

South Australia



WORKERS REHABILITATION AND COMPENSATION (DISPUTE RESOLUTION) AMENDMENT ACT 1995

No. 75 of 1995

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ANNO QUADRAGESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1995

No. 75 of 1995

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

[Assented to 9 November 1995]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Workers Rehabilitation and Compensation (Dispute Resolution) Amendment Act 1995*.

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

Commencement

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

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

(a) by inserting after the definition of "apprentice" the following definition:

"arbitration officer" — *This refers to a conciliation and arbitration officer when acting as an arbitrator;;*

(b) by inserting after the definition of "compensable disability" the following definition—

"conciliation and arbitration officer" —*See section 81;*

"conciliation officer" — *This refers to a conciliation and arbitration officer when acting as a conciliator;*

"conciliator" means a presidential member of the Tribunal or a conciliation officer assigned to preside at conciliation proceedings—*see section 92(1)(a);;*

(c) by inserting after the definition of "employment" the following definition:

"evidentiary material" means any document, object or substance of evidentiary value in proceedings before the Tribunal and includes any document, object or substance that should, in the opinion of the Tribunal, be produced for the purpose of enabling the Tribunal to determine whether or not it has evidentiary value;;

(d) by inserting after the definition of "industry" the following definition:

"industrial association" means—

- (a) an association registered under the *Industrial and Employee Relations Act 1994*; or
- (b) an association registered under the *Industrial Relations Act 1988* of the Commonwealth; or
- (c) the United Trades and Labor Council; or
- (d) the Australian Mines and Metals Association; or
- (e) the Employer-Managed Workers Compensation Association Incorporated; or
- (f) an association, society or body formed to represent, protect or further the interests of employers or employees;;

(e) by inserting after the definition of "prescribed allowance" the following definition:

"presidential member" of the Tribunal means the President or a Deputy President of the Tribunal;;

(f) by striking out the definition of "registered association";

(g) by striking out the definition of "reviewable decision" and substituting the following:

"reviewable decision" —see section 89A;;

(h) by striking out the definition of "the Tribunal" and substituting the following definition:

"Tribunal" means the *Workers Compensation Tribunal*;

Amendment of s. 8—Functions of Advisory Committee

4. Section 8 of the principal Act is amended by striking out from subsection (3) "registered associations" and substituting "industrial associations".

Amendment of s. 36—Discontinuance of weekly payments

5. Section 36 of the principal Act is amended—

- (a) by striking out subsections (4), (4a), (4b), (4c) and (5) and substituting the following subsections:

(4) If a worker lodges a notice of dispute disputing 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—

- (a) 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 dispute first comes before a conciliator; and
- (b) the Tribunal may further suspend the operation of the decision (from time to time) to allow a reasonable opportunity for resolution of the dispute by conciliation, arbitration or judicial determination (as the case requires) without prejudice to the worker's financial position in the meanwhile.

(4A) However, if the dispute is resolved by the Corporation's decision on reconsideration of the disputed decision, the suspension terminates at the end of the period allowed for the worker to express dissatisfaction with the result of the reconsideration.

(5) If the dispute is ultimately resolved in favour of the Corporation, the Corporation may, at the Corporation's discretion (but subject to the regulations)—

- (a) recover amounts that were paid because of suspension of the operation of the Corporation's decision from the worker as a debt; or
- (b) set off the amounts against liabilities of the Corporation to make payments to the worker under this Act;

(b) by striking out from subsection (10) "a Review Officer may" and inserting "the Tribunal may".

Amendment of s. 42—Redemption of liabilities

6. Section 42 of the principal Act is amended by striking out from subsection (1)(b) "for medical expenses of the kind referred to in" and substituting "under".

Amendment of s. 42B—Power to require medical examination, etc.

7. Section 42B of the principal Act is amended by striking out subsections (3) to (10) (inclusive) and inserting:

(3) If a worker lodges a notice of dispute disputing a decision under this section by the Corporation to suspend, or not to pay, weekly payments within one month after the worker receives notice of the decision—

- (a) the operation of the decision is suspended, and the weekly payments must be reinstated, until the dispute first comes before a conciliator; and
- (b) the Tribunal may further suspend the operation of the decision (from time to time) to allow a reasonable opportunity for resolution of the dispute by conciliation, arbitration or judicial determination (as the case requires) without prejudice to the worker's financial position in the meanwhile.

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(4) However, if the dispute is resolved by the Corporation's decision on reconsideration of the disputed decision, the suspension terminates at the end of the period allowed for the worker to express dissatisfaction with the result of the reconsideration.

(5) If the dispute is ultimately resolved in favour of the Corporation, the Corporation may, at the Corporation's discretion (but subject to the regulations)—

- (a) recover amounts that were paid because of suspension of the operation of the Corporation's decision from the worker as a debt; or
- (b) set off the amounts against liabilities of the Corporation to make payments to the worker under this Act.

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

8. Section 54 of the principal Act is amended by striking out subparagraph (i) of subsection (7)(g) and substituting the following subparagraph:

- (i) may be heard and determined by the Tribunal (constituted of a presidential member); and.

Amendment of s. 60—Exempt employers

9. Section 60 of the principal Act is amended by striking out from subsection (6)(g) "registered association" and substituting "industrial association".

Amendment of s. 64—The Compensation Fund

10. Section 64 of the principal Act is amended by striking out paragraph (c) of subsection (3) and substituting the following paragraph:

- (c) the costs of the system of dispute resolution established by this Act;.

Amendment of s. 68—Special levy for exempt employers

11. Section 68 of the principal Act is amended by striking out paragraph (c) of subsection (2) and substituting the following paragraph:

- (c) a fair contribution towards the costs of the system of dispute resolution established by this Act;.

Amendment of s. 76—Proof of registration

12. Section 76 of the principal Act is amended by striking out "a registered association" and substituting "an industrial association".

Substitution of Part 6

13. Part 6 of the principal Act (comprising sections 77 to 102 inclusive) is repealed and the following Parts are substituted:

**PART 6
WORKERS COMPENSATION TRIBUNAL**

DIVISION 1—ESTABLISHMENT OF TRIBUNAL

Establishment of Tribunal

77. The *Workers Compensation Appeal Tribunal* established under this Act before the commencement of this Part continues as the *Workers Compensation Tribunal*.

Seal

77A. (1) The Tribunal has a seal and may have more than one seal.

(2) A document apparently sealed with a seal of the Tribunal will, in the absence of evidence to the contrary, be taken to have been duly issued under the authority of the Tribunal.

DIVISION 2—CONSTITUTION OF THE TRIBUNAL

Constitution of the Tribunal

78. The Tribunal may be constituted of—

- (a) a Full Bench; or
- (b) a single presidential member; or
- (c) a single conciliation and arbitration officer.

Full Bench

78A. (1) A Full Bench of the Tribunal consists of three presidential members.

(2) A decision in which a majority of the presidential members constituting a Full Bench of the Tribunal agree is a decision of the Tribunal.

Exercise of Tribunal's powers by the Registrar

78B. The Registrar may exercise the powers of the Tribunal for the purpose of—

- (a) adjourning proceedings by consent of the parties; or
- (b) carrying out other functions assigned to the Registrar under the rules.

DIVISION 3—JURISDICTION OF THE TRIBUNAL

Jurisdiction

79. The Tribunal has the jurisdiction conferred by statute.

DIVISION 4—THE PRESIDENTIAL MEMBERS

The President

80. (1) The Senior Judge of the *Industrial Relations Court of South Australia* is President of the Tribunal.

(2) The President is the principal judicial officer of the Tribunal.

(3) The President is responsible for the administration of the Tribunal.

(4) In the absence of the President from official duties, responsibility for administration of the Tribunal devolves on a Deputy President appointed by the Governor to act in the President's absence or, if no such appointment has been made, on the most senior Deputy President available to undertake that responsibility.

(5) The President may delegate administrative powers and responsibilities to a Deputy President.

The Deputy Presidents

80A. (1) A Judge (other than the Senior Judge) of the *Industrial Relations Court of South Australia* is a Deputy President of the Tribunal.

(2) The Governor may, on the nomination of the Minister, appoint a suitable person as a Deputy President of the Tribunal.

(3) A person is not eligible for appointment as a Deputy President of the Tribunal unless the person is a legal practitioner of at least seven years standing.

(4) A person may be appointed as a Deputy President of the Tribunal on a permanent or acting basis.

(5) A person appointed as a Deputy President of the Tribunal under this section ceases to hold that office if the person—

- (a) dies; or
- (b) reaches the age of 65 years; or
- (c) in the case of a Deputy President appointed on an acting basis—completes the term appointment and is not reappointed; or
- (d) resigns by written notice given to the Minister; or
- (e) is removed from office by the Governor for—
 - (i) misconduct; or
 - (ii) neglect of duty; or
 - (iii) incompetence; or
 - (iv) incapacity to carry out official duties satisfactorily.

(6) A Deputy President appointed under this section is entitled to remuneration allowances and expenses on a basis approved by the Governor.

DIVISION 5—CONCILIATION AND ARBITRATION OFFICERS

Appointment of Conciliation and arbitration officers

81. (1) The Governor may appoint conciliation and arbitration officers to carry out the Tribunal's work of conciliation and arbitration.

(2) A conciliation and arbitration officer must be a person of standing in the community with appropriate experience to work effectively in the conciliation and arbitration of disputes under this Act.

(3) Before a person is appointed (or reappointed) as a conciliation and arbitration officer, the Minister must consult confidentially about the proposed appointment with—

- (a) the United Trades and Labor Council; and
- (b) the South Australian Employers' Chamber of Commerce and Industry; and
- (c) the President of the Tribunal, or a Deputy President nominated by the President of the Tribunal.

Conditions of appointment

81A. (1) A conciliation and arbitration officer will be appointed for a term of five years and, at the end of a term of appointment, is eligible for reappointment.

(2) However—

- (a) a term of appointment cannot extend beyond the time the appointee reaches 65 years and if the appointee will reach that age less than 5 years after the date the appointment was made or last renewed, the appointment will be made or renewed for a term ending when the appointee reaches 65 years of age; and
- (b) an appointment may be made on an acting basis and, in that case, the appointment will be for a term (not exceeding six months) stated in the instrument of appointment.

(3) A conciliation and arbitration officer—

- (a) is entitled to a salary and allowances determined by the Governor on the recommendation of the Minister; and
- (b) is, to an extent determined by the Governor, subject to the *Public Sector Management Act 1995* (which applies with modification determined by the Governor); and
- (c) is an employee for the purposes of the *Superannuation Act 1988*.

(4) A conciliation and arbitration officer—

- (a)* must not, without the consent of the Minister, engage in remunerative work apart from official duties; and
- (b)* must not, while in office, be an officer of an industrial association.

(5) The Governor may remove a conciliation and arbitration officer from office if the officer—

- (a)* is convicted of an indictable offence; or
- (b)* is guilty of misconduct or neglect of duty; or
- (c)* is incompetent; or
- (d)* becomes mentally or physically incapable of carrying out official duties satisfactorily; or
- (e)* contravenes subsection (4).

Misconduct includes (but is not limited to)—

- unlawful or improper conduct in the performance of official duties;
- refusal or deliberate failure to follow reasonable administrative directions given under this Part by the President.

(6) The office of a conciliation and arbitration officer becomes vacant if the officer—

- (a)* dies; or
- (b)* completes a term of appointment and is not reappointed; or
- (c)* resigns by written notice to the Minister; or
- (d)* is removed from office under subsection (5).

Administrative responsibility of conciliation and arbitration officers

81B. A conciliation and arbitration officer is responsible to, and subject to direction by, the President on administrative matters and, in particular, is subject to direction by the President on the duties to be performed and the times and places at which the duties are to be performed.

DIVISION 6—ADMINISTRATIVE AND ANCILLARY STAFF**Administrative and ancillary staff**

82. The Tribunal's administrative and ancillary staff consists of—

- (a)* the Registrar;
- (b)* the Deputy Registrars;

- (c) any other persons appointed to the administrative and ancillary staff of the Tribunal.

The Registrar

82A. (1) The Registrar is the Tribunal's principal administrative officer.

(2) A person cannot be appointed to the office of Registrar of the Tribunal, nor can a person holding that office be dismissed or reduced in status, except on the recommendation, or with the concurrence, of the President.

Responsibilities of administrative and ancillary staff

82B. A member of the Tribunal's administrative or ancillary staff is responsible to the President (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties.

DIVISION 7—SITTINGS AND DISTRIBUTION OF BUSINESS

Time and place of sittings

- 83.** (1) The Tribunal may sit at any time (including a Sunday).
- (2) The Tribunal may sit at any place (either within or outside the State).
- (3) The Tribunal will sit at such times and places as the President may direct.

Adjournment from time to time and from place to place

- 83A.** The Tribunal may—
- (a) adjourn proceedings from time to time and from place to place; or
- (b) adjourn proceedings to a time, or a time and place, to be fixed; or
- (c) order the transfer of proceedings from place to place.

DIVISION 8—EVIDENCE

Tribunal not to be bound by evidentiary rules

84. The Tribunal is not bound by the rules of evidence but may inform itself in any way it considers appropriate.

Power to require attendance of witnesses and production of evidentiary material

84A. (1) The Tribunal may, on the application of a party to proceedings or on its own initiative, issue a summons requiring a person to appear before the Tribunal at a specified time and place to give evidence or to produce evidentiary material (or both).

(2) A summons to produce evidentiary material may, instead of providing for production of the material before the Tribunal, provide for production of the material to an officer of the Tribunal nominated in the summons.

Power to compel the giving of evidence

84B. (1) A person who is called to give evidence or to produce evidentiary material before the Tribunal and—

- (a) refuses or fails to make an oath or affirmation when required to do so by the Tribunal; or
- (b) refuses or fails to give evidence on a subject on which that person is compellable to give evidence; or
- (c) refuses or fails without reasonable excuse to produce evidentiary material that that person is required by the Tribunal to produce,

commits a contempt of the Tribunal.

(2) This section applies whether the person was summoned before the Tribunal, brought before the Tribunal on a warrant, or came to the Tribunal of his or her own volition.

Entry and inspection of property

84C. (1) The Tribunal may enter any land or building and carry out an inspection that the Tribunal considers relevant to a proceeding before the Tribunal.

(2) The Tribunal may authorise an officer of the Tribunal to enter any land or building and carry out an inspection that the Tribunal considers relevant to a proceeding before the Tribunal.

(3) A person who obstructs the Tribunal, or a person authorised by the Tribunal, in the exercise of a power of entry or inspection under this section commits a contempt of the Tribunal.

Issue of evidentiary summonses

84D. (1) A summons under this Part may be issued on behalf of the Tribunal by—

- (a) a presidential member of the Tribunal; or
- (b) a conciliation and arbitration officer; or
- (c) the Registrar.

(2) However, the Registrar may only issue a summons at the direction of a presidential member or a conciliation and arbitration officer or as authorised under the Rules.

DIVISION 9—GENERAL PRINCIPLES AND RULES

Principles of equity and good conscience

85. The Tribunal must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

Hearings to be in public

85A. (1) The Tribunal must hear proceedings (other than interlocutory or conciliation proceedings) in a place open to the public.

(2) However, the Tribunal may, in the interests of a party to proceedings hear the proceedings, or a particular part of the proceedings, in private.

Representation

85B. (1) A person is entitled to appear personally or by representative in conciliation proceedings or other proceedings before the Tribunal.

(2) However, a person is not entitled to be represented by a person whose name has been struck off the roll of legal practitioners or who, although a legal practitioner, is not entitled to practise the profession of law because of disciplinary action taken against the person.

(3) If, in conciliation proceedings, the conciliator presiding at the proceedings wants to speak to a person privately in the absence of the person's representative, the representative must withdraw until—

- (a) the conciliator invites the representative to return; or
- (b) the private interview is terminated.

(4) A party is entitled to terminate a private interview with the conciliator held in the absence of the party's representative at any time after the conciliator has had a reasonable opportunity to put to the party proposals for which the conciliator initiated the private interview.

DIVISION 10—APPEALS AND CASES STATED

Appeal on question of law

86. (1) An appeal lies on a question of law against a decision of the Tribunal constituted of a single presidential member to a Full Bench of the Tribunal.

(2) An appeal under this section must be commenced, heard and determined in accordance with the rules.

Cases stated

86A. (1) A Full Bench of the Tribunal may state a case on a question of law for the opinion of the Supreme Court.

(2) A case stated under this section must be heard by the Full Court of the Supreme Court.

(3) On a case stated under this section, the Full Court of the Supreme Court may—

- (a) decide the question of law referred to the Court;
- (b) refer the case back to the Tribunal with directions the Full Court considers appropriate;
- (c) make consequential or related orders (including orders for costs).

DIVISION 11—ENFORCEMENT OF JUDGMENTS

Certified copy of judgment or order

87. The Registrar must, on application by a party to proceedings, issue a certified copy of a judgment or order of the Tribunal in the proceedings.

Enforcement of judgments and orders

87A. (1) A certified copy of a judgment or order of the Tribunal may be filed in the District Court.

(2) When a certified copy of a judgment or order is filed in the District Court under this section, the judgment or order may be enforced as a judgment or order of the District Court.

DIVISION 12—MISCELLANEOUS

Immunities

88. (1) A presidential member of the Tribunal or a conciliation and arbitration officer has the same privileges and immunities from civil liability as a Judge of the Supreme Court.

(2) An officer of the Tribunal, other than a presidential member or a conciliation and arbitration officer, incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

Contempts of the Tribunal

88A. A person who—

- (a) interrupts the proceedings of the Tribunal or misbehaves before the Tribunal; or
- (b) insults a presidential member, a conciliation and arbitration officer or another officer of the Tribunal who is acting in the exercise of official functions; or
- (c) refuses, in the face of the Tribunal, to obey a lawful direction of the Tribunal; or
- (d) fails to comply with a summons, direction, order or other process of the Tribunal (other than an order for the payment of money),

is guilty of a contempt of the Tribunal.

Punishment of contempts

88B. (1) The Tribunal constituted of a presidential member may punish a contempt by imposing a fine of an amount (not exceeding \$2 000) considered appropriate by the presidential member.

(2) This section applies both to contempts committed in the face of the Tribunal and contempts arising from non-compliance with an order, direction, summons or other process of the Tribunal.

(3) The Supreme Court may review a penalty imposed for a contempt of the Tribunal and quash, increase or reduce the penalty.

Miscellaneous provisions about legal process

88C. (1) Any process of the Tribunal may be issued or executed on a Sunday as well as any other day.

(2) The validity of process is not affected by the fact that the person who issued it dies or ceases to hold office.

Service

88D. (1) If it is not practicable to serve any process, notice or other document in the manner otherwise prescribed or contemplated by law, the Tribunal may, by order—

- (a) provide for service by post; or
- (b) make any other provision that may be necessary or desirable for service.

(2) Any process, notice or other document served in accordance with an order under subsection (1) will, despite any other law, be taken to have been duly served.

Rules

88E. (1) The President may make Rules of the Tribunal—

- (a) regulating the business of the Tribunal and the duties of the various officers of the Tribunal; and
- (b) authorising conciliation and arbitration officers to exercise any part of the jurisdiction of the Tribunal; and
- (c) regulating the practice and procedure of the Tribunal; and
- (d) imposing mutual obligations on parties to proceedings in the Tribunal to disclose to each other the contents of expert reports or other material of relevance to the proceedings before the proceedings are brought to trial; and
- (e) regulating the form in which evidence may be taken; and
- (f) regulating costs; and
- (g) dealing with any other matter necessary or expedient for the effective and efficient operation of the Tribunal.

(2) Before making Rules of the Tribunal, the President must consult with a rules committee consisting of—

- (a) at least three presidential members; and
- (b) at least two conciliation and arbitration officers; and
- (c) the Registrar.

(3) The rules take effect as from the date of publication in the *Gazette* or a later date specified in the rules.

Costs of proceedings

88F. Subject to this Act, the costs of proceedings before the Tribunal are in the discretion of the Tribunal.

Recovery of costs of representation

88G. (1) A representative of a party to proceedings before the Tribunal must not charge nor seek to recover for work involved in, or associated with, that representation an amount exceeding the amount allowable under a scale fixed by regulation.

Maximum penalty: \$2 000.

(2) Before proposing a regulation under this section to the Executive Council, the Minister must consult with the Crown Solicitor.

Power to set aside judgments or orders

88H. (1) The Tribunal may amend or set aside a judgment or order of the Tribunal—

- (a) by consent of the parties; or
- (b) in order to correct an error; or
- (c) if the interests of justice require that the judgment or order be amended or set aside.

(2) The power under subsection (1) may only be exercised by the President or a presidential member or conciliation and arbitration officer to whom the President has delegated the power.

Finality of the Tribunal's decisions

88I. No proceeding, judgment or decision of the Tribunal can be challenged, appealed against, reviewed, quashed or called in question except—

- (a) as provided in this Act; or
- (b) in proceedings before the Full Supreme Court founded on an alleged excess or want of jurisdiction.

**PART 6A
DISPUTE RESOLUTION**

DIVISION 1—PRELIMINARY

Interpretation

89. In this Part—

"applicant" means the person who lodges a notice of dispute under this Part;

"party" to a dispute means—

- (a) the applicant; and
- (b) the relevant compensating authority; and

- (c) if the dispute is about a compensable disability and the worker who suffered or is alleged to have suffered the compensable disability is not the applicant—the worker; and
- (d) if the dispute is about a compensable disability and the employer from whose employment the disability arose or is alleged to have arisen is not the applicant—the employer; and
- (e) a person who has a direct interest in the dispute and has notified the Registrar of the interest;

"relevant compensating authority" in relation to a particular disputed decision means—

- (a) if the decision was made by the Corporation or a body corporate exercising powers delegated by the Corporation—the Corporation or the relevant delegate; or
- (b) if the decision was made by an exempt employer—the exempt employer.

Reviewable decisions

89A. (1) The following decisions are reviewable—

- (a) a decision on a claim for compensation including—
 - (i) a decision redetermining a claim¹; or
 - (ii) a decision on a claim by the Tribunal, made in the exercise of the Tribunal's special jurisdiction to expedite decisions on claims²;
- (b) a decision about the nature of rehabilitation services provided, or to be provided, for a worker³;
- (c) a decision to vary, suspend or discontinue weekly payments;
- (d) a decision on an application by an employer to have weekly payments payable to a worker employed by, or formerly employed by, the employer reviewed;
- (e) a decision to disallow or reduce a charge for a medical service (unless the decision merely brings the charge into conformity with a rate of charge prescribed by regulation).

(2) However, a decision is not reviewable if declared not to be reviewable by or under this Act.

¹ See section 53(7) & (7a).

² See section 97B(3)(b).

³ Section 28B also provides for the review of a rehabilitation and return to work plan.

DIVISION 2—NOTICE OF DISPUTE

Notice of dispute

90. (1) A person with a direct interest in a reviewable decision (the "applicant") may lodge a notice of dispute with the Registrar.

(2) A notice of dispute must be in writing and in the form prescribed by regulation.

(3) A person has a direct interest in a reviewable decision if the person—

(a) is directly affected by the decision; or

(b) is the employer from whose employment the compensable disability arose or is alleged to have arisen.

Time for lodging notice of dispute

90A. (1) The notice of dispute must be lodged within one month after the applicant receives notice of the reviewable decision unless the Tribunal allows an extension of time.

(2) The Tribunal's power to extend time may only be exercised by the President or a presidential member or conciliation and arbitration officer to whom the President has delegated the power to allow an extension of time.

(3) An application for an extension of time must be made as in the manner and form prescribed by the regulations.

Notice to be given by Registrar

90B. (1) On receiving a notice of dispute, the Registrar must immediately send copies of the notice of dispute to the other parties to the dispute.

(2) The copy of the notice of dispute sent to the relevant compensating authority must be accompanied by copies of any documentary materials lodged with the notice of dispute.

DIVISION 3—INITIAL RECONSIDERATION

Initial reconsideration

91. (1) The relevant compensating authority must, on receiving a copy of a notice of dispute under this Part—

(a) assign a suitable person to reconsider the disputed decision; and

(b) have the decision reconsidered in the light of the matters set out in the notice of dispute.

(2) A person assigned to reconsider the disputed decision—

(a) may (but need not be) an officer of the relevant compensating authority but must not be the person who made the disputed decision; and

(b) must be a person who has been nominated to the Registrar in accordance with the regulations as a person who may be assigned to reconsider disputed decisions under this Division.

(3) On completion of the reconsideration, the relevant compensating authority must confirm or vary the disputed decision to conform with the result of the reconsideration and give the Registrar a written notice stating—

(a) the result of the reconsideration; and

(b) 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.

(4) If the disputed decision is varied, the written notice must also be given to the other parties to the dispute.

(5) The relevant compensating authority must complete the reconsideration and give the notice or notices stating the result of the reconsideration within 7 days after receiving the notice of dispute or a longer time allowed by the Registrar on the authority's application.

Penalty: \$5 000.

(6) The variation of a decision under this section is not to be regarded as a redetermination of a claim¹.

(7) A decision on a claim by the Tribunal itself, made in the exercise of the Tribunal's special jurisdiction to expedite decisions on claims², is not liable to reconsideration under this section; if such a decision is disputed, the Registrar must immediately refer the dispute for conciliation.

¹ See section 53(7) and (7A).

² See section 97B.

Reference of disputes to conciliation

91A. If—

(a) the relevant compensating authority, on reconsideration of a disputed decision, confirms the decision; or

(b) the relevant compensating authority, on reconsideration of a disputed decision, varies the decision and a party to the dispute expresses dissatisfaction with the result of the reconsideration in accordance with the rules,

the Registrar must refer the dispute for conciliation.

DIVISION 4—CONCILIATION PROCEEDINGS

Assignment of presidential member or conciliation officer to preside at conciliation proceedings

92. (1) When a dispute is referred for conciliation—

- (a) a presidential member or conciliation officer must be assigned in accordance with the rules to preside at the conciliation proceedings; and**
- (b) each party to the dispute must, in accordance with the rules—**
 - (i) disclose to the conciliator the existence and nature of all evidentiary material in the party's possession relevant to the dispute; and**
 - (ii) at the request of another party to the dispute, give the party access to the relevant evidentiary material.**

(2) However, if the conciliator agrees, a party need not give another party access to evidentiary material if—

- (a) the material is a videotape, photographic material, or a report of surveillance; or**
- (b) the disclosure of the material could prejudice the investigation of a suspected offence.**

Obligation of conciliator

92A. In conducting conciliation proceedings, the conciliator must—

- (a) seek to identify the issues in dispute and to narrow the range of the dispute; and**
- (b) explore the possibilities of resolving the dispute by agreement.**

Calling of conciliation conference

92B. (1) A compulsory conference of the parties to a dispute that has been referred for conciliation must be called within the time fixed by the rules.

(2) The Tribunal may summon the parties to the dispute and any other persons who may be able to assist in resolving the dispute to appear at the conference.

(3) A compulsory conference may, at the discretion of the conciliator, be held in public or private or partly in public and partly in private.

(4) A person who fails to attend a compulsory conference as required by summons or who, having attended, fails to participate in the conference as required by the conciliator presiding at the conference, commits a contempt of the Tribunal.

Procedure in conciliation proceedings

92C. (1) In the course of conducting conciliation proceedings, the conciliator may interview the parties to the dispute separately or together.

(2) The conciliator presiding at a conference may (subject to the rules) adjourn the conference from time to time to allow the parties to gather further information, to consider their respective positions or for other purposes relevant to the resolution of the dispute.

(3) Evidence of anything said or done in the course of conciliation proceedings is only admissible in subsequent proceedings by consent of all parties to the proceedings.

(4) However—

(a) evidence of a settlement reached in conciliation proceedings is admissible (without the consent of all parties) in subsequent proceedings; and

(b) evidence of the offers made in the course of conciliation proceedings is admissible (without the consent of all parties) in subsequent proceedings for the purpose of applying provisions for deciding questions about costs.

(5) A settlement to which counsel or another representative of a party agrees at a conference is binding on the party.

(6) The conciliator presiding at a conference may make a determination or order to give effect to a settlement reached at the conference.

(7) A determination or order under subsection (6) is a determination or order of the Tribunal.

Reference of dispute into Tribunal

92D. (1) If conciliation proceedings do not result in an agreed settlement of the dispute, the conciliator presiding at the conciliation proceedings must—

(a) refer the dispute into the Tribunal for arbitration; or

(b) refer the dispute into the Tribunal for judicial determination.

(2) A dispute may only be referred into the Tribunal for judicial determination under subsection (1) if—

(a) the conciliator has first informed the parties to the dispute of the intention to do so and has considered any representations made by any of them about the proposed reference; and

(b) the President (or a Deputy President to whom the President has delegated powers under this section) agrees to the proposed reference.

(3) However, the President (or a Deputy President to whom the President has delegated powers under this section) may, on application by a party or in the exercise of a personal initiative, direct that a dispute be referred into the Tribunal for judicial determination at the conclusion of conciliation proceedings.

DIVISION 5—ARBITRATION

Arbitrator

93. (1) An arbitration will be conducted by an arbitration officer.

(2) A conciliation officer who presided at the conciliation proceedings cannot arbitrate the same dispute unless the parties involved in the conciliation proceedings agree.

Conduct of proceedings

93A. (1) An arbitration is to be conducted in accordance with the rules.

(2) The arbitration officer conducting an arbitration may take into consideration recommendations of the conciliator who presided at the conciliation proceedings.

Special provision about lump sum payments

93B. If the amount of lump sum compensation is disputed by a worker, and the amount to be awarded on an arbitration is less than, the same as, or less than 10% above the amount offered in conciliation proceedings, the worker is not entitled to costs of the arbitration proceedings.

DIVISION 6—JUDICIAL DETERMINATION OF DISPUTE

Cases where Tribunal makes judicial determination

94. The Tribunal must make a judicial determination of a disputed claim—

- (a) if the dispute is referred for judicial determination under Division 4; or
- (b) if a party to the dispute is dissatisfied with the result of an arbitration and disputes the arbitrated determination in accordance with the rules.

Constitution of Tribunal

94A. (1) For the purpose of making a judicial determination of a disputed claim, the Tribunal will be constituted of a single presidential member.

(2) However, if the President decides that a particular dispute should be referred directly to a Full Bench of the Tribunal, the dispute will be heard and determined by a Full Bench of the Tribunal.

Pre-hearing conference

94B. (1) Before the Tribunal proceeds with the hearing of the disputed claim, a pre-hearing conference of the parties must be held in accordance with the rules.

(2) However, a presidential member of the Tribunal may dispense with a pre-hearing conference if there is proper reason for doing so.

Re-hearing of disputed matter

94C. (1) In proceedings under this Division, the Tribunal must rehear the matter in dispute and decide the dispute without regard to decisions taken in earlier proceedings.

(2) However—

- (a) the Tribunal may accept in evidence transcripts of evidence and other evidentiary material introduced in proceedings for arbitration of the dispute; and
- (b) the Tribunal will not take evidence that should, in the Tribunal's opinion, have been introduced in proceedings for arbitration of the dispute unless—
 - (i) there is an adequate reason why the evidence was not introduced in the earlier proceedings; or
 - (ii) the interests of justice require admission of the evidence; and
- (c) if the amount of lump sum compensation is disputed by a worker, and the amount the Tribunal proposes to award under this Division is less than, the same as, or less than 10% above the amount awarded on an arbitration or offered in conciliation proceedings, the worker is not entitled to costs of the proceedings under this Division.

DIVISION 7—COSTS

Costs

95. (1) A party (other than the relevant compensating authority) is entitled, subject to this Part and to limits prescribed by regulation, to an award against the relevant compensating authority for the party's reasonable costs of—

- (a) the initial reconsideration of a disputed decision; and
- (b) any subsequent proceedings for resolution of the dispute under this Part (but not proceedings by way of an appeal or case stated to a Full Bench of the Tribunal or the Supreme Court).

(2) Costs may only be awarded to cover—

- (a) the cost of representation by a legal practitioner or an officer or employee of an industrial association; and
- (b) costs of a kind authorised by the regulations that were reasonably incurred.

(3) If the Tribunal is of the opinion that a party acted unreasonably, frivolously or vexatiously in bringing or in relation to the conduct of proceedings, the Tribunal may—

- (a) decline to make an award of costs in favour of the party and may further (if it thinks fit) make an award of costs against the party; or
- (b) reduce the amount of the award to which the party would otherwise have been entitled.

(4) An award of costs to cover professional advice or assistance may, if the Tribunal considers appropriate, be made in favour of the person who provided the professional advice or assistance.

(5) 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.

DIVISION 8—MINISTERIAL INTERVENTION

Ministerial intervention

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

PART 6B SPECIAL JURISDICTION TO EXPEDITE DECISIONS

Special jurisdiction

97. (1) A worker or employer who believes there has been undue delay in deciding a claim or other matter affecting the worker or employer may apply to the Tribunal, in the manner and form prescribed by regulation, for expedited determination of the matter.

- (2) However, an application cannot be made for expedited determination of—
- (a) a question about the redemption of a liability¹; and
 - (b) a matter of a class excluded by regulation from the ambit of this section.

(3) An application for expedited determination of a matter cannot be made until at least 14 days after the day the matter was placed before the decision-maker whose decision is required.

¹. See section 42.

Constitution of Tribunal for proceedings under this Part

97A. For the purpose of proceedings under this Part, the Tribunal may be constituted of a presidential member or a conciliation and arbitration officer.

Powers of Tribunal on application

97B. (1) On an application for expedited determination of a matter, the Tribunal may—

- (a) give directions the Tribunal considers necessary to expedite the determination of the matter; or

(b) decide the matter itself.

(2) A person to whom a direction is given by the Tribunal under subsection (1) must comply with the direction.

Maximum penalty: \$5 000.

[Prosecution of non-compliance as an offence does not prejudice enforcement of the direction in other ways.]

(3) If the Tribunal decides a claim under this section, the decision—

(a) is to be treated as a decision of the relevant compensating authority; and

(b) is a reviewable decision.

Costs

97C. Regulations may be made about the costs of proceedings under this Part.

Amendment of s. 108—Medical examination at request of employer

14. Section 108 of the principal Act is amended by striking out from subsection (4) "a Review Officer" and substituting "the Tribunal".

Amendment of s. 123A—Right of intervention

15. Section 123A of the principal Act is amended by striking out paragraph (a) and substituting the following paragraph:

(a) any proceedings under this Act before the Tribunal; or.

Amendment of Schedule 1—Transitional provisions

16. Schedule 1 to the principal Act is amended by striking out clause 2(8)(a) and substituting the following:

(a) to the Tribunal (constituted of a presidential member); or.

Transitional provisions

17. (1) A Deputy President of the Workers Compensation Appeal Tribunal appointed under the principal Act and in office immediately before the commencement of this Act continues in office subject to the principal Act as amended by this Act (the "new legislation") as a Deputy President of the Workers Compensation Tribunal as if the new legislation had been in force when the appointment was made and the appointment had been made to that office under the new legislation.

(2) The Registrar and other staff of the Workers Compensation Appeal Tribunal in office immediately before the commencement of this Act continue in office subject to the relevant conditions of appointment in corresponding positions on the staff of the Workers Compensation Tribunal.

**Workers Rehabilitation and Compensation (Dispute
Resolution) Amendment Act 1995**

No. 75 of 1995

(3) Staff of the WorkCover Corporation of South Australia who—

- (a) were employed immediately before the commencement of this Act in work related to the system of review and appeal then existing under the principal Act; and
- (b) are designated by the Governor by notice in the *Gazette* as staff to whom this section applies,

become as from a date stated in the notice staff of the Workers Compensation Tribunal without loss of salary or status, or prejudice to existing or accruing rights in respect of employment.

(4) If proceedings before a Review Officer had been substantially commenced under the principal Act as in force before the commencement of this Act (the "former legislation"), the proceedings may be continued and completed under the provisions of the former legislation.

(5) If a reviewable decision had been made under the former legislation before the commencement of this Act but, as at the commencement of this Act, proceedings for review of the decision had not been commenced or had not been substantially commenced, proceedings for dispute resolution may be commenced under the new legislation within one month after the commencement of the new legislation or a longer time allowed by the President or a Deputy President or conciliation officer to whom the President has delegated the power to allow an extension of time.

(6) The question whether proceedings before a Review Officer have been substantially commenced may be determined, in the event of a dispute, by the President or a Deputy President to whom the President has delegated powers under this subsection and the determination is final and without appeal.

(7) A person who was a Review Officer immediately before the commencement of this Act continues in office, subject to the person's conditions of appointment, for the remainder of the term of appointment as a member of the Tribunal's staff without prejudice to remuneration or existing or accruing rights to leave.

(8) The President may assign a person who continues in office under subsection (7) to carry out duties as a conciliation and arbitration officer or in some other capacity on the Tribunal's staff (or as a conciliation and arbitration officer and in one or more other capacities), but the person continues as a Review Officer for the purpose of continuing and completing proceedings under subsection (4).

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

ROMA MITCHELL Governor