

5. Definitions

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

“**approved insurance office**” means an insurance office approved under section 161;

“**approved rehabilitation provider**” means a person approved under section 156A as a rehabilitation provider or the Commission;

“**approved treatment**” means occupational therapy, clinical psychology, speech therapy and any treatment of a kind approved by the Minister for the purposes of this definition by notice published in the *Gazette*;

“**child’s allowance**” in clause 1(2), (3), and (4) means —

- (a) for the financial year ending on 30 June 1982, the amount of \$15.37;
- (b) for any financial year ending after 30 June 1982 but before 1 July 1985, the amount obtained by varying the child’s allowance for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences; and
- (c) for any subsequent financial year, the nearest multiple of 10 cents to the amount obtained by varying the child’s allowance for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences, or if the relevant minimum award rates are not published, the amount obtained by varying the child’s allowance for the preceding financial year in accordance with the regulations (with an amount that is 5 cents more than a multiple of 10 cents being rounded off to the next highest multiple of 10 cents);

“**chiropractor**” means a person who is resident in this State and is registered as a chiropractor under the *Chiropractors Act 1964* and holds a licence to practise chiropractic issued by the Chiropractors Registration Board constituted under that Act and who is approved by the Commission to practise chiropractic for the purposes of this Act;

“**clause**” means —

- (a) where the term is used in or in respect of a particular Schedule, a clause in that Schedule; and
- (b) otherwise, a clause of Schedule 1;

“**Commission**” means the Workers’ Compensation and Rehabilitation Commission constituted under this Act;

“**Committee**” means the Premium Rates Committee constituted under this Act;

“**company**” means a company or a registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, other than a registered body specified, or of a kind specified, in the regulations;

“**compensation magistrate’s court**” means a compensation magistrate’s court established in accordance with Part VI;

“conciliation officer” means a conciliation officer appointed in accordance with Division 1A of Part V;

“contract of insurance” includes a cover note;

“de facto partner” in relation to compensation payable in respect of the death of a worker means —

- (a) a person who, immediately before the death of the worker, was living in a de facto relationship with the worker and had been living on that basis with that worker for at least the previous 2 years; and
- (b) any former de facto partner of the worker if the worker was legally obliged immediately before the death of the worker to make provision for that former de facto partner with respect to financial matters;

“dentist” means —

- (a) a person who is resident in a State or Territory of the Commonwealth and is entitled to practise as a dentist in accordance with the laws of that State or Territory; or
- (b) a person who is not resident in a State or Territory of the Commonwealth but who is recognized as a dentist for the purposes of this Act by the Commission;

“dependants” means such members of the worker’s family as were wholly or in part dependent upon the earnings of the worker at the time of his death, or would, but for the disability, have been so dependent;

“Director” means the Director of Conciliation and Review appointed in accordance with Division 1A of Part V;

“Directorate” means the Directorate of Conciliation and Review established in accordance with Division 1A of Part V;

“disability” means —

- (a) a personal injury by accident arising out of or in the course of the employment, or whilst the worker is acting under the employer’s instructions;
- (b) a disabling disease to which Part III Division 3 applies;
- (c) a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a significant degree;
- (d) the recurrence, aggravation, or acceleration of any pre-existing disease where the employment was a contributing factor to that recurrence, aggravation, or acceleration and contributed to a significant degree; or
- (e) a disabling loss of function to which Part III Division 4 applies, but does not include a disease caused by stress if the stress wholly or predominantly arises from a matter mentioned in subsection (4) unless the matter is mentioned in paragraph (a) or (b) of that subsection and is unreasonable and harsh on the part of the employer;

“disabled from earning full wages” means rendered less able to earn full wages;

- “**disease**” includes any physical or mental ailment, disorder, defect, or morbid condition whether of sudden or gradual development;
- “**dispute resolution body**” means a review officer or compensation magistrate’s court and in sections 84F and 84H includes a conciliation officer;
- “**District Court**” means The District Court of Western Australia established under the *District Court of Western Australia Act 1969*;
- “**Division**” means a Division of the Part wherein the term is used;
- “**drug of addiction**” means drug of addiction as defined by section 5 of the *Poisons Act 1964*;
- “**earnings**” includes weekly payments of compensation under this Act;
- “**employer**” includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer, and, where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of employment the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the worker whilst he is working for that other person;
- the term “**employer**” shall extend to any person for or by whom any worker, as defined in paragraph (a) or (b) of the definition of “worker”, works or is engaged; and
- “**employer**” in relation to liability to pay compensation for or in respect of a disability to a worker, means the employer in the relevant employment;
- “**estimate**” means the estimate prepared and approved as provided by section 107(1);
- “**Executive Director**” means the person appointed to the office of Executive Director of the Workers’ Compensation and Rehabilitation Commission and includes a person appointed to act in the place and during the absence of the Executive Director while that person is so acting;
- “**General Fund**” means the Workers’ Compensation and Rehabilitation General Fund established under this Act;
- “**industrial agreement**” means an agreement which wholly or partially regulates the terms or conditions of employment;
- “**industrial award**” means —
- (a) an award, a consent award, or an order of The Western Australian Industrial Relations Commission³ constituted under the *Industrial Relations Act 1979*⁴ of Western Australia;
 - (b) an award or a certified agreement made under the *Conciliation and Arbitration Act 1904*⁵ of the Commonwealth;
 - (c) an award or agreement made under the *Public Service Arbitration Act 1966*⁶ of Western Australia; or
 - (d) an award of the Western Australian Coal Industry Tribunal⁷ constituted under the *Mining Act 1904*⁸ of Western Australia, as the relevant employment requires;
- “**industrial disease premium**” means the additional industrial disease premium fixed pursuant to section 151(a)(iii);

“inspector” means a person authorised as an inspector under section 175A(1);

“medical assessment panel” means a medical assessment panel constituted under Part VII;

“medical practitioner” means —

- (a) a person who is resident in a State or Territory of the Commonwealth and is entitled to practise as a medical practitioner in accordance with the laws of that State or Territory; or
- (b) a person who is not resident in a State or Territory of the Commonwealth but who is recognized as a medical practitioner for the purposes of this Act by the Commission;

“member of a family” means spouse, de facto partner, parent, grandparent, step-parent; any person who stands in the place of a parent to another person and also that other person, son, daughter, ex-nuptial son, ex-nuptial daughter, grandson, grand-daughter, step-son, step-daughter (whether the step-son or step-daughter is legally adopted by the worker or not), brother, sister, half-brother, half-sister; and with respect to an ex-nuptial worker includes the worker’s parents, and his brothers and sisters, whether legitimate or ex-nuptial, who have at least one parent in common with the worker;

“mesothelioma” means primary malignant neoplasm of the mesothelium (diffuse mesothelioma) of the pleura or the peritoneum;

“mine” or **“mining operation”** means a mine or mining operation of a class prescribed for the purposes of this definition;

“minimum award rate” means the weighted average minimum award rate for adult males under Western Australian State Awards, as published by the Australian Statistician;

“noise induced hearing loss” means a noise induced loss or diminution of a worker’s hearing that is permanent and is due to the nature of any employment in which the worker was employed, other than a personal injury by accident;

“notional residual entitlement” in relation to a deceased worker, means a sum equal to —

- (a) if section 56 or Schedule 5 clause 2 applied to any incapacity resulting from the relevant disability, the aggregate of weekly payments for total incapacity of the worker at a rate calculated and varied in accordance with Schedule 1 as at the date of his death, for a period from that date up to the date when weekly payments of compensation would have ceased by reason of age, less the amount of any lump sum paid in redemption of weekly payments and the amount of any sum paid under Schedule 2, for that disability; or
- (b) the prescribed amount as at the date of his death, less the amount of any weekly payments made, the amount of any lump sum paid in redemption of weekly payments, and the amount of any sum paid under Schedule 2, for that disability,

whichever is the less;

“physiotherapist” means a person who is resident in the Commonwealth or a Territory of the Commonwealth and is registered as a physiotherapist

in accordance with the laws of a State or Territory of the Commonwealth;

“prescribed amount” means —

- (a) in relation to the financial year ending on 30 June 2000, \$119 048;

Note: This is the nearest whole number of dollars to the amount obtained by multiplying by 208 the average of the amounts that the Australian Statistician published as the all employees average weekly total earnings in Western Australia for pay periods ending in the months of May, August and November 1998 and February 1999.

- (b) in relation to any subsequent financial year, the nearest whole number of dollars to —

- (i) the amount obtained by varying the prescribed amount for the preceding financial year by the percentage by which the amount that the Australian Statistician published as the Wages Cost Index, ordinary time hourly rates of pay (excluding bonuses) for Western Australia (the **“WCI”**) varied between the second-last December quarter before the financial year commenced and the last December quarter before the financial year commenced; or
- (ii) if the calculation under subparagraph (i) cannot be performed in relation to a financial year because the WCI for a relevant quarter was not published, the amount obtained by varying the prescribed amount for the preceding financial year in accordance with the regulations,

with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars;

“rehabilitation” includes, but is not limited to, vocational rehabilitation;

“relevant employment” means —

- (a) the employment in which the personal injury by accident occurred;
- (b) the last employment, during the period of one year mentioned in section 32 or, in the case of pneumoconiosis or mesothelioma, the last employment, to the nature of which the disabling Schedule 3 disease is, or was, due;
- (c) the employment in the course of which the disease was contracted and which was a contributing factor and contributed to a significant degree;
- (d) the employment which contributed and contributed to a significant degree to the recurrence, aggravation, or acceleration of the pre-existing disease; or
- (e) the last employment, during the period of 3 years mentioned in section 49, to the nature of which the disabling Schedule 4 loss of function is, or was, due,

as the case requires;

“repealed Act” means the Act repealed by section 194;

- “review officer”** means a review officer appointed in accordance with Division 1A of Part V;
- “self-insurer”** means employer whom, or employer belonging to a group of employers which, the Governor exempts under section 164 from the obligation to insure pursuant to this Act except for the obligation to insure against liability to pay compensation for any industrial disease of the kinds referred to in section 151(a)(iii);
- “ship”** means any kind of vessel used in navigation by water, however propelled or moved, and includes —
- (a) a barge, lighter, or other floating vessel; and
 - (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water;
- “specialist”** means a medical practitioner —
- (a) who is resident in the State and who is registered as a specialist under section 11A of the *Medical Act 1894*; or
 - (b) who is not resident in the State, but who is recognized as a specialist for the purposes of this Act by the Commission;
- “spouse”** in relation to compensation payable in respect of the death of a worker, includes any former spouse of the worker if the worker was legally obliged immediately before the death of the worker to make provision for that former spouse with respect to financial matters;
- “State”** includes Territory;
- “State Government Insurance Commission”** means the State Government Insurance Commission⁹ established by the *Insurance Commission of Western Australia Act 1986*;
- “State Government Insurance Corporation”** means the State Government Insurance Corporation¹⁰ established by the *Insurance Commission of Western Australia Act 1986*;
- “the Chairman of the Commission”** means the person appointed to the office of Chairman of the Workers’ Compensation and Rehabilitation Commission and includes a person appointed to act in the place and during the absence of the Chairman while that person is so acting;
- “tributer”** means a person who works a mine under an agreement with the lessee or owner of the mine to pay or receive from the lessee or owner a portion of the percentage product taken from the mine;
- “Trust Fund”** means the Workers’ Compensation and Rehabilitation Trust Fund established under this Act;
- “vocational rehabilitation”** means, in relation to workers who have suffered a disability compensable under this Act, the progressive and coordinated use of measures for counselling, occupational and vocational training and retraining, work assessment, and the use of aids, appliances, services or other means to facilitate the restoration of those workers to the fullest capacity for gainful employment of which they are capable;
- “weekly payments of compensation”**, in respect of the prescribed amount, include payments made under clause 10 and weekly payments of the supplementary amount made under Schedule 5 clause 2;

“worker” does not include a person whose employment is of a casual nature and is not for the purpose of the employer’s trade or business, or except as hereinafter provided in this definition a member of the police force, or except as hereinafter provided in this definition a member of the employer’s family dwelling in his house; but save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied, is oral or in writing;

the term **“worker”**, save as hereinbefore provided in this definition, includes a member of the police force, who suffers a disability and dies as a result of that disability, and any member of the employer’s family dwelling in his house whose name, employment, and estimated wages are disclosed, at the time of employment and thereafter from time to time when the insurance is renewed, in writing to the insurer of the employer’s liability to pay compensation under this Act;

the term **“worker”** save as aforesaid, also includes —

- (a) any person to whose service any industrial award or industrial agreement applies; and
- (b) any person engaged by another person to work for the purpose of the other person’s trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services,

and any reference to a worker who has suffered a disability shall, where the worker is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.

[(2), (3) repealed]

- (4) For purposes of the definition of **“disability”**, the matters are as follows —
 - (a) the worker’s dismissal, retrenchment, demotion, discipline, transfer or redeployment;
 - (b) the worker’s not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to the employment; and
 - (c) the worker’s expectation of —
 - (i) a matter; or
 - (ii) a decision by the employer in relation to a matter, referred to in paragraph (a) or (b).
- (5) In determining whether the employment contributed, or contributed to a significant degree, to the contraction, recurrence, aggravation or acceleration of a disease for purposes of the definitions of **“disability”** and **“relevant employment”**, the following shall be taken into account —
 - (a) the duration of the employment;
 - (b) the nature of, and particular tasks involved in, the employment;
 - (c) the likelihood of the contraction, recurrence, aggravation or acceleration of the disease occurring despite the employment;

- (d) the existence of any hereditary factors in relation to the contraction, recurrence, aggravation or acceleration of the disease;
- (e) matters affecting the worker's health generally; and
- (f) activities of the worker not related to the employment.

[Section 5 amended by No. 79 of 1983 s. 2; No. 44 of 1985 s. 3; No. 51 of 1986 s. 46(2); No. 85 of 1986 s. 4; No. 86 of 1986 s. 5 and 6; No. 21 of 1987 s. 3; No. 36 of 1988 s. 4; No. 96 of 1990 s. 6; No. 72 of 1992 s. 16(3); No. 48 of 1993 s. 18, 21, 28 and 29; No. 62 of 1994 s. 109; No. 34 of 1999 s. 4 and 32(1); No. 10 of 2001 s. 218; No. 28 of 2003 s. 214; No. 36 of 2004 s. 4.]