

Schedules

Schedule 1 — Compensation entitlements

1. Death — dependants wholly dependent

Where death results from the disability and the worker leaves any dependants wholly dependent upon his earnings —

- (1) (a) in respect and for the benefit only of all those dependants, if any, who are not of the kind referred to in subclause (2), (3), or (4) a sum equal to the notional residual entitlement of the worker;

but if a worker dies leaving —

- (b) a spouse or parent or a spouse and parent wholly dependent upon his earnings, whether or not there are other dependants wholly dependent upon his earnings, there shall be a minimum amount payable being a sum equal to the aggregate weekly payments for total incapacity of the worker at a rate calculated and varied in accordance with this Schedule as at the date of the worker's death for a period of one year after that date;
 - (c) in the event of there being more than one dependant wholly dependent on his earnings the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by a dispute resolution body;
- (2) in respect and for the benefit only of each of those dependants, if any, who is a child, or step-child, under the age of 16 years, a child's allowance weekly until the child attains that age;
 - (3) in respect and for the benefit only of each of those dependants, if any, who is a full-time student child or step-child, and has attained the age of 16 years but is under the age of 21 years, a child's allowance weekly until the child attains the age of 21 years or ceases to be a full-time student, whichever is the sooner;
 - (4) in respect and for the benefit only of each of those dependants who is a child, or step-child, of any age, whether a full-time student or otherwise who, by reason of circumstances a dispute resolution body in its absolute discretion decides, should receive continued support, a child's allowance weekly until such time as a dispute resolution body orders,
but if a worker dies leaving —

(5) only a dependant or dependants wholly dependent upon his earnings who, apart from this subclause, would be entitled to a child's allowance under subclause (2), (3), or (4), the compensation entitlement of that dependant or those dependants is whichever of the following —

- (a) a sum equal to 25% of the notional residual entitlement of the worker;
- (b) a child's allowance under subclause (2), (3), or (4) as the case may be,

a dispute resolution body determines as likely to be in the best interests of that dependant or those dependants, and —

- (c) in the event of a dispute resolution body determining a sum under paragraph (a) and there is more than one such dependant the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by a dispute resolution body.

2. Death — partial dependants who are not children

Where death results from the disability and the worker does not leave a dependant wholly dependent upon his earnings (other than a dependant of a kind referred to in clause 1(2), (3), or (4)) but leaves a dependant (other than of a kind referred to in clause 1(2), (3), or (4)) in part dependent on his earnings, such sum to each such dependant in part dependent on him as may be agreed upon or in default of agreement may be determined by a dispute resolution body by proceedings under this Act to be reasonable and proportionate to the loss of any necessary financial support suffered by that dependant but such sum or the total of such sums, as the case requires, shall not exceed a sum equal to the notional residual entitlement.

3. Death — partial dependants who are children

Where death results from the disability and the worker does not leave a dependant wholly dependent upon his earnings but leaves a dependant of a kind referred to in clause 1(2), (3), or (4), partly dependent on his earnings, such weekly sum only for each such dependant in part dependent on him as may be agreed upon or in default of agreement may be determined by a dispute resolution body by proceedings under this Act to be reasonable and proportionate to the loss of any necessary financial support suffered by that dependant but such weekly sum shall not in any case exceed the child's allowance which would be payable weekly if the dependant were wholly dependent.

4. Death — no dependant

Where death results from the disability and the worker leaves no dependant, the reasonable expenses of his medical attendance and also funeral expenses, including all cemetery board charges, but, in the case of funeral expenses, not exceeding the amount applying in accordance with section 5A, the cost of which may be awarded to and upon the application of any person by whom the expenses were properly incurred, or to whom the whole or any part of the expenses is owed.

5. Death — where not resulting from the disability but weekly payments had been made

Where a worker has been in receipt of, or was entitled to receive, weekly payments for not less than 6 months immediately preceding his death and an order for redemption has not been made pursuant to section 67 and the worker dies but the death does not result from the disability —

(1) and the worker leaves any spouse, child, or step-child wholly dependent upon his earnings —

(a) in respect of and for the benefit only of all those dependants —

(i) the amount, if any, which would have been payable as a lump sum if, before the *Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1999* commenced, a dispute resolution body had ordered redemption pursuant to section 67 immediately before the worker's death; or

(ii) the aggregate of weekly payments for total incapacity of the worker at a rate calculated and varied as at the date of the worker's death for a period of one year after the worker's death,

whichever is the greater; and

(b) in the event of there being more than one such dependant the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by a dispute resolution body;

(2) and if the worker does not leave any spouse, child, or step-child wholly dependent upon, or supported by, his earnings but leaves any spouse, child or step-child in part dependent upon his earnings —

(a) in respect of and for the benefit only of all those dependants —

- (i) such sum as may be agreed upon, or in default of agreement, may be determined by proceedings under this Act, to be reasonable and proportionate to the total of the loss of any necessary financial support suffered by all those dependants; or
 - (ii) the amount which would have been payable if subclause (1) applied, whichever is the less, and
- (b) in the event of there being more than one such dependant, the amount is to be apportioned between them according to the respective losses of any necessary financial support suffered by them, which apportionment is to be determined by a dispute resolution body.

6. Payments to Commission

Any amount payable by an employer or his insurer pursuant to section 84F and clauses 1, 2, 3, or 5 shall be paid into the custody of the Commission and, where the case requires, be apportioned for the benefit of those entitled in accordance with the order of a dispute resolution body, and after the amount is so paid there shall be liberty to apply to a dispute resolution body by or on behalf of any one of those entitled in respect of the manner in which that amount or any part of it is applied.

7. Amount of compensation in case of total or partial incapacity

- (1) Subject to section 56 and subclause (3) when total incapacity for work results from the disability a weekly payment during the incapacity equal to the weekly earnings of the worker calculated and varied in accordance with this Schedule.
- (2) Subject to section 56 and subclause (3), where partial incapacity for work results from the disability, a weekly payment during the partial incapacity equal to the amount by which the total weekly earnings of the worker calculated and varied in accordance with this Schedule would exceed the weekly amount exclusive of payments for overtime or any bonus or allowance which he is earning or is able to earn in some suitable employment or business after the occurrence of the disability.
- (3) An entitlement of a worker to weekly payments for a disability under this Act ceases if and when the total weekly payments for that disability reaches the prescribed amount, unless a dispute resolution body makes an order to the contrary under section 84E, and there

shall be no revival of, or increase in, that entitlement upon any subsequent increase in the prescribed amount.

- (4) Nothing in subclause (3) affects the liability of an employer for, and the entitlement of a worker to, expenses as are provided for in clauses 9, 17, 18, and 19 but subject to the limitations on those expenses as provided in clause 17(1).
- (5) Unless otherwise authorized by the Commission, compensation shall be paid by the employer to the worker at the employer's usual place of payment of wages on the employer's usual pay days or, at the request of the worker shall be sent by prepaid post to the worker's address.
- (6) A worker when fulfilling any requirement of a dispute resolution body made under section 157, is deemed for the purposes of this clause to be totally incapacitated.

8. Deemed total incapacity

Where a worker who has so far recovered from his disability as to be fit for employment of a certain kind satisfies a dispute resolution body that he has taken all reasonable steps to obtain, and has failed to obtain, that employment and that the failure is a consequence, wholly or mainly, of the disability, a dispute resolution body may, without limiting its powers of review, order that the worker's incapacity be treated, or continue to be treated, as total incapacity, for such period, and subject to such conditions, as the order may provide.

9. No incapacity — medical expenses

Where a total or partial incapacity for work does not result from the disability but the worker is obliged to obtain medical or surgical, dental, physiotherapy or chiropractic advice or treatment, clauses 17, 18, and 19 apply in so far as they may be made applicable.

10. Absence from work for medical attendance

Where absence from work arises from a necessary attendance for a medical or like purpose that is authorized or required under this Act or from an unavoidable delay in the provision, repair, or replacement of any artificial aid of the kinds referred to in clause 17 and without which the worker is unable to work, the employer shall pay a weekly payment or portion thereof at a rate equivalent to the rate that applies for total or partial incapacity.

11. Weekly earnings

- (1) Subject to clauses 12 to 16, for the purposes of this Schedule "**weekly earnings**" has the meaning given by this clause.
- (2) In this Schedule —

“Amount A” means the rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation, plus —

- (a) any over award or service payments paid on a regular basis as part of the worker’s earnings;
- (b) overtime; and
- (c) any bonus or allowance;

“Amount Aa” means the rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation, plus any over award or service payments paid on a regular basis as part of the worker’s earnings;

“Amount B” means the worker’s average weekly earnings (including overtime and any bonus or allowance) over the period of one year ending on the day before the disability occurs in the employment that the worker is in when the disability occurs or, if the worker is then in more than one employment at the end of that period, the sum of the average weekly earnings (including overtime and any bonus or allowance) in each employment, but if the worker has been in an employment for a period of less than one year, the worker’s average weekly earnings in that employment are to be determined over that lesser period;

“Amount C” means, during a financial year —

- (a) the amount obtained by multiplying by 1.5 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, November and February preceding the financial year; or
- (b) if any relevant amount of earnings is not published, the amount obtained by varying Amount C for the preceding financial year in accordance with the regulations;

Note: During the financial year ending on 30 June 2000 Amount C is \$852.52.

“Amount D” means the minimum rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation;

“Amount E” means the minimum weekly earnings to which the worker would have been entitled, at the time of the incapacity, under the *Minimum Conditions of Employment Act 1993*;

“bonus or allowance” means any bonus or incentive, shift allowance, week-end or public holiday penalty allowance, district allowance, industry allowance, meal allowance, living allowance, clothing allowance, travelling allowance, or other allowance;

“earnings” includes wages, salary and other remuneration;

“overtime” means any payment for the hours in excess of the number of ordinary hours which constitute a week’s work.

- (3) In the case of a worker whose earnings are prescribed by an industrial award when the disability occurs, weekly earnings are —
- (a) for the 1st to the 4th weekly payments: Amount A but not more than Amount C or less than Amount D;
 - (b) for weekly payments after the 4th: Amount Aa, or a lesser amount determined in accordance with the regulations, but not more than Amount C or less than Amount D.
- (4) In the case of a worker to whom subsection (3) does not apply, weekly earnings are —
- (a) for the 1st to the 4th weekly payments: Amount B but not more than Amount C or less than Amount E;
 - (b) for weekly payments after the 4th: 85% of Amount B, or a lesser amount determined in accordance with the regulations, but not more than Amount C or less than Amount E.
- (5) Subject to subsection (6), the references in the definition of Amount A in subsection (2) to overtime and any bonus or allowance are references to those items averaged over the period of 13 weeks ending at the time of the incapacity.
- (6) If the worker was totally or partially incapacitated from working or for any other reason did not work during any part of the period of 13 weeks mentioned in subsection (5), that part is to be disregarded in calculating the average amount per week that the worker was paid over that period.
- (7) Regulations made for the purposes of subsection (3)(b) or (4)(b) may provide for lesser amounts (but not less than Amount D or E, whichever is applicable) to be determined in respect of weekly payments after the 4th, 12th, 26th or 52nd, or after such other numbers of weekly payments as are prescribed.

[11A. *deleted*]

12. Part-time worker

In respect of employment to which clause 11(3) applies, in the case of a part-time worker employed solely in the employment in which

the disability occurs, a proportionate deduction shall be made in such weekly earnings to the extent that the hours worked by him each week are less than the number of hours stated in the industrial award as ordinary hours which constitute a week's work.

13. Concurrent contracts

In respect of employment to which clause 11(3) applies, in the case of a worker who had entered into concurrent contracts of service with 2 or more employers under which he worked at one time for one such employer and at another time for another such employer and —

- (1) under which the total number of hours worked each week by him are less than the number of hours stated in the industrial award relating to the employment in which the disability occurs as ordinary hours which constitute a week's work, a proportionate deduction shall be made in such weekly earnings to the extent the total number of hours worked by him are so less; or
- (2) under which the total number of hours worked by him, discounting in respect of each of the employments overtime or any bonus or allowance, are equal to or more than the number of hours stated in the industrial award relating to the employment in which the disability occurs as ordinary hours which constitute a week's work, no deduction shall be made.

14. Casual or seasonal worker

In the case of a casual or a seasonal or other worker who is ordinarily employed for only part of the year, “**weekly earnings**” means that fraction of the worker's weekly earnings calculated and varied in accordance with this Schedule as represents the same ratio that the number of weeks that he normally works each year bears to 52.

15. Board and lodging

Where the remuneration of a worker consists of wages with board or board and lodging, the wages or the earnings of the worker shall, for the purposes of this Act, be deemed to be the amount of the wages with the addition of the value of such board or board and lodging to be assessed, but such board or board and lodging shall not be assessed at a sum exceeding the amount applying in accordance with section 5A.

16. Variation of weekly payments

- (1) The weekly earnings of the worker calculated in accordance with other applicable clauses shall be varied from the date and to the extent of any variation in the provisions of the relevant industrial award made after the disability occurs, or, where weekly earnings are calculated under clause 11(4), the weekly earnings shall be varied

from the date and to the extent of any variation the worker would have been entitled to receive in the normal course of his employment.

- (2) Where a relevant industrial award becomes redundant or obsolete the weekly earnings of the worker calculated in accordance with other applicable clauses shall be varied from the date and to the extent of any percentage increase in wages ordered in a National Wage Decision made under the *Conciliation and Arbitration Act 1904*⁴ of the Commonwealth as a result, *inter alia*, of consumer price index movements.

17.^{27,28,29} **Payment of medical and other expenses**

In addition to weekly payments of compensation payable, a sum is payable equal to the reasonable expenses incurred in respect of —

- (1) first aid and ambulance or other service to carry the worker to hospital or other place for medical treatment; medicines and medical requisites; medical or surgical attendance and treatment, including where necessary, medical or surgical attendance and treatment by specialists; dental attendance and treatment; physiotherapy or chiropractic attendance and treatment; attendance and treatment that is approved treatment; charges for hospital treatment and maintenance, in accordance with clause 18 but not including charges for a nursing home unless a medical practitioner certifies that the worker is totally and permanently incapacitated and requires continuing medical treatment and maintenance which cannot be administered in the worker's domestic environment; the provision of hearing aids, artificial teeth, artificial eyes, and where the disability renders their use necessary, spectacles or contact lenses, in so far as that attendance, treatment, or other item does not include vocational rehabilitation, but not exceeding, in the aggregate, a sum equal to 30% of the prescribed amount, unless clause 18A applies, and there shall be no revival of, or increase in, the entitlement to such expenses upon any subsequent increase in the prescribed amount;
- (1a) vocational rehabilitation up to, but not exceeding, in the aggregate, a sum equal to 7% of the prescribed amount, and there shall be no revival of, or increase in, the entitlement under this subclause upon any subsequent increase in the prescribed amount;
- (2) funeral expenses, including all cemetery board charges, in the event of the death of the worker, but not exceeding the amount applying in accordance with section 5A;

- (3) the repair or replacement, including such services by way of consultations, examinations, or prescriptions as are reasonably rendered by medical practitioners, dentists, or other qualified persons in connection with the repair or replacement of a hearing aid, an artificial limb, artificial teeth, artificial eyes, spectacles, or contact lenses damaged or destroyed by accident arising out of or in the course of the worker's employment, or whilst the worker is acting under the employer's instructions, whether or not, except in the case of artificial teeth, personal injury is caused to the worker;
- (4) the purchase or supply of a wheeled chair or similar appliance, where the worker has suffered the loss of both legs or is paralysed in both legs by reason of a disability suffered by a worker but not exceeding the amount applying in accordance with section 5A;
- (5) the cost of any surgical appliance or of an artificial limb that complies with the standards laid down by the Commonwealth Repatriation Artificial Limb and Appliance Centre, if such an appliance or artificial limb is capable of relieving any disablement incurred by the worker by reason of a disability suffered by a worker; and
- (6) in the case of personal injury by accident arising out of or in the course of the worker's employment, or whilst acting under the employer's instructions, the reasonable cost of any necessary repair or replacement of clothing damaged or destroyed at the time of the accident.

18. Hospital charges

- (1) The hospital charges mentioned in clause 17(1) for treatment and maintenance of the worker in a hospital shall, subject to subclause (2), be as provided under the *Hospitals and Health Services Act 1927* in relation to such cases.
- (2) Where, on the reasonable medical advice in the interests of the health of the worker or where by reason of the unavailability of hospital accommodation, or in the discretion of a dispute resolution body in any other case, the worker occupies more expensive hospital accommodation than that to which the prescribed charges refer a dispute resolution body may, on the application of the worker, determine that a rate higher than those prescribed shall be the rate for hospital charges.

18A. ^{28,29} **Payment of additional expenses**

- (1) Where the worker has incurred reasonable expenses referred to in subclause (1) of clause 17 in excess of the maximum amount provided for by that subclause, a dispute resolution body may, subject to subclause (2), if it considers that the maximum amount is inadequate,

allow such additional sum, but not exceeding \$50 000, as it thinks proper in the circumstances.

- (1a) Where the worker is likely to incur reasonable expenses referred to in subclause (1) of clause 17 in excess of the maximum amount provided for by that subclause, a dispute resolution body may, subject to subclause (2), if it considers that the maximum amount is likely to be inadequate, allow such specific additional sum, but not exceeding \$50 000, as it thinks proper in the circumstances.
- (2) A dispute resolution body shall not allow an additional sum in the exercise of its discretion under subclause (1) or (1a) unless it considers that such a sum ought to be allowed, having regard to the social and financial circumstances and the reasonable financial needs of the worker.
- (2a) An application under subclause (1a) may be made at any time after the reasonable expenses referred to in subclause (1) of clause 17 incurred by the worker exceed 75% of the maximum amount provided for by that subclause.
- [(3) *repealed*]
- (4) The insurer of the employer, if the employer is insured in accordance with this Act, or otherwise the employer, shall notify the worker when the reasonable expenses referred to in subclause (1) of clause 17 incurred by the worker exceed 75% of the maximum amount provided for by that subclause.

19. Travelling

- (1) Where a worker is required by his employer, his employer's duly authorized agent or medical, or like adviser, or is advised by his own medical or like adviser, to travel from the place where he resides to a hospital or other place for treatment, or attendance of a kind referred to in clause 17; then, in addition to the compensation payable to such worker under this Schedule, the employer shall pay all reasonable fares and expenses incurred by the worker in such travelling and return, and the reasonable cost of meals and lodging necessarily incurred by the worker while away from his home for the purpose of such treatment, massage, or medical examination not exceeding the amount or amounts applying in accordance with section 5A.
- (2) In any case where no medical or like adviser is available and a worker travels for treatment, or attendance of a kind referred to in clause 17 without being so required or advised, the employer shall be liable as prescribed in subclause (1), if the worker proves such travelling was necessary in the circumstances of the case.
- (3) The amounts to cover the cost of meals and lodging shall not be payable to any worker who has no dependants, unless a worker has

incurred costs for meals and lodging in excess of that which he would have incurred had he remained at his home, and then only to the amount of that excess.

[Schedule 1 amended by No. 44 of 1985 s.41; No. 85 of 1986 s.12; No. 96 of 1990 s.48; No. 72 of 1992 s.23; No. 48 of 1993 ss.19 and 28; No. 103 of 1994 s.18; No. 33 of 1999 s.8; No. 34 of 1999 ss.32(12) to (19), 53(a), (c) and (d)(ii).]

Schedule 2 — Table of compensation payable³⁰

<i>Column 1</i>	<i>Column 2</i>
• Item Nature of Injury	<i>Ratio which the sum payable herein bears to the prescribed amount.</i>
	%
EYES	
1. Total loss of sight of both eyes	100
2. Total loss of sight of an only eye	100
3. Total loss of sight of one eye	50
4. Total loss of sight of one eye and serious diminution of the sight of the other eye	75
5. Loss of binocular vision	50
HEARING	
6. Total loss of hearing	75
SPEECH	
7. Total loss of power of speech	75
BODY AND MENTAL	
8. Permanent and incurable loss of mental capacity resulting in total inability to work	100
9. Total and incurable paralysis of the limbs or of mental powers	100
SENSORY	
10. Total loss of sense of taste and smell	50
11. Total loss of taste	25
12. Total loss of smell	25
ARM	
13. Loss of arm at or above elbow	90
14. Loss of arm below elbow	80

• Item	Nature of Injury	<i>Ratio which the sum payable herein bears to the prescribed amount.</i>
		%
	HAND	
15.	Loss of both hands	100
16.	Loss of a hand and foot	100
17.	Loss of hand or thumb and 4 fingers	80
18.	Loss of thumb	35
19.	Loss of forefinger	17
20.	Loss of middle finger	13
21.	Loss of ring finger	9
22.	Loss of little finger	6
23.	Total loss of movement of joint of thumb	17
24.	Total loss of distal phalanx of thumb	20
25.	Total loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx	15
26.	Total loss of distal phalanx of forefinger	10
27.	Total loss of distal phalanx of	
	— middle finger	8
	— ring finger	6
	— little finger	4
	LEG	
28.	Loss of leg at or above knee	70
29.	Loss of leg below knee	65
	FEET	
30.	Loss of both feet	100
31.	Loss of foot	65
32.	Loss of great toe	20
33.	Loss of any other toe	8
34.	Loss of 2 phalanges of any other toe	5
35.	Loss of phalanx of great toe	8
36.	Loss of phalanx of any other toe	4

Column 1

Column 2

• Item	Nature of Injury	<i>Ratio which the sum payable herein bears to the prescribed amount.</i>
		%

BACKS, NECK AND PELVIS

36A.	Permanent loss of the full efficient use of the back (including thoracic and lumbar spine)	60
36B.	Permanent loss of the full efficient use of the neck (including cervical spine)	40
36C.	Permanent loss of the full efficient use of the pelvis	15

MISCELLANEOUS

37.	Loss of genitals	50
38.	Severe facial scarring or disfigurement to a maximum of	80
39.	Severe bodily, other than facial, scarring or disfigurement to a maximum of	50

[Schedule 2 amended by No. 44 of 1985 s.42; No. 48 of 1993 s.20.]

Schedule 3 — Specified industrial diseases

Column 1

Column 2

Description of Disease

Description of Process

* Arsenic, phosphorus, lead, mercury or other mineral poisoning	Any employment involving the use or handling of arsenic, phosphorus, lead, mercury, or other mineral, or their preparations or compounds.
* Anthrax	Wool-combing; wool-sorting; handling of hides, skins, wool, hair, bristles, or carcasses; loading and unloading or transport of merchandise.
Communicable diseases	Employment in an occupation or in a situation exposing the worker to infection by the intermediate hosts of any communicable disease or by agencies transmitting any communicable disease, where within a reasonable period of incubation, specific infection has followed demonstrable action of the particular

Column 1
Description of Disease

* Poisoning by trinitrotoluene or by benzol or its nitro and amido derivatives (dinitrobenzol, aniline and others)
Poisoning by a homologue of benzol

* Poisoning by carbon bisulphide

Poisoning by a halogen derivative of a hydrocarbon of the aliphatic series

* Poisoning by nitrous fumes

* Poisoning by fluorine

* Poisoning by cyanogen compounds

* Poisoning by carbon monoxide

* Leptospirosis; endemic typhus, scrub typhus, Brill's disease, swineherds disease, plague, mite dermatitis and scrub itch

* Chrome ulceration

Effects of insolation

Effects of electrical currents

Any dematosis, ulceration or injury to the skin or ulceration or injury to the mucous membranes of the mouth

Column 2
Description of Process
vectors or agents concerned in the transmission of that disease, or where that action can be reasonably presumed.

Any process involving the use of trinitrotoluene or of the nitro and amido derivatives of benzol or its preparations or compounds.

Any process involving the use of homologue of benzol.

Any process involving the use of carbon bisulphide or its preparations or compounds.

Any process involving the use of a halogen derivative or a hydrocarbon of the aliphatic series.

Any process in which nitrous fumes are evolved.

Any process in which fluorine is used.

Any process in which cyanogen compounds are used.

Any process in which carbon monoxide is used, or evolved.

Employment in an occupation or in a situation exposing the worker to infection with a specific disease transmissible from animal to man where the specific infection associated with occupation or situation develops within its known incubation period and can be reasonably presumed to have occurred in the course of such employment.

Any process involving the use of chromic acid or bichromate of ammonium, potassium, or sodium, or their preparations.

Work entailing prolonged exposure to sunlight.

Workers exposed to electrical currents.

Any industrial process.

<i>Column 1</i>	<i>Column 2</i>
<i>Description of Disease</i>	<i>Description of Process</i>
or nose wholly or partly produced or aggravated by contact with or inhalation or ingestion of irritating dusts, solids, gases or fumes or mineral or vegetable irritants or ray burn	
Epitheliomatous cancer or ulceration of skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of those substances.	Handling of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products, or residues of those substances.
* Pneumoconiosis	Any process entailing exposure to mineral dusts harmful to the lungs.
Mesothelioma	Any process entailing substantial exposure to asbestos dust.
Pathological manifestation due to —	Any process involving exposure to the action of radium, radioactive substances, X-rays or lasers.
(a) radium and other radioactive substances	
(b) X-rays;	
(c) lasers.	
Hepatitis B	Employment in a hospital or other medical centre or a dental hospital or dental centre or employment associated with a blood bank.
Lung cancer	Any process entailing heavy exposure to asbestos dust.
Bronchopulmonary diseases caused by cotton, flax, hemp or sisal dust	Any process entailing exposure to cotton, flax, hemp or sisal dust.
Occupational asthma caused by sensitizing agents or irritants inherent to the work process	Any process entailing exposure to sensitizing agents or irritants inherent to that process
Extrinsic allergic alveolitis caused by the inhalation of organic dusts	Any process entailing exposure to organic dusts.
Diseases caused by alcohols, glycols or ketones	Any process entailing exposure to alcohols, glycols or ketones.
Diseases caused by the asphyxiants carbon monoxide, hydrogen cyanide or its toxic derivatives or hydrogen sulfide	Any process in which carbon monoxide, hydrogen cyanide or its toxic derivatives or hydrogen sulfide is used.

* See section 48(2)

[Schedule 3 amended by No. 44 of 1985 s.43; No. 48 of 1993 s.42.]

Schedule 4 — Specified losses of functions

Column 1

Column 2

<i>Loss of Function</i>	<i>Description of Process</i>
Noise induced hearing loss	Any work process involving continued exposure to excessive noise.
Effects of vibration (including Raynaud's phenomenon and dead hand)	Use of vibratory tools, implements and appliances.
Compressed air illness	Any process carried on in compressed air.

Schedule 5 — Exceptions to cessation of weekly payments by reason of age^{31,32}

[Section 56]

1. Definitions

(1) In this Schedule —

“proclaimed date” means the date on which this Schedule comes into operation;

“redemption amount” means —

- (a) the sum of \$20 000 varied annually on 1 July, commencing 1 July 1983 and thereafter on the accumulative sum in accordance with such percentage change in the weighted average minimum award rate for adult males under the Western Australian State Awards published by the Australian Bureau of Statistics as occurs between 1 April in the calendar year preceding the variation and 31 March in the calendar year of the variation; or
 - (b) a sum equivalent to the prescribed amount less the amount of weekly payments made,
- whichever is the less;

“supplementary amount” means —

- (a) in relation to a worker with a dependent spouse, the sum of \$34.50;
 - (b) in relation to a worker without a dependent spouse, the sum of \$20,
- or such higher amounts as are respectively prescribed.

(2) Schedule 1 shall be read and construed subject to this Schedule.

2. Incapacity for work resulting from disabilities other than pneumoconiosis, mesothelioma and lung cancer

Where the worker shows to the satisfaction of the employer or, in the case of dispute, a dispute resolution body that, if incapacity resulting from the disability had not occurred, he would have continued to be a

worker after attaining the age of 65, he shall be entitled to the supplementary amount as a weekly payment during any period of total incapacity resulting from the disability in the time he would have been a worker, but in any case —

- (a) not beyond the time when he attains the age of 70 years; and
- (b) subject to Schedule 1 clause 7(3).

3. Incapacity for work resulting from disabilities of pneumoconiosis, mesothelioma and lung cancer — weekly payments

- (1) This clause shall be read and construed subject to the qualifications on entitlement in sections 33 and 34 and subject to sections 46 and 47.
- (2) In this clause “**weekly payments**” means weekly payments of compensation calculated and varied in accordance with Schedule 1.
- (2a) Subclauses (3) to (7) apply only to the disabilities of pneumoconiosis and mesothelioma.
- (3) Subject to the provisions of this Schedule and to Schedule 1 clause 7 (3), where a worker aged 65 or more on the proclaimed date had suffered one of those disabilities before that date and, immediately before then, he was entitled to weekly payments of compensation for any incapacity resulting from that disability under the repealed Act, in respect of any incapacity resulting from that disability on or after the proclaimed date he is entitled to receive weekly payments.
- (4) Subject to the provisions of this Schedule and Schedule 1 clause 7(3), where a worker who attains or has attained the age of 65 after the proclaimed date has or had suffered one of those disabilities before attaining that age and, immediately before attaining that age, he was entitled to weekly payments for any incapacity resulting from that disability, in respect of any incapacity resulting from that disability on or after the day he attains or attained that age he is entitled to receive weekly payments.
- (5) Subject to the provisions of this Schedule, where a worker attains or has attained the age of 65 after the proclaimed date and one of those disabilities of the worker occurs or has occurred on or after his attaining that age, in respect of any incapacity arising from that disability he is entitled to receive weekly payments.
- (6) Subject to the provisions of this Schedule, where a worker was aged 65 or more on the proclaimed date and one of those disabilities of the worker occurs on or after the day on which the *Workers’ Compensation and Assistance Amendment Act 1984*¹ comes into operation, in respect of any incapacity arising from that disability he is entitled to receive weekly payments.
- (7) Subject to the provisions of this Schedule, where a worker aged 65 or more on the proclaimed date suffers from one of those disabilities and the disability occurred on or after the proclaimed date but before the

coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*¹, in respect of any incapacity resulting from that disability he is entitled to receive —

- (a) a lump sum payment equivalent to the value of weekly payments he would have received prior to the coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*¹ if he had been entitled to receive such weekly payments from the time the disability occurred but so that such lump sum payment shall not exceed the aggregate of 52 such weekly payments; and
 - (b) weekly payments, if and to the extent that the total sum of weekly payments received, together with the lump sum payment received pursuant to paragraph (a), does not exceed the aggregate of 52 such weekly payments.
- (8) Subject to the provisions of this Schedule and Schedule 1 clause 7 (3) —
- (a) where a worker aged 65 or more on the relevant day had suffered the disability of lung cancer before that day and, immediately before then, he was entitled to weekly payments of compensation for any incapacity resulting from that disability, in respect of any incapacity resulting from that disability on or after the relevant day he is entitled to receive weekly payments;
 - (b) where a worker who attains or has attained the age of 65 after the relevant day has or had suffered the disability of lung cancer before attaining that age and, immediately before attaining that age, he was entitled to weekly payments for any incapacity resulting from that disability, in respect of any incapacity resulting from that disability on or after the day he attains or attained that age he is entitled to receive weekly payments;
 - (c) where a worker who attains or has attained the age of 65 after the relevant day suffers or has suffered the disability of lung cancer on or after attaining that age, in respect of any incapacity arising from that disability he is entitled to receive weekly payments;
 - (d) where a worker who was aged 65 or more on the relevant day suffers the disability of lung cancer on or after the relevant day, in respect of any incapacity arising from that disability he is entitled to receive weekly payments; and
 - (e) where a worker would be entitled to receive weekly payments under paragraph (a), (b), (c) or (d) if the references in those paragraphs to “relevant day” were references to 28 June 1985, he is entitled to receive —

- (i) a lump sum payment equivalent to the value of the weekly payments he would have received up until the “relevant day” but so that such lump sum payment shall not exceed the aggregate of 52 such weekly payments; and
- (ii) weekly payments, if and to the extent that the total sum of weekly payments received, together with the lump sum payment received pursuant to subparagraph (i), does not exceed the aggregate of 52 such weekly payments,

and for the purposes of this subclause, “**the relevant day**” means the day of the commencement of section 49 of the *Workers’ Compensation and Assistance Amendment Act 1990*¹.

4. Election to take redemption amount as lump sum or supplementary amount weekly

A worker entitled to receive weekly payments of compensation under clause 3 may elect during his lifetime and while he is so entitled and —

- (a) where he receives payments under clause 3(3), within 3 months of the coming into operation of the *Workers’ Compensation and Assistance Amendment Act 1984*¹;
- (b) where he receives payments under clause 3(4), within the period ending on the date that is —
 - (i) 3 months after the coming into operation of the *Workers’ Compensation and Assistance Amendment Act 1984*¹; or
 - (ii) one year after he becomes or became entitled to receive payments,
 whichever date is the later;
- (c) where he receives payments under clause 3(5) —
 - (i) if, at the coming into operation of the *Workers’ Compensation and Assistance Amendment Act 1984*¹, he has received such payments for a period of not less than one year, within 3 months of the coming into operation of that Act; or
 - (ii) in any other case, within the period of one year from the time when he became or becomes entitled to receive weekly payments;
- (d) where he receives weekly payments under clause 3(6) or clause 3(8)(a), (b), (c) or (d), within the period of one year from the time when he becomes entitled to receive those payments; or

- (e) where he receives —
 - (i) only a lump sum payment under clause 3(7) or 3 (8)(e), at the time of receiving that lump sum payment; or
 - (ii) a lump sum payment and weekly payments under clause 3(7) or 3(8)(e), before receiving the aggregate of 52 weekly payments,

to receive the redemption amount as a lump sum or to receive the supplementary amount weekly during his lifetime from the date he so elects and the employer shall be liable to pay compensation accordingly and not in accordance with clause 3.

5. Requirements for election under clause 4

- (1) A worker elects for the purposes of clause 4 if, and only if —
 - (a) the worker signs a prescribed form of election containing prescribed particulars in respect of the relevant disability; and
 - (b) that form is filed with the Directorate, and a copy of it is served on the employer, by or on behalf of the worker.
- (2) A form of election shall not be binding upon a worker unless the Director is satisfied that it contains a statement in clear terms of the effect the election will have on the worker's, and the worker's dependants', future entitlement to compensation under this Act.
- (3) Where the Director is not satisfied in accordance with subclause (2), he shall within 7 days notify the employer and the worker accordingly.

6. Effect of receiving the redemption amount as a lump sum

From the date a worker receives the redemption amount as a lump sum —

- (a) section 67 does not apply;
 - (b) for the disability from which the incapacity resulted —
 - (i) the worker is not entitled to further compensation; and
 - (ii) clauses 9, 10, 17, 18 and 19 of Schedule 1 cease to apply to the worker;
- and
- (c) clauses 1, 2, 3, 4, 5 and 17(2) of Schedule 1 shall not apply in respect of the worker's death.

7. Effect of receiving supplementary amount

From the date a worker commences to receive a supplementary amount weekly —

- (a) section 67 does not apply;

- (b) if his death results from the disability and a dependent spouse survives him —
 - (i) the dependent spouse is entitled to receive, and the employer is liable to pay into the custody of the Commission for the benefit of the spouse, as a lump sum the aggregate of the supplementary amount for a worker with a dependent spouse at the rate applicable at the date of death for a period of 3 years, and after the amount is so paid there shall be liberty to apply to the Commission by or on behalf of the dependent spouse in respect of the manner in which that amount or any part of it is applied;
 - (ii) the dependent spouse is also entitled to receive, and the employer is liable to pay weekly, from the date of the worker's death and during the dependent spouse's lifetime, the supplementary amount at the rate for a worker without a dependent spouse;
- and
- (c) clauses 1, 2, 3, 4, 5 and 17(2) of Schedule 1 do not apply in respect of the worker's death.

8. Payment of supplementary amount

- (1) An employer is not liable to pay compensation in accordance with clause 3 to a worker who does not make an election within the time specified in clause 4 but is liable to pay that worker the supplementary amount weekly during his lifetime from the last day on which the worker was entitled to make an election.
- (2) A worker who —
 - (a) receives a lump sum payment under clause 3(7)(a) or 3(8)(e)(i);
 - (b) is not entitled to receive weekly payments under clause 3(7)(b) or 3(8)(e)(ii); and
 - (c) does not elect to take the redemption amount as a lump sum at the time of receiving the payment referred to in paragraph (a),

is entitled to receive a further lump sum payment equivalent to the value of the supplementary amounts weekly he would have been entitled to receive during the period commencing one year after his disability occurred and ending on the day on which he is entitled to make an election under clause 4(e)(i) and thereafter he is entitled to receive the supplementary amount weekly during his lifetime.

**9. Death of a worker prior to commencement of section 49 of
*Workers' Compensation and Assistance Amendment Act 1990*¹**

- (1) Where a worker who died prior to the commencement of section 49 of the *Workers' Compensation and Assistance Amendment Act 1990*¹ would otherwise have been entitled to compensation or other benefits, or both, under clause 3(8)(e), 4(e) or 8(2) in respect of incapacity resulting from the disability of lung cancer is survived by a dependent spouse, that spouse is entitled to receive any compensation or other benefits, and the employer is liable to pay the compensation or to pay for the provision of the other benefits, that the worker would have received or been entitled to receive up until the time of his death.
- (2) The payment of a supplementary amount weekly to a dependent spouse instead of to a worker under subclause (1) does not act to stop clause 7(b) applying to that dependent spouse.

[Schedule 5 amended by No. 104 of 1984 s.8; No. 96 of 1990 s.49; No. 48 of 1993 s.28.]

[Schedule 6. Repealed by No. 48 of 1993 s.28.]

Schedule 7 — Noise induced hearing loss

[Section 24A]

1. Definitions

In this Schedule —

“**audiometric test**” means an audiometric test carried out in accordance with clause 4(1);

“**prescribed workplace**” means a workplace prescribed under clause 10;

“**proclaimed date**” means the date on which the *Workers' Compensation and Assistance Amendment Act 1988*¹ comes into operation.

2. Audiometric tests

- (1) A worker employed in a prescribed work place shall undergo an initial audiometric test as soon as practicable but no later than —
- (a) where the worker is employed in a prescribed workplace at the proclaimed date, 12 months after that date; or
 - (b) if the worker was not employed in a prescribed workplace at the proclaimed date, 12 months after the worker commences employment in a prescribed workplace.
- (2) A worker employed in a prescribed workplace, or who has retired from work in a prescribed workplace within the last 3 months, who has not undergone an audiometric test for 12 months and who wishes

to do so may request the employer, or in the case of a retired worker the worker's last employer, in writing to arrange for such a test and the employer shall, as soon as practicable, but not later than one month after the day that the request was received, arrange for the test to be held at the earliest date practicable.

- (3) A worker who has retired from work and is subsequently employed in a prescribed workplace shall undergo an audiometric test within 3 months of commencing that employment.
- (4) Any worker may undergo an audiometric test at any other time not referred to in this clause but clause 3 does not apply to that test.

3. Employer to arrange and pay for audiometric test

- (1) The employer of a worker who is required, or who makes a request, to undergo an audiometric test under clause 2 shall —
 - (a) arrange for the test;
 - (b) bear the cost of the test and all reasonable fares and expenses incurred by the worker in travelling to undergo the test and in returning, including the reasonable cost of meals and lodgings; and
 - (c) give written notice to the worker in the prescribed form of the time and place of the test, where relevant, the requirement to undergo the test and any other particulars prescribed regarding the test.
- (2) An employer who contravenes subclause (1) commits an offence.

4. Carrying out of audiometric tests

- (1) An audiometric test shall be carried out in the prescribed manner by a person meeting the prescribed requirements and approved by the Executive Director.
- (2) A person who carries out an audiometric test shall ensure that the results of the test prepared, or summarized, as prescribed are delivered to the Commission and to the worker tested within one month after the day of the test.
- (3) Subject to subclause (2), a person who carries out an audiometric test shall ensure that the results of the test, and any information derived from those results, are not communicated to any person other than at the written request of the worker tested or to —
 - (a) the Executive Director; or
 - (b) any other person prescribed in circumstances, if any, prescribed.
- (4) A person who contravenes subclause (2) or (3) commits an offence.

5. Communication and storage of audiometric test results

- (1) The Commission shall communicate the results of an audiometric test delivered to it under clause 4(2) —
 - (a) to the worker tested and, if the test results indicate that the worker may be entitled to compensation for noise induced hearing loss under section 24A, to the worker's employer; and
 - (b) to the Directorate or a compensation magistrate's court, where required to do so under section 73(6).
- (1a) The Commission may communicate the results mentioned in subclause (1) or information from those results, to any other person if, and only if, the identity of the worker or employer to whom the results or information relates, is not revealed to that person.
- (2) The Commission shall store the results of audiometric tests delivered to it under clause 4(2) for the period prescribed and, subject to subclause (1), shall ensure that those results, and any information derived from them, remain confidential.

6. Reference to medical assessment panel

- (1) Any question that arises under section 24A or this Schedule regarding audiometric testing or hearing loss, including whether or to what extent hearing loss is noise induced hearing loss, may be referred by the Director to a medical assessment panel if —
 - (a) a person performing a function under Part IIIA so requests;
 - (b) the worker claiming compensation or that worker's employer so requests in the manner prescribed and on payment of the prescribed fee⁴².
- (2) Where a question has been referred to a medical panel under subclause (1) —
 - (a) the Director shall make such arrangements as are necessary to enable any medical practitioner who has examined or treated the worker, on the worker's own behalf or on behalf of the employer, and who makes a request to do so, to attend before the medical assessment panel and make oral submissions, and the medical practitioner shall be paid from moneys standing to the credit of the General Fund such witness fees as he or she would have been entitled to receive if he or she had attended to give evidence in a hearing before a compensation magistrate's court under Part IIIA; and

- (b) if the worker, on being required to do so, refuses without reasonable excuse, proof of which is on the worker, to submit to an examination by that panel, or obstructs the examination, then that worker's right to compensation for noise induced hearing loss under section 24A is suspended until the examination takes place.

7. Re-test of person's hearing

- (1) Where an audiometric test has been carried out on a worker and the worker or the employer, within 3 months after the day on which the results of the audiometric test are communicated to him or her, gives notice in the prescribed form to the Commission to the effect that the test results are disputed the Commission shall arrange for a re-test of the worker to be carried out in the prescribed manner.
- (2) If a worker refuses without reasonable excuse, proof of which is on the worker, to submit to a re-test under subclause (1) or obstructs that re-test, then that worker's right to compensation for noise induced hearing loss under section 24A is suspended until the re-test takes place.
- (3) The costs of a re-test under this clause and all reasonable fares and expenses incurred by the worker in travelling to undergo the test and in returning, including the reasonable cost of meals and lodgings shall be paid from moneys standing to the credit of the General Fund.

8. Determination of hearing loss

- (1) The results of an audiometric test carried out on a worker and stored by the Commission under clause 5 are *prima facie* evidence of the level of hearing of the person at the date of the test.
- (2) Where a comparison of the results of 2 audiometric tests stored by the Commission under clause 5 shows that a loss or diminution of the hearing of a worker has occurred, those results shall be *prima facie* evidence of the measure of loss or diminution of hearing of that worker between the dates of the tests.
- (3) Where an audiometric test shows that a loss or diminution of hearing has been incurred by a worker but the worker has not undergone an earlier audiometric test then whether, and to what extent, that loss or diminution of hearing is compensable noise induced hearing loss may, in default of agreement between the worker and employer, be referred to the Director for conciliation under Part IIIA⁴².
- (4) If a worker —

- (a) undergoes an audiometric test within 3 months of the worker's employment being terminated, or in the case of a worker who has retired, the worker makes a request under clause 2(2) within 3 months of retirement, then the results of that test shall be taken into account in assessing hearing loss for the purposes of section 24A as if the person had undergone the test before the termination of that employment, or on retirement; or
- (b) undergoes an audiometric test within 3 months before commencing employment then the results of that test shall be taken into account in assessing hearing loss for the purposes of section 24A as if the worker had undergone the test at the commencement of that employment.

9. Audiometric test not conclusive proof that hearing loss is noise induced

The fact that the worker was under a duty or chose to undergo an audiometric test or other hearing test, shall not be conclusive proof that any loss or diminution of the worker's hearing is due to the nature of the employment in which the worker was employed.

10. Prescribed workplaces

Workplaces shall be prescribed for the purposes of this Schedule.

[Schedule 7 inserted by No. 36 of 1988 s.12; amended by No. 48 of 1993 ss.28 and 43; No. 49 of 1996 s.64.]