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Accident Compensation (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purposes of the Bill.

Clause 2 provides for the commencement of the various provisions of the Bill.

PART 2—AMENDMENT OF THE ACCIDENT COMPENSATION ACT 1985

Clause 3 provides that references to the "Principal Act" throughout Part 2 are references to the **"Accident Compensation Act 1985"**.

Clause 4 makes a consequential amendment to section 3 (Objects of Act) of the Principal Act.

Clause 5 makes various, mainly consequential, amendments to section 5 (Definitions) of the Principal Act, including the insertion of additional definitions of "authorised insurer", "interest at the prescribed rate", "return to work plan" and "risk management program". The definition of "medical question" is amended to include a question of whether employment could possibly have been a contributing factor to an injury.

Clauses 6 and 7 amend section 5 (definitions) of the Principal Act and insert a new section 5c in the Principal Act so as to expressly include fringe benefits within the meaning of the Fringe Benefits Tax Assessment 1986 of the Commonwealth as part of remuneration for the purposes of the Principal Act and the **Accident Compensation (WorkCover Insurance) Act 1993**.

Clause 8 makes consequential amendments to section 5A (8) and (9) of the Principal Act which provide for the calculation of weekly payments for certain workers who were injured whilst trainees or under the age of 21, or while a full-time student.

Clause 9 amends section 9 (Independent contractors) of the Principal Act so as to expressly exclude from its operation contracts between direct sellers and their suppliers. A number of consequential amendments are also made.

Clause 10 amends section 14 of the Principal Act (Persons employed by the Crown or administrative units) by substituting "department" for "administrative unit" and by expressly excluding municipal councillors from being deemed to be workers.

Clause 11 amends section 15 of the Principal Act, which deems persons attending at a place of pick-up to be working under a contract of service, so as to delete references to travelling to or from a place of pick-up.

Clause 12 makes a consequential amendment to section 16 (1) (Sporting contestants) of the Principal Act.

Clause 13 makes consequential amendments to sections 19 (Objectives of the Authority), 20 (Functions of the Authority) and 21 (Delegation) of the Principal Act.

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Clause 14 inserts a new section 20D into the Principal Act which empowers the Authority to issue advisory practice notes for the purpose of furthering a number of objects of the Act.

Clause 15 makes a consequential amendment to section 22 (Chief Executive of the Authority and officers and employees) of the Principal Act and clarifies the degree of protection to be provided to employees of the Authority and corrects a typographical error in section 25 (Full-time Director and Chief Executive) of the Principal Act.

Clause 16 amends section 28 of the Principal Act so as to require the Board of Management of the Authority to meet at least 10 times in each calendar year rather than at least once a month as at present and to enable the Board to conduct meetings by telephone or closed circuit television.

Clause 17 amends section 29 of the Principal Act in consequence of the **Public Sector Management Act 1992** and clarifies the degree of protection to be provided to Directors of the Board of Management of the Authority.

Clause 18 makes consequential amendments to section 31A (WorkCover Advisory Committee) of the Principal Act.

Clause 19 makes consequential amendments and corrections to section 32 (WorkCover Authority Fund) of the Principal Act.

Clause 20 amends section 33A of the Principal Act, which requires self-insurers to pay contributions into the WorkCover Authority Fund, so as to include contributions towards the cost incurred by the Authority in meeting any liability it may incur when a body corporate ceases to be a self-insurer. The clause also alters the dates for contributions to be paid and makes a number of consequential amendments.

Clause 21 inserts a new section 34A into the Principal Act which requires the Authority to submit to the Minister and make publicly available a half-yearly operating and financial report. This replaces the existing provisions relating to quarterly and actuarial reports in sections 37 and 37A, which are repealed by clause 22.

Clause 22 repeal sections 37 (Quarterly report) and 37A (Actuarial reports) of the Principal Act and omits references to one or both of those sections in sections 38, 38A and 38B.

Clause 23 amends section 41 of the Principal Act to include matters arising under Part VI in the jurisdiction of the County Court in certain circumstances.

Clause 24 amends section 42B of the Principal Act so as to enable any judge of the County Court to determine certain matters which had not been finally concluded by the Accident Compensation Tribunal before 1 December 1992.

Clause 25 amends section 44 of the Principal Act so as to clarify the provision which limits the use in other proceedings of evidence given to the County Court in proceedings under the Principal Act or the Workers Compensation Act and to make minor and consequential amendments. The clause also amends section 47 of the Principal Act so as to make admissible per se in such proceedings a report arising from an examination by a registered psychologist.

Clause 26 substitutes for section 49 of the Principal Act a section that requires that, before proceedings under the Act, other than those which relate solely to a claim under section 92, 98 or 98A, may be commenced, the relevant dispute must have been referred for conciliation under Division 2 of Part III of the Act and either conciliation must have been completed or a period of 28 days after the referral must have elapsed.

Clause 27 inserts a new sub-section (2A) into section 50 of the Principal Act which requires that, in proceedings relating to a claim under Section 98 or 98A of the Act, a worker is not entitled to have his or her costs met by the defendant and must pay the costs of the defendant unless the order of the Court is for payment of compensation in an amount which is more than 120% of the amount of a final offer within the meaning of a new section 98B of the Act (see clause 43). However, this rule does not apply where the final offer is for an amount which is 83% or more of the maximum amount of compensation payable for the relevant injury or injuries.

Clause 28 clarifies the definition of "dispute" in section 53 of the Principal Act.

Clause 29 amends section 55 of the Principal Act so as to require a referral for conciliation to be signed personally by the applicant unless the Senior Conciliation Officer is satisfied there are special circumstances preventing that being done and to require the Senior Conciliation Officer to issue a certificate to the worker or claimant and the employer specifying the date of referral for the purposes of the proposed new section 49 (see Clause 26).

Clause 30 inserts a new section 58A (Protection of Conciliation Officers and legal practitioners) into the Principal Act so as to provide Conciliation Officers and legal practitioners appearing at conciliation conferences with the same protection as applies to judges and barristers in the Supreme Court.

Clause 31 clarifies the provisions of section 65 of the Principal Act with respect to the limitations placed on the use in civil or criminal proceedings of information given to a Medical Panel.

Clause 32 amends section 67 of the Principal Act so as to make it clear that any medical question may be referred to a Medical Panel irrespective of the date of injury and clarifies an aspect of sub-section (4) of that section.

Clause 33 clarifies the intention of section 83 of the Principal Act which deems certain injuries to have arisen out of or in the course of employment.

Clause 34 inserts a new section 84A (Interstate arrangements) into the Principal Act which determines the law of which place is to apply where a worker is injured in another State or Territory. This provision will not be brought into operation until all the States and Territories adopt a uniform approach to this matter.

Clause 35 makes a consequential amendment to section 85 (Entitlement to compensation outside Victoria) of the Principal Act and clarifies section 86 (Compensation for disease due to employment) of the Principal Act with respect to employment being a significant contributing factor and corrects typographical errors in sections 88 and 90 of the Principal Act.

Clause 36 repeals section 91 (Commonwealth benefits) of the Principal Act, which has never been proclaimed to come into operation.

Clause 37 amends section 92 (Compensation for death of a worker) of the Principal Act so as to provide that only the County Court may determine death benefits.

Clause 38 amends section 93B (After 26 weeks of incapacity) of the Principal Act by altering the calculation of weekly payments under that section so that a partially incapacitated worker who returns to some form of work retains a greater proportion of the value of his or her earnings . The clause also makes consequential amendments to sections 93A (First 26 weeks of incapacity), 93B and 93D (Suitable employment) of the Principal Act.

Clause 39 inserts a new section 93DA (Notional earnings) into the Principal Act which specifies circumstances in which the notional earnings of a partially incapacitated worker are not to be taken into account.

Clause 40 amends section 97 of the Principal Act with respect to entitlement to weekly payments where a worker ceases to reside in, or is temporarily absent from, Australia.

Clause 41 amends section 98 (Compensation for maims) of the Principal Act so as to set a threshold for compensation for loss of hearing and to require that for the purposes of section 98, loss of hearing must be assessed in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 edition or a later prescribed edition) published by the National Acoustic Laboratory, and to empower the Minister (instead of a Medical Panel as at present), on the recommendation of the Convenor of the Medical Panels, to approve persons to determine the percentage of hearing loss and the methods to be used in so determining. The Bill provides that the threshold will apply in respect of all claims made on and after 1 April 1994.

Clause 42 amends section 98A (Compensation for pain and suffering) of the Principal Act to make it clear that compensation is payable under that section in respect of all injuries described in the Table of Maims in section 98 and not solely those characterised as "losses".

Clause 43 inserts a new section 98B (Proceedings under section 98 or 98A) into the Principal Act which prevents a party from commencing proceedings under section 98 or 98A unless the claim has been dealt with in accordance with a proposed new section 104 of the Principal Act (see clause 50) and until a final offer in respect of the claim has been made or is deemed to have been made by the authorised insurer, self-insurer or Authority (as the case may be).

Clause 44 amends section 99 (Compensation for medical and like services) of the Principal Act so as to prescribe the circumstances under which compensation under that section continues to be payable after 52 weeks after entitlement arises or entitlement to weekly payments ceases, (as the case requires).

Clause 45 amends section 99AA of the Principal Act (Administrative Appeals Tribunal) so as to impose similar requirements in relation to the referral of disputes for conciliation prior to the commencement of proceedings in the Administrative Appeals Tribunal as were imposed by the amendments contained in clause 26 in respect of the commencement of proceedings in the County Court or Magistrates' Court. The clause also repeals sub-section (5) of that section relating to adjournments.

Clause 46 amends section 99AC of the Principal Act so as to ensure that, when exercising jurisdiction under part IV of the Principal Act, the Administrative Appeals

Tribunal has adequate power to appropriately manage the relevant proceedings and so as to clarify the relationship between the provisions of part IV of the Principal Act and the **Administrative Appeals Tribunal Act 1984.**

Clause 47 clarifies the provisions of section 99AD of the Principal Act relating to the award of costs in certain proceedings before the Administrative Appeals Tribunal.

Clause 48 makes consequential amendments to section 99A (payment of the reasonable costs of an occupational rehabilitation service whether or not entitlement to compensation under the Act has been established) of the Principal Act.

Clause 49 makes a consequential amendment to section 99B (Rates applicable for occupational rehabilitation service) of the Principal Act.

Clause 50 substitutes for most of the provisions of Division 3 of Part IV of the Principal Act revised provisions in respect of the management of claims:

"Division 3—Claims Management and Procedures

Section 101 re-enacts the current provisions requiring an employer to have available to workers at each workplace a summary of the requirements for giving notice of an injury, the making of a claim and the benefits available under the Act and a register of injuries. However, the summary is now to include the name of the employer's authorised insurer, the summary and the injury register are to be in a form approved by the Authority and particulars of the injury are to be as specified by the Authority.

Section 102 re-enacts the current provisions regarding giving notice of an injury except that notice must now be given in the manner and form and including the particulars approved by the Authority.

Section 103 re-enacts the current provisions regarding claims for compensation with the following modifications—

(*a*) a claim for compensation must be made in a form approved by the Authority, rather than the prescribed form, and the Authority is empowered to approve different forms for different types of compensation;

(*b*) a claim is deemed not to have been made if either the claim form or the authority to obtain medical information contains a material defect, omission or irregularity and if the claim is returned to the claimant, together with a notice, within 14 days;

(*c*) claims must be lodged within the following timeframes (unless the Authority, authorised insurer or self-insurer is satisfied the person had a special excuse warranting waiver or extension of the time limit)—

- (i) claims for weekly payments—as soon as practicable after the incapacity arising from the injury becomes known;
- (ii) death benefits claims—within 2 years after the date of the worker's death;
- (iii) claims for pain and suffering compensation—at the same time as a claim for compensation under the Table of Maims is made;

(iv) claims for medical and like services—within 6 months after the date of the service.

Section 104 requires that a claim for compensation under section 98 or 98A must be accompanied by medical information which supports the entitlement of the claimant to compensation and specifies the extent of any relevant loss, impairment, disfigurement or pain and suffering, requires the authorised insurer, Authority or self-insurer to accept or reject the claim within 60 days and, if the claimant disputes that decision, before the claimant commences any proceedings, requires him or her to refer the claim to a Medical Panel for an opinion as to the entitlement of the claimant to compensation and the extent of any relevant loss, impairment, disfigurement or pain and suffering. The final offer made to the claimant in accordance with proposed new section 98B must be consistent with the opinion of the Medical Panel.

Section 105 re-enacts the current provisions relating to initial medical certificates except that, instead of containing prescribed particulars, the certificate must specify the expected duration of the worker's incapacity and the maximum period to be covered in general circumstances is reduced from 28 days to 14 days.

Section 106 re-enacts and extends existing provisions which require claims to be lodged with the Authority in certain circumstances (and which apply only to injuries which occurred prior to 4 pm on 30 June 1993) to provide also for lodgement with the relevant authorised insurer and provides that where injuries occur on or after that time, and the employer fails or is likely to fail to forward the claim or refuses to accept the claim, the claim must be lodged with the relevant authorised insurer.

Section 107 re-enacts the existing provision which requires the Authority, authorised insurer or employer to provide to a claimant, on request, information relevant to the claim received from a provider of a medical or hospital service to the claimant.

Section 108 sets out the responsibilities of an employer (other than a self-insurer or a subsidiary of a self-insurer) with respect to acceptance or rejection of claims, forwarding claims to the authorised insurer or the Authority and lodging returns relating to claims which do not exceed the employer's liability under the employer's excess. An employer who fails to forward a claim as required may incur additional premium or any cost or expense incurred by the authorised insurer or the Authority as a result of that failure may be recovered as a debt.

Section 109 provides that if an authorised insurer, the Authority or a self-insurer fails, within 35 days after receiving a claim for weekly payments, to give notice of a decision to accept or reject the claim, the claim is deemed to have been accepted and any weekly payments, including those outstanding, must be paid.

Section 110 re-enacts the existing provisions relating to an application by a worker for alteration of the amount of weekly payments, except that it is provided that applications must be made in writing and specify reasons and any supporting evidence and that written notice of the decision whether to approve or reject the application must be given within 35 days after its receipt. However, a failure to approve or reject the application within that period does not, unlike the existing provision, result in a deemed acceptance of the application.

Section 111 the existing provisions relating to certificates of continuing incapacity are re-enacted in simplified form, the declaration regarding employment status must be in a form approved by the Authority, rather than in the prescribed form, and certificates are of no effect to the extent that they cover a period more than 90 days before the date that the certificate is provided.

Section 112 re-enacts the existing provision empowering an authorised insurer, the Authority or a self-insurer to require a worker to submit to examination by a medical practitioner, physiotherapist or chiropractor and osteopath provided and paid for by it. Examinations by registered psychologists are also included.

Section 113 re-enacts the existing provision empowering an authorised insurer, the Authority or an employer to require a worker to obtain a certificate of incapacity from a medical practitioner or authorised person nominated and paid for by the authorised insurer, the Authority or the employer.

Section 114 sets out the various circumstances which, under the Act, can result in the termination or alteration of weekly payments. It is made clear that weekly payments can be terminated or altered whether or not a worker is actually in receipt of weekly payments at the time. Terminations or alterations that take effect from the date of an event with no notice being required are specified. In other cases notice must be given and the decision takes effect from a date specified or after the expiry of the required notice periods. Weekly payments must not be reduced on the ground of the expiry of 26 weeks of incapacity unless notice has been given and the provisions of the new section 114A are complied with. Weekly payments must not be terminated on the ground of the expiry of 104 weeks of incapacity unless notice has been given and the provisions of the new section 114B have been complied with.

Section 114A provides that weekly payments must not be reduced on the ground of the expiry of 26 weeks of incapacity unless the authorised insurer, the Authority or the self-insurer has made a determination of the worker's entitlement under section 93B and has given at least 14 days notice of the decision following that determination. Provision is made for the continuation of payments pending notice being given and for assessment where the date of the expiry of 26 weeks of incapacity is uncertain or the claim is made within 49 days before the expiry of the 26 weeks of incapacity.

Section 114B provides that weekly payments must not be terminated on the ground of the expiry of 104 weeks of incapacity unless the authorised insurer, the Authority or the self-insurer has made a determination of the worker's entitlement to weekly payments after 104 weeks and has given at least 28 days notice of the decision following that determination. Provision is made for the continuation of payments pending notice being given and for assessment where the date of the expiry of 104 weeks of incapacity is uncertain or the claim is made within 63 days before the expiry of the 104 weeks.

Section 114C re-enacts the current provisions which specify the time limits for commencement of payment of weekly payments, except that, where a claim is accepted, weekly payments must commence within 7 days after the decision to accept is made.

Section 114D re-enacts, with the inclusion of references to authorised insurers, the current provisions relating to the payment of weekly payments.

Section 114E replaces the current provisions relating to outstanding weekly payments and late payment of weekly payments. The various circumstances, in which outstanding weekly payments together with interest at the prescribed rate must be paid, are specified.

Section 114F replaces the current provisions relating to recovery of payments. Payments of compensation or other amounts to a worker, an employer or any other person to which they were not entitled may be recovered by an authorised insurer, the Authority or a self-insurer and an authorised insurer or the Authority may recover from an employer any penalty or cost incurred as a result of the employer failing to pay compensation as required by the Act.

Clause 51 repeals the inoperative Heading to Division 3A of Part IV of the Principal Act and repeals Division 3B of Part IV, consequential to the revision of the provisions relating to claims.

Clause 52 amends section 115 (Settlements) of the Principal Act so as to include a reference to appropriate persons following the enactment of the **Accident Compensation (WorkCover Insurance) Act 1993**.

Clause 53 makes a consequential amendment to section 122 (Employer to re-employ Worker) of the Principal Act.

Clause 54 amends section 123 (Return to Work) of the Principal Act so as to include references to authorised insurers and the Authority in relation to the Uninsured Employers and Indemnity Scheme and so as to provide for the re-location of an offence provision (see Clause 81).

Clause 55 includes a reference to authorised insurers in section 123A (Notice to include statement of right of review) of the Principal Act.

Clause 56 amends section 125A (Liability to pay compensation—on and after 4 p.m. on 30 June 1993) of the Principal Act so as to provide that payments made by an employer within the employer's excess do not prejudice determination of liability above that excess.

Clause 57 amends section 125B of the Principal Act so as to make it clear that there is no right of contribution as between the Authority, employers or authorised insurers in respect of liability to which section 125A of the Principal Act applies irrespective of when that liability arises.

Clause 58 substitutes for section 127 (Provisions to apply where employer does not meet liabilities) of the Principal Act a new section which provides for the relevant authorised insurer to assume liability if an employer fails or refuses to pay compensation.

Clause 59 amends section 128 (Provisions relating to the payment of compensation) of the Principal Act so as to include references to authorised insurers and premium payable under the **Accident Compensation (WorkCover Insurance) Act 1993**.

Clause 60 amends section 129 of the Principal Act, which deals with contribution as between the Authority and self-insurers for injuries arising on and after 4.00 pm on 31 August 1985, so as to substitute the "Administrative Appeals Tribunal" for the reference to the "Tribunal" and amends section 39 of the Principal Act so as to exclude matters arising under section 129 from the jurisdiction of the County Court.

Clause 61 amends section 129 of the Principal Act so as to make it clear that the liability of the Authority referred to, in relation to any period on or after 4 p.m. on 30 June 1993, is the liability of the Authority in respect of the relevant injury under the re-insurance arrangement or the Uninsured Employers and Indemnity Scheme under the **Accident Compensation (WorkCover Insurance) Act 1993** and that neither employers nor authorised insurers are liable for, or entitled to, contribution in respect of injuries arising on or after 31 August 1985 (that is, the date that the WorkCare Scheme commenced).

Clause 62 amends sections 129A and 129B of the Principal Act, which deal with contribution from prior insurers and employers, so as to include reference to payments under a re-insurance arrangement or the Uninsured Employers and Indemnity Scheme, amends various other sections of the Principal Act relating to contribution so as to include references to the **Accident Compensation (WorkCover Insurance) Act 1993** and to authorised insurers and makes a number of general consequential amendments.

Clause 63 amends sections 130, 131 and 132 of the Principal Act, which deal with the administration of funds comprising lump payments of compensation for death and to young persons and others, so as to transfer responsibility for the administration of those funds from the Authority to the State Trust Corporation of Victoria.

Clause 64 amends sections 135 (Actions for damages), 135A (Actions for damages) and 135B (Actions in respect of injuries which occurred before 1 December 1992) of the Principal Act so as to clarify the operation of those sections and, having regard to the decision of the Full Court of the Supreme Court in the case of Jim Isaac Robart v. Matchplan Pty. Ltd. (In Liquidation), to provide that damages are not recoverable in proceedings in respect of injuries or deaths arising prior to 1 December 1992 (apart from those injuries referred to in section 135A (2) (*b*)) where those proceedings are commenced on and after 30 June 1994. Further, section 135A (7) is amended so as to make it clear that the amounts referred to in that subsection which should apply in any case are those amounts as at the date of the relevant award and section 135B (6) (*a*) is amended so as to make it clear that, in the relevant circumstances, the defendant cannot be ordered to pay the costs of the plaintiff. The clause also amends section 135A of the Principal Act so as to increase the maximum amount of damages which may be recovered for non-pecuniary loss in accordance with that section to $298 640 in line with the equivalent provision in the Transport Accident Act and so as to reduce the mandatory discount rate applied to the calculation of damages for future loss under the section from 6 per centum to 3 per centum.

Clause 65 makes necessary consequential amendments to the **Accident Compensation (WorkCover) Act 1992** and the **Constitution Act 1975**.

Clause 66 inserts a new section 137A (Settlement between the Transport Accident Commission and the Authority) into the Principal Act which provides for settlement agreements between the Commission and the Authority of amounts which the Commission is or may become liable to pay to the Authority in respect of motor accidents which occurred prior to the commencement of the **Transport Accident Act 1986**.

Clause 67 substitutes for section 138 (Indemnity by third party) of the Principal Act a new section which clarifies and strengthens provisions for recovery from third parties.

Clause 68 makes a consequential amendment to section 139 (Self-insurers, Definitions) of the Principal Act.

Clause 69 repeals a number of provisions of the Principal Act relating to exemption from levy, the establishment of the Self-Insurance Review Tribunal, limitations on applications for approval as a self-insurer and the requirement to publish approvals and revocations of approval as a self-insurer in the Government Gazette.

Clause 70 amends section 141 of the Principal Act so as to reduce from 1000 to 500 the number of workers employed on a full-time basis in Victoria which an applicant for approval as a self-insurer must have and to substitute the Authority for the Minister as the body empowered to specify what information must accompany an application for approval. The clause also amends section 141A of the Principal Act so as to reduce from 1000 to 500 the number of workers employed on a full-time basis in Victoria proposed to be covered by any scheme of self-insurance proposed by the Municipal Association of Victoria (MAV).

Clause 71 amends sections 142 and 142A of the Principal Act so as to make the approval of a body corporate or the MAV as a self-insurer subject to such terms and conditions as the Authority determines both at the time of approval and at any time while the approval is in force. These amendments are to apply to all current as well as future approvals.

Clause 72 inserts new sections 142B and 142C into the Principal Act which provide for the approval as a self-insurer of a partnership or a limited partnership within the meaning of the **Partnership Act 1958**, all of the partners of which are bodies corporate.

Clause 73 amends section 146 (5) of the Principal Act so as to provide that the assessed liability, which is the basis of the calculation of the amount to be covered by the bank guarantee that a self-insurer must obtain, is the amount one and a half times the sum of the actuarial value of relevant specified liabilities.

Clause 74 makes consequential amendments to section 148 (Review of Approval) of the Principal Act.

Clause 75 amends section 155 of the Principal Act (Secrecy provisions relating to self-insurers) so as to authorise the release of documents or information to a welfare, benefit or compensation scheme of a State, a Territory or the Commonwealth and to the National Occupational Health and Safety Commission.

Clause 76 substitutes for Part VI (Rehabilitation) of the Principal Act a new Part which re-enacts the current provisions of Part VI and incorporates the substance of the Accident Compensation (Occupational Rehabilitation and Risk Management) Regulations 1993 (SR No. 121/1993) which expire on 1 July 1994:

"PART VI—OCCUPATIONAL REHABILITATION, RETURN TO WORK PLANS AND RISK MANAGEMENT

Section 156 requires an employer, whose total rateable remuneration exceeds $1 000 000 in a year or who has a worker in their employment who has been totally incapacitated for work for 20 days or more, to establish an occupational rehabilitation program and a risk management program in accordance with Part VI. Further, within 10 days after the twentieth day of incapacity, the worker's employer must prepare a

return to work plan in respect of the worker and must nominate a return to work co-ordinator.

Section 157 specifies certain classes of employers who are exempt, to the extent indicated, from the requirements of section 156.

Section 158 specifies the contents of an occupational rehabilitation program and provides that the program must be available to all workers of the employer.

Section 159 provides that a risk management program must specify the steps to be taken after an injury to reduce the risk of recurrence of injury of that kind.

Section 160 specifies the contents of a return to work plan and provides that the plan must be revised as often as is necessary.

Section 161 specifies the functions of a return to work co-ordinator.

Section 162 empowers the Authority, authorised insurer or self-insurer to require a worker who is receiving weekly payments to attend at an interview to ascertain whether the worker's opportunities for employment could be enhanced.

Section 163 empowers the Authority to approve providers of occupational rehabilitation services, authorise groups of employers to establish uniform occupational rehabilitation programs and direct a particular employer to establish programs and use the services of a specified provider of occupational rehabilitation services.

Section 164 makes it an offence to fail to comply with any requirement or direction under Part VI.

Clause 77 deems existing programs, nominations and approvals under the Accident Compensation (Occupational Rehabilitation and Risk Management) Regulations 1993 to have been established under the Principal Act as amended by this section.

Clause 78 repeals Part VII (Accident Compensation Levy Collection) of the Principal Act.

Clause 79 inserts a reference to authorised insurers in section 238 (1) of the Principal Act which provides for agreements with providers of medical and like services.

Clause 80 makes consequential amendments to section 239 of the Principal Act which empowers the Authority to obtain information and evidence relevant to entitlement to compensation and to section 240 of the Principal Act which empowers persons authorised by the Authority to enter and inspect premises and obtain information and documents for the purpose of determining whether there has been any contravention of the legislation.

Clause 81 substitutes for section 242 of the Principal Act a new section in which the various offences under the Principal Act by employers and workers are consolidated and a further new section which creates an offence, currently contained in the Accident Compensation (Medical Authority and Settlements) Regulations 1993 which are due to expire on 30 June 1994.

Clause 82 makes a number of consequential amendments to section 243 (Secrecy provisions) of the Principal Act and inserts into that section a provision authorising the release of documents or information to a welfare, benefit or compensation scheme of a

State, a Territory or the Commonwealth and to the National Occupational Health and Safety Commission.

Clause 83 makes consequential amendments to sections 246 (Service of documents by the Authority), 247 (service of documents on the Authority), 248 (Fraud), 248AA (Bribery), 249 (False information) and 249A (Refunding money to the Authority, etc.) of the Principal Act.

Clause 84 substitutes for section 249B (Suspension of payment for services) of the Principal Act revised provisions which empower the Authority only to refer conduct of providers of services to workers to the relevant professional bodies and to suspend and cancel payments. Payment of costs by authorised insurers, self-insurers or the Authority is suspended until the relevant professional body reviews the conduct. If the professional body considers that the provider has not acted properly, the Authority is empowered to direct that payments for services provided during the period of suspension be forfeited. If there is no relevant professional body, the Authority is empowered to first warn the provider that it is concerned about his or her conduct, if the conduct continues, to suspend payments and, if the Authority considers that the person has not acted properly, to direct that payments for services provided during the period of suspension be forfeited. A right of review, without a requirement for prior referral to conciliation, is provided to the Administrative Appeals Tribunal. It is expressly provided that section 239, which empowers the Authority to obtain information, applies to any liability or entitlement under this section.

Clause 85 makes a consequential amendment to section 250 (Obstructing officers) of the Principal Act.

Clause 86 makes consequential amendments to section 252 (Institution of proceedings) of the Principal Act.

Clause 87 inserts a new section 252B into the Principal Act which requires the Authority to publish and make generally available any guidelines, forms and claims practice notes it makes or approves.

PART 3—AMENDMENT OF THE ACCIDENT COMPENSATION (WORKCOVER INSURANCE) ACT 1993

Clause 88 references throughout Part 3 to the "Principal Act" are references to the "**Accident Compensation (WorkCover Insurance) Act 1993**".

Clause 89 amends section 1 of the Principal Act, which sets out the purposes of that Act, to expressly provide that WorkCover insurance which employers are required to hold covers the employer's liability at common law and makes it clear that the liability of the Authority which was transferred to authorised insurers on 4 p.m. on 30 June 1993 comprises only those liabilities expressly referred to in the Principal Act.

Clause 90 amends section 7 (Compulsory WorkCover Insurance) of the Principal Act so as to substitute "WorkCover insurance policy" for "policy of insurance" and includes in sections 7 and 63 of the Principal Act references to injuries due to the nature of employment.

Clause 91 inserts into section 7 of the Principal Act a provision requiring employers who do not have any rateable remuneration in a financial year but who employ one or

more apprentices during that year to obtain and keep in force a WorkCover insurance policy.

Clause 92 amends both the Principal Act and the **Accident Compensation Act 1985** so as to make appropriate provision for WorkCover insurance for work-experience students under the **Education Act 1958**. The provisions deem the host employer of such students to have a WorkCover insurance policy with the authorised insurer for the time being of the Directorate of School Education and provides that the premium payable in respect of such policies is to be paid by the Directorate. Consequential amendments relieving the host employers of certain obligations under the **Accident Compensation Act 1985** and adjusting the definition of "remuneration" in that Act are also made.

Clause 93 makes an amendment to section 8 of the Principal Act consequential upon the inclusion in the definition of remuneration under the **Accident Compensation Act 1985** of fringe benefits.

Clause 94 amends section 10 (1) of the Principal Act so as to clarify the prohibition on an insurer who is not an authorised insurer from issuing or renewing a WorkCover insurance policy.

Clause 95 amends section 12 (2) of the Principal Act so as to include a situation where an employer may be liable, as well as where an employer is actually liable, for the requirement for an employer to make a policy available for inspection to apply.

Clause 96 amends sections 28, 30 and 35 of the Principal Act relating to the granting, renewal and cancellation or suspension of a license as an authorised insurer so as to remove the exemption currently granted to the Authority from the need to give reasons for a decision under those sections. The clause also makes consequential amendments to sections 30 and 35 to otherwise preserve the effect of those provisions. Finally, the clause inserts in section 32 of the Principal Act a provision specifying when a notice imposing conditions or further conditions on a licence under sub-section (2) of that section is to take effect.

Clause 97 amends section 46 of the Principal Act so as to authorise payment out of the statutory fund of an authorised insurer of contributions into the Uninsured Employers and Indemnity Fund determined under section 56 (3) of the Principal Act for that authorised insurer.

Clauses 88 and 99 amend sections 57 and 59 of the Principal Act relating to the determination and administration of claims against the Uninsured Employers and Indemnity Scheme established under Part 5 of the Act so as to ensure that these provisions are consistent with the revised claims procedures introduced by the Bill into the **Accident Compensation Act 1985.**

Clause 100 inserts new sections 59A and 59B into part 5 of the Principal Act so as to make it clear that workers and their dependants who are entitled to compensation under the Uninsured Employers and Indemnity Scheme also have access, where appropriate, to relief at common law in respect of the relevant injuries or deaths.

Clause 101 amends section 61 of the Principal Act so as to exclude an employer, whose rateable remuneration did not exceed the exemption limit at the time of the relevant injury, from liability to reimburse the Authority amounts of compensation paid or payable

under the Uninsured Employers and Indemnity Scheme and so as to remove a possible inconsistency between section 61 and new section 59B (3).

Clause 102 makes typographical corrections to section 66 of the Principal Act.

Clause 103 provides that the WorkCover Insurance Premiums Order 1993/94 is to be construed as if it had been made with the inclusion of two scheme-wide adjustments to the way in which certain premiums are calculated.

Clause 104 repeals the transitional Parts 7 (Consequential Amendments to **Accident Compensation Act 1985**), 8 (General Amendment of **Accident Compensation Act 1985**) and 9 (Amendment of Other Acts) of the Principal Act.

PART 4—AMENDMENT OF TRANSPORT ACCIDENT ACT 1986

Clause 105 amends section 27 of the **Transport Accident Act 1986** so as to authorise payment out of the Transport Accident Fund to the Authority under a settlement agreement between the Transport Accident Commission and the Authority.

Clause 106 makes consequential amendments to section 38 of the **Transport Accident Act 1986**.

Clause 107 inserts a new section 38AA into the **Transport Accident Act 1986** which provides for settlement between the Transport Accident Commission and the Authority of claims under section 38 of that Act.

Clause 108 inserts a new section 94A into the **Transport Accident Act 1986** which provides for settlement between the Transport Accident Commission and the Authority of claims in respect of which the Authority, an employer or an authorised insurer has recovery rights under section 138 of the **Accident Compensation Act 1985**.

PART 5—AMENDMENT OF WORKERS COMPENSATION ACT 1958

Clause 109 provides that references throughout Part 5 to the "Principal Act" are references to the **"Workers Compensation Act 1958"**.

Clause 110 makes consequential amendments to various transitional provisions of the Principal Act.

Clause 111 amends various definitions in section 3 (1) of the Principal Act.

Clause 112 substitutes "Fund" for "WorkCover Authority Fund" in various provisions of the Principal Act.

Clause 113 amends section 9 of the Principal Act so as to prevent negative indexation taking effect and to set off the amount of the reduction which would otherwise have taken place against any further increases.

Clause 114 amends section 9 in "The Clauses Referred To" in the Principal Act so as to provide for interest at the rate fixed under section 2 of the **Penalty Interest Rates Act 1983** to be paid in respect of each unpaid weekly payment and so as to substitute "the County Court" for references to "the Tribunal".

Clause 115 repeals various spent provisions of the Principal Act.

Clause 116 substitutes "County Court" for "Tribunal" in sections 25GA and 32 of the Principal Act.

Clause 117 amends section 26 of the Principal Act so as to provide a new definition of "Hospital".

Clause 118 amends the Principal Act so as to provide for the transfer of the administration of funds comprising lump sum compensation to young persons and others from the Authority to the State Trust Corporation of Victoria.

Clause 119 makes various consequential amendments to section 46 (Enforcement of awards) of the Principal Act.

Clause 120 amends section 67 of the Principal Act so as to provide that the statutory indemnity imposed by that section on persons other than the employer applies whether or not the employer is liable to pay damages in respect of the relevant injury. This amendment is to apply to all payments of compensation paid or payable after the commencement of this clause.

Clause 121 substitutes "Authority" for references to "Commission" in various sections of the Principal Act.

Clause 122 amends section 85 of the Principal Act so as to substitute "County Court" for references to "Tribunal" and to make other consequential amendments.

Clause 123 makes consequential amendments to sections 96 and 111A of the Principal Act.

PART 6—AMENDMENT OF OTHER ACTS

Clause 124 re-enacts section 110 of the **Corrections Act 1986** so as to limit the application of that section to offenders who are required or directed to work or take part in a programme of activities and prison volunteers.

Clause 125 amends the various provisions of the **Education Act 1958**, under which certain volunteers in schools are entitled, in respect of injury or death arising out of or in the course of their volunteer work, to compensation equivalent to that provided under the WorkCover Scheme, to bring those provisions into line with the current provisions of the **Accident Compensation Act 1985**.

Clause 126 amends the various provisions of the **Emergency Management Act 1986**, under which certain volunteers specified in that Act are entitled, in respect of injury or death arising out of or in the course of their volunteer work, to compensation equivalent to that provided under the WorkCover Scheme, to bring those provisions into line with the current provisions of the **Accident Compensation Act 1985**.

Clause 127 amends the various provisions of the **Juries Act 1967**, under which jurors are entitled, in respect of injury or death arising out of or in the course of their jury service, to compensation equivalent to that provided under the WorkCover Scheme, to bring those provisions into line with the current provisions of the **Accident Compensation Act 1985**.

Clause 128 amends the various provisions of the **Police Assistance Compensation Act 1968**, under which certain persons who provide assistance to members of the Police Force are entitled, in respect of injury or death arising out of or in the course of rendering

that assistance, to compensation equivalent to that provided under the WorkCover Scheme, to bring those provisions into line with the current provisions of the **Accident Compensation Act 1985**.

Clause 129 amends the various provisions of the **Victoria State Emergency Service Act 1987**, under which certain volunteers specified in that Act are entitled, in respect of injury or death arising out of or in the course of their volunteer work, to compensation equivalent to that provided under the WorkCover Scheme, to bring those provisions into line with the current provisions of the **Accident Compensation Act 1985**.

By Authority L. V. North, Government Printer Melbourne