit.

(2) If a worker fails to comply with a requirement under subsection (1) within the time allowed in the notice, the Corporation may—

(a) if no compensation has been paid under this Division—suspend any weekly payments being made to the worker;

(b) if compensation has been paid under this Division—determine not to pay compensation in respect of the period of default.

(3) A requirement imposed by the Corporation under subsection (1) is, on the application of the worker made within the prescribed period in accordance with the regulations, subject to review by a Review Officer.

(4) Where a worker applies for a review under subsection (3), any weekly payments suspended under subsection (2) must be reinstated (to their previous level) until the matter is first brought before a Review Officer.

(5) If any proceedings before a Review Officer under this section are adjourned, the Review Officer may, on such terms and conditions as the regulations may prescribe, order that one or more payments be made to the worker during the adjournment.

(6) A Review Officer should, in considering whether or not to make an order under subsection (5), take into account—

(a) the reason or reasons for the adjournment;

and

(b) the conduct of the parties to the proceedings,

and may take into account such other matters as the Review Officer thinks fit.

(7) Any period between the conclusion of a hearing before a Review Officer and the handing-down of the Review Officer's decision is to be regarded as an adjournment for the purposes of subsections (5) and (6).

(8) A Review Officer must, in hearing and determining any proceedings under this section, act with as much expedition as is reasonably practicable in the circumstances.

(9) On an application under this section, a Review Officer may—

(a) confirm, vary or quash the requirement imposed by the Corporation;

(b) give such directions as the Review Officer thinks necessary to expedite any assessment under this Division.

(10) If a Review Officer decides in favour of the Corporation, the Corporation may, at the Corporation's discretion (but subject to the regulations)—

(a) recover any amounts paid under subsections (4) or (5) from the worker as a debt;

or

(b) set off any amounts paid under subsections (4) or (5) against liabilities of the Corporation to make payments to the worker under this Act.

Amendment of s. 43—Lump sum compensation

11. Section 43 of the principal Act is amended—

(a) by striking out subsections (3), (4) and (5);

(b) by striking out from subsection (6) "this section" and substituting "subsection (2)";

(c) by inserting after "by way of lump sum" in subsection (7) "under subsection (2)";

(d) by inserting after subsection (7) the following subsection:

(7a) If the amount of compensation to which a worker is entitled under subsection (2) is greater than 55 per cent of the prescribed sum, the worker is entitled to a supplementary benefit equivalent to 1.5 times the amount by which that amount exceeds 55 per cent of the prescribed sum.;

and

(e) by striking out from the definition of "the prescribed sum" in subsection (11) "\$60 000" and substituting "\$62 000".

Amendment of s. 44—Compensation payable on death

12. Section 44 of the principal Act is amended—

(a) by inserting after "equal to" in subsection (1) (b) (i) "1.675 times";

(b) by inserting after "by subtracting from" in subsection (1) (c) (i) (A) "an amount equal to 1.675 times";

(c) by inserting after "by subtracting from" in subsection (4a) "an amount equal to 1.675 times";

and

(d) by inserting after subsection (14) the following subsection:

(14a) Where the worker had received compensation under Division IVA, a person is not eligible for weekly payments under this section to the extent (if any) that those payments would coincide with a period in respect of which the compensation under Division IVA was paid but otherwise weekly payments are

payable under this section as if compensation had not been paid under that Division.

Amendment of s. 45—Review of weekly payments

13. Section 45 of the principal Act is amended by striking out from paragraph (a) of subsection (7) “stating the ground” and substituting “containing such information as the regulations may require as to the grounds”.

Amendment of s. 46—Incidence of liability

14. Section 46 of the principal Act is amended by inserting after subsection (8a) the following subsections:

(8b) Where the Corporation notifies an employer (other than an exempt employer) pursuant to this subsection that a worker is entitled to compensation by way of income maintenance, the employer must, subject to subsection (8c), make the appropriate payments of compensation on behalf of the Corporation (until or unless otherwise directed by the Corporation).

Penalty: \$2 000.

(8c) An employer is not required to comply with subsection (8b)—

(a) if the employer satisfies the Corporation that to do so would be unduly burdensome on the employer, or that it is otherwise unreasonable to expect the employer to make the payments to the worker;

or

(b) in any other prescribed circumstance.

(8d) An employer who fails to satisfy the Corporation under subsection (8c) that the employer should not be required to comply with subsection (8b) may apply to the Board for a review of the matter.

(8e) An application for review does not suspend an obligation to make payments of compensation on behalf of the Corporation.

(8f) The review will be conducted in accordance with procedures determined by the Board, by the Board itself, or by a committee or person to whom the Board has delegated its powers of review under this section, and the Board has an absolute discretion as to whether it will permit the employer or a representative of the employer to be heard orally on the review.

(8g) On review, the Board may confirm, vary or rescind a decision of the Corporation under subsection (8b).

(8h) If—

(a) an employer makes a payment pursuant to subsection (8b);

and

(b) the employer applies, in a manner and form determined by the Corporation, for reimbursement within three months after the payment is made,

the employer is entitled to reimbursement by the Corporation and, if the regulations so provide, interest at the prescribed rate.

(8i) An employer may make payments of compensation on behalf of the Corporation in anticipation of a claim for compensation being subsequently made to the Corporation and determined in the worker's favour.

(8j) An employer is entitled to be reimbursed by the Corporation for a payment made under subsection (8i) if and only if—

(a) the claim is made within three months after the date of the payment;

and

(b) the claim is determined in the worker's favour,

(but the extent of the reimbursement cannot exceed the amount to which the worker is entitled on the claim).

Amendment of s. 53—Determination of claim

15. Section 53 of the principal Act is amended by striking out paragraph (a) of subsection (6) and substituting the following paragraph:

(a) such information as the regulations may require as to the grounds on which the claim is rejected;

Amendment of s. 54—Limitation of employer's liability

16. Section 54 of the principal Act is amended—

(a) by striking out paragraph (b) of subsection (1);

(b) by inserting after "compensable disability" in subsection (3) (being a disability that arises out of the use of a motor vehicle and gives rise to a liability of a kind referred to in subsection (2));

(c) by striking out subsection (4);

and

(d) by striking out from subsection (8) the definition of "prescribed sum".

Amendment of s. 63—Delegation to exempt employer

17. Section 63 of the principal Act is amended—

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

Section 42a

Section 42b;

(b) by striking out from subsection (3) "Subject to subsection (3a)" and substituting "Subject to this section";

and

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

(3aa) An exempt employer—

(a) must notify the Corporation, in accordance with the regulations, of its intention to make an assessment under Division IVA of Part IV and must not proceed to make the assessment except with the Corporation's consent;

and

(b) is subject to direction by the Corporation as to how it is to exercise its powers and discretions under that Division in relation to the workers, or a particular worker, of the employer.

Amendment of s. 92a—Costs

18. Section 92a of the principal Act is amended—

(a) by striking out from subsection (1) “must observe the following principles in relation to awarding costs” and substituting “is empowered to award costs and must, in doing so, observe the following principles”;

(b) by striking out from subsection (1) (a) “an unrepresented” and substituting “a”;

and

(c) by striking out from subsection (1) (a) “expenses” and substituting “the costs of the proceedings”.

Insertion of s. 112a

19. The principal Act is amended by inserting after section 112 the following section:

Employer information

112a. The Corporation may, as it thinks fit, disclose the following information in relation to any employer registered under this Act:

(a) the number of claims in respect of compensable disabilities made by the employer's workers in a particular period;

(b) the cost of claims in respect of compensable disabilities suffered by the employer's workers in a particular period;

(c) the nature of compensable disabilities suffered by the employer's workers;

(d) details of any remission of levy granted to the employer, or any supplementary levy imposed on the employer, under section 67.

Substitution of third schedule

20. The third schedule of the principal Act is repealed and the following schedule is substituted:

**THIRD SCHEDULE
LUMP SUM COMPENSATION**

Nature of the Disability	Percentage of the prescribed sum payable
Total and incurable loss of intellectual capacity resulting from damage to the brain	100
Total and incurable paralysis of the limbs	100
Loss of Vision—	
Total loss of sight of both eyes	100
Total loss of sight of one eye	50
Total loss of sight of one eye, the vision in the other eye being less than 6/60 Snellens type with correction or absent	100
Hearing Loss—	
Total loss of hearing	75
Speech Loss—	
Total loss of the power of speech	75
Sensory Loss—	
Total loss of senses of taste and smell	50
Total loss of sense of taste	25
Total loss of sense of smell	25
Arm Injuries—	
Loss of arm at or above elbow	90
Loss of arm below elbow	80
Hand Injuries—	
Loss of both hands	100
Loss of thumb	35
Loss of forefinger	25
Loss of middle finger	20
Loss of ring finger	20
Loss of little finger	14
Total loss of movement of joint of thumb	15
Loss of distal phalanx of thumb	17
Loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx	15
Loss of distal phalanx of forefinger	11
Loss of distal phalanx of other fingers	9
Leg Injuries—	
Loss of leg at or above knee	90
Loss of leg below knee	80
Foot Injuries—	
Loss of both feet	100
Loss of foot and hand	100
Loss of foot	75
Loss of great toe	25
Loss of any other toe	10
Loss of two phalanges of any other toe	8
Loss of phalanx of great toe	11
Loss of phalanx of any other toe	7
Loss of genital organs	70
Permanent loss of the capacity to engage in sexual intercourse	70
Total impairment of the neck and cervical spine	80
Total impairment of the upper back and thoracic spine	50
Total impairment of the lower back and lumbar spine	80
Loss of all teeth	20
Total impairment of the ventilatory function	90
Total impairment of shoulder	50
Total impairment of wrist	25
Total impairment of hip	45
Total impairment of ankle	30

Disfigurement—

A percentage of the prescribed sum (not exceeding 70 per cent) proportionate to the extent, severity and likely duration of the disfigurement.

Impairment of a physical or sensory faculty not mentioned above—

A percentage of the prescribed sum equivalent to the percentage loss of total bodily function represented by the impairment.

1. For the purposes of this schedule, a limb or other member will be taken to be lost if it is rendered permanently and

wholly useless, and a finger will be taken to be lost if two joints are severed from the hand or rendered permanently and wholly useless.

2. Where a disability consists of the permanent loss of a proportion (but not all) of the full efficient use of a physical or sensory faculty, a worker is entitled to a percentage of the compensation payable for total loss of the faculty equal to the percentage of full efficient use lost by the worker.

3. For the purpose of determining the extent of a loss of full efficient use of a physical or sensory faculty, the extent to which the loss, or the effect of the loss, may be reduced or limited by an external removable aid or appliance will be disregarded.

4. The percentage loss of total bodily function represented by a particular impairment of a physical or sensory faculty is to be determined in accordance with professionally accepted principles approved by regulation.

5. Where a worker is entitled to compensation in respect of two or more disabilities to which this schedule applies, the worker's entitlement will be determined in accordance with principles prescribed by the regulations (but the total entitlement cannot exceed 100 per cent of the prescribed sum).

6. In this schedule—

'impairment' in relation to a physical or sensory faculty, means the loss of the faculty, the loss of its use, or the damage to or malfunction of the faculty.

'physical or sensory faculty' includes any part of the body.

Fourth schedule

21. The fourth schedule of the Act is amended—

(a) by inserting after "financial year" in clause 2 (6) "(and laid before each House of Parliament by the Minister together with the Corporation's annual report)";

and

(b) by inserting after clause 2 the following clause:

Ministerial control

3. The Committee is, in the performance of its functions, subject to the control and direction of the Minister.

Application of amendments

22. (1) Subject to this section, the amendments affecting entitlement to, or quantum of, compensation for disabilities apply in relation to—

(a) a disability occurring on or after the commencement of this Act;

or

(b) a disability occurring before the commencement of this Act in relation to which—

(i) no claim for compensation had been made under the principal Act as at the commencement of this Act; or

(ii) a claim for compensation had been made under the principal Act but the claim had not been determined by the Corporation or the exempt employer.

(2) The amendments made by section 3, 5, 6, 10 and 11 apply whether the entitlement to compensation arose before or after the commencement of this Act.

(3) The amendments made by section 4 have no retrospective effect.

(4) A liability at common law for non-economic loss or solatium that arose before the commencement of this Act is not extinguished, on the commencement of this Act, by the amendments to section 54 of the principal Act, but, if an action is not commenced in a court to enforce the liability before the date falling 12 months after the cause of action arose or six months after the commencement of this Act (whichever is the later), the liability is then extinguished.

(5) The period prescribed by subsection (4) cannot be extended.

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

ROMA MITCHELL Governor