Western Australia

Workers' Compensation and Injury Management Act 1981

Compare between:

[22 May 2009, 08-b0-02] and [17 Sep 2009, 08-c0-04]

Western Australia

Workers' Compensation and Injury Management Act 1981

An Act to amend and consolidate the law relating to compensation for, and the management of, employment-related injuries, to provide for the WorkCover Western Australia Authority and a Dispute Resolution Directorate, and for related purposes.

[Long title amended by No. 96 of 1990 s. 4; No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 4.]

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Part I — Preliminary

1. Short title

This Act may be cited as the *Workers' Compensation and Injury Management Act 1981* [1].

[Section 1 amended by No. 96 of 1990 s. 5; No. 42 of 2004 s. 5.]

2. Commencement

The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation [1].

3. Purposes

The purposes of this Act are —

(a) to make provision for the compensation of —

(i) workers who suffer an injury; and

(ii) certain dependants of those workers where the death of the worker results from such an injury;

(b) to make provision for the management of workers' injuries in a manner that is directed at enabling injured workers to return to work;

(ba) to make provision for specialised retraining programs for certain injured workers;

(c) to promote safety measures in and in respect of employment aimed at preventing or minimising occurrences of injuries; and

(d) to make provision for the hearing and determination by the dispute resolution authorities of disputes between parties involved in workers' compensation matters in a manner that is fair, just, economical, informal and quick.

[Section 3 amended by No. 72 of 1992 s. 4; No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 6, 146 and 148(1).]

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4. General application

(1) In this section ***proclaimed date*** means the date on which this section comes into operation [1].

(2) This Act —

(a) applies to and in respect of —

(i) liability and the extent of liability to pay compensation and to pay for the provision of other benefits;

(ii) the requirement to obtain and keep current a policy of insurance for the full amount of that liability; and

(iii) entitlement and the extent of entitlement to receive compensation and other benefits,

in relation to injury or death, as set out in the following cases —

(iv) for incapacity occurring, or continuing to occur, on or after the proclaimed date, whether the injury from which the incapacity resulted occurred or first occurred before, on, or after that date, but in the case of an injury which occurred before that date, only if that injury was, or was deemed to be, a compensable injury under the repealed Act;

(v) for injuries and impairments from injury mentioned in Schedule 2, whether the date of the accident whereby that injury was caused to the worker occurred before, on, or after that date, but in the case of an accident which occurred before that date only if that injury was an injury under the Second Schedule of the repealed Act;

(vi) for death which occurs on or after the proclaimed date, where death resulted from an injury which occurred or first occurred before, on, or after the

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proclaimed date, but in the case of an injury which occurred before that date only if that injury was, or was deemed to be, a compensable injury under the repealed Act;

(vii) for death which occurs on or after the proclaimed date, where death did not result from the injury but for the purposes of clause 5 the period of 6 months referred to in that clause commenced before, on, or after that date;

(viii) for weekly amounts payable to children in respect of periods on and after the proclaimed date for death which occurred before, on, or after that date;

(ix) for such expenses as are provided for in clauses 4, 9, 17, 18, and 19, incurred on and after the proclaimed date, and for amounts payable under clause 10 for absences from work, on or after the proclaimed date whether the events or circumstances giving rise to those expenses or absences from work occurred or first occurred before, on, or after the proclaimed date, but in the case of events or circumstances which occurred before that date only if they would have given rise to payment of those expenses or for absences from work under the repealed Act;

(b) applies to and in respect of the injury management of a worker under Part IX, whether the injury referred to in that Part occurred or first occurred before, on, or after the proclaimed date; and

(c) applies to and in respect of the exercise of functions and powers and the performance of duties in relation, and incidental, to the matters referred to in paragraphs (a) and (b).

[Section 4 amended by No. 42 of 2004 s. 7, 146 and 147.]

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5. Terms used

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

approved insurance office means an insurance office approved under section 161;

approved medical specialist means a person for the time being designated under section 146F as an approved medical specialist;

approved medical specialist panel means an approved medical specialist panel constituted under Part VII Division 3;

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*;

approved vocational rehabilitation provider means a person approved under section 156 as a vocational rehabilitation provider;

arbitrator means an officer of WorkCover WA approved under section 286(2) as an arbitrator;

chief executive officer means the person appointed under the *Public Sector Management Act 1994* to the office of chief executive officer of WorkCover WA and includes a person appointed to act in the place and during the absence of the chief executive officer while that person is so acting;

child's allowance 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

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(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 2005*;

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;

Commissioner means the Commissioner appointed under section 281;

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;

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

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worker to make provision for that former de facto partner with respect to financial matters;

decision includes an order, award, direction or determination;

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 recognised as a dentist for the purposes of this Act by WorkCover WA;

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 injury, have been so dependent;

Director means the officer of WorkCover WA approved under section 288(2) as the Director Dispute Resolution;

disease includes any physical or mental ailment, disorder, defect, or morbid condition whether of sudden or gradual development;

dispute resolution authority means the Director, an arbitrator or the Commissioner;

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;

DRD means the Dispute Resolution Directorate established under section 278;

DRD Rules means the rules made under section 293;

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;

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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 an injury to a worker, means the employer in the relevant employment;

estimate means the estimate prepared and approved as provided by section 107(1);

General Account means the Workers' Compensation and Injury Management General Account 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 or order (including an enterprise order or General Order) made by The Western Australian Industrial Relations Commission under the *Industrial Relations Act 1979*;

(b) an industrial agreement as defined in the *Industrial Relations Act 1979*;

(c) an award under the *Coal Industry Tribunal of Western Australia Act 1992*; or

(d) an award or certified agreement, as those terms are defined in the *Workplace Relations Act 1996* of the Commonwealth,

as the relevant employment requires;

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industrial disease premium means the additional industrial disease premium fixed pursuant to section 151(a)(iii);

injury 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 disease because of which an injury occurs under section 32 or 33;

(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 loss of function that occurs in the circumstances mentioned in section 49,

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;

injury management means the management of workers' injuries in a manner that is directed at enabling injured workers to return to work;

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

medical assessment panel means a medical assessment panel constituted under Part VII Division 1;

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

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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 recognised as a medical practitioner for the purposes of this Act by WorkCover WA;

medical report includes a medical opinion;

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 injury, the aggregate of weekly payments for total incapacity of the

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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 the injury or impairment resulting from the injury; or

(b) the NRE amount as at the date of the worker's 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 the injury suffered by the worker or impairment resulting from the injury,

whichever is the less;

NRE amount means —

(a) in relation to any financial year ending on or before 30 June 2005, the prescribed amount in relation to that financial year;

(b) in relation to the financial year ending on 30 June 2006, $200 000;

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

(i) the amount obtained by varying the NRE amount for the preceding financial year by the percentage by which the amount that the Australian Statistician published as the Labour Price Index (formerly known as the Wages Cost Index), ordinary time hourly rates of pay (excluding bonuses) for Western Australia (the ***LPI***) varied between the second-last December quarter before the financial year commenced and the last December quarter before the financial year commenced; or

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(ii) if the calculation under subparagraph (i) cannot be performed in relation to a financial year because the LPI for a relevant quarter was not published, the amount obtained by varying the NRE 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;

officer of the DRD refers to —

(a) the Director;

(b) an arbitrator; and

(c) any other officer of WorkCover WA made available under section 291;

participate, in relation to a return to work program established under section 155C(1), means to participate in the program in a cooperative manner including attending appointments as required under the program;

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;

(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 Labour Price Index (formerly known as the Wages Cost Index), ordinary time hourly rates of pay (excluding bonuses) for Western Australia (the

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LPI) 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 LPI 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;

registered agent means a person registered under regulations made under section 277;

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 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 Schedule 4 loss of function is, or was, due,

as the case requires;

repealed Act means the Act repealed by section 317;

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return to work, in relation to a worker who has suffered an injury compensable under this Act, means —

(a) the worker holding or returning to the position held by the worker immediately before the injury occurred, if it is reasonably practical for the employer who employed the worker at the time the injury occurred to provide that position to the worker; or

(b) if the position is not available, or if the worker does not have the capacity to work in that position, the worker taking a position —

(i) for which the worker is qualified; and

(ii) that the worker is capable of performing,

whether with the employer who employed the worker at the time the injury occurred, or another employer;

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;

specialised retraining assessment panel means a specialised retraining assessment panel constituted under Part VII Division 5;

specialised retraining program means a program directed at enabling a worker to return to work by assisting the worker to undertake formal vocational training or study through technical or tertiary training courses of no longer than 3 years duration;

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specialist means a medical practitioner —

(a) who is resident in the State and who is registered as a specialist under the *Medical Practitioners Act 2008* section 38; or

(b) who is not resident in the State, but who is recognised as a specialist for the purposes of this Act by WorkCover WA;

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 Commission [2] established by the *Insurance Commission of Western Australia Act 1986*;

State Government Insurance Corporation means the State Government Insurance Corporation [3] established by the *Insurance Commission of Western Australia Act 1986*;

the Chairman of WorkCover WA means the person appointed to the office of Chairman of WorkCover WA's governing body 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 Account means the Workers' Compensation and Injury Management Trust Account established under this Act;

vocational rehabilitation, in relation to a worker who has suffered an injury compensable under this Act, means the provision to the worker of prescribed services, according to the

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worker's assessed needs, for the purpose of enabling the worker to return to work;

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;

WorkCover Guides means the directions published by WorkCover WA under section 146R;

WorkCover WA means the WorkCover Western Australia Authority referred to in section 94;

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 an injury and dies as a result of that injury, 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

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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 an injury 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) deleted]

(3) A reference in this Act to a ***personal injury by accident*** is a reference to an injury of a kind referred to in paragraph (a) of the definition of ***injury*** in subsection (1).

(4) For purposes of the definition of ***injury***, 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 ***injury*** 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;

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(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(1) 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; No. 42 of 2004 s. 8, 146, 147, 150 and 154(4); No. 16 of 2005 s. 30(2); No. 31 of 2005 Sch. 3 cl. 8; No. 77 of 2006 Sch. 1 cl. 189(1); No. 22 of 2008 Sch. 3 cl. 54; No. 8 of 2009 s. 139(2) and (3).]

5A. Indexation of certain amounts

(1) An amount that a provision of this Act describes as applying in accordance with this section is —

(a) before 1 July 1997, the amount that was prescribed for the purposes of that provision; and

(b) for a financial year commencing on or after 1 July 1997, the nearest whole number of dollars to the amount obtained by varying the amount applying at the commencement of the preceding financial year by the percentage by which the March CPI varies from the March CPI for the preceding financial year, or if the relevant index numbers are not published, the amount obtained by varying the amount applying at the commencement of the preceding financial year in accordance with the regulations (with an amount that is

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50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars).

(2) In this section ***March CPI***, for a financial year, means the index number for the quarter ending on the last 31 March before the financial year commences, as shown in the Consumer Price Index Numbers (All Groups Index) for Perth published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth.

[Section 5A inserted by No. 34 of 1999 s. 5.]

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Part II — Application of this Act in respect of certain persons and bodies

6. Local governments and other authorities

The exercise and performance of the powers and duties of a local government or other public, or statutory authority shall, for the purposes of this Act, be treated as the trade or business of such local government or other authority.

[Section 6 amended by No. 14 of 1996 s. 4.]

7. Tributers

(1) For the purposes of this Act a tributer, and any wages man employed by the tributer, shall be deemed a worker, and the lessee or owner of the mine let on tribute shall be deemed an employer of the tributer or wages man.

(2) The earnings of the tributer shall be deemed to be equal to the ruling rate of wages for miners as prescribed for the time being by the current industrial award in force in the district in which the mine is situated.

[Section 7 amended by No. 42 of 2004 s. 9.]

8. Baptist clergymen

In this Act ***worker*** includes a clergyman who is recognised as an accredited minister and who is in full-time active ministry in an affiliated Baptist Church under the constitution and by-laws of the Baptist Union of Western Australia Incorporated and the Baptist Union of Western Australia Incorporated is, for the purposes of this Act, deemed to be the employer of such a clergyman.

9. Anglican clergy

In this Act ***worker*** includes a member of the clergy of the Anglican Church of Australia being a bishop, or a member of

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the clergy licensed by the bishop, of a diocese of the church in the State and, for the purpose of this Act, the Anglican Archbishop of Perth is deemed to be the employer.

[Section 9 inserted by No. 72 of 1992 s. 5.]

10. Other clergymen

At the request of the governing body of any other church, the Minister —

(a) may, by notice published in the *Gazette*, declare that in this Act ***worker*** includes a clergyman, as defined in the notice, of that church and, if the Minister so declares, he shall also declare, in the same notice, who is, for the purposes of this Act, deemed to be the employer of such a clergyman, and thereupon the notice shall have effect according to its terms as if they were provided in this Act; and

(b) may at any time by subsequent notice so published cancel or amend the first-mentioned notice and thereupon the subsequent notice shall have effect according to its terms as if they were provided in this Act.

10A. Working directors

(1) In this section —

company means a company as defined in section 5(1) other than a public company as that term is defined in the *Corporations Act 2001* of the Commonwealth;

corporate body has the same meaning as "company" in section 5(1);

director has the meaning given to that term in the *Corporations Act 2001* of the Commonwealth;

earnings means wages, salary and other remuneration;

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working director, in relation to a company, means a director of the company, whether or not the director would be a worker if this section did not apply —

(a) who executes work for or on behalf of the company; and

(b) whose earnings as a director of the company by whatever means are in substance for personal manual labour or services.

(2) Despite anything in section 5, a director of a corporate body is not a worker of that corporate body for the purposes of this Act unless this section makes the director a worker.

(3) A company may apply to an approved insurance office under section 160(2) on the basis that a working director of the company is a worker.

(4) If a company complies with section 160 in respect of a working director of the company on the basis that the director is a worker, then, for the purposes of this Act —

(a) the director is a worker; and

(b) the company is the employer of the director.

(5) Subsection (4) ceases to apply if the circumstances described in subsection (7) arise.

(6) If a company that is an employer is, or is one of a group of employers that is, exempt under section 164, then, for the purposes of this Act —

(a) a director of the company who is a working director is a worker; and

(b) the company is the employer of the director.

(7) If a company (other than a company that is, or is one of a group of employers that is, exempt under section 164) does not comply with section 160 on the basis that a working director of the company is a worker, then, for the purposes of this Act, the working director is not a worker.

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(8) Subsection (7) does not prevent the company from applying as described in subsection (3), and subsection (7) ceases to apply if the circumstances described in subsection (4) arise.

[Section 10A inserted by No. 16 of 2005 s. 9(1).]

11. Exclusion of certain persons who are contestants in sporting or athletic activities

Notwithstanding anything in section 5 and subject to section 11A, a person is deemed not to be a worker within the meaning of this Act while he is, pursuant to a contract —

(a) participating as a contestant in any sporting or athletic activity;

(b) engaged in training or preparing himself with a view to his so participating;

(ba) engaged in promotional activities in accordance with the contract pursuant to which he so participates; or

(c) engaged on any regular journey, daily, or other periodic journey, or other journey in connection with his so participating or being so engaged,

if, under that contract, he is not entitled to any remuneration other than remuneration for the doing of those things.

[Section 11 amended by No. 44 of 1985 s. 5; No. 34 of 1999 s. 7.]

11A. Jockeys

(1) Notwithstanding section 11, for the purposes of this Act ***worker*** includes a person licensed as a jockey under the *Racing and Wagering Western Australia Act 2003* —

(a) riding a horse in any race run under the management of a racing club registered under the *Racing and Wagering Western Australia Act 2003*; or

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(b) engaged on a racecourse in riding work, or carrying out the usual duties of a jockey, for a trainer licensed as a trainer under the *Racing and Wagering Western Australia Act 2003*,

and Racing and Wagering Western Australia is, for the purposes of this Act, deemed to be the employer of such a person.

(2) The earnings of a person included as a worker under subsection (1) shall be deemed to be equal to the rate of wages, including special allowances, prescribed for stable foremen under the Horse Training Industry Award 1976 as made under the *Conciliation and Arbitration Act 1904* [4] of the Commonwealth and amended from time to time.

[Section 11A inserted by No. 44 of 1985 s. 6; amended by No. 35 of 2003 s. 244.]

12. Compensation not payable in certain cases

(1) A person is not entitled to claim or receive compensation under this Act, in respect of an injury to or the death of a person that occurred before the coming into operation of section 3 of the *Workers' Compensation Act Amendment Act (No. 2) 1977* [5] if, had that section been in force when the injury or death occurred, the person who was injured or died would not have been a worker within the meaning of this Act by reason only of the amendments made by that section.

(2) Subsection (1) does not apply to or in relation to compensation in respect of which proceedings had been commenced in the Board before 5 July 1977.

[Section 12 amended by No. 42 of 2004 s. 11, 146 and 147.]

13. Continued operation of this Act where compensation previously paid

Nothing in sections 11 or 12 in any way affects or limits the operation of this Act apart from those sections in relation to an injury to or the death of a person if any person, at any time

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before 28 November 1977, received compensation under the repealed Act in respect of that injury or death, and this Act continues to apply to the liability for and the right to compensation in respect of that injury or death as if those sections were not in this Act.

[Section 13 amended by No. 42 of 2004 s. 146 and 147.]

14. Application to worker in employment of Crown

(1) In this section ***Crown*** means Crown in right of the State.

(2) This Act applies to workers employed by or under the Crown to whom this Act would apply if the employer were a private person.

(2a) For the purposes of this Act, a person —

(a) who is not a worker referred to in subsection (2), but who holds a judicial or other statutory office; or

(b) who is a member of the Governor's Establishment within the meaning of the *Governor's Establishment Act 1992*,

is deemed to be a worker employed by or under the Crown.

(3) All moneys payable under this Act by or on behalf of the Crown shall be paid out of moneys to be provided by Parliament.

(4) In all claims against the Crown, whether arising out of injuries to workers employed by or under the Crown, or in respect of any other claim under this Act by any other person, proceedings may be taken and prosecuted under this Act by suit against the Attorney General as representing the Crown in his representative capacity and without imposing any personal liability upon the occupant of the office of Attorney General.

[Section 14 amended by No. 44 of 1985 s. 7; No. 40 of 1992 s. 13; No. 42 of 2004 s. 148(1).]

*[**15.** Deleted by No. 36 of 2004 s. 5.]*

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16. Act to apply as to injury to persons employed on Western Australian ships

[(1) deleted]

(2) This Act applies with the following modifications in respect of an injury occurring to a worker employed on a ship where under section 20 the worker's employment is connected with this State —

(a) the notice of injury and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the injury occurred and incapacity commenced on board the ship it is not necessary to give notice of the injury;

(b) in the case of the death of the worker leaving no dependants, no compensation is payable if the owner of the ship is, under the *Merchant Shipping Act 1894* of the United Kingdom, liable to pay the expenses of burial;

(c) where incapacity for work results from the injury, the owner of the ship may deduct from the payment due to the injured worker under this Act any expenses of maintenance which the owner of the ship is, under the *Merchant Shipping Act 1894* of the United Kingdom, liable to defray and has, in fact, defrayed;

(d) any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section 503 [6] of the *Merchant Shipping Act 1894* of the United Kingdom (which relates to the limitation of a ship-owner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity, under the provisions of this Act relating to remedies both against employer

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and stranger, as if the indemnity were damages for loss of life or injury; and

(e) section 174(2) and (3) of the *Merchant Shipping Act 1894* of the United Kingdom (which relates to the recovery of wages of seamen lost with their ship), apply in respect of proceedings for the recovery of compensation by the dependants of a worker lost with his ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation are in such a case maintainable if the claim is made within 18 months of the date at which the ship is deemed to have been lost with all hands.

[Section 16 amended by No. 44 of 1985 s. 8; No. 36 of 2004 s. 6 and 16; No. 42 of 2004 s. 147 and 148(3).]

17. Crew of fishing vessel

This Act does not apply in respect of injuries occurring to such members of the crew of a fishing vessel as contribute to the cost of working that vessel, and are remunerated by shares in the profits or the gross earnings of the working of that vessel.

[Section 17 amended by No. 42 of 2004 s. 148(1).]

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Part III — Compensation

Division 1 — Injury: general

[Heading inserted by No. 42 of 2004 s. 12.]

18. Liability of employers to workers for injuries

If an injury of a worker occurs, the employer shall, subject to this Act, be liable to pay compensation in accordance with Schedule 1.

[Section 18 amended by No. 42 of 2004 s. 146.]

19. Personal injury by accident arising out of or in course of employment

(1) Without limiting the generality of section 18, a worker shall be treated as having suffered personal injury by accident arising out of or in the course of the worker's employment if the injury occurs —

(a) during the worker's attendance at a place for educational purposes if —

(i) the attendance is required by the worker's terms of employment or apprenticeship; or

(ii) the attendance is for the purpose of, or in connection with, the worker's employment with the employer and the employer agrees to the attendance;

(b) during the attendance at a place for treatment or attendance of a kind referred to in clause 17 of Schedule 1; or

(c) during the attendance at a place for the purpose of receiving payment of compensation to which the worker is entitled under this Act.

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(2) A worker shall not be treated as having suffered personal injury by accident arising out of or in the course of the worker's employment if the worker suffers an injury —

(a) during a journey —

(i) between a place of residence of the worker and the worker's place of employment;

(ii) between a place of residence of the worker and a place mentioned in subsection (1); or

(iii) if the worker has more than one place of residence, between those places;

or

(b) during a journey arising out of or in the course of the worker's employment if the injury is incurred during, or after, any substantial interruption of, or substantial deviation from, the journey, made for any reason unconnected with the worker's employment or attendance mentioned in subsection (1).

(3) In subsection (2) —

place of residence includes a place of temporary residence;

substantial interruption prima facie includes any interruption of the journey for a period of more than one hour.

[Section 19 inserted by No. 48 of 1993 s. 30.]

20. Compensation not payable unless worker's employment connected with this State

(1) In this section —

State, in a geographical sense, includes a State's relevant adjacent area as described in Schedule 6.

(2) Compensation under this Act is only payable in respect of employment that is connected with this State.

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(3) The fact that a worker is outside this State when the injury occurs does not prevent compensation being payable under this Act in respect of employment that is connected with this State.

(4) A worker's employment is connected with —

(a) the State in which the worker usually works in that employment;

(b) if no State or no one State is identified by paragraph (a), the State in which the worker is usually based for the purposes of that employment; or

(c) if no State or no one State is identified by paragraph (a) or (b), the State in which the employer's principal place of business in Australia is located.

(5) In the case of a worker working on a ship, if no State or no one State is identified by subsection (4), a worker's employment is, while working on a ship, connected with the State in which the ship is registered or (if the ship is registered in more than one State) the State in which the ship most recently became registered.

(6) If no State is identified by subsection (4) or (if applicable) (5), a worker's employment is connected with this State if —

(a) a worker is in this State when the injury occurs; and

(b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.

(7) In deciding whether a worker usually works in a State, regard must be had to —

(a) the worker's work history with the employer over the preceding period of 12 months; and

(b) the intentions of the worker and employer,

but regard must not be had to any temporary arrangement under which the worker works in a State for a period of not longer than 6 months.

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(8) Subject to subsection (7), in deciding whether a worker usually works in a State or is usually based in a State for the purposes of employment, regard must be had to any period during which a worker works in a State or is in a State for the purposes of employment whether or not under the statutory workers' compensation scheme of that State the person is regarded as a worker or as working or employed in that State.

(9) Compensation under this Act does not apply in respect of the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* of the Commonwealth applies to the worker's employment.

[Section 20 inserted by No. 36 of 2004 s. 7; amended by No. 36 of 2004 s. 17(4).]

21. Compensation from date of incapacity

An employer is liable to pay compensation under this Act from the date of incapacity resulting from the injury but clause 9 applies in any case.

[Section 21 amended by No. 42 of 2004 s. 147.]

22. Serious and wilful misconduct

If it is proved that the injury of a worker is attributable to his —

(a) voluntary consumption of alcoholic liquor or of a drug of addiction, or both, which impairs the proper functioning of his faculties;

(b) failure, without reasonable excuse, proof of which is on him, to use protective equipment, clothing, or accessories provided by his employer for the worker's use; or

(c) other serious and wilful misconduct,

any compensation claimed in respect of that injury shall be disallowed unless the injury has serious and permanent effects or results in death.

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[Section 22 amended by No. 42 of 2004 s. 13 and 147.]

23. Person not to be compensated twice

(1) Compensation under this Act is not payable in respect of anything to the extent that —

(a) compensation has been received under the laws of a place other than this State; or

(b) judgment has been obtained against the employer independently of this Act.

(2) If a person receives compensation under this Act and, for the same matter, subsequently —

(a) receives compensation under the laws of a place other than this State; or

(b) obtains judgment against the employer independently of this Act,

the person from whom compensation under this Act is received may, in a court of competent jurisdiction, sue and recover from the person the amount described in subsection (3).

(3) The amount that is recoverable under subsection (2) is —

(a) the amount of compensation paid under this Act; or

(b) the amount of compensation received under the laws of a place other than this State or for which judgment was obtained independently of this Act,

whichever is less.

[Section 23 inserted by No. 36 of 2004 s. 8.]

Division 1a — Determination by courts and recognition of determination

[Heading inserted by No. 36 of 2004 s. 9.]

23A. Term used: court

In this Division —

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court includes a tribunal constituted by a judicial officer.

[Section 23A inserted by No. 36 of 2004 s. 9.]

23B. Determination of State with which worker's employment is connected in proceedings under this Act

(1) If the question of whether this State is connected with a worker's employment arises in proceedings in a court in relation to a claim for compensation under this Act, that court must —

(a) determine the State with which the worker's employment is connected in accordance with section 20; and

(b) cause that determination to be entered in the records of the court.

(2) Subsection (1) does not apply if there is a determination that is to be recognised under section 23D.

[Section 23B inserted by No. 36 of 2004 s. 9.]

23C. Determination by the District Court of State with which worker's employment is connected

(1) If a claim for compensation has been made under this Act, a party to the claim may apply to the District Court for a determination of the question of which State is the State with which the worker's employment is connected.

(2) The District Court must determine an application under subsection (1) in accordance with section 20 and cause that determination to be entered in the records of the court.

(3) An application under subsection (1) is not to be made or heard if there is a determination that is to be recognised under section 23D.

[Section 23C inserted by No. 36 of 2004 s. 9.]

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23D. Recognition of previous determinations

(1) This section applies if a determination of the State with which a worker's employment is connected has been made —

(a) by a court of this State under section 23B or 23C;

(b) by a court of another State under a provision of a law that corresponds with section 23B or 23C; or

(c) by a court of this State or another State in the course of proceedings on a claim for damages to which Part IV Division 1a applies or to which provisions of a law of another State corresponding to that Division apply.

(2) The State determined as mentioned in subsection (1) is to be recognised for the purposes of this Act as the State with which the worker's employment is connected.

(3) This section does not prevent any appeal relating to the determination.

(4) If the determination is altered on appeal, the altered determination is to be recognised under subsection (2).

[Section 23D inserted by No. 36 of 2004 s. 9.]

23E. Determination may be made by consent

In this Division a reference to a determination made by a court in a proceeding includes a reference to a determination made by the court with the consent of the parties to the proceeding.

[Section 23E inserted by No. 36 of 2004 s. 9.]

Division 2 — Discontinued regime for lump sum payments for specified injuries

[Heading inserted by No. 42 of 2004 s. 14.]

24. Compensation for injuries mentioned in Schedule 2

(1) In this section —

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amendment day means the day on which section 21 of the *Workers' Compensation Reform Act 2004* comes into operation [1].

(2) Notwithstanding Schedule 1, in respect of compensable personal injuries by accident, if the worker himself so elects during his lifetime as provided by section 24B, the compensation payable for the injuries mentioned in column 1 of Part 1 of the table set out in Schedule 2 shall, subject to the provisions of this Act relating to Schedule 2, be the percentage ratios of the prescribed amount indicated in column 2 of that Part, but the compensation payable for each such injury shall be in accordance with the percentage ratio of the prescribed amount indicated in that column in respect of such an injury at the date of the accident whereby that injury was caused to the worker, irrespective of when the worker so elects.

(3) This Division does not apply if the compensable personal injury by accident occurs on or after the amendment day.

(4) This Division does not apply in relation to noise induced hearing loss shown on or after the amendment day by an audiometric test under Schedule 7 clause 4.

[Section 24 amended by No. 44 of 1985 s. 9; No. 36 of 1988 s. 5; No. 42 of 2004 s. 15.]

24A. Lump sum compensation for noise induced hearing loss

(1) Subject to Schedule 7 and this section, a worker suffering from noise induced hearing loss shall be entitled to compensation for that loss under item 6 of Part 1 of the table set out in Schedule 2 if the worker so elects as provided by section 24B, but the compensation payable for that hearing loss shall, subject to the provisions of this Act relating to Schedule 2, be in accordance with the percentage ratio of the prescribed amount indicated in column 2 of Part 1 of the table set out in Schedule 2 in respect of item 6 at the date of the audiometric test under Schedule 7 that showed that a loss or diminution of the worker's hearing had been incurred, irrespective of when the worker so elects.

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(2) A worker is entitled to compensation under this section only in respect of noise induced hearing loss incurred after the date on which this section comes into operation and —

(a) in respect of the worker's first election under this section, where that noise induced hearing loss is at least a 10% loss of hearing; and

(b) in respect of a subsequent election by the worker under this section after a successful first election under paragraph (a) —

(i) where that noise induced hearing loss is at least a further 5% loss of hearing; or

(ii) where the worker has reached the age of 65 years or on the worker's retirement from work before that age, where that noise induced hearing loss is any further percentage of loss of hearing.

(3) Nothing in subsection (2) operates to stop a worker who —

(a) has retired from work before attaining the age of 65 years;

(b) has made a successful election under subsection (2)(b)(ii); and

(c) subsequently returns to work,

from making an election under subsection (2)(b) in respect of further loss of hearing.

(4) A worker is not entitled to compensation under this section in respect of noise induced hearing loss incurred after the worker has attained the age of 65 years.

(5) In subsection (2), loss of hearing means percentage loss of hearing calculated in accordance with the National Acoustic Laboratory Tables prescribed.

(6) Schedule 7 applies and noise induced hearing loss shall be ascertained and measured for the purposes of this section in accordance with that Schedule.

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[Section 24A inserted by No. 36 of 1988 s. 6; amended by No. 42 of 2004 s. 16.]

24B. Election under section 24 or 24A

(1) A worker elects for the purposes of section 24 or 24A(1) where —

(a) the worker signs a prescribed form of election containing prescribed particulars in respect of the relevant injury or hearing loss; and

(b) that form of election is filed with the Director, and a copy of it is served by or on behalf of the worker on the employer who, in the case of an election for the purposes of section 24A, shall be the employer who last employed the worker in employment to the nature of which noise induced hearing loss is due.

(2) A form of election referred to in subsection (1) is not 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 future entitlements to compensation under this Act.

(3) If not satisfied in accordance with subsection (2), the Director shall within 7 days notify the employer and the worker accordingly.

(4) Subject to this Act, a worker who elects as provided by subsection (1) is entitled to continue to receive any weekly payments of compensation to which he or she is entitled until —

(a) an agreement with respect to the election is registered under section 76; or

(b) an order of an arbitrator is made with respect to the amount of compensation payable pursuant to the election,

whichever is sooner.

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(5) Where a worker makes an election under subsection (1) for the purposes of section 24A, this Division and Part XI shall apply as if the noise induced hearing loss in respect of which the election was made was a compensable personal injury by accident arising out of or in the course of the worker's employment and for that purpose a reference to the time or date of the personal injury by accident shall, in respect of compensable noise induced hearing loss, be construed as a reference to the date of the audiometric test under Schedule 7 that showed that a loss or diminution of the worker's hearing had been incurred.

[Section 24B inserted by No. 36 of 1988 s. 6; amended by No. 48 of 1993 s. 28(1); No. 34 of 1999 s. 8; No. 42 of 2004 s. 17 and 149.]

25. Term used: loss of

For the purpose of the table set out in Schedule 2, ***loss of*** includes —

(a) "permanent loss of the use of"; and

(b) "permanent loss of the efficient use of", but in such case such percentage of the appropriate amount payable as is equal to the percentage of the diminution of the full efficient use, may be awarded, in lieu of the full amount.

26. Subsequent injuries

(1) When, by a compensable personal injury by accident, a worker has already suffered a permanent loss of any percentage of the full efficient use of —

any part or faculty of the body referred to in column 1 of Part 1 of the table set out in Schedule 2 —

and by subsequent compensable personal injury by accident suffers further loss of the full efficient use of —

that part or faculty of the body —

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the compensation payable under the provisions of that table in respect of each such subsequent injury shall be proportionate to any increase (resulting from that subsequent injury) in the percentage of loss of that full and efficient use, and the compensation payable shall be calculated at the rates applicable at the time of occurrence of each subsequent injury.

(2) Where a worker has received compensation payable under the provisions of that table for 100% of the loss of, or the permanent loss of the efficient use of, any part or faculty of the body referred to in column 1 of that table —

whether in one payment for permanent total loss of, or permanent total loss of the efficient use of —

that part or faculty of the body —

or in several payments, each of which has been made for a permanent partial loss of, or a permanent partial loss of the efficient use of —

that part or faculty of the body, then and in such case, the worker is not entitled to any further payment under the provisions of that table in respect of that part or faculty.

[Section 26 amended by No. 42 of 2004 s. 18.]

27. Compensation in accordance with table at date of accident

Notwithstanding the other provisions of this Act and in particular section 118, where any decision, ruling, order, award, judgment, settlement, or agreement was given, made, or registered before 18 May 1978, on the basis that compensation payable for an injury under the table set out in Schedule 2 was in accordance with the amount indicated in column 2 of that table in respect of that injury at the date of the accident whereby that injury was caused to the worker, that decision, ruling, order, award, judgment, settlement, or agreement shall not be rescinded, altered, or amended, and the worker shall not be entitled to any further payment under the provisions of that table

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in respect of that injury, by reason that it was given, made, or registered on that basis.

[Section 27 amended by No. 48 of 1993 s. 28(1); No. 34 of 1999 s. 9.]

28. Limit on compensation of worker electing

A worker who elects under section 24B is not in any case (including the case of a worker suffering by the same accident more than one of the injuries mentioned in Schedule 2) entitled to more than the prescribed amount, in addition to payment of such expenses as are provided for in clauses 9, 17, 18, 18A and 19 which clauses are hereby made applicable to each worker entitled to compensation under this Division until that worker so elects and an agreement is registered or an order of an arbitrator is made with respect to the amount of compensation payable pursuant to the election.

[Section 28 amended by No. 44 of 1985 s. 13; No. 36 of 1988 s. 7; No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 19 and 149.]

29. Compensation while incapacity continues

Sections 24 and 24A do not limit the amount of compensation that is payable to a worker for any period of incapacity resulting from the injuries referred to in those sections unless the worker elects under section 24B and an agreement is registered or an order of an arbitrator is made with respect to the amount of compensation payable pursuant to the election.

[Section 29 amended by No. 44 of 1985 s. 14; No. 36 of 1988 s. 8; No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 149.]

30. Compensation payable before election

Subject to section 28, when a worker elects under section 24B, any amount of compensation that was paid or payable to him for any period of incapacity resulting from the injuries referred to in section 24 or 24A and occurring before he so elects and an agreement is registered or an order of an arbitrator is made with

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respect to the amount of compensation payable pursuant to the election shall not be deducted from the amount payable in accordance with the table set out in Schedule 2.

[Section 30 amended by No. 44 of 1985 s. 15; No. 36 of 1988 s. 9; No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 149.]

31. Schedule 2 Part 1 interpretation

In the application of Part 1 of the table set out in Schedule 2 the following apply —

(a) loss of arm includes such loss resulting from injury to the shoulder;

(b) loss of leg includes such loss resulting from injury to the hip;

(c) if an eye or foot or other member is deemed lost or permanently and wholly useless or a finger has lost 2 joints, that constitutes the total loss of the eye, foot, member, or finger;

(d) except in the case of eyes, determination of a percentage of loss is not to be made while using artificial aids;

(e) determination of loss of sight is to be made on a corrective basis and item 5 of Schedule 2 shall not apply where loss of binocular vision is caused solely by the total loss of sight or substantial loss of sight of one eye.

[Section 31 amended by No. 42 of 2004 s. 20.]

Division 2A — New regime for lump sum payments for specified injuries

[Heading inserted by No. 42 of 2004 s. 21.]

31A. Application of Division

(1) In this section —

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amendment day means the day on which section 21 of the *Workers' Compensation Reform Act 2004* comes into operation [1].

(2) This Division does not apply in respect of a compensable personal injury by accident that occurs before the amendment day.

(3) This Division does not apply in relation to noise induced hearing loss shown before the amendment day by an audiometric test under Schedule 7 clause 4.

[Section 31A inserted by No. 42 of 2004 s. 21.]

31B. Degree of permanent impairment

In this Division —

degree of permanent impairment means —

(a) except as provided in paragraph (b), the degree of permanent impairment of a part or faculty of the body, evaluated as described in sections 146A and 146B;

(b) in the case of scarring referred to in item 80 or 81 of Schedule 2, the degree of permanent whole of person impairment, evaluated as described in sections 146A and 146B,

resulting from the injury or injuries arising from a single accident.

[Section 31B inserted by No. 42 of 2004 s. 21.]

31C. Compensation for impairments mentioned in Schedule 2

(1) Despite Schedule 1, in respect of a permanent impairment from a compensable personal injury by accident, if the worker so elects during the lifetime of the worker as provided by section 31H in respect of an impairment mentioned in column 1 of Part 2 of the table in Schedule 2, the compensation payable for the impairment is, subject to subsection (2) and the

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provisions of this Act relating to Schedule 2, to be the percentage ratio of the prescribed amount indicated in column 2 of that Part.

(2) Except as provided in sections 31E and 31F(3), the compensation payable for each such impairment from injury is to be in accordance with the percentage ratio of the prescribed amount indicated in column 2 of Part 2 of the table in Schedule 2 in respect of such an impairment at the date of the accident by which that injury was caused to the worker, irrespective of when the worker so elects.

[Section 31C inserted by No. 42 of 2004 s. 21.]

31D. Schedule 2 impairment assessment

(1) In subsection (2) —

full amount, in relation to an injury, means the amount payable under this Division if the degree of permanent impairment resulting from the injury is 100%.

(2) If compensation is payable under section 31C but the degree of permanent impairment from the injury of the worker is less than 100%, a percentage of the full amount equal to the degree of permanent impairment is to be awarded in lieu of the full amount.

(3) If —

(a) there is not agreement between an employer and a worker as to the degree of permanent impairment of the worker; and

(b) the worker has a certificate of an approved medical specialist given under section 146H indicating that the worker has not less than the degree of permanent impairment alleged by the worker,

the worker may apply to have the question as to the degree of permanent impairment arising from the injury concerned determined by an arbitrator.

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(4) An arbitrator to whom an application to determine a question is made under subsection (3) may —

(a) determine the degree of permanent impairment; or

(b) refer the question as to the degree of permanent impairment for assessment by an approved medical specialist panel and make a determination as to the degree of permanent impairment according to that assessment.

(5) If a determination is made that the worker's degree of permanent impairment arising from the injury concerned is not less than that alleged by the worker, the arbitrator may order the employer to pay all or any of the costs connected with the dispute, including any costs connected with referral to an approved medical specialist panel.

[Section 31D inserted by No. 42 of 2004 s. 21.]

31E. Lump sum compensation for noise induced hearing loss

(1) Subject to Schedule 7 and this section, a worker suffering from noise induced hearing loss is entitled to compensation for that loss under item 44 of Part 2 of the table in Schedule 2 if the worker so elects as provided by section 31H.

(2) The compensation payable for noise induced hearing loss is to be, subject to the provisions of this Act relating to Schedule 2, in accordance with the percentage ratio of the prescribed amount indicated in column 2 of Part 2 of the table in Schedule 2 in respect of item 44 at the date of the audiometric test under Schedule 7 that showed that a loss or diminution of the worker's hearing had been incurred, irrespective of when the worker so elects.

(3) A worker is entitled to compensation under this section only in respect of noise induced hearing loss incurred after 1 March 1991 and —

(a) in respect of the worker's first election under this section (if the worker has not made a successful first election

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under section 24A), where that noise induced hearing loss is at least a 10% loss of hearing; and

(b) in respect of a subsequent election by the worker under this section after a successful first election under section 24A or paragraph (a) of this section —

(i) where that noise induced hearing loss is at least a further 5% loss of hearing; or

(ii) where the worker has reached the age of 65 years or on the worker's retirement from work before that age, where that noise induced hearing loss is assessed under Schedule 7 as any further percentage of loss of hearing.

(4) Nothing in subsection (3) operates to stop a worker who —

(a) has retired from work before attaining the age of 65 years;

(b) has made a successful election under section 24A(2)(b)(ii) or subsection (3)(b)(ii) of this section; and

(c) subsequently returns to work,

from making an election under subsection (3)(b) in respect of further loss of hearing.

(5) A worker is not entitled to compensation under this section in respect of noise induced hearing loss incurred after the worker has attained the age of 65 years.

(6) In subsection (3), loss of hearing means percentage loss of hearing calculated in accordance with the National Acoustic Laboratory Tables prescribed by the regulations.

(7) Schedule 7 applies and noise induced hearing loss is to be ascertained and measured for the purposes of this section in accordance with that Schedule.

[Section 31E inserted by No. 42 of 2004 s. 21.]

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31F. Lump sum compensation for AIDS

(1) In this section and in the table in Schedule 2 —

AIDS means acquired immune deficiency syndrome;

HIV means human immunodeficiency virus;

prohibited drug has the meaning given to that term by the *Misuse of Drugs Act 1981* section 3.

(2) Subject to this section, for the purposes of this Division —

(a) the infection of a worker by HIV by accident arising out of or in the course of employment, or whilst the worker is acting under the employer's instructions, is taken to be a personal injury by accident; and

(b) if that worker subsequently contracts AIDS, the contracting of AIDS —

(i) is taken to be a compensable personal injury by accident;

(ii) is taken to result in a degree of permanent impairment of 100%; and

(iii) is taken to have occurred on the date on which the worker contracted the HIV infection referred to in paragraph (a).

(3) Despite section 31C the compensation payable for the contracting of AIDS in the circumstances set out in subsection (2) is 100% of the prescribed amount at the date on which a certificate is given by a medical practitioner that the worker has contracted AIDS.

(4) The regulations may make provision for methods of deciding for the purposes of this section whether a worker is HIV infected or has contracted AIDS.

(5) Sections 31C(2) and 31D do not apply to an impairment that is AIDS.

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(6) A worker is not entitled to compensation under this Division in respect of an impairment that is AIDS if the impairment resulted from the unlawful use of any prohibited drug or from voluntary sexual activity.

(7) Subsection (6) does not limit the operation of section 22.

(8) A worker is not entitled to compensation under this Division in respect of an impairment that is AIDS if the accident by which the worker became HIV infected occurred on a day before the coming into operation of section 21 of the *Workers' Compensation Reform Act 2004* [1].

[Section 31F inserted by No. 42 of 2004 s. 21.]

31G. Subsequent injuries

(1) In this section —

impairment includes a loss of full and efficient use of a part or faculty of the body to which the provisions of Division 2 apply.

(2) When —

(a) by a compensable personal injury by accident, a worker has already suffered a permanent impairment of any part or faculty of the body referred to in column 1 of the table in Schedule 2; and

(b) by a subsequent compensable personal injury by accident the worker suffers further permanent impairment of that part or faculty of the body,

the compensation payable under the provisions of the table in Schedule 2 and this Division in respect of each such subsequent injury is to be proportionate to any increase (resulting from that subsequent injury) in the degree of permanent impairment, and the compensation payable is to be calculated at the rates applicable at the time of occurrence of each subsequent injury.

(3) Where a worker has received compensation payable under the provisions of the table in Schedule 2 and Division 2 or this

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Division in respect of an impairment of a part of the body or a faculty for a degree of permanent impairment of 100%, whether in one payment for a degree of permanent impairment of 100% or in several payments, each of which has been made for a degree of permanent impairment of less than 100%, then and in such case, the worker is not entitled to any further payment under the provisions of that table and this Division in respect of that impairment.

[Section 31G inserted by No. 42 of 2004 s. 21.]

31H. Election under section 31C or 31E

(1) A worker elects under this section for the purposes of section 31C or 31E when —

(a) the worker signs a form of election prescribed by the regulations containing particulars prescribed by the regulations in respect of the impairment or loss; and

(b) that form of election is filed with the Director, and a copy of it is served by or on behalf of the worker on the employer.

(2) A worker can elect for the purposes of section 31C only if —

(a) the worker and the worker's employer agree as to the worker's degree of permanent impairment resulting from the injury concerned; or

(b) a determination has been made under section 31D(4) in respect of the worker's degree of permanent impairment resulting from the injury concerned or the worker has a certificate given for the purposes of section 31F(3) that the worker has contracted AIDS.

(3) In the case of an election for the purposes of section 31E, the employer on whom the copy of the form of election is served is to be the employer who last employed the worker in

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employment to the nature of which noise induced hearing loss is due.

(4) Where a worker makes an election under subsection (1) for the purposes of section 31E, this Division and Part XI apply as if the noise induced hearing loss in respect of which the election was made were a compensable personal injury by accident arising out of or in the course of the worker's employment, and for that purpose a reference to the time or date of a personal injury by accident is, in respect of compensable noise induced hearing loss, to be construed as a reference to the date of the audiometric test under Schedule 7 that showed that a loss or diminution of the worker's hearing had been incurred.

[Section 31H inserted by No. 42 of 2004 s. 21; amended by No. 16 of 2005 s. 16.]

31I. Effect of election

(1) A form of election referred to in section 31H(1) is not 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 future entitlements to compensation under this Act.

(2) If not satisfied in accordance with subsection (1), the Director is to, within 7 days of so determining, notify the employer and the worker accordingly.

(3) Subject to this Act, a worker who elects as provided by section 31H(1) is entitled to continue to receive any weekly payments of compensation to which the worker is entitled until —

(a) an agreement with respect to the election is registered under section 76; or

(b) an order of an arbitrator is made with respect to the amount of compensation payable under the election,

whichever is the sooner.

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(4) Sections 31C and 31E do not limit the amount of compensation that is payable to a worker for any period of incapacity resulting from the impairments or losses referred to in those sections unless the worker elects under section 31H and an agreement is registered or an order of an arbitrator is made with respect to the amount of compensation payable pursuant to the election.

[Section 31I inserted by No. 42 of 2004 s. 21.]

31J. Limit on compensation of worker electing

(1) A worker who elects under section 31H is not in any case (including the case of a worker suffering by the same accident more than one of the impairments mentioned in Schedule 2) entitled to more than the prescribed amount, in addition to payment of such expenses as are provided for in clauses 9, 17, 18, 18A and 19.

(2) Clauses 9, 17, 18, 18A and 19 are by this section made applicable to each worker entitled to compensation under this Division until that worker elects under section 31H and an agreement is registered or an order of an arbitrator is made with respect to the amount of compensation payable pursuant to the election.

[Section 31J inserted by No. 42 of 2004 s. 21.]

31K. Compensation payable before election

Subject to section 31J, when a worker elects under section 31H, any amount of compensation that was payable to the worker for any period of incapacity resulting from the injuries referred to in section 31C or 31E and occurring before the worker so elects and an agreement is registered or an order of an arbitrator is made with respect to the amount of compensation payable pursuant to the election is not to be deducted from the amount payable in accordance with the table in Schedule 2.

[Section 31K inserted by No. 42 of 2004 s. 21.]

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Division 3 — Injury: specified industrial diseases

[Heading inserted by No. 42 of 2004 s. 22.]

32. Compensation of worker dying from or affected by certain industrial diseases (Schedule 3)

Where a worker is rendered less able to earn full wages by reason of suffering from, or his death is caused by, any disease, except pneumoconiosis, mesothelioma, or lung cancer, mentioned in column 1 of Schedule 3 and the disease is or was due to the nature of any employment in which the worker was employed at any time within one year previous to the date of being so rendered, whether under one or more employers, an injury, being that disease, of the worker occurs and this Act applies to that injury subject, however, to this Division.

[Section 32 amended by No. 42 of 2004 s. 23, 146 and 147.]

33. Pneumoconiosis, mesothelioma or lung cancer

Where a worker is rendered less able to earn full wages by reason of suffering from, or his death is caused by —

(a) pneumoconiosis;

(b) on and after 8 May 1970, mesothelioma; or

(c) on and after the date on which this section comes into operation, lung cancer,

and the disease is, or was, due to the nature of any employment in which the worker was employed at any time previous to the date of being so rendered and it is shown to the satisfaction of an arbitrator that, since he was last employed in the State in any employment of that nature, the worker —

(a) has not been absent from the State for a period of, or periods aggregating, more than 6 months; or

(b) having been absent from the State for a period of, or periods aggregating, more than 6 months, has not during that period or those periods been employed in any employment of that nature,

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an injury, being pneumoconiosis, mesothelioma, or lung cancer, as the case may be, of the worker occurs and this Act applies to that injury subject, however, to this Division.

[Section 33 amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 24, 146, 147 and 149.]

34. Worker suffering from chronic bronchitis and pneumoconiosis

Whenever a worker is rendered less able to earn full wages, by reason of suffering from chronic bronchitis in association with pneumoconiosis, he is deemed to be so rendered by pneumoconiosis and this Act applies subject, however, to this Division; but a worker who, after receiving compensation pursuant to this section, is subsequently employed in any process entailing exposure to mineral dusts harmful to the lungs whether by the same or any other employer, is not entitled to any further compensation or benefit, in respect of any period of incapacity due to pneumoconiosis of any kind or to the aggravation or acceleration of any such disease, arising from his subsequent employment in that process.

[Section 34 amended by No. 42 of 2004 s. 25.]

35. Worker suffering from lung cancer and pneumoconiosis

Whenever after the proclaimed date a worker is rendered less able to earn full wages by reason of suffering from lung cancer in association with that form of pneumoconiosis known as asbestosis, he is deemed to be so rendered by pneumoconiosis and this Act applies subject, however, to this Division: but a worker who, after receiving compensation pursuant to this section, is subsequently employed in any process entailing substantial exposure to asbestos dust whether by the same or any other employer, is not entitled to any further compensation or benefit, in respect of any period of incapacity due to asbestosis or to the aggravation or acceleration of such disease, arising from his subsequent employment in that process.

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[Section 35 amended by No. 42 of 2004 s. 26.]

36. Reference to medical panel

(1) Whenever a claim is made by, or in relation to, a worker for compensation under section 33 or 34, the employer shall within 14 days of the making of the claim send particulars of the claim to WorkCover WA, and the chief executive officer shall refer the question of the worker's condition and fitness for employment to a medical panel comprising 2 or 3 physicians —

(a) all of whom are to be nominated by the chief executive officer from amongst physicians who specialise in diseases of the chest or in occupational diseases; and

(b) at least one of whom specialises in diseases of the chest.

(2) An employer who fails to comply with subsection (1) commits an offence.

(3) The Chairman of a medical panel shall be appointed by the Minister on the nomination of the chief executive officer.

[Section 36 amended by No. 28 of 1984 s. 101; No. 44 of 1985 s. 17; No. 33 of 1986 s. 4; No. 86 of 1986 s. 5; No. 96 of 1990 s. 7; No. 30 of 1993 s. 13; No. 48 of 1993 s. 32; No. 34 of 1999 s. 10; No. 42 of 2004 s. 150 and 152.]

37. Oral submission by medical practitioner

On a reference under section 36, any medical practitioner who has examined or treated the worker on his own behalf or has examined him on behalf of the employer may attend and make oral submissions to the medical panel, and the chief executive officer shall make arrangements with the medical panel to give such a medical practitioner the opportunity to attend, and, where such a medical practitioner does so attend the medical panel shall so certify to the chief executive officer, and the practitioner shall be paid from moneys standing to the credit of the General Account such witness fee as he would have been

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entitled to receive if he had attended to give evidence in a hearing before an arbitrator.

[Section 37 amended by No. 86 of 1986 s. 5; No. 30 of 1993 s. 13; No. 48 of 1993 s. 28(1); No. 49 of 1996 s. 64; No. 42 of 2004 s. 27 and 152; No. 77 of 2006 Sch. 1 cl. 189(9).]

38. Questions for determination by a medical panel

(1) On a reference under section 36, the medical panel, following such examination and tests as it may require, having given the opportunity for oral submissions to be made, and having considered such oral submissions as have been made pursuant to section 37, and perused such certificates of other medical practitioners as either party may in person or by his solicitor or agent tender to that medical panel, shall thereupon consider and determine the following questions —

(a) is, or was, the worker suffering from pneumoconiosis, mesothelioma or lung cancer?

(b) if so, is, or was, the worker thereby less able to earn full wages?

(c) to what extent if any does, or did —

(i) pneumoconiosis;

(ii) mesothelioma;

(iii) lung cancer,

adversely affect the worker's ability to undertake physical effort?

(d) what other, if any, disease or physical condition is, or was, contributing to the worker's being less able to earn full wages, or death and to what extent?

(e) is, or was, the worker fit for work? If so, at what level — light, moderate, or heavy?

(2) The determination of the medical panel shall, as far as is practicable in each case, be in the form and contain answers to the questions prescribed.

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(3) Where the medical panel comprises 2 members who fail to agree on its determination, the chief executive officer shall add a third member to the panel in accordance with section 36.

(4) The determination of the medical panel or a majority of its members is final and conclusive and binding on the worker, on his employer, and on any tribunal in which such determination is relevant.

[Section 38 amended by No. 44 of 1985 s. 18; No. 86 of 1986 s. 5; No. 48 of 1993 s. 33; No. 42 of 2004 s. 28 and 152.]

39. Worker disabled by tuberculosis and pneumoconiosis

Subject to this Division, where a worker is rendered less able to earn full wages, by reason of suffering from tuberculosis in association with pneumoconiosis, and any of those diseases is, or was, due to the nature of any employment in which the worker was employed at any time prior to the date of being so rendered, that person is deemed to be totally incapacitated for work, during such period as the tuberculosis is active, and, thereafter, for a further period of 3 months or for the period that he is unemployed, whichever period is the shorter, and, during that period and further period, the person is —

(a) if in receipt of payments under the Tuberculosis Allowance (Commonwealth) Scheme, established under the *Tuberculosis Act 1948*[7] of the Commonwealth, entitled to compensation in weekly payments equal to the maximum weekly income permissible under that Scheme; and

(b) if not in receipt of payments mentioned in paragraph (a), entitled to such compensation as that to which he would be entitled, if totally incapacitated by pneumoconiosis.

[Section 39 amended by No. 42 of 2004 s. 29.]

40. Interpretation of this Division in cases of death without prior incapacity

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A reference in this Division to the date on which, or time at which, a worker was rendered less able to earn full wages is, in the case of a death of a worker who was not rendered less able to earn full wages before the worker died, a reference to the date of the worker's death.

[Section 40 inserted by No. 42 of 2004 s. 30.]

41. Last employer liable but may join others

(1) Subject to subsections (2), (3) and (4), the compensation is recoverable from the employer who last employed the worker during the period of one year mentioned in section 32, or, in the case of pneumoconiosis, mesothelioma, or lung cancer, who last employed the worker, in the employment to the nature of which the disease is, or was, due.

(2) The worker or his dependants shall, if so required, furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during that period of one year, or in the case of pneumoconiosis, mesothelioma, or lung cancer, at any time previous to the date on which the worker was rendered less able to earn full wages, as he or they may possess.

(3) If that employer alleges that the disease was in fact contracted whilst the worker was in the employment of some other employer and not whilst in his employ, he may join such other employer as a party to the proceedings, and if the allegation is proved, that other employer shall be the employer from whom the compensation shall be recoverable.

(4) If the disease is of such a nature as to be contracted by a gradual process, any other employers who during that period of one year, or in the case of pneumoconiosis, mesothelioma, or lung cancer, at any time previous to the date on which the worker was rendered less able to earn full wages, employed the worker in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of

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agreement, may be determined in proceedings under this Act for settling the amount of the compensation.

(5) Where an employer has been insured by more than one insurer, then those insurers shall be entitled to be heard upon any application to have liability apportioned between them in terms of subsection (4).

[Section 41 amended by No. 42 of 2004 s. 31.]

42. Relevant earnings

The amount of the compensation shall be calculated with reference to the earnings of the worker under the employer from whom the compensation is recoverable.

43. Employer to whom notice to be given

The employer to whom notice of the occurrence of the injury is to be given is the employer from whom compensation is recoverable under section 41(1) and that notice may be given notwithstanding that the worker has voluntarily left the employment of that employer.

[Section 43 amended by No. 42 of 2004 s. 32.]

44. Disease deemed due to nature of employment

If the worker at or immediately before the date on which the worker was rendered less able to earn full wages was employed in any process mentioned in column 2 of Schedule 3 and produces a certificate from a medical practitioner that the disease contracted is the disease or one of the diseases in column 1 set opposite the description of the process, such disease shall be deemed to have been due to the nature of the employment, unless the employer proves the contrary.

[Section 44 amended by No. 42 of 2004 s. 33.]

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45. Additions to Schedule 3

(1) The Governor may, by Order in Council published in the *Gazette*, declare that any other disease or process or disease and process shall be included in Schedule 3[48].

(2) Every such Order in Council shall on the expiration of 3 months from the date of such publication, and while in force, have the same effect as if the disease or process or disease and process named therein were inserted in that Schedule, and this Division shall be read and construed accordingly.

(3) Before any such Order in Council is published in the *Gazette* it shall be laid before both Houses of Parliament; and, if either House of Parliament passes a resolution disallowing any such Order in Council, of which resolution notice has been given at any time within 14 sitting days of such House after the Order in Council has been laid before it, such Order in Council shall thereupon cease to have effect.

46. Compensation limited to prescribed amount

(1) Notwithstanding any provisions of the *Mine Workers' Relief Act 1932* or any other provisions of this Act, the compensation payable to a worker in respect of any period or periods of total or partial incapacity due, or deemed due, solely to pneumoconiosis, arising, or deemed to arise, out of or in the course of employment in a process, described in column 2 of Schedule 3 as any process entailing exposure to mineral dusts harmful to the lungs, or to that disease in combination with any other disease, shall not in any case exceed the prescribed amount; and the provisions of this section shall apply whether the period or periods of incapacity occur or result while the worker is employed by the same employer or by different, successive employers.

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(2) A worker who has received the full amount of compensation —

> that was the maximum amount of his employer's liability to him under this Act, as it existed at the time of the payment,

in respect of pneumoconiosis or that disease in combination with any other disease, and who is subsequently employed in any process entailing exposure to mineral dusts harmful to the lungs, shall not in any circumstances be entitled to further compensation or benefit for any period of incapacity due to pneumoconiosis, or to that disease in combination with any other disease.

(3) A supplementary amount paid under Schedule 5 clause 4 or 8 is not compensation for the purpose of this section.

[Section 46 amended by No. 104 of 1984 s. 3.]

47. Certain workers not to benefit

Where at the time at which a worker was rendered less able to earn full wages as mentioned in this Division —

(a) he is or was employed or was last employed in, on, or about a mine within the meaning of the *Mines Safety and Inspection Act 1994*;

(b) the disease by which he is or was so rendered is one of the diseases by reason whereof he would be liable, if found to be suffering from that disease, to be prohibited under or by virtue of the regulations made under the *Mines Safety and Inspection Act 1994*, from being employed, or from continuing to be employed, in, on, or about a mine within the meaning of that Act; and

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(c) he was employed or was last employed, in, on, or about a mine under the authority of a provisional certificate issued to him by a medical practitioner under the regulations made under the *Mines Safety and Inspection Act 1994*,

and at or after that time —

(d) the worker is found upon examination by a physician who specialises in diseases of the chest to have been suffering from the disease by which he is or was so rendered at the time when the provisional certificate was issued to him, and such physician so certifies in writing,

then, notwithstanding that the disease by which the worker is or was so rendered is one of the diseases mentioned in column 1 of Schedule 3 liable to be contracted by the worker in the course of his employment in, on, or about a mine, and notwithstanding anything to the contrary contained elsewhere in this Act, neither the worker nor any dependant of the worker shall be entitled to claim or recover any workers' compensation from any employer under or by virtue of this Act in respect of being so rendered.

[Section 47 amended by No. 30 of 1993 s. 13; No. 62 of 1994 s. 109; No. 42 of 2004 s. 34.]

48. Notification of disease

(1) Whenever it comes to the knowledge of an employer that any worker employed by him is suffering from a disease mentioned in Schedule 3, the employer shall within 7 days send written notice to that effect to WorkCover WA, and the notice shall state the name and address of the worker and the time at which the worker was rendered less able to earn full wages.

Penalty: $100.

(2) Whenever a notice under subsection (1) relates to a disease mentioned in Schedule 3 and marked with an asterisk, the chief executive officer shall forward a copy of the notice to the chief executive officer of the department of the Public Service of the

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State principally assisting the Minister charged with the administration of the *Occupational Safety and Health Act 1984*.

(3) It is the duty of every medical practitioner who attends a patient suffering from a disease mentioned in Schedule 3, and which he has reason to believe was contracted by reason of the nature of his employment, to notify in writing the chief executive officer of the department of the Public Service of the State principally assisting the Minister charged with the administration of the *Occupational Safety and Health Act 1984* of the case within 14 days after such attendance on a patient.

Penalty: $100.

[Section 48 amended by No. 28 of 1984 s. 102; No. 86 of 1986 s. 5; No. 21 of 1987 s. 4; No. 30 of 1995 s. 48; No. 42 of 2004 s. 35 and 152.]

Division 4 — Injury: specified losses of functions

[Heading inserted by No. 42 of 2004 s. 36.]

49. Injury occurs when loss of function renders worker less able to earn full wages

Where a worker is rendered less able to earn full wages by reason of suffering from a loss of function described in column 1 of Schedule 4 and the loss of function is due to the nature of any employment in which the worker was employed at any time within 3 years before the date on which the worker is rendered less able to earn full wages, an injury, being that loss of function, occurs and this Act applies to such an injury subject to this Division.

[Section 49 inserted by No. 42 of 2004 s. 37.]

*[**50.** Deleted by No. 36 of 1988 s. 10.]*

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51. Compensation recoverable from last employer

(1) Subject to subsections (2), (3) and (4), the compensation is recoverable from the employer who last employed the worker during the period of 3 years mentioned in section 49 in the employment to the nature of which the loss of function is, or was, due.

(2) The worker shall, if so required, where possible furnish that employer with the names and addresses of all the other employers who employed him in the employment during the period of 3 years mentioned in section 49.

(3) If that employer alleges that the loss of function was in fact caused whilst the worker was in the employment of some other employer and not whilst in his employ, he may join such other employer as a party to the proceedings, and if the allegation is proved, that other employer shall be the employer from whom the compensation shall be recoverable.

(4) If the loss of function is of such a nature as to be caused by a gradual process, any other employers who during the period of 3 years mentioned in section 49, employed the worker in the employment to the nature of which the loss of function was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in proceedings under this Act for settling the amount of the compensation.

(5) Where an employer has been insured by more than one insurer, those insurers shall be entitled to be heard on any application to have the liability apportioned between them in terms of subsection (4).

52. How compensation calculated

The amount of weekly payment of compensation shall be calculated and varied with reference to the earnings of the

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worker under the employer from whom the compensation is recoverable.

53. Employer to whom notice given

The employer to whom notice of the occurrence of the injury is to be given is the employer from whom compensation is recoverable under section 51(1) and that notice may be given notwithstanding that the worker has voluntarily left the employment of that employer.

[Section 53 amended by No. 42 of 2004 s. 38.]

54. Loss of function deemed due to nature of employment

If the worker at or immediately before the date on which the worker is rendered less able to earn full wages was employed in any process mentioned in column 2 of Schedule 4 and produces a certificate from a medical practitioner that the loss of function contracted is the loss or one of the losses in column 1 set opposite the description of the process, such loss of function shall be deemed to have been due to the nature of the employment, unless the employer proves the contrary.

[Section 54 amended by No. 42 of 2004 s. 39.]

55. Additions to Schedule 4

(1) The Governor may, by Order in Council published in the *Gazette*, declare that any other loss of function or process or loss of function and process shall be included in Schedule 4.

(2) Every such Order in Council shall on the expiration of 3 months from the date of such publication, and while in force, have the same effect as if the loss of function or process or loss of function and process named therein were inserted in that Schedule, and this Division shall be read and construed accordingly.

(3) Before any such Order in Council is published in the *Gazette* it shall be laid before both Houses of Parliament; and, if either

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House of Parliament passes a resolution disallowing any such Order in Council, of which resolution notice has been given at any time within 14 sitting days of such House after the Order in Council has been laid before it, such Order in Council shall thereupon cease to have effect.

Division 5 — Commencement, review, suspension, and cessation of payments

56. Entitlement to weekly payments ceasing on account of age

Subject to the exceptions in Schedule 5, an entitlement of a worker to weekly payments of compensation for incapacity for work resulting from an injury under this Act ceases —

(a) if the injury occurs on or before the date on which the worker attains the age of 64 — on attaining the age of 65; or

(b) if the injury occurs after the date on which the worker attains the age of 64 — on the date one year after the injury occurs.

[Section 56 amended by No. 42 of 2004 s. 146 and 147.]

57. Saving as to expenses

Nothing in section 56 affects the liability of an employer for, and the entitlement of a worker to, compensation payable under Schedule 2, and expenses as are provided for in clauses 9, 17, 18, 18A and 19 but subject to the limitation on those expenses as provided for in clauses 17(1) and 18A(1c).

[Section 57 amended by No. 42 of 2004 s. 40.]

57A. Claims procedure — insured employer

(1) This section applies where —

(a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 178(1)(b); and

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(b) the worker suffering the injury has served on the employer a certificate signed by a medical practitioner —

(i) in or to the effect of the form prescribed containing substantially the information sought in the form; or

(ii) to the effect that the worker is unfit for work because of a recurrence of an injury in respect of which a certificate as referred to in subparagraph (i) has previously been served,

and the employer is indemnified by a policy of insurance against his liability to pay the compensation claimed.

(2) Where, in the circumstances mentioned in subsection (1), an employer fails to make a claim under and in accordance with his policy of insurance before the expiration of 3 full working days of his insurer after the day on which the circumstances mentioned in subsection (1) arose or, where the making of a claim within that time would not be reasonably practicable, as soon as reasonably practicable thereafter, the insurer may, in the Magistrates Court, sue and recover from the employer, as a debt due, any amount that, under the policy of insurance, he is liable to pay by way of indemnity in respect of the first 3 working days for which weekly payments are claimed by the worker.

(3) Upon an employer making a claim as mentioned in subsection (2), the insurer must, before the expiration of 14 days after the claim was made by the employer —

(a) give the worker to whom the claim relates and the employer notice, in accordance with section 57BA and the regulations, that liability is accepted in respect of the weekly payments claimed;

(b) subject to section 75, give the worker to whom the claim relates and the employer notice, in accordance with section 57BA and the regulations, that liability is

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disputed in respect of all or any of the weekly payments claimed; or

(c) give the worker to whom the claim relates, the employer and the Director notice, in accordance with section 57BA and the regulations, that a decision as to whether or not liability is to be accepted in respect of the weekly payments claimed is not able to be made within the time allowed by this subsection.

Penalty: $1 000.

(3a) If within 10 days after the Director is notified under subsection 3(c) that a decision is not able to be made, the insurer has not —

(a) notified the worker to whom the claim relates, the employer and the Director that liability is accepted in respect of the weekly payments claimed; or

(b) subject to section 75, notified the employer, the worker and the Director that liability is disputed in respect of all or any of the weekly payments claimed and of the reasons why it is disputed,

the claim by the worker shall be deemed to be disputed.

(4) Where the Director has requested an insurer to do so, the insurer shall cause each notification to the Director under subsection (3)(c) to be accompanied by a means specified by the Director for conveying to the Director, in a machine-readable form so specified, the information contained in the notification.

Penalty: $1 000.

(5) Where an insurer fails to comply with subsection (3) in respect of a claim for weekly payments under this Act, the worker who made the claim is, by force of this subsection, entitled to the weekly payments claimed and the insurer is liable to indemnify the employer in respect of those weekly payments, but either the employer or the insurer may apply for a determination under subsection (6).

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(6) On an application under subsection (5) an arbitrator may determine the entitlement that the worker would have but for the operation of subsection (5), and thereupon the entitlement of the worker is as so determined but without affecting his entitlement under subsection (5) in respect of the period before that determination.

(7) An employer shall make the first of the weekly payments as soon as practicable after —

(a) he is notified that the insurer accepts the claim or the time prescribed by subsection (3) expires without the employer having received any notification as required by that subsection from the insurer; and

(b) the worker has complied with the requirements of sections 178 and 179 or, on an application made under section 58, an arbitrator has ordered the commencement of weekly payments under this subsection notwithstanding that those requirements have not been complied with,

and subsequent weekly payments shall be made on the employer's usual pay days.

(8) An employer who having received a payment from an insurer in respect of the employer's liability to make a weekly payment to a worker fails to make that weekly payment to the worker in accordance with subsection (7) commits an offence.

Penalty: $2 000.

[Section 57A inserted by No. 96 of 1990 s. 8; amended by No. 72 of 1992 s. 6; No. 48 of 1993 s. 28(1) and 34; No. 34 of 1999 s. 11; No. 42 of 2004 s. 41, 146, 147 and 154(4); No. 59 of 2004 s. 133.]

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57B. Claims procedure — self-insurer or uninsured employer

(1) This section applies where —

(a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 178(1)(b); and

(b) the worker suffering the injury has served on the employer a certificate signed by a medical practitioner —

(i) in or to the effect of the form prescribed containing substantially the information sought in the form; or

(ii) to the effect that the worker is unfit for work because of a recurrence of an injury in respect of which a certificate as referred to in subparagraph (i) has previously been served,

and the employer (whether in contravention of section 160, in accordance with an exemption under section 164, as a result of the insurer declining to indemnify the employer, or otherwise) is not indemnified by a policy of insurance against his liability to pay the compensation claimed.

(2) In the circumstances mentioned in subsection (1), an employer must, before the expiration of 17 days after those circumstances arose —

(a) if liability to make the weekly payments claimed is accepted, subject to subsection (6), make the first of those weekly payments;

(b) subject to section 75, give the worker notice, in accordance with section 57BA and the regulations, that liability is disputed in respect of all or any of the weekly payments claimed; or

(c) give the Director and the worker notice, in accordance with section 57BA and the regulations, that a decision as to whether or not liability is to be accepted in respect of

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the weekly payments claimed is not able to be made within the time allowed by this subsection.

Penalty: $1 000.

(2a) If within 10 days after the Director is notified under subsection (2)(c) that a decision is not able to be made, the employer has not —

(a) if liability to make the weekly payments claimed is accepted, notified the Director accordingly and, subject to subsection (6), made the first of those weekly payments; or

(b) subject to section 75, notified the worker and the Director that liability is disputed in respect of all or any of the weekly payments claimed and of the reasons why it is disputed,

the claim by the worker shall be deemed to be disputed.

(2b) When an insurer declines to indemnify an employer against the employer's liability to pay the compensation claimed, the insurer shall, before the expiration of 14 days after the claim was made by the employer, notify WorkCover WA to that effect and of the reasons for declining to indemnify.

Penalty: $1 000.

(3) Where the Director has requested an employer to do so, the employer shall cause each notification to the Director under subsection (2)(c) to be accompanied by a means specified by the Director for conveying to the Director, in a machine-readable form so specified, the information contained in the notification.

Penalty: $1 000.

(4) Where an employer fails to comply with subsection (2) upon a worker claiming compensation by way of weekly payments under this Act, the worker is, by force of this subsection, entitled to the weekly payments claimed and the employer shall, subject to subsection (6), forthwith make the first of those

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weekly payments, but the employer may apply for a determination under subsection (5).

(5) On an application under subsection (4) an arbitrator may determine the entitlement that the worker would have had but for the operation of subsection (4), and thereupon the entitlement of the worker is as so determined but without affecting his entitlement under subsection (4) in respect of the period before that determination.

(6) An employer is not required under subsection (2) or (4) to make any weekly payment unless —

(a) the worker has complied with the requirements of sections 178 and 179; or

(b) on an application made under section 58, an arbitrator has ordered the commencement of weekly payments under this section notwithstanding that those requirements have not been complied with.

(7) After the first of the weekly payments, subsequent weekly payments to which a worker is entitled shall be made on an employer's usual pay days.

[Section 57B inserted by No. 96 of 1990 s. 8; amended by No. 72 of 1992 s. 7; No. 48 of 1993 s. 28(1) and 35; No. 34 of 1999 s. 12; No. 42 of 2004 s. 42, 146, 147, 150 and 154(4).]

57BA. Notices under sections 57A and 57B

(1) A notice under section 57A or 57B is to be expressed in plain language.

(2) The regulations may make provision —

(a) as to information to be included in or to accompany a notice under section 57A or 57B; and

(b) requiring information included in or accompanying a notice under section 57A or 57B to be given to

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WorkCover WA or other persons prescribed by the regulations.

(3) A notice under section 57A(3)(b) or 57B(2)(b) is to be in or to the effect of the form prescribed by the regulations and is to contain a statement of —

(a) the reason the person giving the notice disputes liability;

(b) the provisions of this Act on which the person giving the notice relies to dispute liability.

(4) A notice under section 57A(3)(b) or 57B(2)(b) is to also include —

(a) a statement to the effect that the worker can apply for resolution of the dispute under this Act;

(b) a statement to the effect that the worker can seek advice or assistance from the worker's trade union organisation, a legal practitioner or a registered agent; and

(c) such other information as the regulations may prescribe or, subject to the regulations, as WorkCover WA may from time to time approve and notify to insurers and, in the case of information required in a notice under section 57B(2)(b), to employers.

(5) A statement in a notice under section 57A(3)(b) or 57B(2)(b) is given —

(a) in the case of a notice under section 57A(3)(b), subject to the insurer not being prejudiced in any subsequent proceedings relating to the claim by any information included in the statement; and

(b) in the case of a notice under section 57B(2)(b), subject to the employer, or the insurer if the insurer subsequently agrees to indemnify the employer, not being prejudiced in any subsequent proceedings relating to the claim by any information included in the statement.

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(6) A notice under section 57A(3)(c) or 57B(2)(c) is to —

(a) be in or to the effect of the form prescribed by the regulations;

(b) include a statement as to the reasons why a decision as to whether or not liability is to be accepted in respect of the weekly payments claimed is not able to be made within the time allowed by section 57A(3) or 57B(2), as the case requires, and —

(i) if a reason is that the person giving the notice requires further medical information, a statement as to the nature and substance of the medical information and whether or not the person giving the notice requires any written authority from the worker for that purpose;

(ii) if a reason is that the person giving the notice requires further information as to the worker's weekly earnings, a statement as to the nature and substance of the information required; and

(iii) any other particulars required by the person giving the notice to make the decision;

and

(c) include such other information as the regulations may prescribe.

[Section 57BA inserted by No. 42 of 2004 s. 43.]

57C. Notification to Commission

(1) This section applies in respect of a claim made by a worker for compensation by way of weekly payments that was made after the day fixed by the Minister for the purpose of this section by notice published in the *Gazette*.

(2) Where an employer makes a claim to his insurer as referred to in section 57A(2) and weekly payments to which the worker is entitled are commenced the insurer shall, as soon as practicable

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but in any event before the expiration of 21 days after the day on which the weekly payments were commenced, send to WorkCover WA notification in accordance with subsection (5) of the matter to which the claim relates.

Penalty: $1 000.

(3) Where section 57B applies and weekly payments to which the worker is entitled are commenced the employer shall, as soon as practicable but in any event before the expiration of 21 days after the day on which the weekly payments were commenced, send to WorkCover WA notification in accordance with subsection (5) of the matter to which the claim relates.

Penalty: $1 000.

(4) An insurer or employer who has given notification under subsection (2) or (3) in respect of a claim shall send to WorkCover WA notification in accordance with subsection (5) of the discontinuance of weekly payments as soon as practicable after the weekly payments are discontinued, except that where it appears likely that there will be any further payment of compensation under this Act to the worker arising from the injury to which the claim relates, the notification required under this subsection shall be sent as soon as practicable after it appears that all such payments have been made.

Penalty: $1 000.

(5) Notification required to be made in accordance with this subsection shall be in the form prescribed containing substantially the information required and, in the case of a notification under subsection (2) or (3), include an estimate of whether or not the incapacity of the worker is expected to be for a period exceeding 4 weeks and shall, where WorkCover WA has so requested, be accompanied by a means specified by WorkCover WA for conveying to WorkCover WA, in a machine-readable form so specified, the details of the information and the estimate.

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[Section 57C inserted by No. 96 of 1990 s. 8; amended by No. 42 of 2004 s. 44, 147 and 150.]

57D. Confidentiality

(1) Subject to subsection (2), a person, except with the express authority of WorkCover WA, shall not have access to, inspect, or peruse any information given under section 57C to WorkCover WA, and that information shall be treated as strictly confidential and shall not, except for the purposes of this Act, be disclosed to any person.

Penalty: $1 000.

(2) An employer may request that information provided under section 57C, whether by him or an insurer, in respect of compensation claimed by a worker from that employer be disclosed to another insurer or prospective insurer, and subsection (1) does not apply to the disclosure of information in accordance with that request.

[Section 57D inserted by No. 96 of 1990 s. 8; amended by No. 42 of 2004 s. 150.]

58. Arbitrator may determine liability

(1) Where, in the circumstances mentioned in section 57A(1) —

(a) a period of 17 days has elapsed since those circumstances arose and the worker has not received the first of the weekly payments claimed; or

(b) whether or not the period mentioned in paragraph (a) has elapsed, notification has been given by the insurer —

(i) under section 57A(3)(b) or 57A(3a)(b), that liability is disputed; or

(ii) under section 57A(3)(c), that a decision as to liability is not able to be made within the time allowed,

an arbitrator may, on the application of the worker hear and determine the question of liability to make the weekly payments claimed.

(2) Where in the circumstances mentioned in section 57B(1) —

(a) a period of 17 days has elapsed since those circumstances arose and the worker has not received the first of the weekly payments claimed; or

(b) whether or not the period mentioned in paragraph (a) has elapsed, notification has been given by the employer —

(i) under section 57B(2)(b) or 57B(2a)(b), that liability is disputed; or

(ii) under section 57B(2)(c), that a decision as to liability is not able to be made within the time allowed,

an arbitrator may, on the application of the worker hear and determine the question of liability to make the weekly payments claimed.

(2a) Where under section 57A(3a) or 57B(2a) a claim by a worker is deemed to be disputed, the Director may order the employer to make an application for an arbitrator to hear and determine the question of liability to make the weekly payments claimed.

(3) An employer may, in the circumstances mentioned in section 57A(1) or section 57B(1), make application for an arbitrator to hear and determine the question of liability to make the weekly payments claimed, and an arbitrator may hear and determine the matter.

[(4) deleted]

(5) On a hearing under subsection (1), (2), (2a) or (3) the arbitrator is to satisfy himself as to all the evidence before him and —

(a) if the arbitrator considers that the evidence is satisfactory to establish liability to make weekly payments, may —

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(i) make an order that weekly payments including arrears to the date of the hearing shall be paid out of moneys standing to the credit of the General Account and that the employer shall forthwith pay to WorkCover WA for the General Account the amount of such payments together with an additional 10% of that amount; or

(ii) make an order as to weekly payments by the employer to the worker on such terms as the arbitrator sees fit;

or

(b) if the arbitrator considers that the evidence is not satisfactory to establish liability to make weekly payments, may dismiss or adjourn the application on such terms as the arbitrator sees fit.

(6) The fact that an application has been dismissed under subsection (5) shall not be taken into account by an arbitrator in any other proceedings under this Act.

[Section 58 inserted by No. 96 of 1990 s. 9; amended by No. 72 of 1992 s. 8; No. 48 of 1993 s. 28(1); No. 49 of 1996 s. 64; No. 42 of 2004 s. 45 and 150; No. 77 of 2006 Sch. 1 cl. 189(9).]

59. Information as to remunerated work

(1) This section applies to a worker who has claimed or is receiving weekly payments of compensation from an employer (***the employer***).

(2) A worker who commences remunerated work (other than work with the employer) after making a claim for weekly payments of compensation, is to, within 7 days of —

(a) commencing the work; or

(b) receiving notification under subsection (3),

whichever is the later, inform in writing the employer or the employer's insurer of the commencement of the work.

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Penalty: $500.

(3) The employer or the employer's insurer is to notify in writing a worker of the worker's obligations under subsection (2).

(4) A worker is not to be convicted of an offence under subsection (2) unless the employer or the employer's insurer has complied with subsection (3).

(5) The employer or the employer's insurer may, in writing, request a worker to provide the following particulars of remunerated work (other than work with the employer) commenced after the making of the worker's claim for weekly payments of compensation —

(a) the date of commencement of the work;

(b) the title, classification or description of the work;

(c) the remuneration for the work; and

(d) the name and address of the person (if any) for whom the work is performed.

(6) A worker is to provide in writing the particulars requested under subsection (5) within 7 days of the date of the request.

Penalty: $500.

(7) If the particulars provided by the worker under subsection (6) establish that the worker has commenced remunerated work, the employer or the employer's insurer may discontinue or reduce the worker's weekly payments of compensation in accordance with the particulars.

(8) The employer or the employer's insurer must not discontinue or reduce a worker's weekly payments of compensation under subsection (7) otherwise than in accordance with the particulars provided by the worker under subsection (6).

Penalty: $2 000.

(9) Subject to sections 57A, 57B and 58, if —

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(a) a worker has claimed but has not received from the employer, weekly payments of compensation;

(b) the worker provides particulars under subsection (6);

(c) the particulars establish that the worker has commenced remunerated work,

the employer or the employer's insurer may make a decision in accordance with the particulars as to whether or not weekly payments of compensation are to be made for the period to which the particulars relate, and if so, the amount of the weekly payments.

(10) A worker who disputes the discontinuance or reduction of weekly payments of compensation under subsection (7) may apply for an order of an arbitrator that the weekly payments be reinstated.

[Section 59 inserted by No. 72 of 1992 s. 9; amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 46.]

60. Application for discontinuance or reduction of weekly payments

(1) Where weekly payments are made to a worker pursuant to this Division, the employer may apply at any time for an order of an arbitrator that such payments be discontinued or reduced.

(2) If the employer satisfies an arbitrator that there is a genuine dispute as to liability to pay compensation or as to the proper amount of such weekly payments, and in either case of the grounds of the dispute, the arbitrator may order that the payments be suspended for such time as the arbitrator directs or be discontinued or be reduced to such amount as the arbitrator thinks proper or the arbitrator may dismiss the application.

[Section 60 amended by No. 96 of 1990 s. 10; No. 72 of 1992 s. 10; No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 47.]

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61. Unlawful discontinuance of weekly payments

(1) Subject to subsections (7) and (8) and section 84, where weekly payments of compensation for total or partial incapacity are made to a worker under this Act, they shall not be discontinued or reduced without the consent of the worker or an order of an arbitrator unless the worker has returned to work or a medical practitioner has certified that the worker has total or partial capacity for work or that the incapacity is no longer a result of the injury and a copy of the certificate (which shall set out the grounds of the opinion of the medical practitioner) together with at least 21 clear days' prior notice of the intention of the employer to discontinue the weekly payments or to reduce them by such amount as is stated in the notice, has been served by the employer upon the worker and unless within that period the worker has not made an application under subsection (3).

(2) Weekly payments of compensation for total or partial incapacity shall not be discontinued or reduced pursuant to subsection (1) unless the notice referred to in that subsection contains a clear statement —

(a) informing the worker of the effect of failing to make an application under subsection (3) within the time referred to therein;

(b) informing the worker that he may obtain information from WorkCover WA as to the ways and means available to him to establish or protect his rights in respect of his injury; and

(c) containing such other information as may be prescribed.

(2a) If a person is required to give notice under subsection (1) and —

(a) fails to give the notice within the period referred to in that subsection; or

(b) gives a notice that does not comply with subsection (2),

the person commits an offence.

Penalty: $2 000.

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(3) A worker who disputes the right of his employer to discontinue or reduce the weekly payments referred to in subsection (1) may, within the period of notice given under that subsection or, if the employer fails to give the notice required under that subsection, within the period of 21 days or such further time as an arbitrator may allow from the day on which the weekly payments were discontinued or reduced, apply for an order of an arbitrator that the weekly payment shall not be discontinued or reduced.

(4) Upon the hearing of an application referred to in subsection (3) an arbitrator shall —

(a) adjourn the application on such terms as the arbitrator thinks fit;

(b) dismiss the application in which case the weekly payments may be discontinued or reduced, as the case may be; or

(c) make an order as to weekly payments by the employer to the worker on such terms as the arbitrator thinks fit.

(4aa) A reference in subsection (1), (3) or (4) to the employer is, where the employer is insured against liability to pay compensation under this Act, a reference to the employer's insurer.

(4a) Upon the hearing of an application referred to in subsection (3) an arbitrator —

(a) may, where the case requires, take into account whether —

(i) a return to work program has been established for the worker under section 155C(1);

(ii) the establishment, content and implementation of the return to work program are in accordance with the code as defined in section 155; and

(iii) the worker has participated in the return to work program,

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and for the purposes of determining the application accordingly treat the worker's incapacity as being of such degree as the arbitrator sees fit; and

(b) shall, where the case requires, take into account matters referred to in clause 8.

(5) Subject to subsections (7) and (8), weekly payments shall not be discontinued or reduced otherwise than in accordance with this Act.

Penalty: $2 000.

(6) A conviction for an offence that is a contravention of subsection (5) shall not affect any liability for the making of weekly payments of compensation under this Act.

(7) Subsections (1) and (2) do not apply to a discontinuance of payments —

(a) on payment in full of the prescribed amount;

(b) if section 56 or Schedule 5 clause 2 applies in respect of the incapacity, on the worker reaching the age at which his entitlement to compensation ceases; or

(ba) if section 93E(8) or 93P(2)(b) applies to the payment of compensation; or

(c) on suspension of payments in accordance with section 72, or 145D; or

(d) on failure to comply with section 69 by a worker who does not reside in the State.

(8) Subsections (1) and (2) do not apply to a discontinuance or reduction of weekly payments of compensation under section 59(7).

[Section 61 amended by No. 44 of 1985 s. 20; No. 96 of 1990 s. 11; No. 72 of 1992 s. 11 and 12; No. 48 of 1993 s. 28(1); No. 34 of 1999 s. 13 and 32(2); No. 42 of 2004 s. 48, 147 and 150.]

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62. Review of weekly payments

(1) Any weekly payment may be reviewed by an arbitrator on an application either of the employer or of the worker, and on such review, may be discontinued, reduced, or increased subject to any maximum provided, as from such date as the arbitrator, having regard to the past or present condition of the worker, sees fit.

(2) An arbitrator may, instead of discontinuing, reducing or increasing the weekly payments, suspend the weekly payments from the date of the order until such time as is specified in the order.

[Section 62 amended by No. 96 of 1990 s. 12; No. 72 of 1992 s. 13; No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 49.]

63. No compensation during suspension

Where under this Act a right to compensation is lawfully suspended, no compensation is payable in respect of the period of suspension unless an arbitrator otherwise orders.

[Section 63 amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 50.]

64. Medical examination

(1) Where a worker has given notice of an injury he shall, if so required by the employer, submit himself for examination by a medical practitioner provided and paid by the employer.

(2) Subsection (1) does not apply in relation to an election made by the worker —

(a) for the purposes of section 24 to receive compensation in accordance with that section for permanent loss of the full efficient use of the back, neck or pelvis; or

(b) for the purposes of section 31C to receive compensation in accordance with that section for impairment of the back, neck or pelvis.

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(3) A reference in subsection (1) to the employer is, where the employer is insured against liability to pay compensation under this Act, a reference to the employer's insurer.

[Section 64 amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 51 and 146.]

65. Periodical medical examination

Any worker receiving weekly payments under this Act shall, if so required by the employer or, if the employer is insured against liability to pay compensation under this Act, the employer's insurer, from time to time submit himself for examination by a medical practitioner provided and paid by the employer or insurer, as the case may be.

[Section 65 amended by No. 42 of 2004 s. 52.]

66. Regulations as to medical examination

A worker shall not be required to submit himself for examination by a medical practitioner under section 64 or 65 otherwise than in accordance with the regulations, nor at more frequent intervals than are prescribed, nor more often than is prescribed.

[Section 66 amended by No. 42 of 2004 s. 53.]

66A. Additional medical examinations

(1) In this section —

additional medical examination means an examination by a medical practitioner in addition to those permitted by section 66.

(2) An arbitrator may by order require a worker to submit himself for an additional medical examination if the arbitrator is satisfied that the examination is necessary.

(3) An additional medical examination required under subsection (2) is to be carried out by a medical practitioner registered under section 145B —

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(a) agreed to by the worker and the employer; or

(b) selected by the arbitrator, if the worker and the employer cannot reach agreement under paragraph (a) within such period as is specified in the order.

(4) The medical practitioner is to be paid by the employer.

(5) The regulations may limit the number of additional medical examinations that may be required.

(6) A reference in subsection (3) or (4) to the employer is, where the employer is insured against liability to pay compensation under this Act, a reference to the employer's insurer.

[Section 66A inserted by No. 42 of 2004 s. 54.]

67. Lump sum in redemption of weekly payments

(1) Where weekly payments for a permanent total or permanent partial incapacity resulting from an injury other than mesothelioma have continued for not less than 6 months, the liability for the incapacity is to be redeemed by the payment of a lump sum if —

(a) an arbitrator, with the consent of the worker and the employer, makes an order that the liability for the incapacity is to be redeemed by the payment of a lump sum of an amount specified in the order; or

(b) the worker and the employer agree to the redemption, and on the amount of the lump sum, and a memorandum of the agreement is registered under Division 7.

(2) When a memorandum of an agreement under subsection (1) is sent to the Director as required by section 76, a statement of the benefits paid under this Act before the agreement was made is to be sent with the memorandum.

(3) The statement is to be provided by the employer or the employer's insurer.

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(4) Where permanent incapacity has resulted from mesothelioma and any weekly payment has been made, or the worker is entitled to any weekly payment, the liability for the incapacity shall, on the application of the worker, be redeemed by the payment of a lump sum to be determined, in default of agreement, by an arbitrator, and such lump sum may be ordered by the arbitrator to be paid to or invested or otherwise applied for the benefit of the person entitled to the lump sum.

(5) Where an order is made for redemption of the liability to pay compensation by payment of a lump sum under subsection (1) or (4), or an agreement for the redemption of a liability for incapacity is made and registered under Division 7 —

(a) the worker is not entitled to further compensation; and

(b) clauses 9, 10, 17, 18, 18A and 19 cease to apply to the worker,

for the injury from which the incapacity resulted.

(6) The regulations may make provision as to details that are to be specified in a consent order, or an agreement registered under Division 7, for payment of a lump sum.

[Section 67 amended by No. 44 of 1985 s. 21; No. 48 of 1993 s. 36; No. 33 of 1999 s. 4; No. 34 of 1999 s. 14; No. 42 of 2004 s. 55, 146 and 147.]

68. Calculation of lump sum

[(1)-(2) deleted]

(3) Where the liability for an incapacity is to be redeemed under section 67(4), the lump sum shall be calculated by taking the amount that is equal to the prescribed amount less weekly payments, if any, made and discounting the amount so taken in accordance with a compound discount table prescribed by regulations.

(4) A reference in this section to ***a compound discount table*** shall be construed as including a reference to any formula or

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formulae prescribed for use in conjunction with such a compound discount table.

[Section 68 amended by No. 44 of 1985 s. 22; No. 48 of 1993 s. 37; No. 33 of 1999 s. 5; No. 34 of 1999 s. 15.]

69. Worker not residing in the State

Subject to this Act, if a worker receiving a weekly payment does not reside in the State he is entitled to receive the amount of the weekly payments accruing due so long as he proves, in such a manner and at such intervals as may be prescribed, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

70. Furnishing medical reports

(1) Where a worker has submitted himself for examination by a medical practitioner as required under section 64, 65 or 66A, the employer or employer's insurer, as the case requires, shall, within 14 days after receiving the report of that practitioner as to the worker's medical condition, furnish the worker with a copy of that report.

(2) If a person is required to furnish a worker with a copy of a report under subsection (1) and fails to do so within the period referred to in that subsection, that person commits an offence.

Penalty: $2 000.

(3) In proceedings for an offence under subsection (2) it is a defence for the employer or the employer's insurer, as the case may be, to show that the other of them furnished a copy of the report within the period referred to in subsection (1).

(4) Where a worker has been examined by a medical practitioner selected by himself, the worker shall, within 14 days after receiving the report of that practitioner as to the worker's medical condition, furnish the employer with a copy of that report.

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(5) The reference in subsection (4) to the employer is, where the employer is insured against liability to pay compensation under this Act, a reference to the employer's insurer.

[Section 70 inserted by No. 42 of 2004 s. 56.]

71. Recovery of payments

Where WorkCover WA, the employer, or the insurer has paid compensation or expenses to a worker or dependant and that person was not lawfully entitled to that payment or to any part of the amount of that payment, WorkCover WA, the employer, or the insurer, as the case may be, may apply for an order of an arbitrator that compensation or expenses so paid be refunded, and an arbitrator has jurisdiction to hear and determine such an application and to make any order in relation thereto or any part thereof as the arbitrator considers appropriate in the circumstances.

[Section 71 amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 57.]

72. Suspension of payments during custody

(1) Subject to subsection (2), a worker's entitlement to weekly payments of compensation under this Act is suspended during any period that the worker is —

(a) in custody under a law of this State, another State or a Territory, or the Commonwealth except where that custody is of a kind prescribed by the regulations; or

(b) otherwise serving a term of imprisonment of a kind prescribed by the regulations.

(2) The worker's entitlement to compensation is suspended from the date on which an arbitrator certifies to the existence of the ground of suspension under subsection (1) until the date from which an arbitrator certifies that the ground no longer exists.

(3) A certificate issued under subsection (2) is binding on the worker, the employer and the insurer of the employer.

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(4) An arbitrator may exercise functions under this section entirely on the basis of the documents and information provided to the arbitrator.

[Section 72 inserted by No. 42 of 2004 s. 58.]

72A. Suspension or cessation of payments for failure to undergo medical examination

(1) A worker's entitlement to compensation under this Act, and to take and prosecute any proceeding under this Act, may be suspended by order of an arbitrator if the worker —

(a) being required by the employer under section 64 to submit himself for examination by a medical practitioner; or

(b) being required by an arbitrator to submit himself for an additional medical examination as defined in section 66A(1), being an examination additional to examinations under section 64,

refuses or fails to do so or in any way obstructs the examination.

(2) A worker's entitlement to compensation under this Act, may be suspended by order of an arbitrator if the worker —

(a) being required by the employer under section 65 to submit himself for examination by a medical practitioner; or

(b) being required by an arbitrator to submit himself for an additional medical examination as defined in section 66A(1), being an examination additional to examinations under section 65,

refuses or fails to do so or in any way obstructs the examination.

(3) An arbitrator is not to make an order under subsection (1) or (2) if the worker satisfies the arbitrator that the worker had a reasonable excuse for refusing or failing to submit to the medical examination or obstructing the examination.

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(4) An arbitrator is to revoke an order made under subsection (1) or (2) if satisfied that the worker has submitted himself for the examination and has not obstructed the examination.

(5) The worker's entitlements are suspended from the date on which the arbitrator makes the order until the date on which the order is revoked or the worker's entitlements cease under subsection (7).

(6) An order made under subsection (1) or (2) is binding on the worker, the employer and the insurer of the employer.

(7) If a worker continues to refuse or fail to submit to medical examination for one month, or such time as an arbitrator otherwise orders, after an order is made under subsection (1) or (2) in respect of the worker, then —

(a) the worker's entitlement to compensation for the injury in respect of which the worker was required to submit to medical examination ceases; and

(b) in the case of an order under subsection (1), the worker's entitlement to take and prosecute any proceeding under this Act in relation to that compensation ceases.

[Section 72A inserted by No. 42 of 2004 s. 58; amended by No. 16 of 2005 s. 17.]

72B. Suspension or cessation of payments for failure to participate in return to work program

(1) A worker's entitlement to compensation under this Act may be suspended by order of an arbitrator if the worker, being required by an arbitrator under section 156B(2) to participate in a return to work program, refuses or fails to participate in the return to work program.

(2) An arbitrator is not to make an order under subsection (1) if —

(a) the establishment, content or implementation of the return to work program is not in accordance with the code as defined in section 155; or

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(b) the worker satisfies the arbitrator that the worker had a reasonable excuse for refusing or failing to participate in the return to work program.

(3) An arbitrator is to revoke an order made under subsection (1) if satisfied that the worker has subsequently participated in a return to work program that has been established for the worker under section 155C(1).

(4) The worker's entitlements are suspended from the date on which the arbitrator makes the order until the date on which the order is revoked under subsection (3) or the worker's entitlements cease under subsection (6).

(5) An order made under subsection (1) is binding on the worker, the employer and the insurer of the employer.

(6) If a worker continues to refuse or fail to comply with an order to participate in the return to work program for one month, or such time as an arbitrator otherwise orders, after an order is made under subsection (1) in respect of the worker, then the worker's entitlement to compensation for the injury in respect of which the worker was required to participate in the return to work program ceases.

[Section 72B inserted by No. 42 of 2004 s. 58.]

[Division 5A deleted by No. 48 of 1993 s. 28(1).]

Division 6 — Disputes between employers

73. Worker entitled but dispute between employers

(1) Where there is a dispute between employers as to liability but no dispute that the worker is entitled to compensation from some employer for a fresh injury or the recurrence of an old injury the employer of the worker at the time of the latest injury or recurrence is liable to pay compensation under this Act until the question of which employer is liable or how liability is to be apportioned between employers has been resolved.

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(2) The worker or his dependants, if so required by the employer first liable to pay compensation, shall furnish to him the name and address of any employer in whose employment the worker was when any like injury previously occurred, as he or they may possess.

(3) If the worker has filed an application for compensation, the respondent employer shall join as a party any other employer whom he alleges is wholly or partially liable to pay the compensation.

(4) If the worker has not filed an application the employer first liable to pay compensation may apply for determination by an arbitrator of the question of whether some other employer is wholly or partially liable to pay compensation.

(5) If an arbitrator finds that it was a recurrence and not a fresh injury or partly a recurrence and partly a fresh injury, the arbitrator may order that other employer to pay to the applicant employer the whole or a part of the amount of compensation paid to the worker and to pay any further compensation to which the worker is entitled.

(6) If the dispute between employers is in respect of liability to pay compensation for noise induced hearing loss under section 24A or 31E, WorkCover WA shall provide an arbitrator dealing with the dispute with copies of the results of any relevant audiometric tests stored by WorkCover WA under clause 5(2) of Schedule 7.

[Section 73 amended by No. 36 of 1988 s. 11; No. 96 of 1990 s. 16; No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 59, 147, 149 and 150.]

74. Dispute between insurers

(1) Where a worker is entitled to compensation for a fresh injury or the recurrence of an old injury from an employer but there is a dispute between insurers as to liability to indemnify that employer, the insurer of the employer of the worker at the time

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of the latest injury or recurrence is liable to indemnify the employer until an arbitrator has otherwise determined.

(1a) An employer or insurer may apply for determination by an arbitrator of a dispute between insurers notwithstanding any term or condition of any policy of insurance providing for some other means of settling disputes.

(2) An arbitrator shall determine which insurer is liable or how liability is to be apportioned and may make such order as the arbitrator thinks proper for the reimbursement of one insurer by another and for the indemnity of the employer in respect of his liability under this Act.

[Section 74 amended by No. 44 of 1985 s. 23; No. 96 of 1990 s. 17; No. 48 of 1993 s. 28(1); No. 34 of 1999 s. 16; No. 42 of 2004 s. 60, 147 and 149.]

74A. Apportionment under sections 73 and 74

Liability shall not be so apportioned under section 73 or 74 that part of the liability to pay compensation, or indemnify an employer in respect of compensation, relates to an injury that occurred before the commencement of section 16 of the *Workers' Compensation and Assistance Amendment Act 1990* [1].

[Section 74A inserted by No. 96 of 1990 s. 18; amended by No. 42 of 2004 s. 146.]

75. Obligation to make weekly payments preserved

(1) Where an employer is liable under section 73(1) to pay compensation under this Act, neither that employer nor his insurer shall give notification under section 57A(3)(b) or (c) or 57B(2)(b) or (c) in respect of weekly payments claimed, but nothing in this section affects the right to make an application under section 73(4) in relation to the matter.

(2) An employer or insurer that gives notification contrary to subsection (1) commits an offence.

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Penalty: $1 000.

[Section 75 inserted by No. 96 of 1990 s. 19; amended by No. 42 of 2004 s. 61.]

Division 7 — Agreements

76. Registration of memorandum of agreement

(1) Subject to section 92(h), where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act by agreement, or any agreement, whether purporting to be made under this Act or not, has been entered into whereby a worker agrees to compound any claim or right to compensation under this Act, a memorandum thereof shall be sent, in manner prescribed, by any party interested, to the Director, who, subject to subsection (2a), shall, on being satisfied as to its genuineness, and, where the agreement provides for the payment of compensation pursuant to an election under section 24, 24A, 31C or 31E, as to the adequacy of the amount thereof, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as an award or order made by an arbitrator.

(2) No such memorandum shall be recorded before 7 days after the despatch by the Director of notice to the parties interested.

(2a) The Director cannot, under this section, record a memorandum of an agreement for the payment of a lump sum in redemption of the liability to pay compensation unless the Director is satisfied that the worker is aware of the consequences of the recording of the memorandum.

(3) No agreement between a worker and an employer has any force or validity if it exempts the employer wholly or partially from any liability for compensation to which the worker is or may subsequently become entitled under this Act, and notwithstanding any such agreement, a worker may recover

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from his employer any compensation to which he is, or subsequently becomes, so entitled, but the foregoing provisions of this subsection have no application to an agreement for the redemption of the liability to pay compensation if a memorandum of the agreement has been duly recorded under this section.

(4) Where a worker seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act, and the employer proves that the worker has in fact returned to work and is no longer incapacitated, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as an arbitrator, under the circumstances, may think just.

(5) The Director may at any time rectify the register.

(6) A memorandum received for registration shall be examined as to —

(a) the genuineness of the agreement; and

(b) the adequacy of the amount of any compensation pursuant to an election under section 24, 24A, 31C or 31E payable under the agreement,

and if it appears to the Director as the result of such examination or as the result of any information which the Director considers sufficient that a redemption agreement or an agreement as to the amount of compensation payable to the worker or to a person under any legal disability or to dependants, ought not to be registered by reason of the agreement having been obtained by fraud or undue influence or other improper means, or by reason that the amount of compensation pursuant to an election under section 24, 24A, 31C or 31E payable under the agreement is inadequate or excessive, the Director shall refuse to record the memorandum of the agreement sent for registration, and in that case shall refer the matter to the Commissioner who shall make such order

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(including an order as to any sum already paid under the agreement) as the Commissioner thinks just.

(7) For the purpose of carrying out his duties under subsection (6) the Director may, by notice in writing, require the attendance before him of the parties to the agreement and interrogate them in relation to the agreement and where the medical opinion of a medical practitioner is material and relevant to the question of the adequacy of the amount of compensation pursuant to an election under section 24, 24A, 31C or 31E payable under the agreement, the Director may require the employer to have the worker examined by a medical practitioner nominated by the Director, at the expense of the employer, in any case where the Director is of the opinion that a report from such medical practitioner will assist him in determining the matter of the adequacy or inadequacy of the amount of the compensation.

(7a) A medical practitioner nominated by the Director under subsection (7) to examine a worker who has made an election under section 31C in respect of an impairment that is not AIDS must be an approved medical specialist.

(8) An arbitrator may, upon application being made by either party within 6 months after a memorandum of an agreement as to the redemption of the liability to pay compensation for an injury by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to the arbitrator's satisfaction that the agreement was obtained by fraud or undue influence or other improper means, or that the amount of compensation pursuant to an election under section 24, 24A, 31C or 31E payable under the agreement is inadequate or excessive, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances the arbitrator thinks just.

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(9) Where a memorandum has been recorded under this section the Director shall without fee issue a certificate of the memorandum and the recording on application by any party concerned.

(10) Subject to this Act the certificate is evidence of the subject matter referred to in the certificate before any court or other tribunal or person in respect of proceedings to enforce compliance with the subject matter of the memorandum and for all other purposes under this Act.

[Section 76 amended by No. 48 of 1993 s. 28(1) and 38; No. 33 of 1999 s. 6; No. 34 of 1999 s. 17; No. 74 of 2003 s. 134(2); No. 42 of 2004 s. 62 and 146.]

77. Registration obligatory

An agreement to which section 76 is applicable shall not be binding on or enforceable against the parties or admitted as valid unless it is registered as provided in this Division.

78. Effect of non-registration of agreement

An agreement as to the redemption of the liability to pay compensation for an injury by a lump sum if not registered in accordance with this Act does not nor does the payment of the sum payable under the agreement exempt the person by whom the compensation is payable from liability to continue to pay it; and an agreement as to the amount of compensation to be paid to a person under legal disability or to dependants, if not so registered, does not, nor does the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation.

[Section 78 amended by No. 42 of 2004 s. 146.]

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Division 8 — Other matters affecting compensation

79. Wilful and false representation

Where it is proved that the worker has, at the time of seeking or entering employment in respect of which he claims compensation for an injury, wilfully and falsely represented himself as not having previously suffered from the injury an arbitrator may in the arbitrator's discretion refuse to award compensation which otherwise would be payable.

[Section 79 amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 63, 146 and 147.]

80. Effect on annual leave, long service leave and sick leave

(1) Compensation is payable in accordance with this Act to a worker in respect of any period of incapacity notwithstanding that the worker has received or is entitled to receive in respect of such period any payment, allowance, or benefit for annual leave or long service leave under any Act of the Commonwealth or of the State, any industrial award under any such Act, or any other industrial agreement applicable to his employment, and the amount of compensation so payable shall be the amount which would have been payable to the worker had he not received or been entitled to receive in respect of such period any such payment, allowance, or benefit.

(2) A worker is not entitled to receive from any employer payments for sick leave entitlements for any period for which he receives weekly payments of compensation for injury under this Act, and where the first-mentioned payments are made and the second-mentioned payments are subsequently made in respect of the same period, the worker shall reimburse to the employer the first-mentioned payments and the employer shall reinstate the worker's sick leave entitlements as a credit to the extent that the worker does so reimburse the employer.

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(3) To the extent, if any, that a worker fails to reimburse an employer as required by subsection (2), the employer may sue and recover the relevant amount, and to the extent of recovery the employer shall reinstate as a credit the sick leave entitlements.

[Section 80 amended by No. 42 of 2004 s. 64 and 147.]

81. Effect on public holidays pay

Notwithstanding any provision that applies to or in relation to the employment of a worker apart from this Act, where during any period in respect of which weekly payments are payable pursuant to this Act a public holiday occurs, an employer shall not be liable to make any payment to the worker in respect of that holiday other than payment for that day as a part of those weekly payments.

82. Recovery of cost of services rendered

Where a person or authority has rendered to or provided for a worker any services for the cost of which the employer is liable to pay to the worker under this Act —

(a) the employer may pay to that person or authority the whole or any part of the amount owing to him or it and such a payment shall, to the extent of the amount paid, be a discharge of the liability of the employer to the worker under this Act and of the liability of the worker to that person or authority for the services; and

(b) if the whole or any part of the amount owing to that person or authority is not paid he or it has, in respect thereof, the same rights and remedies against the employer as the worker has.

83. Industrial award and partial incapacity

(1) Notwithstanding any industrial award or industrial agreement, other than any award or certified agreement as those terms are defined in the *Workplace Relations Act 1996* of the

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Commonwealth, where a worker is rendered less able to earn full wages by reason of an injury for which compensation is or has been payable under this Act, he may be employed at such wage, being such proportion of the full wage for work in the same employment, as he and the employer may agree as being appropriate to his earning capacity having regard to the nature and extent of his injury.

(2) In default of agreement as to the appropriate proportion in any case that proportion may be determined by an arbitrator.

[Section 83 amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 65, 146 and 147.]

84. Worker not to be prejudiced by resuming work

Where a worker who has been incapacitated by injury resumes or attempts to resume work, and is unable, on account of the injury, to work or continue to work, the resumption or attempted resumption of work by him shall not deprive him of any entitlement to compensation under this Act which he otherwise had.

[Section 84 amended by No. 42 of 2004 s. 147.]

84AA. Employer to keep position available during worker's incapacity

(1) Where a worker who has been incapacitated by injury attains partial or total capacity for work in the 12 months from the day the worker becomes entitled to receive weekly payments of compensation from the employer, the employer shall provide to the worker —

(a) the position the worker held immediately before that day if it is reasonably practicable to provide that position to the worker; or

(b) if the position is not available, or if the worker does not have the capacity to work in that position, a position —

(i) for which the worker is qualified; and

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(ii) that the worker is capable of performing,

most comparable in status and pay to the position mentioned in paragraph (a).

Penalty: $5 000.

(2) The requirement to provide a position mentioned in subsection (1)(a) or (b) does not apply if the employer proves that the worker was dismissed on the ground of serious or wilful misconduct.

(3) Where, immediately before the day mentioned in subsection (1), the worker was acting in, or performing on a temporary basis the duties of, the position mentioned in paragraph (a) of that subsection, that subsection applies only in respect of the position held by the worker before taking the acting or temporary position.

(4) For the purpose of calculating the 12 months mentioned in subsection (1), any period of total capacity for work is not to be included.

[Section 84AA inserted by No. 48 of 1993 s. 39; amended by No. 42 of 2004 s. 147.]

84AB. Employer to notify worker and WorkCover WA of intention to dismiss worker

(1) An employer must not dismiss a worker to whom section 84AA(1) applies unless the employer has given to the worker and to WorkCover WA in accordance with subsection (2) a notice of intention to dismiss the worker.

Penalty: $2 000.

(2) A notice of intention to dismiss a worker —

(a) is to be given to the worker and to WorkCover WA not less than 28 days before the dismissal is to take effect; and

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(b) is to be in or to the effect of the form prescribed and contain substantially the information sought in the form.

(3) Nothing in this section limits any other obligation of an employer or rights of a worker under this Act or any other written law.

[Section 84AB inserted by No. 42 of 2004 s. 66.]

[Part IIIA: s. 84A-84ZZ deleted by No. 42 of 2004 s. 67; s. 84ZZA, 84ZZB deleted by No. 59 of 2004 s. 131.]

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Part IV — Civil proceedings in addition to or independent of this Act

Division 1 — General

[Heading inserted by No. 48 of 1993 s. 4(1).]

85. Saving — motor vehicle cases

Nothing in this Part affects the operation of sections 29 and 29A of the *Motor Vehicle (Third Party Insurance) Act 1943,* and this Part shall be read subject to those sections of that Act.

86. Saving — independent liability

Except as expressly provided by this Act, nothing in this Act affects any liability that exists independently of this Act.

87. Costs between solicitor and client in common law actions

(1) This section applies to an action for damages independently of this Act if Division 2 applies to the awarding of damages in the action (whether or not an award of damages is affected).

(2) An agreement is not to be made for a legal practitioner to receive, for appearing for or acting on behalf of a person —

(a) in an action to which this section applies; or

(b) in respect of an application for a declaration under section 11 of the *Workers' Compensation and Rehabilitation Amendment Act 1993,*

any greater reward than is provided for by any costs determination (as defined in the *Legal Profession Act 2008* section 252).

(3) An agreement is void —

(a) if it is made contrary to this section; or

(b) if it would have been contrary to this section if it had been made after the commencement of section 4 of the

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Workers' Compensation and Rehabilitation Amendment Act 1993 [1].

[Section 87 inserted by No. 48 of 1993 s. 4(2); amended by No. 65 of 2003 s. 72(2); No. 21 of 2008 s. 713(2).]

*[**88-90.** Deleted by No. 48 of 1993 s. 4(2).]*

91. Where action brought for injury for which compensation is payable under this Act

(1) If an action is brought to recover damages independently of this Act, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under this Act, the court in which the action is tried shall assess that compensation, or refer the assessment of the compensation for determination by an arbitrator, and shall deduct from that compensation all the costs which have been caused by the plaintiff bringing the action, instead of taking proceedings under this Act, and shall enter judgment accordingly.

(2) To the extent that it is practicable to do so, and subject to the DRD Rules, a referral under subsection (1) is to be dealt with as if it were an application for resolution of a dispute under Part XI.

[Section 91 amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 68 and 147.]

92. Both damages and compensation not recoverable

Where in respect of an injury an action is brought by a worker for damages independently of this Act against his employer or against some other person (referred to in this section as ***the defendant***) or against both of them —

(a) if the court decides the action should succeed, then after damages have been ascertained but before judgment is entered for the worker in the action, the worker shall be

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given a reasonable opportunity to elect whether to have judgment or to discontinue the action;

(b) if the action proceeds to judgment, including the acceptance of an offer to consent to judgment, against the employer only or against the employer and the defendant, there shall be deducted from the amount of the judgment and be paid to the employer a sum representing the amount (after apportionment in respect of any contributory negligence of the worker) actually recoverable by the worker by way of weekly or lump sum compensation, medical and other expenses paid pursuant to this Act, but where liability is apportioned between the employer and the defendant the defendant's liability to pay to the worker shall be reduced accordingly;

(c) if the action proceeds to judgment, including the acceptance of an offer to consent to judgment, against the defendant only or is settled by the acceptance of money paid into court by the defendant, the payments and expenses referred to in paragraph (b) shall be a first charge on the judgment or the amount of money paid into court and the defendant shall be bound to pay the amount of the compensation, and medical and other expenses to the employer and the judgment shall be *pro tanto* discharged by such payment, or the amount due under the charge shall be paid out of court to the employer or his authorised agent, as the case may be;

(d) if the action is discontinued the worker shall pay the costs of the employer or of the defendant or of each of them or such part of those costs as the court thinks fit;

(e) if the action proceeds to judgment, including the acceptance of an offer to consent to judgment, against the employer or the defendant or both or is settled by the acceptance of money paid into court by the employer or the defendant or by both of them, the worker shall not commence or continue proceedings for, or in relation to,

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compensation under this Act in respect of the same injury;

(f) if a worker's claim for damages against the employer or the defendant is settled by agreement otherwise than by a judgment, an acceptance of an offer to consent to judgment, or an acceptance of money paid into court —

(i) the employer or the defendant shall file a memorandum of the terms of the settlement with the Director within 3 months of the date of its execution by the worker;

(ii) the worker shall not commence or continue a claim for compensation under this Act in respect of the same injury unless the Director disapproves of the settlement within 6 weeks of the agreement for settlement being filed with the Director;

(iii) the Director shall not disapprove of the agreement unless he is satisfied the agreement was induced by fraud or misrepresentation or that it would clearly be for the worker's benefit to disapprove of it;

(iv) the Director if he disapproves of the settlement shall serve notice in writing of his disapproval on each of the parties to the settlement of his decision and of the reasons for his disapproval by pre-paid post to the address of the party set out in the settlement or the last known address of a party, within 14 days of the making of his decision;

(g) where a claim for compensation is commenced or continued after the Director disapproves of a settlement referred to in paragraph (f), the amount recovered or recoverable under such settlement shall be brought into account in reduction of the worker's entitlement to compensation;

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(h) Part III Division 7 does not apply to an agreement for settlement referred to in this section.

[Section 92 amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 69, 146 and 147.]

93. Remedies against stranger

(1) Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof but neither the employer nor any person for whose negligence the employer is legally responsible was negligent —

(a) the worker may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation and shall bring to account in reduction of his entitlement to compensation the amount recovered by way of damages;

(b) the employer is entitled to be indemnified by the person whose negligence caused the injury to the worker (in this section called ***the defendant***) to the full extent of the employer's liability to pay compensation under this Act, whether or not the defendant has discharged his liability to pay damages to the worker by judgment or by settlement or otherwise.

(2) If there were —

(a) negligence by the employer or by some person for whose negligence the employer is legally responsible which caused or contributed to the worker's injury, the extent of the indemnity of the employer by the defendant is reduced by the proportion that the employer's negligence and that of any person for whose negligence the employer is responsible bears to 100%; or

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(b) negligence by the worker which caused or contributed to the worker's injury, the extent of the indemnity of the employer by the defendant is reduced by the proportion that the worker's negligence bears to 100%.

(3) All questions as to the right or amount of any such indemnity may, in default of agreement between the employer and the defendant, at the instance of the employer, be determined by an arbitrator on any application made by the worker.

(4) If the defendant has paid the whole or any part of the damages to the worker in respect of the injury caused or contributed to by the defendant and the defendant is required to and has indemnified the employer for the payment of any compensation paid to the worker in respect of the same injury, the defendant may sue and recover from the worker the amount so paid to the employer not exceeding the amount of damages paid to the worker by the defendant.

(5) If the worker has been successful in proceedings to recover damages against the defendant and does not recover the full amount of such damages and any portion of the compensation under this Act paid by the employer to the worker has not been refunded to the employer out of the damages, then the employer may, at his own expense and in the name of the worker and upon giving the worker an indemnity against all costs and expenses, sue and recover from the defendant the amount of any balance of such damages then remaining unpaid, but any damages so recovered from the defendant in excess of the amount of compensation paid to the worker under this Act shall be payable to and received by the worker.

[Section 93 amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 70 and 147.]

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Division 1a — Choice of law

[Heading inserted by No. 36 of 2004 s. 10.]

93AA. The applicable substantive law for work injury claims

(1) If there is an entitlement to compensation under the statutory workers' compensation scheme of a State in respect of an injury to a worker (whether or not compensation has been paid), the substantive law of that State is the substantive law that governs —

(a) whether or not a claim for damages in respect of the injury can be made; and

(b) if it can be made, the determination of the claim.

(2) This Division does not apply if compensation is payable in respect of the injury under the statutory workers' compensation scheme of more than one State.

(3) For the purposes of this section, compensation is considered to be payable under a statutory workers' compensation scheme of a State in respect of an injury if compensation in respect of it —

(a) would have been payable but for a provision of the scheme that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision; or

(b) would have been payable if a claim for that compensation had been duly made, and (where applicable) an election to claim that compensation (instead of damages) had been duly made.

(4) A reference in this section to compensation payable in respect of an injury does not include a reference to compensation payable on the basis of the provisional acceptance of liability.

[Section 93AA inserted by No. 36 of 2004 s. 10; amended by No. 36 of 2004 s. 16 and 17(4).]

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93AB. Claims to which Division applies

(1) This Division applies to a claim for damages or recovery of contribution brought against a worker's employer in respect of an injury that was caused by —

(a) the negligence or other tort (including breach of statutory duty) of the worker's employer; or

(b) a breach of contract by the worker's employer.

(2) This Division also applies to a claim for damages or recovery of contribution brought against a person other than a worker's employer in respect of an injury if —

(a) the worker's employment is connected with this State; and

(b) the negligence or other tort or the breach of contract on which the claim is founded occurred in this State.

(3) Subsection (1)(a) and subsection (2) apply even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.

(4) A reference in this Division to a worker's employer includes a reference to —

(a) a person who is vicariously liable for the acts of the employer; and

(b) a person for whose acts the employer is vicariously liable.

[Section 93AB inserted by No. 36 of 2004 s. 10; amended by No. 36 of 2004 s. 16.]

93AC. What constitutes injury and employment

For the purposes of this Division —

(a) ***injury***, ***employer*** and ***worker*** include anything that is within the scope of a corresponding term in the statutory workers' compensation scheme of another State; and

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(b) the determination of what constitutes employment or whether or not a person is a worker or a worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers' compensation scheme of another State.

[Section 93AC inserted by No. 36 of 2004 s. 10; amended by No. 36 of 2004 s. 17(1).]

93AD. Claim in respect of death included

For the purposes of this Division, a claim for damages in respect of death resulting from an injury is to be considered as a claim for damages in respect of the injury.

[Section 93AD inserted by No. 36 of 2004 s. 10; amended by No. 36 of 2004 s. 16 and 17(2).]

93AE. Terms used

In this Division —

a State's legislation about damages for a work related injury means —

(a) for this State — Division 2;

(b) for another State — any provisions of a law of that State that is declared by the regulations to be the State's legislation about damages for a work related injury;

substantive law includes —

(a) a law that establishes, modifies, or extinguishes a cause of action or a defence to a cause of action;

(b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgment of that time);

(c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding

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on, or arbitration of, a claim is not commenced within a particular time limit;

(d) a law that limits the kinds of injury, loss or damage for which damages or compensation may be recovered;

(e) a law that precludes the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered;

(f) a law expressed as a presumption, or rule of evidence, that affects substantive rights; and

(g) a provision of a State's legislation about damages for a work related injury, whether or not it would be otherwise regarded as procedural in nature,

but does not include a law prescribing rules for choice of law.

[Section 93AE inserted by No. 36 of 2004 s. 10; amended by No. 36 of 2004 s. 17(3).]

93AF. Availability of action in another State not relevant

(1) It makes no difference for the purposes of this Division that, under the substantive law of another State —

(a) the nature of the circumstances is such that they would not have given rise to a cause of action had they occurred in that State; or

(b) the circumstances on which the claim is based do not give rise to a cause of action.

(2) In subsection (1) —

another State means a State other than the State with which the worker's employment is connected.

[Section 93AF inserted by No. 36 of 2004 s. 10.]

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Division 2 — Constraints on awards of common law damages

[Heading inserted by No. 48 of 1993 s. 4(3).]

Subdivision 1 — Preliminary provisions

[Heading inserted by No. 42 of 2004 s. 71.]

93A. Term used: damages

In this Division —

damages does not include —

(a) any sum required or authorised to be paid under an award or industrial agreement within the meaning of the *Industrial Relations Act 1979*;

(b) any sum payable under a superannuation scheme or any life or other insurance policy; or

(c) any amount paid in respect of costs incurred in connection with legal proceedings.

[Section 93A inserted by No. 48 of 1993 s. 4(3); amended by No. 34 of 1999 s. 32(3); No. 42 of 2004 s. 72.]

93B. Application of this Division

(1) This Division applies to the awarding of damages against a worker's employer independently of this Act in respect of an injury suffered by a worker, or a noise induced hearing loss suffered by a worker that is not an injury, if —

(a) it was caused by the negligence or other tort of the worker's employer; and

(b) compensation has been paid or is payable in respect of it under this Act, or would have been paid or be payable but for section 22.

(2) This Division applies even if the damages resulting from the negligence or other tort of the worker's employer are sought to be recovered in an action for breach of contract or other action.

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(3) This Division does not apply to the awarding of —

(a) damages to which the *Motor Vehicle (Third Party Insurance) Act 1943* applies;

(b) exemplary or punitive damages; or

(c) damages of a class that is excluded by the regulations from the application of this Division.

(3a) This Division does not apply to the awarding of damages in respect of an injury if the injury results in the death of the worker.

(4) A reference in this section to the worker's employer includes a reference to a person for whose acts the employer is vicariously liable.

(5) In the context of a cause of action arising on or after the day on which section 79 of the *Workers' Compensation Reform Act 2004* comes into operation, a reference in the other subsections of this section to the worker's employer does not include a reference to a person who is the worker's employer only because of section 175 or 175AA.

[Section 93B inserted by No. 48 of 1993 s. 4(3); amended by No. 34 of 1999 s. 32(4); No. 42 of 2004 s. 73; No. 16 of 2005 s. 10.]

93C. Limit on powers of courts

If this Division applies a court is not to award damages to a person contrary to this Division [8].

[Section 93C inserted by No. 48 of 1993 s. 4(3).]

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Subdivision 2 — 1993 scheme

[Heading inserted by No. 42 of 2004 s. 74.]

93CA. Term used: AMA Guides

In this Subdivision —

AMA Guides means the edition of the Assessment of Disability Guide published by the Western Australian Branch of the Australian Medical Association Incorporated that is prescribed in the regulations.

[Section 93CA inserted by No. 42 of 2004 s. 75.]

93CB. Limits on application of this Subdivision

(1) This Subdivision does not apply if the cause of action arises on or after the day on which section 79 of the *Workers' Compensation Reform Act 2004* comes into operation [1].

(2) This Subdivision does not apply to the awarding of damages to the extent that they are for noise induced hearing loss that is not an injury.

[Section 93CB inserted by No. 42 of 2004 s. 75.]

93CC. Application of this Subdivision

(1) This Subdivision applies to a cause of action arising before the day on which section 79 of the *Workers' Compensation Reform Act 2004* comes into operation [1], regardless of when the cause of action arose and whether proceedings in respect of the cause of action have commenced, unless —

(a) because of section 32(7) of the *Workers' Compensation and Rehabilitation Amendment Act 1999*, the former provisions as defined in section 32(6) of that Act apply to proceedings in respect of the cause of action; or

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(b) because of Part 2 of the *Workers' Compensation (Common Law Proceedings) Act 2004*, the former provisions as defined in section 4 of that Act apply to proceedings in respect of the cause of action.

(2) Despite subsection (1) and section 93CB, this Subdivision applies to a worker who claims to be suffering an injury attributable to the inhalation of asbestos if, before 14 November 2005 —

(a) the worker sought to agree the degree of the disability of the worker for the purposes of section 93E; or

(b) a dispute as to the degree of the disability of the worker was referred under section 93D(11) to a medical panel for determination.

[Section 93CC inserted by No. 42 of 2004 s. 75; amended by No. 20 of 2005 s. 21.]

93D. Assessment of disability

(1) In this section —

relevant level, in relation to a question as to the degree of disability of the worker, means —

(a) if the question arises for the purposes of section 93E(3)(a), (9) or (12), a degree of disability of 30%; or

(b) if the question arises for the purposes of section 93E(4), a degree of disability of 16%.

(2) For the purposes of section 93E, the degree of disability of the worker is to be assessed —

(a) so far as Schedule 2 Part 1 provides for an injury suffered by the worker, as a percentage equal to —

(i) if only one item of that Part applies to the injury, the percentage of the prescribed amount provided for by that item, as read with section 25; or

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(ii) if 2 or more items of that Part apply to the injury, the sum of the percentages of the prescribed amount provided for by those items, as read with section 25;

(b) to the extent, if any, that paragraph (a) does not apply, as the degree of permanent impairment assessed in accordance with the AMA Guides;

(c) to the extent, if any, that neither paragraph (a) nor (b) applies, in accordance with the regulations,

or if more than one of paragraphs (a), (b) and (c) applies, as the cumulative sum of the percentages assessed in accordance with those paragraphs.

(3) For the purposes of section 93E(4) only, if item 36A of Schedule 2 applies to the injury, subsection (2)(a) applies as if the percentage of the prescribed amount provided for by that item were 100% instead of 60%.

(4) If section 25 applies, the percentage under subsection (2)(a) is calculated in accordance with the formula —

$$\frac{PD}{100} \times TD$$

where —

PD is the percentage of the diminution of full efficient use.

TD is the relevant percentage set out in Column 2 of Schedule 2.

Example 1

A worker loses 40% of the full efficient use of one eye. The percentage under subsection (2)(a) is —

$$\frac{40}{100} \times 50 = 20$$

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Example 2

A worker loses the little finger of the left hand, 30% of the full efficient use of one eye and 10% of the full efficient use of the right arm below the elbow. The percentage under subsection (2)(a) is —

$$6 + \left\lceil \frac{30}{100} \times 50 \right\rceil + \left\lceil \frac{10}{100} \times 80 \right\rceil = 6 + 15 + 8 = 29$$

Example 3

A worker loses 10% of the full efficient use of the back (including thoracic and lumbar spine) and 15% of the full efficient use of the neck (including cervical spine). The percentage under subsection (2)(a) (for the purposes of section 93E(4) only) is —

$$\left\lceil \frac{10}{100} \times 100 \right\rceil + \left\lceil \frac{15}{100} \times 40 \right\rceil = 10 + 6 = 16$$

(5) If the worker and the employer cannot agree on whether the degree of disability is not less than the relevant level, the worker may, subject to subsection (6), refer the question to the Director.

(6) A question can only be referred under subsection (5) if the worker produces to the Director medical evidence from a medical practitioner indicating that, in the medical practitioner's opinion, the degree of disability is not less than the relevant level.

(7) As soon as practicable after receiving a referral under subsection (5) the Director is to notify the employer in accordance with the regulations.

(8) If within 21 days after being notified under subsection (7) the employer notifies the Director in accordance with the regulations that the employer considers that the degree of disability is less than the relevant level, a dispute arises for the purposes of Part XI.

(9) The Director is to consider the dispute in consultation with the parties.

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(10) Except in a case to which subsection (11) applies, if the dispute is not resolved by agreement it is to be dealt with under Part XI, and for that purpose —

(a) an application is taken to have been made by the worker under section 181; and

(b) the requirement to give copies under section 182 does not apply.

(11) If the dispute relates to an injury mentioned in section 33, 34 or 35, the dispute is to be referred to a medical panel for determination as described in section 36 and so far as applicable this Act applies in relation to the reference as if it were a reference under section 36 except that the only question to be considered and determined on the reference is the question that was referred.

(12) Unless notification is given by the employer under subsection (8), the employer is to be regarded as having agreed that the degree of disability is not less than the relevant level.

[Section 93D inserted by No. 34 of 1999 s. 32(5); amended by No. 42 of 2004 s. 76, 146 and 147.]

93E. Restrictions on awarding of damages and payment of compensation

(1) In this section —

agreed means agreed between the worker and the employer, whether under section 93D(12) or otherwise;

degree of disability means the degree of disability of the worker assessed in accordance with section 93D(2);

determined means determined or decided when dealt with as described in section 93D(10) or (11);

termination day means the day that is 6 months after the day on which weekly payments commenced.

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(2) Weekly payments of compensation ordered by an arbitrator to commence are to be regarded for the purposes of this section as commencing or having commenced on —

(a) the first day of the period in relation to which weekly payments are ordered to be made; or

(b) the day that is 5 months (or such shorter period as is prescribed) before the day on which the order is made,

whichever is later.

(3) Damages can only be awarded if —

(a) it is agreed or determined that the degree of disability is not less than 30% and that agreement or determination is recorded in accordance with the regulations; or

(b) the worker has a significant injury and elects, in the prescribed manner, to retain the right to seek damages and the election is registered in accordance with the regulations.

(4) For the purposes of subsection (3)(b) the worker has a significant injury if it is agreed or determined that the degree of disability is not less than 16% and that agreement or determination is recorded in accordance with the regulations.

(5) Subject to subsections (6), (6a), and (7), if weekly payments of compensation in respect of the injury have commenced an election cannot be made under subsection (3)(b) after the termination day.

(6) Despite subsection (5), if —

(a) medical evidence complying with section 93D(6) was produced to the Director not less than 21 days before the termination day; and

(b) although a question of whether the degree of disability is not less than 16% was referred to the Director under section 93D(5) not less than 21 days before the termination day, at the end of the seventh day before the

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termination day the Director has not given the worker notice in writing that an agreement or determination of the question has been recorded,

an election can be made under subsection (3)(b) within 14 days after the Director gives the worker notice in writing that an agreement or determination of the question has been recorded.

(6a) Despite subsection (5) and even though subsection (6) does not apply, if the Director gives the worker notice under section 93EA(5)(b)(i) or 93EB(5)(b)(i) that this subsection applies an election can be made under subsection (3)(b) within 14 days after the Director subsequently gives the worker notice in writing that an agreement or determination of the question has been recorded.

(7) Despite subsection (5), the Director may, in such circumstances as are set out in regulations, extend the period within which an election can be made under subsection (3)(b) until a day (not being a day that is more than 6 months after the termination day) to be fixed by the Director by notice in writing to the worker.

(8) Subject to subsections (9) and (11), if an election has been made under subsection (3)(b) compensation under this Act is not payable in respect of the injury, or any recurrence, aggravation or acceleration of it, in relation to any period after the day on which the election is registered or any expenses incurred during such a period.

(9) Subsection (8) ceases to apply if, after the election is made, it is agreed or determined that the degree of disability is 30% or more and that agreement or determination is recorded in accordance with the regulations.

(10) Subsection (9) relates only to the degree of the original injury, and any recurrence, aggravation or acceleration of it is not to be taken into account.

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(11) If an agreement or determination under subsection (9) is recorded, the worker may apply for any compensation which, but for subsection (8), would have been payable under this Act in relation to a relevant period or expenses incurred during a relevant period.

(12) In subsection (11) —

relevant period means any period —

(a) which is after the day on which the election is registered and before the agreement or determination under subsection (9) is recorded; and

(b) during which the degree of disability is agreed or determined to have been not less than 30%.

(13) If the liability for an incapacity resulting from the injury has been redeemed under section 67, damages are not to be awarded in respect of the injury.

(14) If a further additional sum has been allowed to the worker under clause 18A(1b) in relation to an injury that is compensable under this Act, damages are not to be awarded in respect of the injury.

[Section 93E inserted by No. 34 of 1999 s. 32(5); amended by No. 44 of 2000 s. 4; No. 35 of 2004 s. 9; No. 42 of 2004 s. 77, 147 and 149.]

93EA. Referring questions with fresh evidence in particular cases

(1) Unless it does not apply because of subsection (2), subsection (3) applies if —

(a) on or before 30 September 2001, a worker —

(i) sought to refer a question to the Director under section 93D(5); and

(ii) in order to satisfy section 93D(6), produced to the Director anything that, even though it may not have constituted evidence of the kind

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required by that subsection, was accepted by the Director as evidence of that kind;

and

(b) the Director treated the question as having been referred under section 93D(5), after which, for a reason based on a failure to satisfy the requirements of section 93D(6) for a referral under section 93D(5) —

(i) a review officer did not deal with the substance of the question; or

(ii) a court set aside or quashed a decision of a review officer that dealt with the substance of the question.

(2) If the question is whether the worker's degree of disability is not less than 16%, subsection (3) does not apply unless the production of what was produced as referred to in subsection (1)(a)(ii) and the purported referral of the question both occurred —

(a) not less than 21 days before the termination day; or

(b) before a day fixed under section 93E(7) by the Director.

(3) If this subsection applies, the worker may, within the time limited by subsection (4)(b) and otherwise in accordance with subsection (4), refer to the Director under section 93D(5) the same question as is mentioned in subsection (1)(a)(i), relating to the same injury and only that injury.

(4) A question can only be referred under subsection (3) if —

(a) the referral is made in writing in a form specified in the regulations stating that the worker is also acting under subsection (3);

(b) the referral is made —

(i) within the period of 3 months commencing after the day on which section 10 of the *Workers' Compensation (Common Law Proceedings)*

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Act 2004 comes into operation [1] (called the ***commencement day*** in subparagraph (ii)); or

(ii) if subsection (1)(b)(ii) applies and the decision is set aside or quashed after the commencement day, within the period of 3 months commencing after the day on which the decision is set aside or quashed;

and

(c) when referring the question to the Director, the worker produces to the Director evidence relating to the injury that complies with section 93D(6), or satisfies the Director that complying evidence has already been produced to the Director.

(5) If a worker seeks to make a referral under section 93D(5) stating that it is also made under subsection (3) of this section, the Director is required, as soon as practicable, to notify the worker and the employer, in accordance with the regulations —

(a) whether or not the Director is of the opinion that evidence complying with section 93D(6) has been produced and in all other respects the referral is properly made; and

(b) if the Director —

(i) is of that opinion, that the referral is accepted and section 93E(6a), if relevant, and section 93EC apply;

(ii) is not of that opinion, that the referral sought to be made by the worker is not accepted.

[Section 93EA inserted by No. 35 of 2004 s. 10; amended by No. 42 of 2004 s. 147.]

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93EB. Referring questions in certain other cases

(1) Unless it does not apply because of subsection (2), subsection (3) applies if —

(a) before the coming into operation of section 10 of the *Workers' Compensation (Common Law Proceedings) Act 2004* [1], a worker sought to refer a question to the Director under section 93D(5);

(b) on or after 4 December 2003, on the basis that Part IV Division 2 as in force before it was amended by section 32 of the *Workers' Compensation and Rehabilitation Amendment Act 1999* applied to proceedings for the awarding of the damages concerned —

(i) a review officer did not deal with the substance of the question; or

(ii) a court set aside or quashed a decision of a review officer that dealt with the substance of the question;

and

(c) after the coming into operation of section 10 of the *Workers' Compensation (Common Law Proceedings) Act 2004*, section 93D(5) applies and the worker wishes to refer the question to the Director under that section.

(2) If the question is whether the worker's degree of disability is not less than 16%, subsection (3) does not apply unless the purported referral of the question occurred —

(a) not less than 21 days before the termination day; or

(b) before a day fixed under section 93E(7) by the Director.

(3) If this subsection applies, the worker may, within the time limited by subsection (4)(b) and otherwise in accordance with subsection (4), refer to the Director under section 93D(5) the same question as is mentioned in subsection (1)(a), relating to the same injury and only that injury.

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(4) A question can only be referred under subsection (3) if —

(a) the referral is made in writing in a form specified in the regulations stating that the worker is also acting under subsection (3);

(b) the referral is made —

(i) within the period of 3 months commencing after the day on which section 10 of the *Workers' Compensation (Common Law Proceedings) Act 2004* comes into operation [1] (called the ***commencement day*** in subparagraph (ii)); or

(ii) if subsection (1)(b)(ii) applies and the decision is set aside or quashed after the commencement day, within the period of 3 months commencing after the day on which the decision is set aside or quashed;

and

(c) when referring the question to the Director, the worker produces to the Director evidence relating to the injury that complies with section 93D(6), or satisfies the Director that complying evidence has already been produced to the Director.

(5) If a worker seeks to make a referral under section 93D(5) stating that it is also made under subsection (3) of this section, the Director is required, as soon as practicable, to notify the worker and the employer, in accordance with the regulations —

(a) whether or not the Director is of the opinion that evidence complying with section 93D(6) has been produced and in all other respects the referral is properly made; and

(b) if the Director —

(i) is of that opinion, that the referral is accepted and section 93E(6a), if relevant, and section 93EC apply;

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(ii) is not of that opinion, that the referral sought to be made by the worker is not accepted.

[Section 93EB inserted by No. 35 of 2004 s. 10; amended by No. 42 of 2004 s. 147.]

93EC. Extended time for commencing proceedings

If —

(a) under section 93EA(5)(b)(i) or 93EB(5)(b)(i), the Director notifies a worker that the referral of a question relating to an injury is accepted and that this section applies; and

(b) the time limited by any written law for the commencement of an action seeking damages in respect of the injury —

(i) has elapsed before the day on which the Director notifies the worker (the ***notification day***); or

(ii) is due to elapse on the notification day or before the expiry of a period of 2 years after the notification day,

an action seeking damages in respect of the injury may, despite that written law, be commenced at any time before the expiry of a period of 2 years after the notification day.

[Section 93EC inserted by No. 35 of 2004 s. 10; amended by No. 42 of 2004 s. 146 and 147.]

93F. Restrictions on awarding and amount of damages if disability less than 30%

(1) Unless an agreement or determination that the degree of disability of the worker is not less than 30% is recorded for the purposes of section 93E —

(a) the amount of damages to be awarded is to be a proportion, determined according to the severity of the

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injury, of the maximum amount that may be awarded; and

(b) the maximum amount of damages that may be awarded is Amount A, but the maximum amount may be awarded only in a most extreme case of a disability of less than 30% in degree.

(2) Subsection (1) has effect in respect of the amount of a judgment before the operation of section 92(b).

(3) No entitlement to damages is created by subsection (1) and that subsection is subject to any other law that prevents or limits the awarding of damages.

(4) If —

(a) section 93E(3) does not allow damages to be awarded in respect of the injury; or

(b) damages in respect of the injury have been awarded in accordance with subsection (1),

the employer is not liable to make any contribution under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (the ***Contribution Act***) in respect of damages awarded against another person in relation to the injury.

(5) If section 93E(3)(b) allows damages to be awarded in respect of the injury —

(a) the contributions that the employer may be liable to make under the Contribution Act in respect of damages awarded against other persons in relation to the injury are not to exceed the damages that could have been awarded in accordance with subsection (1); and

(b) if the employer has made or been directed to make a contribution under the Contribution Act in respect of damages awarded against another person in relation to the injury, the amount of damages that may be awarded

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in accordance with subsection (1) is reduced by the amount of that contribution.

(6) This section applies regardless of whether the damages are awarded against one or several employers.

(7) An issue as to the amount of damages that may be awarded, is to be determined by reference to Amount A as in effect on the date on which the determination is made.

(8) In this section —

Amount A means —

(a) in relation to the financial year ending on 30 June 2000, $250 000;

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

(i) the amount obtained by varying Amount A for the preceding financial year by the percentage by which the amount that the Australian Statistician published as the Labour Price Index (formerly known as the Wages Cost Index), ordinary time hourly rates of pay (excluding bonuses) for Western Australia (the ***LPI***) 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 LPI for a relevant quarter was not published, the amount obtained by varying Amount A 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.

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[Section 93F inserted by No. 34 of 1999 s. 32(5); amended by No. 42 of 2004 s. 147; No. 8 of 2009 s. 139(4).]

93G. Regulations

Regulations may provide for —

(a) the notification to be given to workers of the effect of the provisions of this Subdivision;

(b) the form and lodgment of elections under section 93E(3)(b);

(c) the registration by the Director of elections under section 93E(3)(b) if an agreement or determination for the purposes of section 93E(4) has been recorded, and the power of the Director to refuse to register an election if not satisfied that the worker has been properly advised of the consequences of the election;

(d) the recording by the Director of an agreement or determination under section 93E as to the degree of disability of a worker;

(e) the way in which applications under section 93E(11) are to be made and dealt with.

[Section 93G inserted by No. 34 of 1999 s. 32(5); amended by No. 42 of 2004 s. 78.]

Subdivision 3 — 2004 scheme

[Heading inserted by No. 42 of 2004 s. 79.]

93H. Terms used

(1) In this Subdivision —

degree of permanent whole of person impairment means the degree of permanent whole of person impairment, evaluated as described in sections 146A and 146C, resulting from the injury or injuries arising from a single event, as defined in subsection (2);

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election registration day means the day on which the Director registers the election under section 93K(4)(b).

(2) In the definition of ***degree of permanent whole of person impairment*** in subsection (1) —

event means anything that results, whether immediately or not and whether suddenly or not, in an injury or injuries of a worker and the term includes continuous or repeated exposure to conditions that results in an injury or injuries of a worker.

[Section 93H inserted by No. 42 of 2004 s. 79.]

93I. Application of this Subdivision

(1) This Subdivision applies only if the cause of action arises on or after the day on which section 79 of the *Workers' Compensation Reform Act 2004* comes into operation [1].

(2) Despite subsection (1), this Subdivision applies to a worker who claims to be suffering an injury attributable to the inhalation of asbestos if, on or after 14 November 2005 —

(a) the worker seeks to agree the worker's degree of permanent whole of person impairment for the purposes of section 93K; or

(b) an assessment of a medical panel to evaluate the worker's degree of permanent whole of person impairment is sought under section 93R.

[Section 93I inserted by No. 42 of 2004 s. 79; amended by No. 20 of 2005 s. 22.]

93J. No damages for noise induced hearing loss if not an injury

Damages to which this Division applies are not to be awarded, in circumstances to which this Subdivision applies, in respect of noise induced hearing loss that is not an injury.

[Section 93J inserted by No. 42 of 2004 s. 79.]

93K. Restrictions on awarding, and amount of, damages

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(1) If the liability for an incapacity resulting from the injury has been redeemed under section 67, damages are not to be awarded in respect of the injury.

(2) If a further additional sum has been allowed to the worker under clause 18A(1b) in relation to an injury that is compensable under this Act, damages are not to be awarded in respect of the injury.

(3) If the worker is participating, or has at any time participated, in a specialised retraining program established in respect of an injury that is compensable under this Act, damages are not to be awarded in respect of the injury.

(4) Damages in respect of an injury can only be awarded if —

(a) the worker elects, in the manner prescribed in the regulations, to retain the right to seek the damages;

(b) the Director registers the election in accordance with the regulations;

(c) court proceedings seeking the damages are commenced within —

(i) the period of 30 days after the Director gives the worker written notice that the Director has registered the election; or

(ii) any further time provided for in the regulations to allow for things to be done before court proceedings are commenced;

and

(d) the court is satisfied that the worker's degree of permanent whole of person impairment is at least 15%.

(5) Unless the court is satisfied that the worker's degree of permanent whole of person impairment is at least 25% —

(a) the amount of damages to be awarded is to be a proportion, determined according to the severity of the

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injury or injuries, of the maximum amount that may be awarded; and

(b) the maximum amount of damages that may be awarded in respect of the injury or injuries is Amount A, but the maximum amount may be awarded only in a most extreme case in which the worker's degree of permanent whole of person impairment is less than 25%.

(6) Subsection (5) has effect in respect of the amount of a judgment before the operation of section 92(b).

(7) No entitlement to damages is created by subsection (5) and that subsection is subject to any other law that prevents or limits the awarding of damages.

(8) If —

(a) subsection (4) does not allow damages to be awarded in respect of the injury; or

(b) damages in respect of the injury have been awarded in accordance with subsection (5),

the employer is not liable to make any contribution under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (the ***Contribution Act***) in respect of damages awarded against another person in relation to the injury.

(9) If subsection (5) limits the damages that could have been awarded in respect of the injury —

(a) the contributions that the employer may be liable to make under the Contribution Act in respect of damages awarded against other persons in relation to the injury are not to exceed the damages that could have been awarded in accordance with subsection (5); and

(b) if the employer has made or been directed to make a contribution under the Contribution Act in respect of damages awarded against another person in relation to

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the injury, the amount of damages that may be awarded in accordance with subsection (5) is reduced by the amount of that contribution.

(10) This section applies regardless of whether the damages are awarded against one or several employers.

(11) An issue as to the amount of damages that may be awarded, is to be determined by reference to Amount A as in effect on the date on which the determination is made.

(12) In this section —

Amount A means, in relation to a financial year, the amount that section 93F(8) defines to be Amount A in relation to that financial year.

(13) The court is not bound by an agreement or assessment recorded by the Director under section 93L(2), but may admit it as evidence relevant to the worker's degree of permanent whole of person impairment.

[Section 93K inserted by No. 42 of 2004 s. 79.]

93L. Election to retain right to seek damages

(1) In this section —

termination day has the meaning given in section 93M.

(2) A worker can only elect under section 93K(4) to retain the right to seek damages if —

(a) the worker and the employer agree —

(i) that the worker's degree of permanent whole of person impairment is at least 15%; and

(ii) as to whether or not the worker's degree of permanent whole of person impairment is at least 25%;

or

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(b) the worker's degree of permanent whole of person impairment has been assessed to be a percentage that is not less than 15%,

and the Director has, at the written request of the worker, recorded that agreement or assessment in accordance with the regulations.

(3) The Director cannot, under subsection (2), record an assessment that involves a special evaluation as defined in section 146C(4) unless the Director has been given a copy of the certificate referred to in section 93N(1) on the basis of which the special evaluation was requested.

(4) If a claim for compensation by way of weekly payments has been made wholly or partially with respect to the injury or injuries concerned, an election cannot be made after the termination day.

(5) An agreement or assessment that the Director has, at the written request of the worker, recorded in accordance with the regulations cannot be withdrawn and, after it has been recorded, another agreement or assessment as to the worker's degree of permanent whole of person impairment cannot be recorded.

(6) An election that the Director has registered in accordance with the regulations cannot be withdrawn and a subsequent election cannot be made in respect of the same injury or injuries.

(7) Subsection (5) does not prevent an agreement or assessment as to the worker's degree of permanent whole of person impairment from being made, whether before or after the commencement of court proceedings, after the Director has, at the written request of the worker, recorded an agreement or assessment in accordance with the regulations, or from being used in court proceedings.

(8) The Director may at any time rectify an error that was made in recording an agreement or assessment or registering an election.

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[Section 93L inserted by No. 42 of 2004 s. 79.]

93M. Termination day

(1) If a claim for compensation by way of weekly payments has been made wholly or partially with respect to an injury, the termination day for an election to retain the right to seek damages in respect of that injury is the last day of the period of one year after the day on which the claim for compensation by way of weekly payments is made unless a later day is fixed by subsection (3) or under subsection (4).

(2) In subsection (1) —

claim for compensation by way of weekly payments means a claim for compensation by way of weekly payments for total or partial incapacity that has been made on an employer in accordance with section 178(1)(b).

(3) If, after the expiry of the period of 3 months after the day on which the claim is made —

(a) a dispute resolution authority, acting under section 58(1) or (2), determines the question of liability to make the weekly payments claimed; or

(b) the worker is first notified that liability is accepted in respect of the weekly payments claimed,

the termination day is the last day of the period of 9 months after the day of the act described in paragraph (a) or (b) that was most recently done unless a later day is fixed under subsection (4).

(4) The Director may, in accordance with the regulations, from time to time extend the termination day, but only if —

(a) before the termination day, an approved medical specialist, in writing —

(i) certifies that the worker's condition has not stabilised to the extent required for a normal evaluation of the worker's degree of permanent

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whole of person impairment to be made in accordance with the WorkCover Guides as described in sections 146A and 146C; and

(ii) recommends a day until which the termination day be extended;

(b) the Director is satisfied that the employer has failed to comply with section 93O;

(c) the Director is satisfied that the extension should be given because an approved medical specialist requires or required more than the time described in section 93O(1)(d) before being able to give the worker the documents required by section 146H; or

(d) the Director is satisfied that —

(i) the worker has, in accordance with the regulations, requested an approved medical specialist to assess the worker's degree of permanent whole of person impairment other than as described in subparagraph (ii), allowing at least the time described in section 93O(1)(d) for the approved medical specialist to give the worker the documents required by section 146H at least 7 days before the termination day, but the worker was not given, or it would be impracticable to give, those documents at least 7 days before the termination day; or

(ii) the worker has, in accordance with the regulations, requested an approved medical specialist to make an assessment that involves a special evaluation of the worker's degree of permanent whole of person impairment, allowing at least 7 weeks for the approved medical specialist to make the assessment and give the worker the documents required by section 146H at least 7 days before the termination day, but the worker was not given, or it would be

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impracticable to give, those documents at least 7 days before the termination day.

(5) In subsection (4) —

normal evaluation has the meaning given to that term in section 146C(3);

special evaluation has the meaning given to that term in section 146C(4).

(6) An extension under subsection (4) is to be to a day that is not more than one year after the day that would have been the termination day had there been no extension under that subsection except that, in circumstances described in subsection (4)(d), the Director may give an extension for as long as the Director considers necessary to give the worker an opportunity to make an election.

(7) An extension is to be in writing and the Director is required to give the worker and the employer each a copy of the extension.

(8) An extension may be given even though the termination day has passed.

[Section 93M inserted by No. 42 of 2004 s. 79.]

93N. Special evaluation if condition has not sufficiently stabilised

(1) This section applies if, after the expiry of the period of 6 months after the day that would have been the termination day had there been no extension under section 93M(4), an approved medical specialist certifies that the worker's condition has not stabilised to the extent required for a normal evaluation of the worker's degree of permanent whole of person impairment to be made in accordance with sections 146A and 146C.

(2) The worker may request an approved medical specialist to make a special evaluation of the worker's degree of permanent whole of person impairment in accordance with sections 146A and 146C.

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(3) The approved medical specialist requested to make a special evaluation may be the approved medical specialist who certified as described in subsection (1).

(4) The request is to be made in accordance with the regulations not later than 8 weeks before the termination day and is to be accompanied by a copy of the certificate referred to in subsection (1).

(5) The approved medical specialist is to make the special evaluation in accordance with sections 146A and 146C unless the worker's condition is found to have stabilised to the extent required for a normal evaluation, in which case the approved medical specialist is to make a normal evaluation in accordance with those sections.

(6) In this section —

normal evaluation has the meaning given to that term in section 146C.

[Section 93N inserted by No. 42 of 2004 s. 79.]

93O. Employer to give worker notice of certain things

(1) At the time described in subsection (2), the employer is required to notify the worker in writing in accordance with the regulations —

(a) of the day that would be the termination day if no later day were to be fixed under section 93M(4);

(b) that about 6 months remains before the termination day;

(c) of the significance of the termination day for the worker's ability to seek damages; and

(d) of the amount of time that, according to the regulations, an approved medical specialist can reasonably be expected to take, after a worker requests an assessment of the worker's degree of permanent whole of person impairment, to give the worker the documents that an

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approved medical specialist is required by section 146H to give the worker.

(2) The notice is required to be given within the period of 14 days commencing on the day that is 6 months and 14 days before the day that would be the termination day if no later day were to be fixed under section 93M(4).

[Section 93O inserted by No. 42 of 2004 s. 79.]

93P. How election may affect statutory compensation

(1) This section applies unless, according to an agreement or assessment that the Director has recorded as described in section 93L(2), the worker's degree of permanent whole of person impairment is at least 25%.

(2) If a worker elects under section 93K to retain the right to seek damages and this section applies —

(a) the amount of any weekly payment of compensation to which the worker is entitled under this Act in respect of the injury or injuries, to the extent that the payment is for any time during the first 6 months after the election registration day, is varied to the amount calculated as described in subsection (4);

(b) the worker is not entitled to any weekly payment of compensation under this Act in respect of the injury or injuries to the extent that the payment would be for any time that is more than 6 months after the election registration day; and

(c) no other compensation under this Act is payable in respect of the injury or injuries —

(i) in relation to a time that is after the election registration day;

(ii) under Part III Division 2 or 2A, irrespective of whether an election under that Division is made before or after the election registration day; or

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(iii) for expenses incurred after the election registration day.

(3) In subsection (2) —

in respect of the injury or injuries includes wholly or partially in respect of the injury or injuries and also includes wholly or partially in respect of any recurrence, aggravation or acceleration of the injury or injuries.

(4) The amount of a weekly payment is —

(a) to the extent that it is for any time during the first 3 months after the election registration day, 70% of the amount of the weekly payment to which the worker would have been entitled if this section had not applied; and

(b) to the extent that it is for any other time during the first 6 months after the election registration day, 50% of the amount of the weekly payment to which the worker would have been entitled if this section had not applied.

[Section 93P inserted by No. 42 of 2004 s. 79.]

93Q. Special provisions about HIV and AIDS

(1) Damages are not to be awarded in respect of the infection of a worker by HIV but damages may be awarded in respect of the contraction of AIDS unless it results from the unlawful use of any prohibited drug or from voluntary sexual activity.

(2) A worker who has contracted AIDS has, for the purposes of this Subdivision, a degree of permanent whole of person impairment resulting from the disease of at least 25%.

(3) A certificate in writing by a medical practitioner to the effect that the worker has contracted AIDS is to be recorded by the Director under section 93L(2), and otherwise treated for the purposes of this Subdivision, as if it included an assessment that the worker's degree of permanent whole of person impairment resulting from the disease was at least 25%.

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(4) The regulations may make provision for methods of deciding for the purposes of this section whether a worker has contracted AIDS.

(5) Part VII Division 2 does not apply to the degree of permanent whole of person impairment of a worker resulting from the contraction of AIDS.

(6) For the purposes of this Subdivision and any limitation on the period within which proceedings may be commenced to recover damages for that cause, the cause of action of a worker who has contracted AIDS is to be taken to have arisen when a certificate is first given in writing by a medical practitioner to the effect that the worker has contracted AIDS.

(7) Section 93L(4) and sections 93M, 93N, 93O, and 93P do not apply in the case of an action for damages in respect of the contraction of AIDS.

(8) In this section —

AIDS means acquired immune deficiency syndrome;

HIV means human immunodeficiency virus;

prohibited drug has the meaning given to that term by the *Misuse of Drugs Act 1981* section 3.

[Section 93Q inserted by No. 42 of 2004 s. 79.]

93R. Special provisions about specified industrial diseases

(1) If damages are sought or to be sought in respect of a disease referred to in section 33 or 34, any assessment to evaluate the worker's degree of permanent whole of person impairment resulting from the disease as described in sections 146A and 146C is to be made, not by an approved medical specialist as stated in section 146A(2), but by a medical panel constituted as described in section 36.

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(2) Subsection (1) does not prevent the evaluation of the worker's degree of permanent whole of person impairment being settled by agreement.

(3) A person seeking an assessment may advise the chief executive officer, in accordance with any relevant regulation, and the chief executive officer is to arrange for a medical panel to be constituted to make the assessment and refer the making of the assessment sought to the panel.

(4) Section 36(3), section 37, and section 38(1) and (3) apply for a reference under this section as they would for a reference under section 36 except that what is to be considered and determined is the assessment referred under this section instead of the questions that arise on a reference under section 36.

(5) Even though the worker's condition is not required to have stabilised, the evaluation is not a special evaluation as referred to in section 146C.

(6) There is no termination day for an election to retain the right to seek damages in respect of a disease described in subsection (1).

(7) A medical panel from which an assessment under this section is sought is not bound by a previous assessment made under this section if the previous assessment has not been recorded by the Director under section 93L(2).

(8) If the Director, under section 93L(2), records an assessment under this section —

(a) any reference in this Subdivision to the worker's degree of permanent whole of person impairment is to be taken to be a reference to the worker's degree of permanent whole of person impairment as evaluated in the assessment recorded; and

(b) section 93K(13) does not apply.

[Section 93R inserted by No. 42 of 2004 s. 79.]

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93S. Regulations

Regulations may provide for —

(a) the notification to be given to workers, and the notification to be given to employers, of —

(i) the effect of the provisions of this Subdivision;

(ii) things done under this Subdivision;

(b) the form and lodgment of elections under section 93K(4)(a);

(c) the registration by the Director of elections under section 93K(4)(a) if an agreement or assessment for the purposes of section 93L(2) has been recorded, and the power of the Director to refuse to register an election if not satisfied that the worker has been properly advised of the consequences of the election;

(d) the recording by the Director of an agreement or assessment under section 93L(2) as to the worker's degree of permanent whole of person impairment;

(e) how and when a worker may apply for the Director to extend the termination day under section 93M(4), and the period for which the Director may give an extension.

[Section 93S inserted by No. 42 of 2004 s. 79.]

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Part V — WorkCover Western Australia Authority

[Heading inserted by No. 42 of 2004 s. 80.]

Division 1 — Constitution, purposes, and powers

94. WorkCover Western Australia Authority

(1) When section 81(1) of the *Workers' Compensation Reform Act 2004* comes into operation [1], the name of the body corporate that was previously called the "Workers' Compensation and Rehabilitation Commission" becomes the "WorkCover Western Australia Authority", but the corporate identity of the body corporate and its rights and obligations are not affected by the change.

(2) The WorkCover Western Australia Authority —

(a) is a body corporate with perpetual succession and a common seal;

(b) may acquire, hold, and dispose of real and personal property;

(c) may sue and be sued in its corporate name; and

(d) may, subject to the directions of the Minister, exercise and discharge the powers, authorities, functions, and duties conferred or imposed upon it by this Act.

(2a) The WorkCover Western Australia Authority is an agent of the State and has the status, immunities, and privileges of the State.

(2b) The WorkCover Western Australia Authority is to have a governing body that, in the name of the WorkCover Western Australia Authority, is to perform the functions of the WorkCover Western Australia Authority under this Act or any other written law.

(3) Notwithstanding subsection (1), the WorkCover Western Australia Authority may use and operate under the name

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"WorkCover Western Australia", which it may abbreviate as "WorkCover WA" or "WorkCover".

(4) A person other than WorkCover WA who uses or operates under the name mentioned in subsection (1), or any name that is so similar that it is likely to be misunderstood as referring to WorkCover WA, commits an offence.

[Section 94 amended by No. 86 of 1986 s. 8; No. 48 of 1993 s. 40; No. 42 of 2004 s. 81 and 150.]

95. WorkCover WA's governing body

(1) WorkCover WA's governing body is to consist of —

(a) one person appointed by the Governor on the recommendation of the Minister as a member and Chairman of WorkCover WA's governing body and referred to as a nominee member;

(b) the chief executive officer of WorkCover WA and the chief executive officer of the department of the Public Service of the State principally assisting the Minister charged with the administration of the *Occupational Safety and Health Act 1984*; and

(c) 4 persons appointed by the Governor, on the recommendation of the Minister, as members of WorkCover WA's governing body and referred to as nominee members of whom —

(i) one is a person experienced in employers' interests;

(ii) one is a person experienced in workers' interests;

(iii) one is a person experienced in insurance matters; and

(iv) one is a person experienced in accounting and financial management.

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(2) The person appointed as Chairman of WorkCover WA's governing body is not to be a public service officer within the meaning of the *Public Sector Management Act 1994*.

(3) Before making a recommendation for the purposes of subsection (1)(c)(i), the Minister may, in writing, request the body known as the Chamber of Commerce and Industry of Western Australia (Inc) to submit the name of a person, or the names of such number of persons as is specified in the request, who, or each of whom, has the required experience and is willing to act as a member under subsection (1)(c)(i), and before making a recommendation for the purposes of subsection (1)(c)(ii), the Minister may, in writing, request the body known as UnionsWA (formerly known as the Trades and Labor Council of Western Australia) to submit the name of a person, or the names of such number of persons as is specified in the request, who, or each of whom, has the required experience and is willing to act as a member under subsection (1)(c)(ii).

(4) Before making a recommendation for the purposes of subsection (1)(c)(iii) or (iv), the Minister may make enquiries to find a person who has the required experience and is willing to act as a member under that provision.

(5) The Governor may, on the recommendation of the Minister, appoint a person who is not a public service officer within the meaning of the *Public Sector Management Act 1994* as deputy of the member who is the Chairman of WorkCover WA's governing body.

(6) In the absence, for any reason, of the Chairman and a person appointed to act in the place and during the absence of the Chairman from a meeting of WorkCover WA's governing body, the Chairman's appointed deputy may attend the meeting and while so attending has all the powers, authorities, functions, and duties of the Chairman.

[Section 95 inserted by No. 42 of 2004 s. 82.]

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96. Term of office

(1) Subject to this Act, a nominee member holds office for such period not exceeding 3 years as is specified in the instrument of his appointment but is eligible for reappointment.

(2) The Minister on such terms as he thinks fit may grant leave of absence to a nominee member.

(3) A nominee member may resign his office by writing signed by him and delivered to the Minister but the resignation does not have effect until accepted by the Minister.

(4) The Governor may terminate the appointment of a nominee member —

(a) for mental or physical incapacity to carry out duties as a member in a satisfactory manner, for inefficiency, or for misbehaviour; or

(b) for other good cause, whether the events or circumstances giving rise to that good cause occurred before, on, or after the date on which the appointment took effect.

(5) If a nominee member —

(a) is ~~an undischarged~~ , according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose ~~property is subject to an order or arrangement~~affairs are under ~~the~~insolvency laws ~~relating to bankruptcy;~~; or

(b) absents himself except on leave granted by the Minister from 3 consecutive meetings of WorkCover WA's governing body; or

[(c) deleted]

(d) resigns and his resignation is accepted; or

(e) has his appointment terminated pursuant to subsection (4),

the office of that nominee member becomes vacant.

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(6) Where the office of a nominee member becomes vacant otherwise than by effluxion of time, the Governor may, on the recommendation of the Minister, appoint to the vacant office for the unexpired part of the term of the office a person who is eligible for appointment to that office and section 95(3) or (4), as the case requires, applies in respect of such a recommendation.

[Section 96 amended by No. 42 of 2004 s. 83 and 151; No. 18 of 2009 s. 94.]

97. Meetings

(1) WorkCover WA's governing body shall hold such meetings at such times and places as are necessary to enable it to exercise and discharge the powers, authorities, functions, and duties conferred or imposed under this Act and the Minister may at any time require the Chairman to convene a meeting of WorkCover WA's governing body to consider such matters as the Minister specifies.

(2) The Chairman is to preside at all meetings of WorkCover WA's governing body at which he is present and in his and his deputy's absence the members present may appoint one of their number to preside.

(3) At a meeting of WorkCover WA's governing body 4 members constitute a quorum.

(4) Any question arising at a meeting is to be decided by a majority of the members present and voting.

(5) The member presiding at a meeting has a deliberative vote and in the event of an equality of votes also has a casting vote.

(5a) Division 1AA is about a member of WorkCover WA's governing body having a material personal interest in a matter being considered or about to be considered by the governing body.

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(6) WorkCover WA is to cause accurate minutes to be kept of proceedings at its governing body's meetings.

(7) To the extent that it is not prescribed WorkCover WA's governing body may determine its own procedure.

[Section 97 amended by No. 42 of 2004 s. 84, 150 and 151.]

98. Defects not to invalidate proceedings

An act, proceeding, or determination of WorkCover WA is not invalid on the ground only of a vacancy in the office of a member of its governing body or of any defect in the appointment of a member or his deputy.

[Section 98 amended by No. 42 of 2004 s. 85 and 150.]

99. Conditions of appointment

(1) A nominee member is not required to devote the whole of his time to the duties of his office.

(2) A member other than one who is in the Public Service is to be paid such fees and allowances as may be fixed by the Minister on the recommendation of the Minister for Public Sector Management.

[Section 99 amended by No. 86 of 1986 s. 5; No. 42 of 2004 s. 86.]

100. Functions of WorkCover WA

The functions of WorkCover WA are to administer this Act and without limiting the generality of the foregoing —

(a) to control and administer the General Account and the Trust Account;

(b) where necessary or desirable, to participate in research into the causes, incidence, and methods of prevention of accidents, injuries, losses of functions, and diseases in respect of which compensation may be payable under this Act;

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(c) where necessary or desirable, to assist in encouraging the prevention or minimising of accidents, injuries, losses of functions, and diseases in respect of which compensation may be payable under this Act;

[(d) deleted]

(da) to promote injury management;

(e) to coordinate arrangements generally to secure the care, supervision, and assistance of workers suffering injury in respect of which compensation is or may be payable under this Act;

(f) to obtain from persons who are insurers or self-insurers or are referred to in section 292(2)(a) or (b) or (3) and from courts information and returns enabling WorkCover WA to compile and record such statistics, records, and reports as it considers desirable for the better administration of this Act;

(fa) to keep under review the sufficiency of the information provided to WorkCover WA by persons who are insurers or self-insurers or are referred to in section 292(2)(a) or (b) or (3), and whether or not criteria developed by WorkCover WA or prescribed by the regulations for assessing the performance of those persons are being met;

(g) where necessary or desirable, to assist in investigating all matters relating to accidents, injuries, losses of functions, or diseases in respect of which compensation is or may be payable under this Act, to study the causes and various methods of treatment and the results of treatment of such accidents, injuries, losses of functions, and diseases;

[(h) deleted]

(i) to provide support services to any medical panel established under section 36 and to any medical

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assessment panel, approved medical specialist panel or specialised retraining assessment panel;

(j) to collect such statistics, records, reports, and other information as it may require to enable it to perform its obligations under section 151(a), and ensure that its functions under Part VIII are performed efficiently; and

(k) to advise the Minister on —

(i) matters to do with insurance that is required by this Act;

(ii) WorkCover WA's functions under this Act;

(iii) the policy to be followed in the State with regard to workers' compensation; and

(iv) any other matter referred by the Minister to WorkCover WA for its advice.

[Section 100 amended by No. 96 of 1990 s. 21; No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 87 and 150; No. 77 of 2006 Sch. 1 cl. 189(9).]

100A. Advisory committees

(1) WorkCover WA may at any time and when so requested by the Minister shall appoint advisory committees to assist it in the performance of its functions and duties.

(2) Subject to this section, an advisory committee shall consist of such number of persons as are appointed by WorkCover WA and at least one of them is to be a member of WorkCover WA's governing body.

(3) The member of an advisory committee who is a member of WorkCover WA's governing body or, if there are 2 or more of them, whichever of them is specified in their appointment as the person who is to preside, is to preside at meetings of the committee but, subject to the direction of WorkCover WA, an advisory committee may otherwise determine its own procedures.

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(4) The members of advisory committees are entitled to be paid such fees and allowances as may be determined by the Minister on the recommendation of the Minister for Public Sector Management.

(5) The fees and allowances mentioned in subsection (4) shall be paid by WorkCover WA from moneys standing to the credit of the General Account.

(6) In appointing persons to be members of advisory committees under this section WorkCover WA shall, as far as is practicable, appoint persons experienced in employers' interests, persons experienced in workers' interests, persons with experience relevant to the kinds of matters to be considered by the committee concerned, and such other persons as WorkCover WA considers appropriate.

(7) Despite subsection (2), an advisory committee appointed for the purposes of section 146R or in connection with the assessment of matters of a medical nature is to consist of the following members —

(a) at least one member of WorkCover WA's governing body appointed by WorkCover WA;

(b) such medical practitioners as are nominated by the Australian Medical Association (WA) Incorporated and appointed by WorkCover WA with the approval of the Minister; and

(c) such other members as are appointed by WorkCover WA with the approval of the Minister and after consultation with the Australian Medical Association (WA) Incorporated.

(8) WorkCover WA may, with the Minister's approval, appoint members of an advisory committee under subsection (7) without complying with subsection (6).

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[Section 100A inserted by No. 96 of 1990 s. 22; amended by No. 49 of 1996 s. 64; No. 42 of 2004 s. 88 and 150; No. 77 of 2006 Sch. 1 cl. 189(9).]

100B. Disclosure of information

(1) If the chief executive officer of the department principally assisting the Minister in the administration of the *Occupational Safety and Health Act 1984* makes a written request to WorkCover WA to disclose information or data (including information and data about accidents, injuries and diseases) relevant to occupational safety and health that is in the possession of WorkCover WA, WorkCover WA is to comply with the request.

(2) This section has effect despite any other provision of this Act.

[Section 100B inserted by No. 42 of 2004 s. 89.]

101. Powers

WorkCover WA may do all things that are necessary, expedient, or desirable to be done for or in connection with the performance of its functions and without limiting the generality of the foregoing or the powers expressly conferred elsewhere in this Act WorkCover WA has power —

(a) subject to section 102, to perform any of its functions by its officers or to provide facilities for others to do things to further the performance of any function or to arrange with others to provide facilities and to do any things to further the performance of any function and for any of those purposes to pay fees and allowances and to contribute towards expenses;

(aa) to charge for the provision of any service that it makes available such fees as it determines;

(b) to publish such information and findings as in the opinion of WorkCover WA would further the performance of its functions;

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(c) with the written approval of the Treasurer, to invest moneys from the General Account in such investments or securities, and subject to such conditions, as are specified in the instruments of approval;

(ca) to purchase, sell, lease, take on lease, mortgage, exchange or otherwise acquire, deal in or dispose of real and personal property;

(cb) to improve, develop or alter real property;

(d) to institute and maintain proceedings in the name of the WorkCover Western Australia Authority for any alleged breach of this Act; and

(e) to determine whether an insurer should be permitted to cancel a policy of insurance and, if so, upon what terms and, in any event, upon the term that the cancellation be effective as between the parties to the policy, irrespective of the terms of the policy and whether or not the policy was effected prior to the coming into operation of this Division.

[Section 101 amended by No. 104 of 1984 s. 4; No. 86 of 1986 s. 5; No. 96 of 1990 s. 23; No. 34 of 1999 s. 34; No. 42 of 2004 s. 90 and 150; No. 77 of 2006 Sch. 1 cl. 189(9).]

101AA. Delegation by WorkCover WA

(1) WorkCover WA may delegate to the chief executive officer or another officer of WorkCover WA or to any other member, or any group of members, of WorkCover WA's governing body any power or duty of WorkCover WA under another provision of this Act except if it is under Part VIII.

(2) The delegation must be in writing executed by WorkCover WA.

(3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so

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in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of WorkCover WA to perform a function through an officer or agent.

[Section 101AA inserted by No. 42 of 2004 s. 91.]

101A. Borrowings by WorkCover WA

(1) Subject to this Act WorkCover WA may, with the prior approval of the Treasurer, borrow such moneys as it thinks necessary from time to time for carrying out its functions.

(2) WorkCover WA shall not exercise the powers conferred by this section unless a proposal in writing showing —

(a) the terms and particulars of the proposed loan;

(b) the rate of interest to be paid on that loan;

(c) the purpose to which the money borrowed is to be applied; and

(d) the manner in which the loan is to be repaid,

shall first be submitted by it on the recommendation of the Minister to, and approved by, the Treasurer.

(3) Any moneys borrowed by WorkCover WA under this section may be raised as one loan or as several loans and in such manner as the Treasurer may approve, but the amount of the moneys so borrowed shall not in any one year exceed in the aggregate such amount as the Treasurer approves.

[Section 101A inserted by No. 104 of 1984 s. 5; amended by No. 42 of 2004 s. 150.]

101B. Guarantees of borrowings

(1) The Treasurer is hereby authorised to guarantee —

(a) the repayment of any amount borrowed from time to time under section 101A; and

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(b) the payment of interest and such other charges in respect of such borrowings as he has approved.

(2) Before a guarantee is given by the Treasurer under this section, WorkCover WA shall give to the Treasurer such security as the Treasurer may require and shall execute all such instruments as may be necessary for the purpose.

(3) The Treasurer shall cause any money required for fulfilling any guarantee given by him under this section to be charged to the Consolidated Account which, to the extent necessary, is hereby appropriated accordingly and the Treasurer shall cause any amounts received or recovered from WorkCover WA or otherwise in respect of moneys so charged by him to be credited to the Consolidated Account.

[Section 101B inserted by No. 104 of 1984 s. 5; amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 42 of 2004 s. 150; No. 77 of 2006 s. 4.]

102. Limitation on powers

Apart from coordinating arrangements in the matters referred to in section 100(e), WorkCover WA or its officers shall not provide facilities or perform services for or in respect of those matters unless directed to do so by the Minister.

[Section 102 amended by No. 42 of 2004 s. 92 and 150.]

*[**103.** Deleted by No. 34 of 1999 s. 35.]*

103A. Returns

(1) A person being or having been an insurer, a self-insurer, or a person referred to in section 292(2)(a) or (b) or (3) who refuses or fails to furnish to WorkCover WA, within such reasonable time as is specified by WorkCover WA, any information or return requested in writing by WorkCover WA in order to enable it to compile and record such statistics, records and

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reports as it considers desirable for the better administration of this Act, commits an offence.

(2) A person who furnishes to WorkCover WA under subsection (1) any information or return that is false in a material particular commits an offence.

Penalty: $2 000.

[Section 103A inserted by No. 44 of 1985 s. 24; amended by No. 96 of 1990 s. 25; No. 42 of 2004 s. 93 and 150.]

104. Publishing and furnishing information

WorkCover WA may —

(a) from time to time, publish information for the guidance of the public on workers' compensation matters; and

(b) when requested, furnish workers and employers with information in respect of ways and means available to them to establish or protect their rights or perform their obligations under this Act.

[Section 104 amended by No. 42 of 2004 s. 94 and 150.]

Division 1AA — Personal interest

[Heading inserted by No. 42 of 2004 s. 95.]

104AA. Disclosure of interests

(1) A member of WorkCover WA's governing body who has a material personal interest in a matter being considered or about to be considered by the governing body must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the governing body.

Penalty: $10 000.

(2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting.

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[Section 104AA inserted by No. 42 of 2004 s. 95.]

104AB. Exclusion of interested member

(1) A member of WorkCover WA's governing body who has a material personal interest in a matter that is being considered by the governing body —

(a) must not vote on the matter; and

(b) must not be present while the matter is being considered at a meeting.

(2) In subsection (1)(a) and (b) a reference to a matter also refers to a proposed resolution under section 104AC in respect of the matter, whether relating to that member or a different member.

[Section 104AB inserted by No. 42 of 2004 s. 95.]

104AC. Resolution that section 104AB inapplicable

Section 104AB does not apply if the governing body has at any time passed a resolution that —

(a) specifies the member, the interest, and the matter; and

(b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

[Section 104AC inserted by No. 42 of 2004 s. 95.]

104AD. Quorum where section 104AB applies

Despite section 97(3), when the governing body is dealing with a matter in relation to which a member of the governing body is disqualified under section 104AB, 3 members who are entitled to vote on any motion that may be moved in relation to the matter constitute a quorum.

[Section 104AD inserted by No. 42 of 2004 s. 95.]

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104AE. Minister may declare sections 104AB and 104AD inapplicable

(1) The Minister may by writing declare that section 104AB or 104AD does not apply in relation to a specified matter either generally or in voting on particular resolutions.

(2) The Minister must within 14 sitting days after a declaration under subsection (1) is made cause a copy of the declaration to be laid before each House of Parliament.

[Section 104AE inserted by No. 42 of 2004 s. 95.]

[Division 1A (s. 104A, 104B) deleted by No. 42 of 2004 s. 96.]

Division 2 — Accounts and audit

105. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of WorkCover WA and its operations.

[Section 105 inserted by No. 98 of 1985 s. 3; amended by No. 42 of 2004 s. 150; No. 77 of 2006 Sch. 1 cl. 189(2).]

Division 3 — Workers' Compensation and Injury Management General Fund

[Heading inserted by No. 86 of 1986 s. 7; amended by No. 42 of 2004 s. 97.]

106. General Account

(1) For the purposes of this Act, an account called the Workers' Compensation and Injury Management General Account is to be established —

(a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or

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(b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.

(2) There shall be credited to the General Account —

[(a) deleted]

(b) all moneys, other than moneys payable to the Workers' Compensation and Injury Management Trust Account, whether from levies, contributions, penalties, fines, interest or other sources, received by or for WorkCover WA in the exercise of its functions under this Act;

(c) all moneys borrowed by WorkCover WA under section 101A; and

(d) any moneys required to be transferred to the General Account under section 6A(1) of the *Employers' Indemnity Supplementation Fund Act 1980*.

(3) There shall be paid from moneys standing to the credit of the General Account —

(a) all moneys required for the remuneration and allowances of members of the governing body of WorkCover WA and of WorkCover WA's staff;

(b) compensation payable by the General Account to a worker pursuant to this Act;

[(c) deleted]

(ca) interest on and repayments of money borrowed by WorkCover WA under section 101A and charges in respect of such borrowings;

(d) the costs of and incidental to proceedings instituted by WorkCover WA under this Act;

(da) any moneys required to be transferred to the Employers' Indemnity Supplementation Fund under section 6A(2) of the *Employers' Indemnity Supplementation Fund Act 1980*;

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(e) all other moneys, except those to be charged to the Trust Account, required by WorkCover WA and the DRD for carrying out their respective functions under this Act; and

(f) any other moneys so required to be paid under this Act or any other enactment.

[Section 106 amended by No. 79 of 1983 s. 3; No. 104 of 1984 s. 6; No. 86 of 1986 s. 9; No. 96 of 1990 s. 26; No. 1 of 1993 s. 14; No. 48 of 1993 s. 28(1); No. 49 of 1996 s. 64; No. 42 of 2004 s. 98 and 150; No. 77 of 2006 Sch. 1 cl. 189(3), (4) and (9).]

107. Estimates

(1) Notwithstanding the provisions of the *Financial Management Act 2006*, WorkCover WA shall in each year prepare an estimate of the amount necessary to be raised by way of levies and contributions payable to the General Account to carry out its functions under this Act; and, as soon as practicable after the preparation of the estimate, WorkCover WA shall submit it to the Minister and it shall not have any force or effect unless and until it is approved by the Minister.

(2) If the General Account is in surplus at the commencement of the year for which the estimate is being prepared, the estimate shall be calculated by deducting from the estimated expenditures the sum of —

(a) the estimated receipts of the General Account from all sources other than the levy and contributions; and

(b) the balance of the General Account at the commencement of the year.

(3) If the General Account is in deficit at the commencement of the year for which the estimate is being prepared, the estimate shall be calculated by deducting the estimated receipts of the General Account arising from all sources other than the levy and contributions, from the sum of —

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(a) the estimated expenditure; and

(b) the balance of the General Account at the commencement of the year.

(4) In calculating the estimate, both the estimated increase required in reserves over that year and depreciation may be included in the estimated expenditure of the General Account.

[Section 107 amended by No. 98 of 1985 s. 3; No. 96 of 1990 s. 27; No. 42 of 2004 s. 150; No. 77 of 2006 Sch. 1 cl. 189(5) and (9).]

108. Total contributions

For any one year WorkCover WA may levy as total contributions to the General Account an amount equal to the estimate for that year.

[Section 108 amended by No. 42 of 2004 s. 150; No. 77 of 2006 Sch. 1 cl. 189(9).]

109. Contributions to General Account by insurers

(1) Each insurer shall contribute annually to the General Account a sum equal to —

(a) the amount prescribed for the purposes of this subsection; or

(b) a sum amounting to a percentage to be fixed by WorkCover WA of the total amount of the premium income (whether received by or owing to the insurer) of the insurer in respect of the year ended 30 June then last past in respect of insurance of employers against their liability to pay compensation under this Act, and their liability under any other law in respect of persons employed by them, excluding any part of the premiums actually paid by way of reinsurance to any other insurer contributing under this Act, which percentage shall be uniform for all insurers,

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whichever is the greater.

(2) A contribution referred to in subsection (1) or (4) shall be paid on 1 October in each year or on such other days as WorkCover WA determines unless it exceeds $15 000, in which case it may be paid in quarterly instalments on 1 October, 1 January, 1 April and 1 June in each year or on such other days as WorkCover WA may determine, and where it, or any instalment of it, is not so paid WorkCover WA may sue and recover the amount of the contribution or instalment, as the case may be, from the insurer or self-insurer without affecting the liability of the insurer or self-insurer, as the case may be, to a penalty under subsection (3).

(2a) WorkCover WA shall give insurers and self-insurers at least 30 days written notice of any day determined under subsection (2).

(3) If any contribution referred to in subsection (1) or (4) or any instalment of it is not paid on or before any day prescribed or determined under subsection (2), the insurer, or self-insurer as the case may be, commits an offence.

Penalty: $2 000.

(4) A self-insurer shall, in respect of any period for which contributions to the General Account are payable by insurers, contribute to the General Account a sum equal to —

(a) the amount prescribed for the purposes of this subsection; or

(b) such contribution as WorkCover WA considers reasonable, assessed upon the wages, salaries, or other remuneration, including amounts paid to workers employed under an agreement to perform —

(i) a specified quantity of work for a specified sum;

(ii) work on piece rates;

(iii) work on a bonus or commission system; or

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(iv) work on any other system for payment by results,

paid by the self-insurer to workers during that period, having regard to the premium payable for insurance by employers engaged in the same or any similar trade, occupation, calling, or industry,

whichever is the greater, and the self-insurer shall upon demand and within such time as WorkCover WA may specify supply WorkCover WA with such particulars of the wages, salaries, or other remuneration paid by him during that period as are required by WorkCover WA.

(4a) If a self-insurer furnishes particulars to WorkCover WA under subsection (4) which are false in any material particular, the self-insurer is guilty of an offence.

Penalty: $5 000.

(4b) Any self-insurer failing to send particulars to WorkCover WA within the time specified under subsection (4) commits an offence and is liable to a penalty of $2 000 and a daily penalty not exceeding $100.

(5) In the month of July of each year or at such other time as WorkCover WA may appoint, every insurer shall send a return showing the amount of the premium income (whether received by or owing to the insurer) in respect of insurance of employers against their liability to pay compensation under this Act and their liability under any other law in respect of persons employed by them during the year ended 30 June then last past, excluding any part of that premium income actually paid by way of reinsurance to any other insurers contributing under this Act, together with a statutory declaration by the insurer or his or its manager, secretary, or agent in the State, that he has carefully examined the return and to the best of his knowledge, information, and belief the return is a true return of that amount.

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(6) Any insurer failing to send the return or statutory declaration in that month or by such other time as WorkCover WA shall appoint, as the case may be, commits an offence and is liable to a penalty of $2 000 and a daily penalty not exceeding $100.

(7) If an insurer sends a return which is false in any material particular, the insurer is guilty of an offence.

Penalty: $5 000.

[Section 109 amended by No. 44 of 1985 s. 25; No. 85 of 1986 s. 7; No. 34 of 1999 s. 57; No. 42 of 2004 s. 99 and 150; No. 77 of 2006 Sch. 1 cl. 189(9).]

Division 4 — Workers' Compensation and Injury Management Trust Fund

[Heading inserted by No. 86 of 1986 s. 7; amended by No. 42 of 2004 s. 100.]

110. Trust Account

(1) For the purposes of this Act, an account called the Workers' Compensation and Injury Management Trust Account is to be established —

(a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or

(b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.

(2) There shall be credited to the Trust Account all moneys paid to WorkCover WA under section 218.

(3) Moneys standing to the credit of the Trust Account shall become one common fund to be invested by WorkCover WA.

(4) Investments made from the Trust Account shall not be made on account of or belong to any particular person.

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(5) Interest or income earned by such investments shall be credited to the Trust Account.

(6) WorkCover WA may, with the written approval of the Treasurer, invest moneys standing to the credit of the Trust Account in such investments or securities, and subject to such conditions, as are specified in the instrument of approval.

(7) WorkCover WA with the approval of the Treasurer shall fix from time to time —

(a) the rate of interest payable to the respective persons entitled to money standing to the credit of the Trust Account in accordance with an order of a dispute resolution authority; and

(b) the proportion of the costs of administration of the Trust Account and investments from it to be charged to the respective persons entitled to money in the Trust Account.

(8) There shall be paid from moneys standing to the credit of the Trust Account —

(a) to WorkCover WA all money required for the cost of its administration; and

(b) to or on behalf of the respective persons entitled to money standing to the credit of the Trust Account, the amount apportioned to them respectively in accordance with an order of a dispute resolution authority, plus interest payable, and less charges made, under subsection (7).

[Section 110 amended by No. 86 of 1986 s. 10; No. 96 of 1990 s. 28; No. 48 of 1993 s. 28(1); No. 49 of 1996 s. 64; No. 34 of 1999 s. 36; No. 42 of 2004 s. 101 and 150; No. 77 of 2006 Sch. 1 cl. 189(6) and (9).]

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Division 5 — Ministerial control

111. Minister may give directions

(1) The Minister may give directions in writing to WorkCover WA with respect to the performance of its functions, either generally or in relation to a particular matter, unless prevented by subsection (1a) from doing so, and WorkCover WA shall give effect to any such direction.

(1a) The Minister cannot give to WorkCover WA any direction with respect to the performance of any of its functions under section 151 unless the direction is allowed by section 154AB.

(2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of WorkCover WA under Part 5 of the *Financial Management Act 2006*.

[Section 111 inserted by No. 72 of 1992 s. 14; amended by No. 42 of 2004 s. 102 and 150; No. 77 of 2006 Sch. 1 cl. 189(7).]

111A. Minister to have access to information

(1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled —

(a) to have information in the possession of WorkCover WA; and

(b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

(a) request WorkCover WA to furnish information to the Minister;

(b) request WorkCover WA to give the Minister access to information;

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(c) for the purposes of paragraph (b) make use of the staff of WorkCover WA to obtain the information and furnish it to the Minister.

(3) WorkCover WA shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

document includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

information means information specified, or of a description specified, by the Minister that relates to the functions of WorkCover WA;

parliamentary purposes means the purpose of —

(a) answering a question asked in a House of Parliament; or

(b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

[Section 111A inserted by No. 72 of 1992 s. 14; amended by No. 42 of 2004 s. 150.]

[Part VI: s. 112-120 deleted by No. 42 of 2004 s. 103; s. 121-144 deleted by No. 48 of 1993 s. 24.]

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Part VII — Medical assessment and assessment for specialised retraining programs

[Heading inserted by No. 42 of 2004 s. 104.]

Division 1 — Medical assessment panels

[Heading inserted by No. 42 of 2004 s. 104.]

145. Exclusion

A medical assessment panel does not have jurisdiction to deal with a question that is within the jurisdiction of a medical panel established under section 36.

[Section 145 inserted by No. 48 of 1993 s. 25.]

145A. Questions that have to be referred

(1) Subject to subsection (2), a question may be referred for determination by a medical assessment panel under section 210 only if —

(a) there is a conflict of medical opinion on the question between —

(i) a medical practitioner engaged by the worker; and

(ii) a medical practitioner provided and paid by the employer, or each medical practitioner so provided and paid if there is more than one of them;

and

(b) one of the parties wishes the proceedings to continue.

(2) A question as to the degree of permanent loss of the full efficient use of the back, neck or pelvis may be referred for determination by a medical assessment panel under section 210 if —

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(a) the employer does not agree to pay an amount claimed by the worker by way of an election made for the purposes of section 24; and

(b) the worker requests that the question be so referred.

[Section 145A inserted by No. 48 of 1993 s. 25; amended by No. 34 of 1999 s. 37; No. 42 of 2004 s. 105.]

145B. Register for panel membership

(1) The Director is to keep a register containing the names of medical practitioners approved under subsection (2) who are willing to be selected for a medical assessment panel.

(2) The Minister may, with the consent of the practitioner and after consultation with the Western Australian Branch of the Australian Medical Association Incorporated and other medical profession organisations, approve of the name of a medical practitioner being included in the register.

(3) A practitioner is only eligible to be registered under this section if practising in a clinical capacity.

[Section 145B inserted by No. 48 of 1993 s. 25.]

145C. Panel to be constituted

(1) On a question being referred for determination by a medical assessment panel, the Director is to select 3 medical practitioners who are registered under section 145B to be the panel that is to determine the question.

(2) Of the members of the panel at least one is to be a specialist in the particular branch of medicine or surgery that is relevant to the question.

(2a) Despite subsection (2), if the question is referred under clause 18A(2ab), each practitioner selected is to be a specialist in a branch of medicine or surgery that is relevant to the question.

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(3) A medical practitioner who has treated or examined the worker concerned in a professional capacity is not eligible to be a member of the panel.

(4) The Director is to nominate one of the members of the panel to be its chairman.

[Section 145C inserted by No. 48 of 1993 s. 25; amended by No. 34 of 1999 s. 38; No. 42 of 2004 s. 106.]

145D. Procedures

(1) In determining the question the panel is to act speedily and informally, and in accordance with good conscience, without regard to technicalities or legal forms and, except as provided under this Act, is not bound by rules of practice nor evidence.

(2) The panel may, for the purposes of assisting it in determining the question, require the worker concerned to —

(a) attend before the panel;

(b) answer questions put by the panel;

(c) produce documents to the panel, or consent to another person who has relevant documents producing them to the panel;

(d) submit to medical examination by the panel,

but the panel is not authorised to treat the worker or require that the worker be treated.

(3) Powers given by subsection (2) to a panel are to be exercised in private unless the worker otherwise consents, and any information or document obtained from, or by the consent of, the worker is not to be disclosed or given to any other person, except the person from whom it was obtained, without the consent of the worker.

(4) A person is not entitled to be represented in proceedings before a medical panel.

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(5) If the worker concerned, without reasonable excuse (proof of which is on the worker) —

(a) refuses to comply with a requirement made by the panel under subsection (2)(a), (b) or (c); or

(b) on being required to submit to examination by the panel, refuses to do so or in any way obstructs the examination,

an arbitrator may issue a certificate to that effect whereupon the worker's right to compensation or to take or prosecute any proceeding under this Act or, in the case of a worker in receipt of a weekly payment, to that weekly payment, is suspended until an arbitrator certifies that the suspension is removed.

(6) To the extent that the practice and procedure of a medical assessment panel are not prescribed under this Act, they are to be as the panel determines.

[Section 145D inserted by No. 48 of 1993 s. 25; amended by No. 42 of 2004 s. 107.]

145E. Determinations

(1) If the members of the panel are not in unanimous agreement as to a question, the question is to be determined in accordance with the opinion of at least 2 members of the panel.

(2) The determination is to be made as soon as is practicable but in any event within 28 days after the day on which a medical examination of the worker concerned is carried out by the panel.

(3) The determination and the reasons for making it are to be given in writing signed by the Chairman in a form approved by the Director, and are to be given to the Director within 7 days after the day on which the determination is made.

(4) The Director is to give the determination and reasons to the person who referred the question to the panel and the worker concerned within 7 days after the day on which the Director receives them.

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(5) The determination is not relevant in relation to —

(a) a determination of an arbitrator under Part III Division 2A as to the permanent or other impairment of the efficient use of any part or faculty of the body for the purposes of Part III Division 2A, or the degree of that impairment;

(b) an action for damages independently of this Act if Part IV Division 2 Subdivision 3 applies to the awarding of damages in the action;

(c) a determination of an arbitrator under section 158C or 158D; or

(d) a determination of an arbitrator for the purposes of clause 18A(2aa)(b).

(6) Unless rescinded under section 145F, the determination, or if the determination is varied under that section the determination as varied, is final and binding on the worker and the worker's employer and on any court or tribunal hearing a matter in which any such determination is relevant.

(7) The determination is, in the absence of evidence that the determination was rescinded or varied under section 145F, conclusive evidence as to the matters determined.

(8) A determination of a medical assessment panel is not —

(a) to be vitiated because of any informality or want of form; or

(b) subject to an appeal.

(9) A decision of a medical assessment panel or anything done under this Act in the process of coming to a decision of a medical assessment panel is not amenable to judicial review.

[Section 145E inserted by No. 48 of 1993 s. 25; amended by No. 42 of 2004 s. 108.]

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145F. Review

(1) If at least 60 days after the determination is made a person who is affected by the determination satisfies the Director that there is any new evidence that could not have been submitted to the panel and would be likely to affect the determination of the question if it were to be reconsidered by the panel the Director may again refer the question to the panel.

(2) The panel may refer to anything that was available to it when previously determining the matter as well as doing anything that it could do if the question were referred to it for determination in the first instance.

(3) The panel may vary its previous determination or rescind it and make a new determination.

(4) Sections 145D and 145E and this section also apply in relation to a determination under this section.

[Section 145F inserted by No. 48 of 1993 s. 25.]

145G. Remuneration

(1) A member of a medical assessment panel is entitled to such fees and allowances as may be determined by the Minister.

(2) The fees and allowances mentioned in subsection (1) shall be paid by WorkCover WA from moneys standing to the credit of the General Account.

[Section 145G inserted by No. 48 of 1993 s. 25; amended by No. 49 of 1996 s. 64; No. 42 of 2004 s. 150; No. 77 of 2006 Sch. 1 cl. 189(9).]

Division 2 — Assessing degree of impairment

[Heading inserted by No. 42 of 2004 s. 109.]

146. Terms used

In this Part —

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degree of impairment, in relation to a worker, means —

(a) the worker's degree of permanent impairment for the purposes of Part III Division 2A;

(b) the worker's degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3;

(c) the worker's degree of permanent whole of person impairment for the purposes of Part IXA;

(d) the worker's degree of permanent whole of person impairment for the purposes of clause 18A;

secondary condition means a condition, whether psychological, psychiatric, or sexual, that, although it may result from the injury or injuries concerned, arises as a secondary, or less direct, consequence of that injury or those injuries.

[Section 146 inserted by No. 42 of 2004 s. 109.]

146A. Evaluation of impairment generally

(1) Subject to sections 146B, 146C, 146D and 146E, a worker's degree of impairment is to be evaluated, as a percentage, in accordance with the WorkCover Guides.

(2) If a worker and the employer do not agree about the evaluation of the worker's degree of impairment, it is to be assessed by an approved medical specialist or, if this Act so provides, an approved medical specialist panel.

(3) A request for assessment by an approved medical specialist is to be made in accordance with the regulations.

(4) For a case in which the evaluation of the degree of impairment of the worker involves taking into account a recurrence, aggravation, or acceleration of any pre-existing disease that was to any extent asymptomatic before the event from which the injury or injuries arose, the WorkCover Guides are not to provide for a deduction to reflect the pre-existing nature of that disease to the extent that it was asymptomatic before that event.

Extract from www.slp.wa.gov.au, see that website for further information

[Section 146A inserted by No. 42 of 2004 s. 109.]

146B. Evaluation for the purposes of Part III Division 2A

(1) This section applies to an evaluation of a worker's degree of permanent impairment for the purposes of Part III Division 2A.

(2) Section 146A(2) does not prevent a finding that the worker's condition has not stabilised to the extent required for an evaluation of the worker's degree of permanent impairment to be made in accordance with the WorkCover Guides for the purposes of Part III Division 2A.

[Section 146B inserted by No. 42 of 2004 s. 109.]

146C. Evaluation for purposes of Part IV Division 2 Subdivision 3

(1) This section applies to an evaluation of a worker's degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3.

(2) Section 146A(2) does not prevent a finding that the worker's condition has not stabilised to the extent required for a normal evaluation of the worker's degree of permanent whole of person impairment to be made in accordance with the WorkCover Guides.

(3) In subsection (2) —

normal evaluation means an evaluation that is not a special evaluation as defined in subsection (4).

(4) If this Act provides for a special evaluation of the worker's degree of permanent whole of person impairment to be made in accordance with this section, the evaluation (a ***special evaluation***) is to be made, even though the worker's condition has not stabilised to the extent otherwise required for an evaluation to be made in accordance with the WorkCover Guides, in accordance with any provisions of the WorkCover Guides that apply to a special evaluation.

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(5) If the evaluation of a worker's degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3 is assessed on the basis that the worker's condition has not stabilised to the extent otherwise required for an evaluation to be made in accordance with the WorkCover Guides, the evaluation has to be a special evaluation made in accordance with this section.

(6) In evaluating the degree of permanent whole of person impairment of the worker, any secondary condition is to be disregarded.

(7) Subsection (6) does not prevent a secondary condition from contributing in the assessment of damages by a court.

[Section 146C inserted by No. 42 of 2004 s. 109.]

146D. Evaluation for the purposes of Part IXA

(1) This section applies to an evaluation of a worker's degree of permanent whole of person impairment for the purposes of Part IXA.

(2) Section 146A(2) does not prevent a finding that the worker's condition has not stabilised to the extent required for an evaluation of the worker's degree of permanent whole of person impairment to be made in accordance with the WorkCover Guides for the purposes of Part IXA.

(3) In evaluating the degree of permanent whole of person impairment of the worker, any secondary condition is to be disregarded.

[Section 146D inserted by No. 42 of 2004 s. 109.]

146E. Evaluation for the purposes of clause 18A

(1) This section applies to an evaluation of a worker's degree of permanent whole of person impairment for the purposes of clause 18A.

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(2) The evaluation (a ***special evaluation***) is to be made even if the worker's condition has not stabilised —

(a) in the case of an evaluation for the purposes of clause 18A(2aa)(a), by an approved medical specialist;

(b) in the case of an evaluation for the purposes of clause 18A(2aa)(b) if the employer disputes the assessment referred to in clause 18A(2aa)(a), by an approved medical specialist panel,

in accordance with any provisions of the WorkCover Guides that apply to a special evaluation for the purposes of this section.

(3) In evaluating the degree of permanent whole of person impairment of the worker, any secondary condition is to be disregarded.

[Section 146E inserted by No. 42 of 2004 s. 109.]

146F. Approved medical specialist

(1) WorkCover WA may, by order published in the *Gazette*, designate a person as an approved medical specialist if the person is a medical practitioner who in WorkCover WA's opinion, is sufficiently trained in the use of the WorkCover Guides and otherwise satisfies criteria for designation as an approved medical specialist that WorkCover WA for the time being applies.

(2) WorkCover WA is required to publish in the *Gazette* the criteria that it applies for deciding whether a medical practitioner is suitable for designation as an approved medical specialist.

(3) WorkCover WA may require an approved medical specialist to enter into a written agreement with WorkCover WA about the procedures to be followed and the fees to be charged for, and other matters relating to, the performance of functions as an approved medical specialist and other matters relevant to the implementation of this Act.

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(4) WorkCover WA may, by order published in the *Gazette*, cancel the designation of a person as an approved medical specialist.

(5) WorkCover WA is required to monitor assessments for consistency and monitor compliance with this Act and agreements under subsection (3).

(6) The Director is to keep a register identifying persons who have been designated as approved medical specialists showing —

(a) the day on which the person was designated; and

(b) if a person's designation as an approved medical specialist has been cancelled, the day on which it was cancelled.

(7) The Director is to make the register available for inspection at any reasonable time by any member of the public.

[Section 146F inserted by No. 42 of 2004 s. 109.]

146G. Powers of approved medical specialist

(1) On being requested to assess a worker's degree of impairment, an approved medical specialist may —

(a) in accordance with the regulations, require the worker to attend at a place specified by the approved medical specialist;

(b) require the worker to answer any question about the injury;

(c) in accordance with the regulations, require the worker, the employer, or the employer's insurer to —

(i) produce to the approved medical specialist any relevant document or information; or

(ii) consent to another person who has any relevant document or information producing it to the approved medical specialist;

(d) require the worker to submit to examination by, or as requested by, the approved medical specialist.

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(2) Regulations may be made —

(a) requiring a worker who requests an assessment of the worker's degree of impairment to produce any information described in the regulations for use in dealing with the request, and prescribing a fine of not more than $2 000 for a contravention of the requirement;

(b) about the time within which a requirement made under subsection (1) or imposed by a regulation under paragraph (a) has to be complied with if the time for complying is not specified in the requirement.

(3) A person who contravenes a requirement under subsection (1) commits an offence and is liable to a fine of $2 000.

(4) If the assessment is sought for the purpose of court proceedings and a person contravenes a requirement made under subsection (1) or imposed by a regulation under subsection (2), the court may order that the proceedings be stayed, either wholly or in part, or that any pleading be struck out.

[Section 146G inserted by No. 42 of 2004 s. 109.]

146H. Outcome of assessment

(1) An approved medical specialist making an assessment for the purposes of Part III Division 2A, Part IV Division 2 Subdivision 3, Part IXA or clause 18A is required to give to each of the worker and the employer, in writing in accordance with the regulations —

(a) a report of the worker's degree of impairment, including details of the assessment and reasons justifying the assessment; and

(b) a certificate specifying the worker's degree of impairment.

(2) An approved medical specialist giving a certificate —

(a) for the purposes of Part III Division 2A or Part IXA that a worker's condition has not stabilised to the extent

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required for an evaluation to be made in accordance with the WorkCover Guides as described in sections 146A, 146B, and 146D; or

(b) for the purposes of Part IV Division 2 Subdivision 3 that a worker's condition has not stabilised to the extent required for a normal evaluation to be made in accordance with the WorkCover Guides as described in sections 146A and 146C,

is required to give to each of the worker and the employer, in writing in accordance with the regulations —

(c) a report of any relevant details provided by the worker; and

(d) brief reasons justifying the finding certified.

(3) A certificate for the purposes of —

(a) Part III Division 2A;

(b) Part IV Division 2 Subdivision 3;

(c) Part IXA; or

(d) clause 18A,

is to specify the provisions for the purposes of which it is made.

(4) A certificate for the purposes of the provisions referred to in one of paragraphs (a), (b), (c) or (d) of subsection (3) —

(a) is not to be given for the purposes of the provisions referred to in any of the other paragraphs; and

(b) has no effect for the purposes of the provisions referred to in any of the other paragraphs.

(5) If any of the documents described in subsection (1) or (2) is produced to the Director for the purposes of Part III Division 2A, Part IV Division 2 Subdivision 3, Part IXA or clause 18A and a factual error is apparent on the face of the document, the Director may reject the document and require the approved medical specialist to replace it with a correct

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document given to each of the recipients of the document that contained the error.

[Section 146H inserted by No. 42 of 2004 s. 109; amended by No. 16 of 2005 s. 18.]

146I. Release of information relevant to assessment

If an approved medical specialist has been requested to assess a worker's degree of impairment, WorkCover WA may, with the consent of the worker, disclose to the approved medical specialist any information that it has in relation to the worker that may be relevant to the assessment.

[Section 146I inserted by No. 42 of 2004 s. 109.]

146J. Decisions of approved medical specialist

(1) A decision of an approved medical specialist or anything done under this Act in the process of coming to a decision of an approved medical specialist is not amenable to judicial review.

(2) In subsection (1) —

decision of an approved medical specialist means an opinion, assessment, or other decision of an approved medical specialist that is relevant to the operation of Part III Division 2A, Part IV Division 2, Part IXA or clause 18A.

[Section 146J inserted by No. 42 of 2004 s. 109.]

Division 3 — Approved medical specialist panels

[Heading inserted by No. 42 of 2004 s. 109.]

146K. Panel to be constituted

(1) On a question being referred under section 31D(4), 158C(2)(b) or clause 18C for assessment by an approved medical specialist panel, the Director is to select 2 approved medical specialists to be the panel that is to assess the degree of impairment.

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(2) An approved medical specialist who has treated or examined the worker concerned in a professional capacity or in the capacity of an approved medical specialist is not eligible to be a member of the panel.

(3) If a referral is made to an approved medical specialist panel, WorkCover WA may, with the consent of the worker, disclose to the panel any information that it has in relation to the worker that may be relevant to the assessment.

[Section 146K inserted by No. 42 of 2004 s. 109.]

146L. Procedures

(1) In assessing the degree of impairment the approved medical specialist panel —

(a) is to act speedily and informally, and in accordance with good conscience, without regard to technicalities or legal forms; and

(b) is not bound by rules of evidence.

(2) On being referred a question as to a worker's degree of impairment, an approved medical specialist panel may —

(a) in accordance with the regulations, require the worker to attend at a place specified by the approved medical specialist panel;

(b) require the worker to answer any question about the injury;

(c) in accordance with the regulations, require the worker, the employer, or the employer's insurer to —

(i) produce to the approved medical specialist panel any relevant document or information; or

(ii) consent to another person who has any relevant document or information producing it to the approved medical specialist panel;

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(d) require the worker to submit to examination by, or as requested by, the members of the approved medical specialist panel.

(3) Regulations may be made —

(a) requiring a worker in respect of whom a question as to degree of impairment has been referred to an approved medical specialist panel to produce any information described in the regulations for use in dealing with the referral, and prescribing a fine of not more than $2 000 for a contravention of the requirement;

(b) about the time within which a requirement made under subsection (2) or imposed by a regulation under paragraph (a) has to be complied with if the time for complying is not specified in the requirement.

(4) Powers given by subsection (2)(a), (b) or (d) are to be exercised in private unless the worker otherwise consents, and any information or document obtained from, or by the consent of, the worker is not to be disclosed or given to any other person, except the person from whom it was obtained, without the consent of the worker.

(5) A person is not entitled to be represented in proceedings before an approved medical specialist panel.

(6) To the extent that the practice and procedure of an approved medical specialist panel are not prescribed under this Act, they are to be as the panel determines.

[Section 146L inserted by No. 42 of 2004 s. 109.]

146M. Failure to comply with requirement of approved medical specialist panel

(1) If a worker —

(a) fails to comply with a requirement made by an approved medical specialist panel under section 146L(2)(a), (b) or (c); or

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(b) on being required to submit to examination by the panel refuses or fails to do so or in any way obstructs the examination,

an arbitrator may issue a certificate to that effect and upon the issue of that certificate the making of an assessment of the worker's degree of impairment is suspended until an arbitrator certifies that the suspension is removed.

(2) An arbitrator is not to issue a certificate under subsection (1) if the worker satisfies the arbitrator that there was a reasonable excuse for refusing or failing to comply with the requirement or obstructing the examination.

(3) An employer or insurer who refuses or fails to comply with a requirement of an approved medical specialist panel under section 146L(2)(c) commits an offence.

Penalty: $5 000.

(4) It is a defence to a charge under subsection (3) to prove that the employer or insurer had a reasonable excuse for failing to comply with the requirement.

[Section 146M inserted by No. 42 of 2004 s. 109.]

146N. Assessment of impairment by approved medical specialist panel

A worker's degree of impairment is to be assessed by an approved medical specialist panel in accordance with section 146A, and section 146B, 146D or 146E, as the case requires.

[Section 146N inserted by No. 42 of 2004 s. 109.]

146O. Outcome of assessment by approved medical specialist panel

(1) Subject to section 146P, the assessment is to be made as soon as is practicable after the day on which a medical examination of

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the worker concerned is carried out by the approved medical specialist panel.

(2) An approved medical specialist panel is required to give to the Director in writing in accordance with the regulations —

(a) a report of the worker's degree of impairment, including details of the assessment and reasons justifying the assessment; and

(b) a certificate specifying the worker's degree of impairment.

(3) The Director is to give copies of the report and certificate to the arbitrator who referred the question to the panel, the worker concerned, and the employer of the worker concerned, within 7 days after the day on which the Director receives them.

(4) The assessment is —

(a) final and binding on the worker, the worker's employer, on any dispute resolution authority, court or tribunal hearing a matter in which any such determination is relevant and on any other approved medical specialist panel; and

(b) conclusive evidence as to the matters determined.

(5) An assessment of an approved medical specialist panel is not —

(a) to be vitiated because of any informality or want of form; or

(b) subject to an appeal.

(6) A decision of an approved medical specialist panel or anything done under this Act in the process of coming to a decision of an approved medical specialist panel is not amenable to judicial review.

(7) In subsection (6) —

decision of an approved medical specialist panel means an opinion, assessment, or other decision of an approved medical

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specialist panel that is relevant to the operation of Part III Division 2A, Part IXA or clause 18A.

(8) If a factual error is apparent on the face of any of the documents described in subsection (1) or (2), the Director may reject the document and require the approved medical specialist panel to replace it with a correct document which the Director is to give to each of the recipients of the document that contained the error.

[Section 146O inserted by No. 42 of 2004 s. 109; amended by No. 16 of 2005 s. 19.]

146P. No assessment without unanimous agreement

(1) If the members of the approved medical specialist panel are not in unanimous agreement as to the degree of impairment, the panel is discharged and a new panel is to be selected to assess the worker's degree of impairment in accordance with section 146N.

(2) A member of a panel discharged under subsection (1) is not eligible to be selected as a member of a new panel under that subsection.

[Section 146P inserted by No. 42 of 2004 s. 109.]

146Q. Remuneration

(1) A member of an approved medical specialist panel is entitled to such fees and allowances as may be determined by the Minister.

(2) The fees and allowances mentioned in subsection (1) are to be paid by WorkCover WA from moneys standing to the credit of the General Account.

[Section 146Q inserted by No. 42 of 2004 s. 109; amended by No. 77 of 2006 Sch. 1 cl. 189(9).]

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Division 4 — WorkCover Guides

[Heading inserted by No. 42 of 2004 s. 109.]

146R. WorkCover Guides

(1) WorkCover WA may issue directions with respect to the evaluation of degree of impairment.

(2) The directions, and any amendment of them, are to be developed in consultation with an advisory committee appointed under section 100A for the purposes of this section.

(3) The directions may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.

(4) Sections 41, 42, 43 and 44 of the *Interpretation Act 1984* apply to the directions as if they were regulations.

[Section 146R inserted by No. 42 of 2004 s. 109.]

Division 5 — Assessment for specialised retraining programs

[Heading inserted by No. 42 of 2004 s. 110.]

146S. Register for panel membership

(1) The Director is to keep a register, with such divisions as the Director considers appropriate, containing the names of persons approved under subsection (2) who are willing to be selected for a specialised retraining assessment panel.

(2) WorkCover WA may, with the person's consent, approve of the name of a person being included in the register.

[Section 146S inserted by No. 42 of 2004 s. 110.]

146T. Panel to be constituted

(1) On a question being referred under section 158D(2) for assessment by a specialised retraining assessment panel, the

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Director is to select 3 persons who are registered under section 146S to be the panel that is to make the assessment.

(2) Of the members of the panel —

(a) one is to be an occupational physician who is an approved medical specialist;

(b) one is to be a person —

(i) who in the opinion of WorkCover WA, has knowledge of, and experience in, matters relating to the labour market; and

(ii) who is not an officer of WorkCover WA;

(c) one is to be an officer of WorkCover WA who is experienced in the review of injury management.

(3) A person is not eligible to be a member of the panel if the person —

(a) has treated or examined the worker concerned in a professional capacity; or

(b) has had dealings with, or has knowledge of, the worker concerned in a professional capacity.

(4) The Director is to nominate one of the members of the panel to be its chairman.

[Section 146T inserted by No. 42 of 2004 s. 110.]

146U. Procedures

(1) In making an assessment a specialised retraining assessment panel is to act speedily and informally, and in accordance with good conscience, without regard to technicalities or legal forms and, except as provided in this Act, is not bound by rules of practice nor evidence.

(2) For the purposes of assisting it in making an assessment a specialised retraining assessment panel may request the worker,

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employer, insurer, medical practitioner or approved vocational rehabilitation provider concerned —

(a) to attend before the panel;

(b) to answer questions put by the panel;

(c) to produce to the panel any relevant document; or

(d) to authorise any person who possesses a relevant document to produce it to the panel.

(3) Powers given by subsection (2) to a panel are to be exercised in private unless the worker otherwise consents, and any information or document obtained from, or by the consent of, the worker is not to be disclosed or given to any other person, except the person from whom it was obtained, without the consent of the worker.

(4) A person is not entitled to be represented in proceedings before a specialised retraining assessment panel.

(5) If the worker concerned, without reasonable excuse (proof of which is on the worker), refuses to comply with a request made by the panel under subsection (2)(a), (b), (c) or (d), an arbitrator may issue a certificate to that effect and upon the issue of the certificate the making of an assessment in relation to the retraining criterion in question is suspended until an arbitrator certifies that the suspension is removed.

(6) To the extent that the practice and procedure of a specialised retraining assessment panel are not prescribed under this Act, they are to be as the panel determines.

[Section 146U inserted by No. 42 of 2004 s. 110.]

146V. Assessments

(1) If the members of a specialised retraining assessment panel are not in unanimous agreement as to a question, the assessment is to be made in accordance with the opinion of at least 2 members of the panel.

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(2) The assessment is to be made as soon as is practicable but in any event within 28 days after the day on which the panel first convenes to make the assessment.

(3) The assessment and the reasons for making it are to be given in writing signed by the chairman in a form approved by the Director, and are to be given to the Director within 7 days after the day on which the assessment is made.

(4) The Director is to give the assessment and reasons to the person who referred the question to the panel and the worker concerned within 7 days after the day on which the Director receives them.

(5) The assessment is not relevant in relation to an action for damages independently of this Act if Part IV Division 2 Subdivision 3 applies to the awarding of damages in the action.

(6) The assessment is —

(a) final and binding on the worker and the worker's employer and on any body hearing a matter in which any such assessment is relevant; and

(b) conclusive evidence as to the matters assessed.

(7) An assessment of a specialised retraining assessment panel is not —

(a) to be vitiated because of any informality or want of form; or

(b) subject to an appeal.

(8) A decision of a specialised retraining assessment panel or anything done under this Act in the process of coming to a decision of a specialised retraining assessment panel is not amenable to judicial review.

(9) In subsection (8) —

decision of a specialised retraining assessment panel means an opinion, assessment, or other decision of a specialised retraining assessment panel that is relevant to the operation of Part IXA.

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[Section 146V inserted by No. 42 of 2004 s. 110.]

146W. Remuneration

(1) A member of a specialised retraining assessment panel who is not an officer of WorkCover WA is entitled to such fees and allowances as may be determined by the Minister.

(2) The fees and allowances mentioned in subsection (1) shall be paid by WorkCover WA from moneys standing to the credit of the General Account.

[Section 146W inserted by No. 42 of 2004 s. 110; amended by No. 77 of 2006 Sch. 1 cl. 189(9).]

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Part VIII — Premium rates

[Heading amended by No. 42 of 2004 s. 111.]

*[**147-150.** Deleted by No. 42 of 2004 s. 112.]*

151. Fixing premiums

For the purpose of fixing premium rates to be charged for insurance in respect of all insurable risks under this Act, the following provisions apply —

(a) WorkCover WA shall from time to time —

(i) fix categories of businesses or groups of businesses each with a different insurable risk and specify the types of business or occupation within each category;

(ii) on the basis formulated pursuant to paragraph (b) fix the appropriate recommended premium rate for each category; and

(iii) fix an additional industrial disease premium to cover claims in respect of pneumoconiosis and mesothelioma arising from employment in any mine or mining operation and claims in respect of other industrial diseases as may be specified by the Minister from time to time by notice published in the *Gazette*, which industrial disease premium shall be paid by employers in classes to be specified by WorkCover WA pursuant to paragraph (c) in respect of such claims;

(b) WorkCover WA is to formulate a basis expressed as a loss ratio for a category or group of categories on which basis it is to fix for each category a recommended premium rate pursuant to paragraph (a)(ii); and

(c) WorkCover WA may specify classes of employers specially fixed by the Minister the employers within which class are liable to pay the industrial disease

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premium at a rate specified by WorkCover WA for that class.

[Section 151 amended by No. 44 of 1985 s. 30; No. 96 of 1990 s. 30; No. 42 of 2004 s. 113 and 153.]

151A. Report as to rates

(1) Where under section 151(a)(ii) WorkCover WA fixes any recommended premium rate it shall, as soon as practicable thereafter, prepare and make available to any person upon request a report as to —

(a) the actuarial basis of any recommended premium rate fixed; and

(b) the comparative claims experience of the different businesses or groups of businesses concerned.

(2) A report under subsection (1) shall not contain information identifying or enabling the identification of any employer.

[Section 151A inserted by No. 96 of 1990 s. 31; amended by No. 42 of 2004 s. 153.]

152. Loading not to exceed 75% unless permitted by WorkCover WA

Unless permitted by WorkCover WA to do so, an insurer shall not charge a loading on a recommended premium rate of more than 75% of that rate.

Penalty: $1 000.

[Section 152 inserted by No. 34 of 1999 s. 40; amended by No. 42 of 2004 s. 114(1), (2) and 150.]

153. Fixing maximum loading or discount

Subject to section 152, WorkCover WA may set the maximum permissible loading or the maximum permissible discount which may be charged or given in respect of a recommended premium rate.

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[Section 153 amended by No. 42 of 2004 s. 115 and 150.]

153A. Minimum premiums

WorkCover WA may recommend a minimum premium for a policy or for any kind or description of policy, of insurance against liability to pay compensation under this Act, and an insurer may, notwithstanding sections 152 and 153, charge the premium so recommended or a lesser premium.

[Section 153A inserted by No. 33 of 1986 s. 6; amended by No. 42 of 2004 s. 153.]

154. Appeals

(1) An employer who is dissatisfied with —

(a) the type of business or occupation on the basis of which an insurer charges the premium required to insure him under this Act;

(b) the amount of the premium which an insurer assesses as required to insure him under this Act at the time of issue or renewal of the policy,

may appeal against the classification or assessment to WorkCover WA in the manner and within the time provided in subsections (2) and (4).

(2) The appeal is made by giving written notice of it —

(a) to WorkCover WA and the insurer within one month of being informed of the classification or assessment or within such further time as WorkCover WA may, in the circumstances of the case, consider it is reasonable to allow;

[(b) deleted]

stating the grounds of objection and the classification or assessment, as the case may be, the employer seeks.

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(3) Notwithstanding the notice of appeal the employer is to pay the premium as assessed by the insurer and the insurer is to issue or renew the policy.

(4) WorkCover WA may fix a time and place for the hearing of an appeal pursuant to subsection (1) and laying down its own procedure may hear and determine the appeal and, as the case requires, decide the proper classification or the proper assessment of the premium not exceeding that assessment initially sought by the insurer.

(5) If the effect of a decision on the appeal is that a lesser sum is payable by way of premium than that already paid to the insurer the insurer shall forthwith repay to the employer the amount of the overpayment and if he does not do so the employer may sue and recover the amount from the insurer.

[Section 154 amended by No. 51 of 1986 s. 46(2); No. 96 of 1990 s. 32; No. 34 of 1999 s. 41; No. 42 of 2004 s. 116, 150 and 153.]

154A. Regulations for provision of information

(1) Regulations may provide for an insurer to inform an employer of —

(a) specified details of the premium for, and other charges relating to, the policy;

(b) specified details of anything done under this Part that may be relevant to the premium;

(c) specified provisions of this Act, rights or obligations under this Act, or things done under this Act, that may be relevant to the premium.

(2) In subsection (1) —

employer means an employer holding, or seeking to obtain, a policy of insurance against liability to pay compensation under this Act;

specified means specified in the regulations.

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[Section 154A inserted by No. 42 of 2004 s. 117.]

154AB. Special directions by Minister

(1) The Minister may give directions in writing as to the effect that the matter described in subsection (2) is to have, while the directions remain in effect, on the fixing under section 151 of recommended premium rates.

(2) That matter is the extent to which the cost of paying compensation under this Act as amended by the *Workers' Compensation Reform Act 2004* in respect of claims made before section 141 of the *Workers' Compensation Reform Act 2004* commenced would differ from what it would have cost to pay compensation arising out of those claims if section 141 of the *Workers' Compensation Reform Act 2004* had not commenced.

(3) Effect is to be given to directions under this section.

[Section 154AB inserted by No. 42 of 2004 s. 117.]

154AC. Regulations for subsidy from Supplementation Fund

(1) The regulations may authorise WorkCover WA to approve an application by an employer for reimbursement of the cost of paying an award of damages to which Part IV Division 2 applies in a case in which a question as to the worker's degree of disability was referred under section 93EA(3) to the extent, if any, to which the cost exceeds the amount ascertained in accordance with regulations made for the purposes of this section.

(2) The amount of any reimbursement approved under the regulations is to be paid by WorkCover WA to the employer and charged against the Employers' Indemnity Supplementation Fund established under section 5(1) of the *Employers' Indemnity Supplementation Fund Act 1980*.

Extract from www.slp.wa.gov.au, see that website for further information

[Section 154AC inserted by No. 35 of 2004 s. 11; amended by No. 42 of 2004 s. 150.]

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Part IX — Injury management

[Heading inserted by No. 42 of 2004 s. 118.]

155. Terms used

In this Part —

code means the code of practice (injury management) issued under section 155A(1) that is currently in force;

injury management system means an injury management system established under section 155B;

return to work program means a return to work program established under section 155C(1);

treating medical practitioner, in relation to a worker, means the medical practitioner who the worker has chosen or accepted to have the primary responsibility for the medical care and coordination of medical care for the worker.

[Section 155 inserted by No. 42 of 2004 s. 118.]

155A. Code of practice (injury management)

(1) WorkCover WA may issue a code of practice (injury management).

(2) The code may include provisions and guidelines in relation to —

(a) the establishment, content and implementation of injury management systems;

(b) the establishment, content and implementation of return to work programs;

(c) the development by approved vocational rehabilitation providers of service delivery plans and the contents of, and other requirements in relation to, those plans;

(d) such other matters relating to injury management as WorkCover WA considers appropriate.

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(3) The code may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.

(4) Sections 41, 42, 43 and 44 of the *Interpretation Act 1984* apply to the code as if the code were regulations.

[Section 155A inserted by No. 42 of 2004 s. 118.]

155B. Establishment of injury management systems for employer's workers

Each employer is to ensure that —

(a) an injury management system is established in relation to the employer's workers; and

(b) the establishment, content and implementation of the injury management system are in accordance with the code.

Penalty: $2 000.

[Section 155B inserted by No. 42 of 2004 s. 118.]

155C. Establishment of return to work programs for individual workers

(1) An employer of a worker who has suffered an injury compensable under this Act must ensure that a return to work program is established for the worker as soon as practicable after either of the following occurs —

(a) the worker's treating medical practitioner advises the employer in writing that a return to work program should be established for the worker;

(b) the worker's treating medical practitioner signs a medical certificate to the effect that the worker has a total or partial capacity to return to work.

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(2) Subsection (1) does not require a return to work program to be established for a worker —

(a) who has returned to the position held by the worker immediately before the injury occurred; and

(b) who has a total capacity to work in that position.

(3) An employer must ensure that the establishment, content and implementation of a return to work program are in accordance with the code.

Penalty applicable to subsections (1) and (3): $2 000.

[Section 155C inserted by No. 42 of 2004 s. 118.]

155D. Injury management: insurers' obligations

(1) An insurer must take such action as is prescribed by the regulations in relation to making each employer who is insured by the insurer aware of the employer's obligations under sections 155B and 155C(1) and (3).

(2) If an insured employer requests the insurer to assist the employer to comply with any of the employer's obligations under section 155B or 155C(1) or (3), the insurer must take such action as is reasonable —

(a) to assist the employer to comply with the employer's obligations that are the subject of the employer's request; and

(b) to ensure that the employer complies with the employer's obligations that are the subject of the employer's request.

(3) If an insured employer requests the insurer to discharge the employer's obligations under section 155C(1) or (3) on behalf of the employer, the insurer must take such action as is reasonable —

(a) to discharge the employer's obligations that are the subject of the employer's request; and

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(b) to comply with the employer's obligations that are the subject of the employer's request,

within such time as is reasonable in the circumstances.

Penalty applicable to subsection (3): $2 000.

[Section 155D inserted by No. 42 of 2004 s. 118.]

156. Approval of vocational rehabilitation providers

(1) WorkCover WA may, in writing —

(a) subject to such conditions, if any, as it sees fit to impose, approve as a vocational rehabilitation provider any person WorkCover WA considers capable of satisfactorily providing vocational rehabilitation; and

(b) revoke any such approval.

(2) In considering whether or not to approve a person as a vocational rehabilitation provider, to impose conditions on any such approval, or to revoke any such approval, WorkCover WA —

(a) may have regard to performance criteria established by an advisory committee under section 100A, and to the advice of such a committee in a particular case; and

(b) in the case of the revocation of an approval that is subject to conditions, is to have regard to whether or not there has been compliance with the conditions.

(3) An implied and non-revocable condition of a person's approval as a vocational rehabilitation provider is that the person is to comply with the code in relation to —

(a) the development and content of service delivery plans;

(b) other requirements in relation to service delivery plans; and

(c) other requirements applicable to vocational rehabilitation providers.

Extract from www.slp.wa.gov.au, see that website for further information

[Section 156 inserted by No. 42 of 2004 s. 118.]

156A. Vocational rehabilitation services

(1) WorkCover WA, upon request, is to provide to workers, employers and other persons information as to the persons who are approved vocational rehabilitation providers.

(2) If a person providing vocational rehabilitation —

(a) is not an approved vocational rehabilitation provider; or

(b) is an approved vocational rehabilitation provider but contravenes a condition imposed in respect of the person's approval,

the amount of any fee or other reward paid in respect of the vocational rehabilitation is not to be regarded as a reasonable expense incurred in respect of vocational rehabilitation for the purposes of clause 17(1a).

(3) If a fee or other reward is paid for the provision of vocational rehabilitation mentioned in subsection (2) by a person who —

(a) not being approved as a vocational rehabilitation provider, held himself or herself out as being so approved; or

(b) being approved as a vocational rehabilitation provider subject to any condition, contravenes any such condition,

the person who paid the fee or other reward may recover as a debt due from that person the amount of the fee or other reward paid.

[Section 156A inserted by No. 42 of 2004 s. 118.]

156B. Arbitrators' powers in relation to return to work programs

(1) The employer of a worker, or a worker, may apply for an order of an arbitrator requiring the worker to participate in a return to work program.

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(2) The arbitrator may require the worker to participate in a return to work program if satisfied that —

(a) a return to work program is required under section 155C(1) to be established for the worker;

(b) the worker, without reasonable excuse, refuses or has failed to participate in a return to work program; and

(c) the establishment, content and implementation of the return to work program are, or will be, in accordance with the code.

(3) The arbitrator may require the worker to participate in a return to work program other than that proposed by or on behalf of a party to the application.

[Section 156B inserted by No. 42 of 2004 s. 118.]

157. Information about injury management matters

(1) WorkCover WA is to provide information and advice on injury management generally.

(2) WorkCover WA is to make available, upon request, to employers, workers and other persons such information or other assistance as it considers appropriate to facilitate the arranging of injury management.

(3) WorkCover WA may make arrangements with other persons or authorities for the use of facilities for providing information about injury management and related matters.

(4) An arbitrator may request WorkCover WA to provide information on injury management or related matters, and WorkCover WA is to provide that information to the arbitrator.

[Section 157 inserted by No. 42 of 2004 s. 118.]

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157A. Early identification of injuries that require, or may require, management

(1) An insurer or a self-insurer shall, not later than the expiration of 7 days after acquiring the knowledge referred to in paragraph (a) or (b), give to WorkCover WA notice in writing, containing the prescribed particulars, with respect to —

(a) a worker whose period of incapacity the insurer or self-insurer knows to have exceeded 4 consecutive weeks; or

(b) a worker whose periods of incapacity during any period of 12 months or less the insurer or self-insurer knows to have exceeded, in sum, 12 weeks.

Penalty: $1 000.

(2) Subsection (1) does not apply —

(a) to an insurer or self-insurer who is exempted under subsection (3) and who is acting in accordance with the exemption; or

(b) in relation to a period of incapacity with respect to which notice has already been given under —

(i) this section;

(ii) section 155 as in force before section 118 of the *Workers' Compensation Reform Act 2004* came into operation [1]; or

(iii) section 155 as in force before 8 March 1991, being the day on which section 33 of the *Workers' Compensation and Assistance Amendment Act 1990* came into operation [1].

(3) WorkCover WA may, in writing, exempt an insurer or a self-insurer from the requirement to comply with subsection (1), either absolutely or subject to such conditions as it sees fit to impose, and any such exemption has effect according to its tenor until revoked by WorkCover WA.

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(4) If WorkCover WA is of the opinion that a worker's injury should be reviewed to determine whether a return to work program should be established for the worker, WorkCover WA may —

(a) notify the worker, the worker's employer and the employer's insurer of that opinion; and

(b) inform those persons of the requirements of section 155C and 155D and their obligations under those provisions.

[Section 157A inserted by No. 42 of 2004 s. 118.]

157B. Mediation and assistance

WorkCover WA may provide mediation and independent guidance on injury management and related matters with a view to facilitating the informal resolution of questions and disputes arising from those matters.

[Section 157B inserted by No. 42 of 2004 s. 118.]

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Part IXA — Specialised retraining programs

[Heading inserted by No. 42 of 2004 s. 119.]

158. Terms used

(1) In this Part —

degree of permanent whole of person impairment means the degree of permanent whole of person impairment, evaluated as described in sections 146A and 146D, resulting from the injury or injuries arising from a single event, as defined in subsection (2);

retraining criteria, in relation to a worker, means the following criteria —

(a) the worker has participated in a return to work program established under section 155C(1) but has not been able to return to work;

(b) the worker has a capacity for retraining and is a person for whom a specialised retraining program is a viable option;

(c) formal vocational training or study through a technical or tertiary training course appears to be the only course of action that will enable the worker to return to work;

(d) it is reasonable to expect that a specialised retraining program will provide the worker with the qualification or skills necessary to return to work, having regard to the labour market, the worker's existing qualifications and work experience;

(e) such other criteria as may be prescribed in the regulations for the purposes of this definition.

(2) In the definition of ***degree of permanent whole of person impairment*** in subsection (1) —

event means anything that results, whether immediately or not and whether suddenly or not, in an injury or injuries of a worker

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and the term includes continuous or repeated exposure to conditions that result in an injury or injuries of a worker.

[Section 158 inserted by No. 42 of 2004 s. 119.]

158A. Eligibility to participate in specialised retraining programs

(1) A worker may participate in a specialised retraining program if —

(a) the worker has suffered an injury that is compensable under this Act;

(b) the injury occurred on or after the day on which section 119 of the *Workers' Compensation Reform Act 2004* comes into operation [1];

(c) either —

(i) the worker and the worker's employer agree that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%; or

(ii) an arbitrator has determined that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%;

and

(d) either —

(i) the worker and the worker's employer agree that the worker satisfies all of the retraining criteria; or

(ii) an arbitrator has determined that the worker satisfies all of the retraining criteria.

(2) A worker is eligible to participate in a specialised retraining program even if —

(a) the worker is receiving weekly payments under clause 7 or other compensation under Schedule 1; or

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(b) the weekly payments paid for periods of the incapacity arising from the worker's injury have reached the prescribed amount.

(3) Despite having suffered an injury referred to in subsection (1)(a) and (b), a worker is not eligible to participate in a specialised retraining program if —

(a) an election by the worker under section 93K(4) in respect of the injury has been registered;

(b) an agreement in respect of the whole of the liability for the incapacity or impairment arising from the injury has been registered under Part III Division 7;

(c) an order for redemption of the liability for incapacity arising from the injury has been made under section 67(1)(a) or (4);

(d) an order in respect of the whole of the liability for the incapacity or impairment arising from the injury has been made under Part XI; or

(e) the worker's claim for damages in respect of the injury or the incapacity or impairment arising from the injury has been settled by agreement independently of this Act and has not been disapproved under section 92(f).

(4) The participation of a worker in a specialised retraining program is subject to sections 158B and 158E.

[Section 158A inserted by No. 42 of 2004 s. 119.]

158B. Final day for recording agreed matters, referring disputed matters for determination

(1) A worker is not eligible to participate in a specialised retraining program unless, on or before the final day referred to in subsection (2) —

(a) either —

(i) the Director has, at the written request of the worker, recorded in accordance with the

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regulations an agreement as to the worker's degree of permanent whole of person impairment; or

(ii) if there is not agreement between the worker and the worker's employer as to the worker's degree of permanent whole of person impairment, the worker has applied under section 158C to have the matter in dispute determined by an arbitrator;

and

(b) either —

(i) the Director has, at the written request of the worker, recorded in accordance with the regulations an agreement that the worker satisfies all of the retraining criteria; or

(ii) if there is not agreement between the worker and the worker's employer that the worker satisfies all of the retraining criteria, the worker has applied under section 158D to have the matter in dispute determined by an arbitrator.

(2) If a claim for compensation by way of weekly payments has been made on an employer in accordance with section 178(1)(b) with respect to an injury of a worker, the final day for purposes of subsection (1) is the last day of the period of 2 years after the day on which the claim for compensation is made unless a later day is fixed under subsection (3) or (4).

(3) If, after the expiry of the period of 3 months after the day on which the claim is made —

(a) an arbitrator, acting under section 58(1) or (2), determines the question of liability to make the weekly payments claimed; or

(b) the worker is first notified that liability is accepted in respect of the weekly payments claimed,

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the final day is the last day of the period 1 year and 9 months after the day of the act described in paragraph (a) or (b) that was most recently done unless a later day is fixed under subsection (4).

(4) The Director may, in accordance with the regulations, from time to time extend the final day, but only if the Director is satisfied that the worker has, in accordance with the regulations and at least 8 weeks before the final day requested an approved medical specialist to assess the worker's degree of permanent whole of person impairment, but the worker could not take, or it would be impracticable for the worker to take, the action referred to in subsection (1) before the final day referred to in subsection (2).

(5) An extension under subsection (4) is to be to a day that is not more than 6 months after the day that would have been the final day had there been no extension under that subsection.

(6) An extension is to be in writing and the Director is required to give the worker and the employer each a copy of the extension.

(7) An extension may be given even though the final day has passed.

[Section 158B inserted by No. 42 of 2004 s. 119.]

158C. Disputes as to degree of permanent whole of person impairment

(1) If —

(a) there is not agreement between a worker and the worker's employer that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%; and

(b) the worker's degree of permanent whole of person impairment has been assessed by an approved medical specialist under sections 146A and 146D as at least 10% but less than 15%,

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but the employer disputes the assessment referred to in paragraph (b), the worker may apply to have the question as to the worker's degree of permanent whole of person impairment arising from the injury concerned determined by an arbitrator.

(2) An arbitrator to whom an application to determine a question is made under subsection (1) may —

(a) determine the worker's degree of permanent whole of person impairment; or

(b) refer the question as to the worker's degree of permanent whole of person impairment for assessment by an approved medical specialist panel in accordance with sections 146A and 146D.

(3) If a determination or assessment is made that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%, the arbitrator may order the employer to pay all or any of the costs or expenses connected with the dispute, including expenses connected with the referral to an approved medical specialist panel.

[Section 158C inserted by No. 42 of 2004 s. 119.]

158D. Disputes as to retraining criteria

(1) If there is not agreement between a worker and the worker's employer that the worker satisfies all of the retraining criteria, the worker may apply to have the question as to whether the worker satisfies all of the retraining criteria determined by an arbitrator.

(2) An arbitrator to whom an application to determine a question is made under subsection (1) is to refer the question for assessment by a specialised retraining assessment panel in accordance with section 146V.

(3) If an assessment is made that the worker is suitable to participate in a specialised retraining program, the arbitrator may order the employer to pay all or any of the costs or

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expenses connected with the dispute, including expenses connected with the referral to a specialised retraining assessment panel.

[Section 158D inserted by No. 42 of 2004 s. 119.]

158E. Specialised retraining program agreements

(1) A worker who is eligible under sections 158A and 158B to participate in a specialised retraining program cannot participate in the program unless —

(a) the worker has entered into an agreement with WorkCover WA in relation to the program; and

(b) the agreement is entered into on or before the final day referred to in subsection (2).

(2) The final day for the purposes of subsection (1) is the later of —

(a) the day that is 30 days after the day on which —

(i) the worker is notified of the recording of an agreement referred to in section 158B(1)(a)(i) as to the worker's degree of permanent whole of person impairment; or

(ii) the worker is given the decision of an arbitrator as to the worker's degree of permanent whole of person impairment,

as is relevant to the case; and

(b) the day that is 30 days after the day on which —

(i) the worker is notified of the recording of an agreement referred to in section 158B(1)(b)(i) that the worker satisfies all of the retraining criteria; or

(ii) the worker is given the decision of an arbitrator as to whether the worker satisfies all of the retraining criteria,

as is relevant to the case.

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(3) An agreement is to make provision in relation to —

(a) course attendance requirements;

(b) the worker's role in relation to reviews under section 158H including attendances and communications with WorkCover WA and providing information in relation to the performance and cooperation of the worker in the specialised retraining program;

(c) acknowledgement by the worker of the effects of this Part relating to the modification, suspension and cessation of amounts payable in respect of the worker's participation in the program.

(4) Any provision of an agreement that is inconsistent with a provision of this Act is of no effect to the extent of the inconsistency.

[Section 158E inserted by No. 42 of 2004 s. 119.]

158F. WorkCover WA to direct payments in relation to specialised retraining programs

(1) As soon as practicable after an agreement under section 158E has been signed by the worker and WorkCover WA, WorkCover WA is to notify the following persons of the agreement —

(a) the worker's employer; and

(b) if the employer is insured against liability to pay compensation under this Act, the employer's insurer.

(2) The total of the amounts payable in respect of a worker's participation in a specialised retraining program is the amount equal to 75% of the prescribed amount calculated as at the date on which the worker signed the agreement.

(3) WorkCover WA may, as it sees fit, but subject to this section and any regulations under subsection (10), give a written direction to the worker's employer or the employer's insurer to

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make a payment in respect of a worker's participation in a specialised retraining program.

(4) A direction may be for periodic payments or for a particular payment.

(5) A payment may be for, but is not limited to —

(a) reasonable fees for a course;

(b) the cost of books and relevant resource materials reasonably necessary to undertake a course;

(c) subject to subsections (8) and (9), a weekly retraining allowance.

(6) Subject to subsection (7), a payment may be for reasonable expenses incurred in respect of vocational rehabilitation under clause 17(1a) that is requested by the worker if the assistance of an approved vocational rehabilitation provider is necessary to coordinate the specialised retraining program.

(7) If the amount payable under clause 17(1a) is exhausted in respect of a worker, then for the purpose mentioned in subsection (6), WorkCover WA may direct that an additional amount, not exceeding 3% of the amount referred to in subsection (2), be paid in respect of the worker, as long as the additional amount does not exceed the total amount applicable to the worker under subsection (2).

(8) The worker cannot receive any weekly retraining allowance payments until the total weekly payments under clause 7 have reached the prescribed amount.

(9) Any weekly retraining allowance amount —

(a) is not to be linked to or represent the worker's capacity or otherwise to work; and

(b) is not to exceed the worker's pre-injury weekly earnings.

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(10) Subject to subsections (6), (7), (8) and (9), the following matters may be prescribed by the regulations —

(a) the submission of requests for payment and requirement for copies of invoices to be provided to WorkCover WA;

(b) the manner in which funds may be apportioned;

(c) when funds should be directed to be paid;

(d) when funds should be paid;

(e) the rate of any weekly training allowance.

[Section 158F inserted by No. 42 of 2004 s. 119.]

158G. Obligations of employers, insurers

(1) An employer or insurer who receives a direction under section 158F or 158I must comply with the direction within the time specified in the direction, or such longer period as may be subsequently specified by WorkCover WA but not exceeding 30 days.

(2) An employer or insurer must not modify, suspend or cease an amount payable under a direction under section 158F or affected by a direction under section 158I unless WorkCover WA has given the employer or insurer written approval to do so.

(3) A reference in section 174(1)(c) to the obtaining of an award by the worker includes a reference to the receipt by an employer or insurer of a direction under section 158F or 158I.

(4) Nothing in section 174 prevents moneys standing to the credit of the General Account from being paid in accordance with a direction under section 158F or 158I within 30 days of the direction being received if —

(a) the direction relates to a payment in respect of a particular specialised retraining program; and

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(b) moneys have already been paid from the General Account in respect of that program.

[Section 158G inserted by No. 42 of 2004 s. 119; amended by No. 77 of 2006 Sch. 1 cl. 189(9).]

158H. 3 monthly reviews of performance, payments under specialised retraining programs

(1) WorkCover WA is to conduct, at the times set out in subsection (2), a review of —

(a) the performance and cooperation of each worker who is participating in a specialised retraining program; and

(b) the payments directed to be made in respect of each worker who is participating in a specialised retraining program.

(2) The first review in respect of a worker is to be conducted 3 months after the day on which the worker commences participation in the specialised retraining program, and subsequent reviews are to be at 3 monthly intervals.

[Section 158H inserted by No. 42 of 2004 s. 119.]

158I. WorkCover WA may direct modification, suspension, cessation of payments under specialised retraining programs

(1) WorkCover WA may, as it sees fit, but subject to this Part and any regulations in relation to the administration of funds for specialised retraining programs, and having regard to the results of a review under section 158H in relation to a worker, give a written direction to the worker's employer or the employer's insurer to modify, suspend or cease the amounts payable in respect of the worker's participation in the program.

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(2) Without affecting subsection (1) WorkCover WA may give a written direction to the worker's employer or the employer's insurer to do any of the following —

(a) suspend any entitlement that a worker has under an agreement under section 158E if WorkCover WA is of the opinion that the worker has not complied, or is not complying, with a provision of the agreement;

(b) cease the entitlement if the worker does not, within one month of being requested in writing by WorkCover WA to do so, comply with the provision;

(c) modify, suspend or cease the amounts payable in respect of the worker's participation in the program if the worker fails a course requirement or does not achieve the results that, in the opinion of WorkCover WA, are required for the course to be successfully completed.

[Section 158I inserted by No. 42 of 2004 s. 119.]

158J. Cessation of payments

Payments in respect of a worker's participation in a specialised retraining program cease from the date on which an event referred to in section 158A(3)(a) to (e) occurs in respect of a claim for the injury concerned.

[Section 158J inserted by No. 42 of 2004 s. 119.]

158K. Directions not open to challenge etc.

A decision of WorkCover WA to direct the payment, modification, suspension or cessation of an amount payable to or in respect of a worker participating in a specialised retraining program is not liable to be challenged, appealed against, reviewed, quashed or called into question under this Act or by any court.

[Section 158K inserted by No. 42 of 2004 s. 119.]

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158L. Other effects of participation in specialised retraining program

(1) The amount referred to in section 158F(2) is in addition to and separate from any other compensation that a worker is entitled to under this Act in relation to an injury.

(2) A worker's participation in a specialised retraining program is not, of itself, a ground for the suspension, discontinuance, reduction or increasing, under this Act, of payments of other compensation that the worker receives in respect of the injury.

(3) A worker's participation in a specialised retraining program is not, of itself, a ground for an arbitrator to require or not require, under section 156B, the worker to participate in a return to work program.

(4) No part of the specialised retraining program entitlement can be taken into account in the calculation of any other compensation to which the worker is entitled under this Act.

[Section 158L inserted by No. 42 of 2004 s. 119.]

*[**159.** Deleted by No. 42 of 2004 s. 118.]*

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Part X — Insurance

Division 1 — Liability of employers and insurers

160. Employer to obtain insurance

(1) Subject to this Act, every employer shall obtain from an approved insurance office and shall keep current a policy of insurance for the full amount of his liability to pay compensation under this Act to any worker employed by him including any increase in amount occurring during currency of the policy.

(2) An employer obliged by this section to effect or renew a policy of insurance shall, on applying to an approved insurance office, for that purpose, furnish to that office an estimate, made to the best of that employer's knowledge, information and belief, of the aggregate amount of wages, salaries, or other remuneration to be paid to the employer's workers not including any amount paid by way of compensation under this Act but including any amounts paid to workers employed under an agreement to perform —

(a) a specified quantity of work for a specified sum;

(b) work on piece rates; or

(c) work on a bonus or commission system for payment by results,

over the period for which the policy is to be effected or renewed; and shall forthwith after the termination of that period furnish a statement of the aggregate amount of those wages paid in fact and shall include in that statement every sum paid during that period to an employee in respect of overtime worked by the employee.

(2a) Where, under section 10A, an employer that is a company applies to an approved insurance office under subsection (2) on the basis that any director of the company is a worker, that employer shall, in relation to each such director, furnish to that

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office, in addition to the information required to be furnished under subsection (2) —

(a) the name of the director; and

(b) in relation to that director in particular, the information, verified as required under subsection (2), that the employer is required under that subsection to furnish in relation to the employer's workers.

(2b) After the termination of the period referred to in subsection (2), an employer referred to in subsection (2a) is to furnish to the insurance office —

(a) a statement of the aggregate amount of the wages, salary and other remuneration paid in fact during that period to the director; and

(b) supporting particulars to verify the aggregate amount stated.

(3) An approved insurance office shall insure any employer requesting it for the full amount of the liability of the employer to pay compensation under this Act to all workers employed by him.

Penalty: $2 000.

(3a) Where WorkCover WA permits an approved insurance office to cancel a policy or contract of insurance obtained by an employer under this section, the approved insurance office shall notify the employer of the cancellation within 14 days after the cancellation has effect.

Penalty: $1 000.

(4) Where a policy or contract of insurance obtained by an employer from an approved insurance office under this section has lapsed, and —

(a) the employer is not insured against his liability to pay compensation under this Act;

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(b) the employer has incurred liability to pay compensation under this Act after the lapsing of the policy or contract of insurance; and

(c) not more than 7 days have elapsed from the time when WorkCover WA received from that approved insurance office a statement in respect of the lapsed policy or contract under section 171(1)(b),

the approved insurance office shall, notwithstanding the lapse of the policy or contract of insurance, be liable to indemnify the employer in respect of that liability as if the liability were incurred during the term of the policy or contract of insurance.

(5) Where an approved insurance office declines to indemnify an employer in respect of a liability referred to in subsection (4) in respect of which the approved insurance office would be liable to indemnify the employer if the liability were incurred during the term of the policy or contract of insurance, the approved insurance office commits an offence.

Penalty: $2 000.

(6) A conviction for an offence under subsection (5) does not affect the liability of the approved insurance office under subsection (4).

(7) Where an employer has obtained a policy of insurance from an approved insurance office under this section, the employer shall ensure that a valid certificate of currency issued by the insurance office in respect of the policy is available for inspection at the employer's principal office or place of business in the State.

Penalty: $2 000.

(8) An employer does not have to comply with subsection (7) if it is not reasonably practicable to do so.

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[Section 160 amended by No. 44 of 1985 s. 34; No. 85 of 1986 s. 10; No. 96 of 1990 s. 37; No. 34 of 1999 s. 42; No. 42 of 2004 s. 120(2), (3) and 150; No. 16 of 2005 s. 11.]

160A. Insurance in respect of working directors

(1) If a dispute arises between an employer that is a company requesting insurance from an insurance office and the insurance office as to whether a person is a working director of the company, the employer or insurance office may apply to have the question determined by an arbitrator.

(2) An insurance office that has issued a policy or contract of insurance to a company that is an employer in respect of a working director pursuant to an application as described in section 10A(3) cannot decline to indemnify the employer in respect of a liability of the employer for the director on the basis that the director is not a worker, or that the company is not the employer of the director, unless an arbitrator determines that —

(a) a representation made by the company in respect of the director when applying for the issue of a policy or contract of insurance in respect of that director was false or misleading in a material particular; and

(b) the decision of the insurance office to issue a policy or contract of insurance in respect of the director was materially affected by that representation.

[Section 160A inserted by No. 16 of 2005 s. 12.]

161A. Issue or renewal of policy without approval

An incorporated insurance office shall not issue or renew a policy insuring an employer against his liability to pay compensation under this Act unless the incorporated insurance office is approved by the Minister under section 161 and the approval is not suspended at the time of the issue or renewal of the policy or has not been revoked by the Minister.

Penalty: $5 000.

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[Section 161A inserted by No. 44 of 1985 s. 35; amended by No. 34 of 1999 s. 57.]

161. Approvals

(1) For the purpose of this Part ***incorporated insurance office*** includes any duly incorporated company carrying on business in the State under the *Insurance Act 1973* of the Commonwealth.

(2) The requirements for an incorporated insurance office to be approved under this section are that it is able to meet the requirements mentioned in subsection (3).

(3) The requirements for an incorporated insurance office that is approved under this section to remain so approved are that it —

(a) has material and financial resources available to it that the Minister, on the advice of WorkCover WA, considers sufficient to enable it to discharge its obligations for the purposes of this Act;

(b) maintains in the State an office having such resources and authority as the Minister considers satisfactory for the expeditious handling of claims;

(c) provides a standard of service to employers and, on behalf of employers, to workers that the Minister, on the advice of WorkCover WA, considers satisfactory;

(d) complies with the time limits and other requirements imposed under this Act and the *Employers' Indemnity Supplementation Fund Act 1980*;

(e) consistently maintains a standard of detail and accuracy in the information required under this Act to be provided by it that is satisfactory to the Minister; and

(f) otherwise discharges its obligations under or for the purposes of this Act to a standard that the Minister, on the advice of WorkCover WA, considers satisfactory.

(4) Where an incorporated insurance office applies to the Minister for the grant or renewal of approval under this section, the

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Minister may, if he is satisfied that it meets the requirements for an incorporated insurance office to be or remain approved, as the case may be, grant or renew the approval, as the case requires, and, in granting or renewing the approval, attach such conditions, if any, as he sees fit to the approval.

(5) Subject to subsection (6), an approval under this section ceases to have effect, unless sooner renewed, at the expiration of 5 years after the day on which the approval was granted or, where it has been previously renewed under this section, at the expiration of 5 years after the day on which it was last renewed.

(6) Notwithstanding subsection (5) but subject to subsection (7), an approval granted or deemed to be granted under this section and current immediately before the day of the commencement of section 38 of the *Workers' Compensation and Assistance Amendment Act 1990* [1] continues to have effect for a period of one year after that day and, unless renewed under this section, thereafter is of no effect.

(7) Where an approved insurance office —

(a) fails in the opinion of the Minister to meet the requirements mentioned in subsection (3) or to comply with any condition attached to its approval; or

(b) so requests,

the Minister may revoke or suspend his approval under this section of that office, but may not do so in any other case.

[Section 161 amended by No. 96 of 1990 s. 38; No. 42 of 2004 s. 150.]

162. The State Government Insurance Commission sole insurer against certain industrial diseases

(1) The State Government Insurance Commission [2] is the only insurer authorised to issue or renew a policy insuring an employer against his liability to pay compensation under this

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Act for any industrial disease of the kinds referred to in section 151(a)(iii).

(1a) An insurer that issues or renews a policy contrary to subsection (1) commits an offence.

Penalty: $1 000.

(2) Nothing in subsection (1) affects the rights and liabilities of the parties to any contract of insurance existing immediately before the day on which this Part comes into operation for the period of the contract unexpired immediately before that day.

[Section 162 amended by No. 51 of 1986 s. 46(2); No. 42 of 2004 s. 121.]

163. Payment of industrial disease premium and issue of policy

An employer required to pay an industrial disease premium under this Act shall pay that premium to the State Government Insurance Commission [2] which is bound to issue a policy insuring the employer against his liability to pay compensation under this Act for any industrial disease of the kinds referred to in section 151(a)(iii).

[Section 163 amended by No. 51 of 1986 s. 46(2).]

164. Exempt employer

(1) Notwithstanding section 160 if an employer or group of employers has given to the State securities approved by WorkCover WA that are charged with all payments to become due under the employer's or group's liability for which insurance would, if there were no exemption, be required by this Act, the Governor may exempt such employer or group from the obligation to insure pursuant to this Act except for the obligation to insure against liability to pay compensation under this Act for any industrial disease of the kinds referred to in section 151(a)(iii).

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(1a) In deciding whether an exemption should be given under subsection (1), regard may be had to the number of workers employed and the category of the insurable risks of the business or businesses of the employer or group, whether the employer or group has established a fund for insurance against liability for which insurance would, if there were no exemption, be required by this Act, and the material and financial resources available in the State to the employer, or each employer of the group, to comply with the requirements of this Act or the *Employers' Indemnity Supplementation Fund Act 1980*.

(2) An exemption granted under section 13 of the repealed Act and current immediately before the day on which this Part comes into operation [1] is deemed to be an exemption granted under this Part and subject to review as provided by section 165.

[Section 164 amended by No. 96 of 1990 s. 39; No. 42 of 2004 s. 122 and 150.]

165. Review of exemptions

(1) On or before 30 June 1982 and thereafter at least once in each period of one year and also when so required by the Minister WorkCover WA shall review all exemptions granted pursuant to section 164.

(2) After a review the Minister may require an increase or permit a decrease in the value of the securities given to the State pursuant to section 164(1) by an employer or group of employers having regard to —

(a) the number of workers then employed by the employer or group;

(b) the current category of the insurable risks of the business or businesses of the employer or group;

(ba) whether or not the employer or group is maintaining a fund for insurance against liability for which insurance would, but for the exemption, be required by this Act;

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(bb) the material and financial resources available in the State to the employer, or each employer of the group, to comply with the requirements of this Act or the *Employers' Indemnity Supplementation Fund Act 1980*;

(c) the claims experience since the last review of the employer or group; or

(d) any change in the extent of the liability to pay compensation under this Act since the last review.

(3) The Minister may after a review recommend to the Governor that an exemption be cancelled —

(a) for any reason which seems to him to justify doing so in the interests of securing the workers' entitlements to compensation; or

(b) because of a failure to give to the State any securities directed by the Minister to be given under subsection (4)(b),

and the Governor may then cancel the exemption.

(4) Where —

(a) under subsection (2) the Minister permits a decrease in the value of the securities given to the State by an employer or group of employers the Minister may order that those securities no longer required to be given to the State be discharged from the charge and returned to the employer or the group, as the case may be;

(b) the Minister requires an increase in the value of securities deposited by an employer or group of employers —

(i) the Minister may direct the employer or group to give to the State such securities charged with all payments to become due under the employer's or group's liability under this Act, in addition to the securities already given, as the Minister determines; or

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(ii) the Minister may direct that the securities given to the State by that employer or group of employers be discharged from the charge and returned to the employer or group and that the employer or group give to the State further securities to the value determined by the Minister charged with all payments to become due under the employer's or group's liability under this Act.

(5) Where an employer or group of employers fails to give to the State, within 21 days after the direction is given, any securities directed by the Minister to be given under subsection (4)(b) —

(a) the employer; or

(b) each employer belonging to the group of employers,

as the case may be, commits an offence.

Penalty: $1 000.

[Section 165 amended by No. 44 of 1985 s. 36; No. 96 of 1990 s. 40; No. 42 of 2004 s. 123 and 150; No. 16 of 2005 s. 20.]

166. Other cancellations

Where an employer who is exempt, or who is one of a group of employers who is exempt, under section 164, fails or refuses to comply with the requirements of this Act or the *Employers' Indemnity Supplementation Fund Act 1980*, the Governor may cancel the exemption of or in respect of that employer.

167. Effect of cessation of exemption

Each employer including a member of a group of employers who ceases to be exempt under section 164 shall forthwith insure as required by section 160.

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168. Cessation of exemption

Where an employer or group of employers which is exempt under section 164 —

(a) applies to the Minister for a revocation of such exemption and for the return of securities given by it or them to the State discharged from the charge referred to in section 164(1); or

(b) proves to the satisfaction of the Minister that —

(i) the employer or group, as the case may be, has ceased to employ workers; or

(ii) he or they have obtained from an approved insurance office a policy of insurance in compliance with section 160(1),

and that —

(iii) there are no outstanding claims for compensation; or

(iv) satisfactory provision has been made for discharging any outstanding claims for compensation,

the Governor may by Order in Council revoke the exemption and order that the securities be discharged from the charge and returned to the employer or the group, as the case may be.

[Section 168 amended by No. 96 of 1990 s. 41; No. 42 of 2004 s. 124.]

169. Forms of policy

The Governor may, on the recommendation of WorkCover WA, determine the form in which any policy of insurance made obligatory under this Act is to be effected and upon a form being so determined any policy in respect of which it is determined shall insofar as it relates to insurance or indemnity under this Act be effected, or in the case of an existing policy, renewed in that form.

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[Section 169 amended by No. 96 of 1990 s. 42; No. 42 of 2004 s. 150.]

170. Failure to insure

(1) An employer who —

(a) fails to comply with section 160(1) or (2); or

(b) gives in an estimate or statement furnished under section 160(2) any information or particular that he knows to be false in any material particular,

commits an offence and is liable to a penalty of $5 000 in respect of each worker employed by him to whom the offence relates; and that employer commits a separate and further offence in respect of each week after the day of conviction during which section 160(1) or (2), as the case may be, is not complied with by him in respect of a worker to whom the original offence related, and is liable in respect of each such separate and further offence to a penalty of $5 000 for each such worker; and in addition subsection (2) applies.

(2) The court convicting an employer of an offence under subsection (1) shall, in addition to any other penalty imposed in respect of the offence under subsection (1) but subject to subsection (2a), order that the employer pay to the General Account an amount equal to the total of any insurance premiums payment of which the court is satisfied the employer has, at any time during the period of 5 years before the conviction, avoided by failing to obtain insurance as required by section 160(1), failing to furnish an estimate or statement as required by section 160(2), or giving any false information or particular in any such estimate or statement.

(2a) In making an order under subsection (2) requiring the payment of an amount determined by reference to insurance premiums payment of which has been avoided, an amount that has been taken into account in making a previous such order shall not be again taken into account.

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(2b) If an order is made under subsection (2) requiring a body corporate convicted of an offence to pay an amount to the General Account but all or any of the amount required to be paid remains unpaid, WorkCover WA may sue and recover from a responsible officer the unpaid amount, whether or not the responsible officer has been convicted under subsection (5).

(2c) If there are 2 or more responsible officers, they are jointly and severally liable for the payment of the unpaid amount.

(2d) The amount required to be paid under the order is reduced by any amount recovered under subsection (2b).

(3) A prosecution for an offence under this section must be commenced within 2 years after the date on which the offence was allegedly committed.

(3a) It is a defence to a prosecution for an offence under this section of failing to comply with section 160(1) or (2) in respect of a worker if the court is satisfied that at the time of the alleged offence the employer believed on reasonable grounds that the employer could not be liable under this Act in respect of the worker because under section 20 the worker's employment was not connected with this State.

(3b) If the employer's belief on reasonable grounds was that under section 20 the worker's employment was connected with another State, subsection (3a) does not apply unless at the time of the alleged offence the employer had workers' compensation cover in respect of the worker under the law of that other State.

(4) In any prosecution for an offence under this section, proof that the employer, not being a self-insurer —

(a) was required under section 175B(1)(c) to produce for inspection a policy of insurance referred to in section 160(1) obtained by the employer and in force at a specified date or between specified dates; and

(b) did not produce that policy as required,

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is prima facie evidence that at that specified date or between those specified dates, as the case may be, the employer failed to comply with section 160(1), and the burden of showing that the employer complied with section 160(1) rests on the employer.

(5) Where a body corporate commits an offence mentioned in subsection (1), every responsible officer commits the like offence.

(6) In subsections (2b), (2c), and (5) ***responsible officer***, in relation to the commission of an offence by a body corporate, means a person who is a director or other officer concerned in the management of the body corporate and who does not prove that —

(a) the offence was committed without the person's consent or connivance; and

(b) the person exercised all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and to all the circumstances.

(7) In subsection (3b) —

workers' compensation cover means insurance or registration required under the law of a State in respect of liability for statutory workers' compensation under that law.

[Section 170 amended by No. 44 of 1985 s. 37; No. 33 of 1986 s. 7; No. 86 of 1986 s. 5; No. 96 of 1990 s. 43; No. 34 of 1999 s. 43 and 57; No. 36 of 2004 s. 11; No. 42 of 2004 s. 150; No. 84 of 2004 s. 80; No. 77 of 2006 Sch. 1 cl. 189(9).]

171. Insurance offices to furnish certain statements

(1) Every approved insurance office shall within 14 days of the close of each calendar month transmit to WorkCover WA —

(a) a statement in the prescribed form giving details of each employer who has during the month in question effected or renewed a policy or contract of insurance with the

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insurance office concerned against liability under this Act;

(b) a statement in the prescribed form giving details of each employer in respect of whom the insurance office concerned has during the month in question marked in its books as lapsed (or, where WorkCover WA has permitted cancellation, cancelled) a policy or contract of insurance under this Act; and

(c) where WorkCover WA has requested the insurance office to do so, a means specified by WorkCover WA for conveying to WorkCover WA, in a machine-readable form so specified, the details referred to in paragraphs (a) and (b), together with a statement certifying the accuracy of the details so conveyed.

Penalty: $1 000.

(2) Such a statement shall be signed by a responsible officer of the insurance office concerned.

(3) Subject to subsection (3a), a person, except with the express authority of WorkCover WA, shall not have access to, inspect, or peruse any such statement, and the information contained therein shall be treated as strictly confidential and shall not, except for the purposes of this Act, be disclosed to any person.

Penalty: $2 000.

(3a) A person who is a principal within the meaning of that term in section 175 may, in writing, request WorkCover WA to disclose information as to the currency of a policy or contract of insurance required by this Act for the liability of a person who is, in relation to the person requesting the information, a contractor within the meaning of that term in that section, and WorkCover WA may, where it is satisfied that the information is not to be used for a purpose unconnected with the objects of this Act, in writing, disclose the information requested (which may include information as to the period for which the policy or contract, if any, remains in force).

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(4) If any statement required by this section is false in any particular to the knowledge of any person who signs it, that person commits an offence.

Penalty: $2 000.

[Section 171 amended by No. 44 of 1985 s. 38; No. 96 of 1990 s. 44; No. 34 of 1999 s. 57; No. 42 of 2004 s. 125 and 150.]

172. WorkCover WA may provide certain information to insurer and recover premiums

Whenever as a result of an inspection or otherwise it is shown that an employer has either wilfully or inadvertently understated to the employer's insurer the aggregate amount of wages, salary and other forms of remuneration paid, or the number of employees engaged, and has thereby become liable to pay by way of premium a lesser amount than would otherwise have been payable, then WorkCover WA may —

(a) provide to the insurer information as to the wages, salary, and other forms of remuneration paid by, and the number of employees engaged by, the employer and the category for the purpose of premium rates in which those employees are engaged; and

(b) sue and recover from the employer —

(i) the full amount of the premium that could have been charged; less

(ii) any amount already paid to the insurer in respect of such insurance,

and pay any moneys so recovered, less any reasonable costs incurred in the recovery, to the insurer.

[Section 172 inserted by No. 34 of 1999 s. 45; amended by No. 42 of 2004 s. 150.]

*[**172A.** Deleted by No. 34 of 1999 s. 44.]*

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173. Worker's rights against insurer

(1) Where during the currency of a contract between an employer and an insurer in respect of the employer's liability under this Act to a worker the employer dies, or in the case of a corporation has commenced to be, or is, wound up, ceases to exist or the employer cannot be found or no longer resides in Australia or in a Territory within Australia or has ceased to carry on the business, or business of the kind, to which that contract related, then in any such circumstance —

(a) the worker has the same rights and remedies against the insurer; and

(b) the insurer has, to the extent of his liability under the contract, the same liability to the worker and the same rights and remedies in respect of the liability,

that the employer otherwise would have had under the contract.

(2) Where, under subsection (1), the liability of the insurer of an employer is less than that which the liability of the employer to the worker would have been, the worker may proceed for the balance against the employer, or in the bankruptcy or liquidation of the employer, or against the personal representative of the employer.

[Section 173 amended by No. 72 of 1992 s. 19.]

174. Payment to worker from General Account

(1) Where —

(a) compensation in accordance with this Act is due by an employer to a worker (other than a worker in respect of whom refusal of insurance is permitted pursuant to this Act);

(b) the employer is not insured against his liability to pay compensation to the worker under this Act or the case is one to which section 173(2) applies or the employer's

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insurer declines to indemnify the employer against the worker's claim for compensation; and

(c) the employer does not pay the compensation due within 30 days of the obtaining of an award by the worker or his representative,

WorkCover WA shall pay to the worker from moneys standing to the credit of the General Account the amount required to satisfy the award and any award for costs in respect thereof.

(1a) Without limiting section 174AB, until the amount paid to a worker under this section is recovered under this section or section 174AA, WorkCover WA may exercise any rights of the employer under this Act in relation to the payment of that award.

[(2) deleted]

(3) Where a worker suffers injury of a kind mentioned in section 32 or 33 and compensation in accordance with this Act is due by an employer to the worker but —

(a) the identity of the employer's insurer, if any, is not known; or

(b) the employer's insurer has ceased to operate in Australia,

an order may be made under Part XI that WorkCover WA pay to the worker from moneys standing to the credit of the General Account the amount required to satisfy an award obtained by the worker or the worker's representative and any award for costs in respect of the award.

(4) If the identity of the insurer is ascertained after payment has been made under subsection (3), WorkCover WA may sue and recover the amount paid from the insurer, to the extent that its insured may have sued for and recovered that amount under the policy of insurance.

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(5) The payment mentioned in subsection (3) shall be made to the worker or the worker's representative within 30 days of the date of the award.

(5a) Despite any other provisions of this section, if WorkCover WA is satisfied that the reason for the employer not being insured against liability to pay compensation to the worker is that the employer believed on reasonable grounds that the employer could not be liable under this Act in respect of the worker because under section 20 the worker's employment was not connected with this State, the employer is not liable to WorkCover WA for any amount paid by WorkCover WA under this section.

(6) Where WorkCover WA has paid from the General Account an amount under subsection (1) WorkCover WA may file in a court of competent jurisdiction a certificate of WorkCover WA showing the amount paid.

(7) No charge is to be made for filing a copy of a certificate under this section.

(8) On filing, the certificate is to be taken to be a judgment of that court for a debt payable by the employer of the worker to WorkCover WA of the same amount as the amount stated in the certificate, and may be enforced accordingly.

(9) Where by reason of section 175 more than one person is liable as an employer to pay compensation under this Act to a worker, the reference in subsection (8) to the employer is to be read as a reference to each person so liable, and the judgment may be enforced against those persons jointly and severally.

[Section 174 amended by No. 85 of 1986 s. 11; No. 96 of 1990 s. 46; No. 72 of 1992 s. 20; No. 48 of 1993 s. 41; No. 49 of 1996 s. 64; No. 36 of 2004 s. 12 and 18; No. 42 of 2004 s. 126, 147 and 150; No. 16 of 2005 s. 21; No. 77 of 2006 Sch. 1 cl. 189(9).]

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174AA. Recovery from responsible officers of body corporate

(1) If none, or some but not all, of an amount paid from the General Account under section 174 is recovered from a body corporate liable to pay the amount under that section, WorkCover WA may sue and recover the unpaid amount from a responsible officer of the body corporate.

(2) A person is a responsible officer of a body corporate if —

(a) the body corporate has contravened section 160(1) in respect of a policy of insurance or otherwise failed to ensure that it had a sufficient policy of insurance that would have covered the body corporate for the liability to which the payment made under section 174 related (whether or not the body corporate has been proceeded against or convicted of an offence for the contravention);

(b) at the time of the contravention or failure the person was a director or other officer concerned in the management of the body corporate; and

(c) the person does not prove that —

(i) the contravention or failure occurred without the person's consent or connivance; and

(ii) the person exercised all such due diligence to prevent the contravention or failure as ought to have been exercised having regard to the nature of the person's functions and to all the circumstances.

(3) If there are 2 or more responsible officers of a body corporate they are jointly and severally liable for the payment of the unpaid amount recoverable under subsection (1).

[Section 174AA inserted by No. 42 of 2004 s. 127; amended by No. 77 of 2006 Sch. 1 cl. 189(9).]

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174AB. WorkCover WA may exercise rights of employer

(1) If an employer is uninsured and is not defending a claim brought by a worker, WorkCover WA has all of the rights of the employer under this Act in place of the employer including the right to —

(a) consent to an award or order being made in a proceeding before a dispute resolution authority;

(b) enter into an agreement as to redemption of the claim;

(c) become a party to proceedings in relation to the claim;

(d) exercise the rights of the employer in relation to injury management; and

(e) require the worker to submit himself for examination under sections 64 and 65.

(2) If an employer —

(a) is uninsured and is defending a claim brought by a worker; or

(b) may be uninsured and a worker has brought a claim, irrespective of whether or not the employer is defending the claim,

then, unless an order to the contrary is made pursuant to an application under subsection (3), WorkCover WA has all of the rights of the employer under this Act in place of the employer as if subsection (1) applied.

(3) The employer may apply under Part XI for an order as to the rights WorkCover WA may exercise under subsection (2) and the exercise of those rights.

(4) An arbitrator may hear and determine an application under subsection (3) and may make such orders in relation to the application as the arbitrator thinks fit.

(5) WorkCover WA may sue for and recover from the employer fees, costs and charges incurred by WorkCover WA under this

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section, whether or not WorkCover WA was successful in any proceedings.

[Section 174AB inserted by No. 42 of 2004 s. 128.]

174AC. WorkCover WA's right of subrogation

If WorkCover WA has paid, or is liable to pay, from the General Account an amount as compensation for which an employer is liable under this Act, WorkCover WA is subrogated to any right of the employer and any insurer of the employer to recover any amount from any other person in respect of that payment (had the payment been made by the employer or insurer), whether the right arises by way of liability for contribution, apportionment of liability or otherwise.

[Section 174AC inserted by No. 42 of 2004 s. 128; amended by No. 77 of 2006 Sch. 1 cl. 189(9).]

174A. Insurer may not refuse to indemnify in certain circumstances

(1) If under a policy of insurance the insurer may refuse, but for this section, to indemnify an employer against the employer's liability to pay compensation claimed under this Act on the ground of an act or omission by or on behalf of the employer but the act or omission did not cause or contribute to the injury for which compensation is claimed, the insurer may not refuse to indemnify the employer but the insurer's liability to indemnify the employer is reduced by the amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of the act or omission.

(2) The onus of proving that the insurer's interests were prejudiced by the act or omission by or on behalf of the employer and the extent of that prejudice is on the insurer.

[Section 174A inserted by No. 72 of 1992 s. 21; amended by No. 42 of 2004 s. 147.]

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Division 2 — Insurance by principals, contractors, and sub-contractors

175. Principal contractor and sub-contractor deemed employers

(1) Where a person (in this section referred to as the ***principal***) contracts with another person (in this section referred to as the ***contractor***) for the execution of any work by or under the contractor and, in the execution of the work, a worker is employed by the contractor, both the principal and the contractor are, for the purposes of this Act, deemed to be employers of the worker so employed and are jointly and severally liable to pay any compensation which the contractor if he were the sole employer would be liable to pay under this Act.

(2) The principal is entitled to indemnity from the contractor for the principal's liability under this section.

(3) The principal is not liable under this section unless the work on which the worker is employed at the time of the occurrence of the injury is directly a part or process in the trade or business of the principal.

(4) Where the principal and the contractor are jointly and severally liable under this section, a judgment obtained against one is not a bar to proceedings against the other except to the extent that the judgment has been satisfied.

(5) Where compensation is claimed from or proceedings are taken against the principal, in the application of this Act a reference to the employer shall be read as a reference to the principal except where, for the purpose of calculating the amount of compensation, a reference is made to the earnings of a worker, the reference shall be read as a reference to the earnings of the worker under the contractor.

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(6) For the purposes of this section, where sub-contracts are made —

(a) ***principal*** includes the original principal for whom the work is being done and each contractor who constitutes himself a principal with respect to a sub-contractor by contracting with him for the execution by him of the whole or any part of the work;

(b) ***contractor*** includes the original contractor and each sub-contractor; and

(c) a principal's right to indemnity is a right against each contractor standing between the principal and the worker.

(7) Where the injury does not occur in respect of premises on which the principal has undertaken to execute the work or which are otherwise under his control or management, subsections (1) to (6) inclusive do not apply.

[Section 175 amended by No. 42 of 2004 s. 147.]

175AA. Certain persons deemed workers

(1) For the purposes of this section, a person (***W***) executes work for another person (***E***) under an avoidance arrangement if —

(a) the work is executed under an arrangement that is contrived to enable E to have the benefit of W's services without having liabilities and duties as W's employer under this Act;

(b) the arrangement was entered into on or after the coming into operation of section 13 of the *Workers' Compensation Legislation Amendment Act 2005* [1]; and

(c) while the arrangement is in effect —

(i) W executes work principally for E on behalf of a company of which W is an employee or director (the ***company***); and

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(ii) the work is directly a part or process in the trade or business of E.

(2) Unless the arrangement is, or is of a class of arrangements, prescribed by the regulations, an arrangement is contrived for the purpose described in subsection (1)(a) if —

(a) before executing work under the arrangement, W was E's worker and provided substantially similar services; or

(b) although the circumstances described in paragraph (a) did not exist before W executes work under the arrangement, E intimated, before the arrangement was entered into, that E was unwilling to enter into an arrangement for the provision of substantially similar services that would have resulted in W being E's worker.

(3) A person may apply to an arbitrator for a determination as to whether a person was, at a particular time or during a particular period, executing work for another person under an avoidance arrangement.

(4) In making a determination for the purposes of subsection (3) the arbitrator is not to have regard to whether or not proceedings have been instituted under section 303A against E, or to the outcome of those proceedings (if any).

(5) If an injury occurs to W and W and E agree or an arbitrator determines that, when the injury occurred, W was executing work for E under an avoidance arrangement —

(a) E is liable to pay any compensation that E would have been liable to pay under this Act if W had been E's worker when the injury occurred;

(b) if, when the injury occurred, E was insured as required by section 160 against its liability to pay compensation to its workers under this Act —

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(i) that insurance extends to E's liability under paragraph (a) to pay compensation; and

(ii) the insurer is entitled to indemnity from E for the cost of satisfying its liability under subparagraph (i);

(c) the company is relieved of its duties and liabilities, if any, under this Act in respect of the payment of compensation to W, and in respect of its duties, if any, under section 155C in respect of W; and

(d) section 175 does not apply so as to entitle E to an indemnity from the company or W.

(6) If E is liable to pay compensation under subsection (5), for purposes related to the compensation and duties under section 155C, and matters related to the compensation and those duties, this Act applies as if —

(a) a reference in this Act to an employer were a reference to E except where, for the purpose of calculating the amount of compensation, a reference is made to the earnings of the worker, the reference is to be read as a reference to the earnings of the company to the extent that those earnings were for work executed for E by W on behalf of the company;

(b) a reference in this Act to a worker were a reference to W.

(7) E or any person on behalf of E, or an insurer of E or any person on its behalf, must not, directly or indirectly, take or receive any money or indemnity from the company or W in respect of any liability of E or the company to pay compensation in respect of W under this Act.

Penalty: $2 000.

(8) An indemnity taken or received in contravention of subsection (7) is void.

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(9) Where money is taken or received as described in subsection (7), whether with the consent of the company or W or not, the company or W, as the case requires, may sue and recover the amount of that money from the person who took or received it.

[Section 175AA inserted by No. 16 of 2005 s. 13.]

Division 3 — Inspectors

[Heading inserted by No. 34 of 1999 s. 46(1).]

175A. Authorisation

(1) WorkCover WA may authorise persons as inspectors for the purposes of this Act.

(2) Before performing any function of an inspector under this Act, a person authorised as an inspector is required to take and subscribe before a justice of the peace an oath or affirmation to the effect that the person will not, except for the purposes of this Act, and the exercise of the person's duties under this Act, disclose to any person any information acquired as an inspector.

(3) A person who wilfully discloses any information contrary to an oath taken under subsection (2) commits an offence.

Penalty: $2 000.

(4) The Chairman of WorkCover WA is to issue to each person authorised as an inspector a certificate stating that the person is so authorised.

(5) The inspector is to produce the certificate whenever required to do so by a person in respect of whom the inspector has exercised, or is about to exercise, a power under this Act.

[Section 175A inserted by No. 34 of 1999 s. 46(1); amended by No. 42 of 2004 s. 150.]

175B. Powers

(1) An inspector may, for the purposes of this Act —

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(a) at all reasonable times of the day or night, enter, inspect, and examine any place where it is suspected that workers may be employed or books, accounts, documents or records required to be inspected may be held;

(b) conduct such examination and inquiry as appears necessary to ascertain whether there has been compliance with this Act;

(c) require the production of, examine, and take copies or extracts of, any books, accounts, documents or records;

(d) interview, either in private or otherwise, as the inspector considers appropriate, any person who the inspector has reasonable grounds to believe is able to provide information that may assist the inspector to perform a function under this Act;

(e) require any person interviewed under paragraph (d) to answer any question and, if the inspector considers it appropriate, to verify any such answer by statutory declaration;

(f) require an employer to provide within 28 days a certificate from an auditor containing a statement as to —

(i) the number of workers employed by the employer during a specified period; and

(ii) the amount of wages, salary, and other forms of remuneration paid by the employer to each worker during that period;

(g) require any person to state the person's name and address;

(h) require an employer or any of the employer's workers to assist the inspector in the performance of a function under this Act, as the inspector considers necessary;

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(i) exercise such other powers as may be conferred by the regulations or as may be necessary for the performance of any function under this Act.

(2) In subsection (1) —

auditor means a person who is registered as an auditor under Part 9.2 of the *Corporations Act 2001* of the Commonwealth.

(3) In exercising any power under this Act an inspector may be accompanied by any other person whose assistance the inspector considers necessary, and that person may do such things as are necessary to assist the inspector in the performance of the inspector's functions, and anything so done is deemed to have been done by the inspector.

[Section 175B inserted by No. 34 of 1999 s. 46(1); amended by No. 10 of 2001 s. 219.]

175C. Interpreters

(1) Where an inspector considers it necessary for the effective performance of a function under this Act, the inspector may be accompanied by an interpreter.

(2) Any inquiry or requirement made to any person by an interpreter on behalf of an inspector is deemed to have been made by the inspector and any answer given to the interpreter is deemed to have been given to the inspector.

[Section 175C inserted by No. 34 of 1999 s. 46(1).]

175D. Offences

(1) A person who —

(a) obstructs or interferes with the performance by an inspector of any of the inspector's functions under this Act;

(b) contravenes a requirement made by an inspector under this Act;

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(c) provides to an inspector an answer or information that is false or misleading in a material particular;

(d) gives any information that is false or misleading in a certificate referred to in section 175B(1)(f); or

(e) directly or indirectly prevents another person from complying with a requirement under this Act,

commits an offence.

Penalty: $5 000.

(2) A person is not excused from complying with a requirement to answer any question on the ground that the answer to the question might be incriminating or render the person liable to a penalty, but an answer given by the person is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this section arising out of the false or misleading nature of that answer.

[Section 175D inserted by No. 34 of 1999 s. 46(1).]

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Part XA — Infringement notices and modified penalties

[Heading inserted by No. 42 of 2004 s. 129.]

175E. Terms used

In sections 175G, 175H, 175I and 175J —

authorised officer means a person designated as an authorised officer under section 175F for the purposes of the section in which the term is used;

prescribed means prescribed by the regulations.

[Section 175E inserted by No. 42 of 2004 s. 129.]

175F. Authorised officers

(1) The chief executive officer may designate officers of WorkCover WA as authorised officers for the purposes of section 175G, 175H, 175I or 175J or for the purposes of 2 or more of those sections, but a person who is authorised to give infringement notices under section 175G is not eligible to be an authorised officer for the purposes of any of the other sections.

(2) The chief executive officer is to issue a certificate of authorisation to each person designated as an authorised officer under subsection (1).

(3) An authorised officer is to produce the certificate whenever required to do so by a person in respect of whom the officer has exercised, or is about to exercise, any power under this Part.

(4) Production of a certificate referred to in subsection (2) in respect of a person is evidence in any court that the person is duly designated under subsection (1).

[Section 175F inserted by No. 42 of 2004 s. 129.]

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175G. Giving of notice

(1) An authorised officer who has reason to believe that a person has committed a prescribed offence under this Act may give an infringement notice to the alleged offender.

(2) The notice is to be given within 6 months after the alleged offence is believed to have been committed.

[Section 175G inserted by No. 42 of 2004 s. 129.]

175H. Content of notice

(1) An infringement notice is to be in the prescribed form.

(2) An infringement notice is to —

(a) contain a description of the alleged offence;

(b) specify the amount of the modified penalty for the offence;

(c) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, that amount may be paid to an authorised officer within the period of 28 days after the giving of the notice; and

(d) inform the alleged offender as to who are authorised officers for the purpose of receiving payment of modified penalties.

(3) The amount specified under subsection (2)(b) is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

(4) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

[Section 175H inserted by No. 42 of 2004 s. 129; amended by No. 84 of 2004 s. 80; No. 2 of 2008 s. 73.]

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175I. Extension of time

An authorised officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid, and the extension may be allowed whether or not the period of 28 days has elapsed.

[Section 175I inserted by No. 42 of 2004 s. 129.]

175J. Withdrawal of notice

(1) An authorised officer may, whether or not the modified penalty has been paid, withdraw an infringement notice within 60 days after the day on which it was given by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

(2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

[Section 175J inserted by No. 42 of 2004 s. 129.]

175K. Benefit of paying modified penalty

(1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.

(2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

[Section 175K inserted by No. 42 of 2004 s. 129.]

175L. No admission implied by payment

Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

[Section 175L inserted by No. 42 of 2004 s. 129.]

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175M. Application of penalties collected

An amount paid as a modified penalty is to be dealt with in accordance with section 312, unless section 175J(2) requires the amount to be refunded.

[Section 175M inserted by No. 42 of 2004 s. 129.]

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Part XI — Dispute resolution

[Heading inserted by No. 42 of 2004 s. 130.]

Division 1 — General

[Heading inserted by No. 42 of 2004 s. 130.]

176. Exclusive jurisdiction

(1) In this Part —

dispute means —

(a) a dispute in connection with a claim for compensation, or the liability to pay compensation, under this Act;

(b) a dispute in connection with an obligation imposed under Part IX;

(c) any other dispute or matter for which provision is made under this Act for determination by an arbitrator;

(d) any other matter of a kind prescribed by the regulations.

(2) A proceeding for the determination of a dispute is not capable of being brought other than under this Part or Part XII.

(3) Subject to this Act, arbitrators have exclusive jurisdiction to examine, hear and determine all disputes.

[Section 176 inserted by No. 42 of 2004 s. 130.]

177. Evidence of communication between worker and injury management officer

Evidence of any communication between a worker and a person employed by WorkCover WA and acting in the capacity of an injury management officer is not admissible in a proceeding before an arbitrator unless, during the course of the proceeding, the worker consents to the evidence being so admitted.

[Section 177 inserted by No. 42 of 2004 s. 130.]

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Division 2 — Requirements before commencing proceeding

[Heading inserted by No. 42 of 2004 s. 130.]

178. Notice of injury and claim

(1) Proceedings for the recovery under this Act of compensation for an injury are not maintainable unless —

(a) a notice of the occurrence of the injury has been given under section 179 in writing containing substantially the information required by subsection (2) as soon as practicable after the occurrence; and

(b) the claim for compensation with respect to such injury has been made within 12 months from the occurrence of the injury or, in case of death, within 12 months from the time of death,

but —

(c) the want of or any defect or inaccuracy in such notice is not a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in defending the proceedings by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake, absence from the State, or other reasonable cause; and

(d) the failure to make a claim within the period mentioned in paragraph (b) is not a bar to the maintenance of such proceedings, if it is shown that the employer has not been prejudiced in defending the proceedings by such failure, or if it is found that the failure was occasioned by mistake, absence from the State, or other reasonable cause.

(2) Notice in respect of an injury under this Act is to state —

(a) the name and address of the person injured;

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(b) in ordinary language the cause of the injury; and

(c) the date and place at which the injury occurred,

and is to include such other information, if any, as may be prescribed by the regulations.

[Section 178 inserted by No. 42 of 2004 s. 130.]

179. Service of notice of injury

(1) Notice in respect of an injury under this Act is to be served on the employer, or, if there is more than one employer, upon one of such employers.

(2) The notice may be served by delivering it at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(3) When the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering it at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there is more than one office, any one of the offices of such body.

(4) When the employer is —

(a) the State, notice in respect of an injury under this Act is to be served on the State Solicitor, at Perth, or the manager of the work on which the worker was employed at the time the injury occurred;

(b) the Governor under the *Governor's Establishment Act 1992*, notice in respect of an injury under this Act is to be served on the Official Secretary within the meaning of that Act;

(c) the President of the Legislative Council, notice in respect of an injury under this Act is to be served —

(i) in the case of a worker who is a member of the Department of the Legislative Council, on the Clerk of the Legislative Council; or

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(ii) in the case of a worker who is an electorate officer, on the Director-General;

(d) the Speaker of the Legislative Assembly, notice in respect of an injury under this Act is to be served —

(i) in the case of a worker who is a member of the Department of the Legislative Assembly, on the Clerk of the Legislative Assembly; or

(ii) in the case of a worker who is an electorate officer, on the Director-General;

or

(e) the President of the Legislative Council and the Speaker of the Legislative Assembly, acting jointly, notice in respect of an injury under this Act is to be served, in the case of a worker who is a member of —

(i) the Department of the Parliamentary Reporting Staff, on the Chief Hansard Reporter;

(ii) the Department of the Parliamentary Library, on the Parliamentary Librarian; or

(iii) the Joint House Department, on the Executive Officer of the Joint House Department,

as the case requires.

(5) A reference in subsection (4)(c), (d) or (e) to an expression that is defined in the *Parliamentary and Electorate Staff (Employment) Act 1992* is a reference to that expression as so defined.

[Section 179 inserted by No. 42 of 2004 s. 130.]

180. Provision of certain documents before commencement of proceeding

(1) In this section —

injury includes alleged injury;

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relevant document means any of the following —

(a) a contract of service or apprenticeship to which the worker is a party;

(b) a contract for service to which the worker is a party;

(c) records of wages or other remuneration paid to the worker;

(d) a report relevant to the injury by a medical practitioner who has treated the worker for the injury;

(e) a report by a medical practitioner who has conducted tests or investigations on the worker in relation to the injury;

(f) a report by a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (d) or (e) in connection with treatment of, or tests related to, the injury;

(g) a report by an approved vocational rehabilitation provider in relation to the worker;

(h) a notice of occurrence of the injury made in accordance with section 178(1)(a);

(i) a claim for compensation with respect to the injury made in accordance with section 178(1)(b);

(j) a document of a kind prescribed by the regulations.

(2) A worker who has suffered an injury, or the worker's legal practitioner or agent, may request the worker's employer at the time the injury occurred, or that employer's insurer, to provide the person making the request with a copy of such relevant documents as are in the possession of or under the control of the employer and the insurer.

(3) If a worker has made a claim for compensation with respect to noise induced hearing loss in accordance with section 178(1)(b), the worker's employer or that employer's insurer may request WorkCover WA to provide the person making the request with

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a copy of any documents in the possession of or under the control of WorkCover WA that —

(a) are of a kind described in paragraph (d), (e) or (f) of the definition of ***relevant document*** in subsection (1); or

(b) relate to the worker's employment history or the worker's exposure to noise.

(4) A request under subsection (2) or (3) is to be made in accordance with the DRD Rules and is to be complied with within the time prescribed by the DRD Rules.

(5) An employer or insurer requested to provide a copy of a relevant document under subsection (2) or (3) that fails to comply with the request within the period referred to in subsection (4) commits an offence.

Penalty: $1 000.

(6) An arbitrator may make an order requiring the production of documents under this section.

[Section 180 inserted by No. 42 of 2004 s. 130; amended by No. 16 of 2005 s. 22.]

Division 3 — Proceedings before an arbitrator

[Heading inserted by No. 42 of 2004 s. 130.]

181. Arbitrators to determine disputes

(1) A party to a dispute may apply to the Director in accordance with this Act and the DRD Rules for determination of the dispute by an arbitrator.

(2) A proceeding before an arbitrator commences when the application is accepted by the Director.

[Section 181 inserted by No. 42 of 2004 s. 130.]

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182. Who is to be given a copy of an application

(1) When an application is accepted by the Director the applicant is to give a copy of the application to —

(a) each other party;

(b) any other person entitled under this Act to a copy of, or notice of, the application; and

(c) any person to whom the applicant is directed by the Director to give a copy of the application.

(2) Subsection (1) does not require the applicant to give a copy of the application to a person mentioned in subsection (1) (a ***notifiable person***) if —

(a) the Director has undertaken to give a copy of the application to the notifiable person; or

(b) under subsection (3) an arbitrator dispenses with the requirement to give a copy of the application to a notifiable person.

(3) An arbitrator may make an order dispensing with the requirement to give a copy of an application to a notifiable person specified in the order if satisfied —

(a) that the applicant has made all reasonable attempts to give a copy of the application to the notifiable person but has been unsuccessful; or

(b) that the hearing of the application without notice to the notifiable person would not cause injustice.

(4) The DRD Rules may provide for the manner in which and time within which subsection (1) is to be complied with.

[Section 182 inserted by No. 42 of 2004 s. 130.]

183. Information exchange between parties

(1) When, and at times prescribed by the DRD Rules after, an application is made for a determination of a dispute by an arbitrator, each party to the dispute must provide to the other

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party and to the Director, in accordance with the DRD Rules, such documents, material and information as the DRD Rules require.

(2) Subject to section 206, a party to a dispute who fails to comply with a requirement of subsection (1) commits an offence.

Penalty: $2 000.

(3) Where a worker, after an injury has occurred, makes a statement in writing, in relation to the injury to the employer of the worker or to an insurer or to any person acting on behalf of the employer or insurer, that statement is not to be admitted in evidence if tendered by the employer or insurer or used by the employer or insurer in a proceeding before an arbitrator unless the employer or insurer has supplied to the worker or to a legal practitioner or agent acting on behalf of the worker in the proceeding a copy in writing of the statement.

(4) Any document, material or information that a party to a dispute has failed to provide in contravention of subsection (1) cannot be admitted on behalf of the party in a proceeding on the dispute before an arbitrator.

(5) A witness cannot appear in a proceeding on a dispute before an arbitrator if a party to the dispute has failed to file a statement from that witness in contravention of this section.

(6) Subsections (2), (4) and (5) do not apply if the party is a worker unless it is established that the worker was represented by a legal practitioner or agent (as defined in section 261) at the relevant time.

(7) The DRD Rules may provide for exceptions to subsections (4) and (5) and may authorise an arbitrator to permit —

(a) the admission in a proceeding before the arbitrator in specified circumstances of any document, material or information that would otherwise be not admissible under subsection (4); or

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(b) the appearance in a proceeding before the arbitrator in specified circumstances of a witness who would otherwise not be permitted to appear under subsection (5).

(8) If an arbitrator is satisfied that a party has failed without reasonable excuse to comply with a requirement of this section, the arbitrator may do any one or more of the following —

(a) refer the matter to WorkCover WA;

(b) note the matter in a certificate issued by the arbitrator in respect of the dispute (together with details of the documents, material or information to which the failure relates);

(c) order that a specified amount or proportion of the costs that would otherwise be recoverable by the party in connection with the application to the arbitrator are not recoverable.

[Section 183 inserted by No. 42 of 2004 s. 130.]

184. Interim assessment and minor claims

When an application is made under this Part, the Director may refer the application or any part of the application to be dealt with under Part XII if the application or that part of the application could have been made under that Part, and may defer determination of a dispute under this Part while the matter referred is being dealt with under that Part.

[Section 184 inserted by No. 42 of 2004 s. 130.]

185. Arbitrator to attempt conciliation

(1) An arbitrator is not to determine a dispute without first using the arbitrator's best endeavours to bring the parties to the dispute to a settlement acceptable to all of them.

(2) No objection may be taken to the determination of a dispute by an arbitrator on the ground that the arbitrator had previously

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used the arbitrator's best endeavours to bring the parties to a dispute to a settlement.

(3) The DRD Rules may make provision for or with respect to conciliation.

[Section 185 inserted by No. 42 of 2004 s. 130.]

186. Arbitrator may review decision

(1) In this section —

new information means information relevant to a decision that, although available to a party at the time the decision was made, was not available to the arbitrator and, in the opinion of the arbitrator, justifies reconsideration of the matter.

(2) If new information becomes available after an arbitrator makes a decision, the arbitrator may reconsider the decision and —

(a) vary or revoke the decision previously made; or

(b) make any further decision,

as the arbitrator considers appropriate having regard to the new information.

[Section 186 inserted by No. 42 of 2004 s. 130.]

187. Decisions of arbitrator

(1) Except as otherwise provided by this Act a decision of an arbitrator —

(a) is final and binding on the parties and is not subject to an appeal; and

(b) is not to be vitiated because of any informality or want of form.

(2) A decision of an arbitrator or anything done under this Act in the process of coming to a decision of an arbitrator is not amenable to judicial review.

[Section 187 inserted by No. 42 of 2004 s. 130.]

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Division 4 — Practice and procedure

[Heading inserted by No. 42 of 2004 s. 130.]

188. Practice and procedure, generally

(1) An arbitrator is bound by rules of natural justice except to the extent that this Act authorises, whether expressly or by implication, a departure from those rules.

(2) The *Evidence Act 1906* does not apply to proceedings before an arbitrator and an arbitrator —

(a) is not bound by the rules of evidence or any practice or procedure applicable to courts of record, except to the extent that the DRD Rules make them apply; and

(b) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(3) An arbitrator may inform himself on any matter as the arbitrator thinks fit.

(4) An arbitrator may —

(a) receive in evidence any transcript of evidence in proceedings before a court or other person or body acting judicially and draw any conclusion of fact from the transcript; and

(b) adopt, as the arbitrator thinks fit, any finding, decision, or judgment of a court or other person or body acting judicially that is relevant to the proceeding.

(5) To the extent that the practice and procedure of an arbitrator are not prescribed under this Act, they are to be as the arbitrator determines.

[Section 188 inserted by No. 42 of 2004 s. 130.]

[188A. *Deleted by No. 42 of 2004 s. 136.]*

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189. Relief or redress not restricted to claim

The granting of relief or redress under this Act is not necessarily to be restricted to the specific claim made nor to the subject matter of the claim.

[Section 189 inserted by No. 42 of 2004 s. 130.]

190. Directions

(1) An arbitrator may give directions at any time in a proceeding and do whatever is necessary for the speedy and fair conduct of the proceeding.

(2) An arbitrator may give directions on the initiative of the arbitrator or on the application of a party.

(3) A directions hearing conducted by an arbitrator may be held for the purposes of this section before the hearing of the proceeding.

[Section 190 inserted by No. 42 of 2004 s. 130.]

191. Dependants

In considering a question as to whether a person who resides outside the State is a dependant of a worker, an arbitrator is to require proof by or including documentary evidence that the worker has, wholly or in part as the case may be, supported the person and is not to accept as sufficient proof a statutory declaration or affidavit unsupported by documentary evidence to that effect.

[Section 191 inserted by No. 42 of 2004 s. 130.]

192. Arbitrator may regard illegal contracts of employment as valid

If in any proceeding for the recovery under this Act of compensation for an injury it appears to an arbitrator that the contract under which the injured worker was engaged at the time when the injury occurred was illegal, the arbitrator may, if,

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having regard to all the circumstances of the case the arbitrator thinks proper to do so, deal with the matter as if the injured person had at that time been a worker under a valid contract.

[Section 192 inserted by No. 42 of 2004 s. 130.]

193. Power of arbitrator to require information

(1) An arbitrator may order any person (whether or not a party to a dispute before the arbitrator) —

(a) to produce, at a time and place specified in the order, the documents or material specified in the order; or

(b) to furnish specified information within a time specified in the order.

(2) The order may require the documents or material to be produced or the information to be furnished —

(a) to the arbitrator or to another party to a dispute before the arbitrator, in the case of an order given to a party to the dispute; or

(b) to the arbitrator in the case of an order given to a person who is not a party to a dispute before the arbitrator.

(3) If a person fails without reasonable excuse to produce a document or material or furnish information in compliance with an order given to the person under this section, the person cannot as a party to a proceeding before a dispute resolution authority have the document, material or information admitted in the proceeding.

(4) An arbitrator may exercise powers under this section at the request of a party to a dispute before an arbitrator or of the arbitrator's own motion.

(5) The regulations or DRD Rules may make provision for or with respect to any of the following matters —

(a) exempting specified kinds of documents, material or information from the operation of this section;

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(b) specifying cases and circumstances in which an arbitrator is required to exercise the arbitrator's powers under this section;

(c) specifying cases and circumstances in which an arbitrator is not to exercise the arbitrator's powers under this section.

(6) An arbitrator may order a person to produce a document, material or information despite any rule of law relating to privilege or the public interest in relation to the production of documents.

[Section 193 inserted by No. 42 of 2004 s. 130.]

194. Arbitrator may provide documents, material and information to other party or medical practitioner

(1) When a document or other material or information relevant to a proceeding before an arbitrator is produced or furnished to the arbitrator by a party to the proceeding or another person (whether or not pursuant to a requirement under this Part), the arbitrator may produce or furnish the document, material or information to —

(a) any other party to the proceeding;

(b) any other party's legal representative or registered agent; or

(c) a medical practitioner (including a medical assessment panel and an approved medical specialist panel).

(2) The arbitrator may, when producing or furnishing documents, material or information, to another person direct that the person must not cause or permit disclosure of the information, or information in the documents or material, or any specified part of that information, to another person.

[Section 194 inserted by No. 42 of 2004 s. 130.]

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195. Representation

(1) At any hearing or conference before an arbitrator, a party to the proceeding may appear in person or may be represented by —

(a) a legal practitioner;

(b) a registered agent;

(c) if the party is a body corporate, a director, secretary, or other officer of the body corporate; or

(d) if the party is a public sector body as defined in section 3(1) of the *Public Sector Management Act 1994*, a public sector employee authorised by the party to represent the party.

(2) In any proceeding an arbitrator may refuse to permit an employer or an insurer to be represented by a legal practitioner or registered agent if a party who is a worker is not represented by a legal practitioner or registered agent.

(3) A person who has been struck off the roll of practitioners of the Supreme Court cannot represent a party.

(4) An arbitrator may refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.

(5) The regulations or the DRD Rules may prevent specified persons, or persons of a specified class, from representing a party.

[Section 195 inserted by No. 42 of 2004 s. 130.]

196. Arbitrator may appoint guardian

If a child is a party or potential party to a proceeding or proposed proceeding, an arbitrator may appoint a litigation guardian in accordance with the DRD Rules to conduct the proceeding on the child's behalf.

[Section 196 inserted by No. 42 of 2004 s. 130.]

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197. Interpreters and assistants

(1) Unless the arbitrator directs otherwise, a party or a party's representative may be assisted in the course of a proceeding by an interpreter or another person necessary or desirable to make the proceeding intelligible to that party and to enable the party to communicate adequately.

(2) A person may present a written submission or evidence in a language other than English if it is accompanied by a translation into English and a statutory declaration by the translator to the effect that the translation accurately reproduces in English the contents of the original document.

[Section 197 inserted by No. 42 of 2004 s. 130.]

198. Electronic hearings and proceedings without hearings

(1) A proceeding before an arbitrator need not be conducted by formal hearing and may, if the DRD Rules so provide or if the arbitrator thinks it appropriate, be conducted by way of a conference between the parties.

(2) If an arbitrator thinks it appropriate, the arbitrator is to allow the parties and their representatives and any witnesses (or one or more of them) to participate in a conference or hearing of a proceeding by means of telephones, video links, or any other system or method of communication.

(3) If an arbitrator thinks it appropriate, the arbitrator may conduct all or part of a proceeding entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a conference or hearing.

(4) An arbitrator may take into account a written submission prepared by a legal practitioner acting for a party to a proceeding and submitted by or on behalf of the party, whether or not the party is represented by a legal practitioner at any conference or hearing of the proceeding.

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(5) If an arbitrator conducts a proceeding in accordance with this section, the arbitrator is to take steps to ensure that the public has access to, or is precluded from access to, matters disclosed in the proceeding to the same extent as if the proceeding had been heard before the arbitrator with the attendance in person of all persons involved in the proceeding.

(6) Provisions of this Act applying to hearings apply with any necessary modifications in relation to a conference or a proceeding conducted in accordance with subsection (3).

[Section 198 inserted by No. 42 of 2004 s. 130; amended by No. 16 of 2005 s. 23.]

199. Hearings to be held in private

Hearings and conferences before an arbitrator are to be conducted in private unless —

(a) the arbitrator conducting the hearing or conference decides that it should be conducted in public; or

(b) the DRD Rules otherwise provide.

[Section 199 inserted by No. 42 of 2004 s. 130.]

200. Notice of hearings

(1) Notice of the time and place for the hearing of a proceeding is to be given in accordance with the DRD Rules to —

(a) each party to the proceeding;

(b) each other person entitled to notice of the hearing under this Act.

(2) If a person, including a party, to whom notice has been given in accordance with the DRD Rules fails to attend, the hearing may be held in the absence of that person.

(3) The failure of a party to attend a hearing of a proceeding does not affect the validity of any decision made in relation to the proceeding.

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[Section 200 inserted by No. 42 of 2004 s. 130.]

201. Expert or professional assistance

(1) An arbitrator may refer any technical or specialised matter to an expert and accept that expert's report as evidence.

(2) An arbitrator who obtains an expert's report is to call the expert for examination on the subject matter of the report if a party to the proceedings so requests.

[Section 201 inserted by No. 42 of 2004 s. 130.]

202. Summoning witnesses

The Director or an arbitrator may issue a summons requiring the attendance of a person before an arbitrator.

[Section 202 inserted by No. 42 of 2004 s. 130.]

203. Powers relating to witnesses

(1) In any proceeding before an arbitrator, the arbitrator may —

(a) call any person to give evidence;

(b) examine any witness on oath or affirmation, or by use of a statutory declaration;

(c) examine or cross-examine any witness to such extent as the arbitrator thinks proper; and

(d) require any witness to answer questions put to the witness.

(2) Nothing in subsection (1) enables an arbitrator to require a witness to answer a question if the witness —

(a) is excused by section 206(1) from answering the question; or

(b) has a reasonable excuse (other than on the ground mentioned in section 204(1) or 205) for refusing to answer the question.

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[Section 203 inserted by No. 42 of 2004 s. 130.]

204. Privilege against self-incrimination

(1) A person is not excused from complying with a requirement under this Part to answer a question, produce a document or other material, or furnish information, on the ground that the answer, the production of the document or other material, or the furnishing of the information, might incriminate the person or render the person liable to a penalty.

(2) However neither —

(a) an answer given by that person that was given to comply with the requirement; nor

(b) the fact that a document or other material produced by the person, or information furnished by the person, to comply with the requirement was produced or furnished,

is admissible in evidence in any criminal proceedings against the person other than proceedings for perjury or for an offence against this Act arising out of the false or misleading nature of an answer.

[Section 204 inserted by No. 42 of 2004 s. 130.]

205. Legal professional privilege in relation to medical reports

(1) A legal practitioner is not excused from complying with a requirement under this Part to answer a question in relation to a medical report or produce a medical report on the ground that the answer to the question would disclose, or the report contains, a privileged communication made by or to the legal practitioner in his capacity as a legal practitioner.

(2) Subsection (1) does not apply in respect of a question that does not relate directly to the treatment, or nature or extent of impairment, or assessment of degree of impairment, of a worker.

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(3) A medical report may be produced by the legal practitioner in compliance with a requirement under this Part with the omission of passages that —

(a) do not relate directly to the treatment, or nature or extent of impairment, or assessment of degree of impairment, of a worker; and

(b) contain a privileged communication made by or to the legal practitioner in his capacity as a legal practitioner.

[Section 205 inserted by No. 42 of 2004 s. 130.]

206. Other claims of privilege

(1) Unless it would be contrary to section 204 or 205 or an order under section 193, a person is excused from answering a question or producing or furnishing a document, material or information in a proceeding if the person could not be compelled to answer the question or produce or furnish the document, material or information in proceedings in the Supreme Court.

(2) An arbitrator may require a person to produce a document or other material to the arbitrator for the purpose of determining whether or not it is a document or material that the arbitrator has power to require the person to produce.

[Section 206 inserted by No. 42 of 2004 s. 130.]

207. Oaths and affirmations

An arbitrator may administer an oath or take an affirmation for the purposes of this Act.

[Section 207 inserted by No. 42 of 2004 s. 130.]

208. Authorising person to take evidence

(1) An arbitrator may authorise, in writing, a person (whether or not an arbitrator) to take evidence on behalf of the arbitrator for the purposes of any proceeding.

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(2) The arbitrator may authorise evidence to be taken under this section outside Western Australia.

(3) The arbitrator may give directions as to the taking of evidence under this section.

(4) If a person other than an arbitrator is authorised to take evidence the person has all the powers of an arbitrator in relation to the taking of evidence.

(5) Evidence taken under this section is to be regarded as having been given to the arbitrator.

[Section 208 inserted by No. 42 of 2004 s. 130.]

209. Dealing with things produced

An arbitrator may inspect any document or other material produced before the arbitrator, and retain it for as long as the arbitrator reasonably thinks fit, and make copies of any document or any of its contents.

[Section 209 inserted by No. 42 of 2004 s. 130.]

210. Referral of medical dispute for assessment

(1) If permitted by section 145A to do so, an arbitrator may refer a question as to —

(a) the nature or extent of an injury;

(b) whether an injury is permanent or temporary; or

(c) a worker's capacity for work,

for determination by a medical assessment panel.

(2) Without limiting subsection (1), that subsection applies to —

(a) questions as to the permanent or other loss of the efficient use of any part or faculty of the body for the purposes of Part III Division 2, or to the degree of that loss;

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(b) questions as to the degree of disability assessed in accordance with section 93D(2);

(c) questions for the purposes of section 31F as to whether a worker has contracted AIDS.

(3) Subsection (1) does not apply to questions as to —

(a) the permanent or other impairment of the efficient use of any part or faculty of the body for the purposes of Part III Division 2A, or to the degree of that impairment;

(b) the degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3;

(c) the degree of whole of person impairment for the purposes of Part IXA; or

(d) the degree of permanent whole of person impairment for the purposes of clause 18A.

[Section 210 inserted by No. 42 of 2004 s. 130.]

Division 5 — Decisions

[Heading inserted by No. 42 of 2004 s. 130.]

Subdivision 1 — General provisions

[Heading inserted by No. 42 of 2004 s. 130.]

211. Decisions generally

(1) Subject to this Act, an arbitrator may make such decisions as the arbitrator thinks fit.

(2) Subject to the provisions of Part XII, an arbitrator may confirm, vary or revoke a direction or order made under Part XII Division 2 or 3.

[Section 211 inserted by No. 42 of 2004 s. 130.]

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212. Conditional and ancillary orders and directions

A power of an arbitrator to make an order or give a direction (the ***primary power***) includes the power to make the order subject to conditions and the power to make any ancillary order or direction the arbitrator considers appropriate for achieving the purpose for which the arbitrator may exercise the primary power.

[Section 212 inserted by No. 42 of 2004 s. 130.]

213. Form and content of decision and reasons

(1) A decision of an arbitrator is to be given in writing to a party to a proceeding if —

(a) the DRD Rules state that the decision is to be given in writing to that party; or

(b) within 14 days after the arbitrator makes the decision, the party requests that the decision be given in writing.

(2) An arbitrator's decision in writing is to include information as to appeal rights that may be available to the parties under this Act.

(3) The reasons for a decision of an arbitrator are to be given in writing to a party to a proceeding if —

(a) the DRD Rules state that the reasons are to be given in writing to that party; or

(b) within 14 days after the arbitrator makes the decision, the party requests that the reasons for the decision be given in writing.

(4) The reasons for an arbitrator's decision —

(a) need only identify the facts that the arbitrator has accepted in coming to the decision and give the reasons for doing so;

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(b) need only identify the law that the arbitrator has applied in coming to the decision and give the reasons for doing so;

(c) need not canvass all the evidence given in the case; and

(d) need not canvass all the factual and legal arguments or issues arising in the case.

(5) A written transcript of the part of the proceeding in which a decision is given orally or reasons are given orally is sufficient compliance with the requirement for the decision or reasons to be in writing.

(6) The fact that a decision is, or reasons are, given orally or in accordance with subsection (4) or (5) is not of itself a ground for reversing or modifying the decision on an appeal.

[Section 213 inserted by No. 42 of 2004 s. 130.]

214. Validity of decision

A failure of an arbitrator to comply with a requirement of this Subdivision does not affect the validity of a decision.

[Section 214 inserted by No. 42 of 2004 s. 130.]

215. When decision has effect

(1) A decision of an arbitrator comes into effect immediately after it is given, or at such later time as is specified in it.

(2) Subsection (1) does not prevent a stay of the effect of the decision from being given under section 250.

[Section 215 inserted by No. 42 of 2004 s. 130.]

216. Correcting mistakes

An arbitrator may correct a decision an arbitrator gives or a statement of the reasons an arbitrator has given for the decision to the extent necessary to rectify —

(a) a clerical mistake;

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(b) an error arising from an accidental slip or omission;

(c) a material miscalculation of figures or a material mistake in the description of any person, thing, or matter referred to in the decision; or

(d) a defect of form.

[Section 216 inserted by No. 42 of 2004 s. 130.]

Subdivision 2 — Particular orders

[Heading inserted by No. 42 of 2004 s. 130.]

217. Order as to total liability

(1) This section applies where —

(a) an arbitrator considers that an injury to a worker that is compensable under this Act has resulted in the permanent total incapacity for work of the worker;

(b) an order for redemption of the liability for the incapacity has not already been made under section 67;

(c) no memorandum of agreement for the payment of a lump sum in redemption of the liability for the incapacity has been recorded under section 76; and

(d) the total weekly payments by way of compensation payable under clause 7 for that injury have reached the prescribed amount.

(2) If this section applies, the arbitrator may, subject to this section, make any order as to the total liability of the employer for the incapacity that the arbitrator thinks proper in the circumstances.

(3) An arbitrator is not to make an order under subsection (2) unless the arbitrator considers an order ought to be made, having regard to the social and financial circumstances and the reasonable financial needs of the worker.

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(4) The total liability of the employer ordered under this section is not to exceed the lesser of —

(a) an amount equal to 75% of the prescribed amount; or

(b) weekly payments at the rate to which the worker was entitled at the time when the total weekly payments for the injury of the worker reached the prescribed amount —

(i) for the period of the expectation of life of the worker; or

(ii) if section 56 or Schedule 5 clause 2 applies in respect of the incapacity, up to the date when weekly payments would cease by reason of age,

whichever is the shorter.

(5) An arbitrator is to deal with the payment of the final liability by ordering weekly payments at such rate as the arbitrator thinks proper in the circumstances, having regard to the matters referred to in subsection (3), but not at a rate that exceeds the rate to which the worker was entitled at the time when the total weekly payments for the injury of the worker reached the prescribed amount.

(6) In making an order as to final liability under this section an arbitrator may order payment of an amount for arrears of such weekly payments from the time when the total weekly payments for the worker's injury reached the prescribed amount to the date of the order.

[Section 217 inserted by No. 42 of 2004 s. 130.]

218. Order relating to payment of compensation in respect of persons under legal disability or who are dependants

(1) A question as to the payment of compensation that is payable to —

(a) a person under a legal disability to give an effective discharge for payment; or

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(b) a dependant or dependants of a deceased worker,

may be determined on application under this Part as a dispute.

(2) An arbitrator may order that compensation that is payable to a person under a legal disability to give an effective discharge for payment is to be paid to WorkCover WA and applied in the manner specified in the order.

(3) An arbitrator may order that all or any of the compensation that is payable to a dependant or dependants of a deceased worker —

(a) is to be paid to WorkCover WA and applied in the manner specified in the order; or

(b) is to be paid to a dependant or dependants of the deceased worker as specified in the order.

(4) After it has been ordered under subsection (2) or (3)(a) that compensation be paid to WorkCover WA, a question as to —

(a) whether the compensation should be applied differently; or

(b) if the order was under subsection (3)(a), whether all or any of the compensation should be paid to a dependant or dependants of the deceased worker,

may be determined on application under this Part as a dispute.

(5) An arbitrator may make such orders under subsections (1) and (4) as the arbitrator thinks fit.

[Section 218 inserted by No. 42 of 2004 s. 130.]

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Subdivision 3 — Enforcement of decisions

[Heading inserted by No. 42 of 2004 s. 130.]

219. Enforcement of decisions

(1) A person to whom money is to be paid under a decision of an arbitrator may enforce the decision by filing in a court of competent jurisdiction —

(a) a copy of the decision that the Director has certified to be a true copy; and

(b) an affidavit as to the amount not paid under the decision.

(2) No charge is to be made for filing a copy of a decision or affidavit under this section.

(3) On filing, the decision is to be taken to be an order of that court, and may be enforced accordingly.

[Section 219 inserted by No. 42 of 2004 s. 130; amended by No. 16 of 2005 s. 24.]

Division 6 — Miscellaneous

[Heading inserted by No. 42 of 2004 s. 130.]

220. Evidence not admissible in common law proceedings

Evidence of a statement made in a proceeding before an arbitrator is not admissible in an action brought by a worker for damages independently of this Act unless the person who made the statement agrees to the evidence being admitted.

[Section 220 inserted by No. 42 of 2004 s. 130.]

221. Payment of compensation awarded

A sum awarded as compensation, unless paid into the custody of WorkCover WA and in the absence of any order to the contrary, is to be paid to the person to whom it is payable under any agreement, award, or order.

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[Section 221 inserted by No. 42 of 2004 s. 130.]

222. Interest before order for payment

(1) In any proceeding before an arbitrator, the arbitrator may order that there is to be included, in any sum to be paid, interest on the whole or any part of the sum for the whole or any part of the period before the sum is payable.

(2) Interest payable under an order made under subsection (1) is to be calculated at a rate prescribed by or determined under the regulations.

(3) This section does not —

(a) authorise the giving of interest upon interest; or

(b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.

[Section 222 inserted by No. 42 of 2004 s. 130.]

223. Interest after order for payment

(1) Unless an arbitrator orders in any particular case that interest is not payable, interest is payable on so much of the amount of any sum ordered to be paid by an arbitrator as is from time to time unpaid.

(2) Interest payable under subsection (1) in respect of any sum ordered to be paid —

(a) is to be calculated as from the date when the order was made or from such later date as an arbitrator in any particular case fixes;

(b) is to be calculated at a rate prescribed by or determined under the regulations; and

(c) forms part of the sum ordered to be paid, but not so as to require the payment of interest on interest.

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(3) Despite subsections (1) and (2), where an amount ordered to be paid is paid in full within the period prescribed or determined under the regulations, interest is not payable on the amount so paid.

[Section 223 inserted by No. 42 of 2004 s. 130.]

224. Interest on agreed payment of lump sum compensation

(1) An arbitrator may order, in accordance with the regulations, that interest is payable on so much of the amount of any sum agreed to be paid under this Act as is from time to time unpaid.

(2) Interest payable under subsection (1) in respect of any sum so agreed to be paid —

(a) is to be calculated as from the date provided by the agreement as the date when the sum is due to be paid or, if the agreement does not so provide, the date that is 21 days after the date the agreement was made;

(b) is to be calculated at a rate prescribed by or determined under the regulations; and

(c) forms part of the sum agreed to be paid, but not so as to require the payment of interest on interest.

[Section 224 inserted by No. 42 of 2004 s. 130.]

225. Regulations may exclude interest

Interest is not payable under section 222, 223 or 224 in the circumstances prescribed in the regulations.

[Section 225 inserted by No. 42 of 2004 s. 130.]

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Part XII — Interim orders and minor claims

[Heading inserted by No. 42 of 2004 s. 130.]

Division 1 — Preliminary

[Heading inserted by No. 42 of 2004 s. 130.]

226. Term used: statutory expenses

In this Part —

statutory expenses means a compensation entitlement under clause 17.

[Section 226 inserted by No. 42 of 2004 s. 130.]

227. Exercise of functions under this Part

(1) Without limiting section 198, an arbitrator may make a decision under this Part on the basis of —

(a) documents and information provided when the relevant application was made; and

(b) advice given to the arbitrator by an officer of the DRD.

(2) An arbitrator is not to conduct a formal hearing under this Part.

(3) An arbitrator is not required to give reasons in writing for a decision under this Part.

(4) A decision under this Part is not subject to an appeal or amenable to judicial review.

[Section 227 inserted by No. 42 of 2004 s. 130.]

228. Provisions of Part XI apply

Except where provision to the contrary is made in this Part or in the DRD Rules, the provisions of Part XI apply to and in relation to proceedings and decisions under this Part.

[Section 228 inserted by No. 42 of 2004 s. 130.]

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229. Arbitrator may direct that matter be dealt with under Part XI

An arbitrator may direct that a matter under this Part, or a matter referred under section 184 to be dealt with under this Part, is to be dealt with instead under Part XI.

[Section 229 inserted by No. 42 of 2004 s. 130.]

230. DRD Rules apply

(1) An application under this Part is to be made in the manner, and is to include the information, prescribed by the DRD Rules.

(2) The giving of directions and orders under this Part is subject to the provisions of the DRD Rules relating to those directions and orders.

[Section 230 inserted by No. 42 of 2004 s. 130.]

Division 2 — Interim payment orders

[Heading inserted by No. 42 of 2004 s. 130.]

231. Application for interim payment order

(1) An application for an order as to payment of weekly payments before liability for those weekly payments is otherwise determined under this Act may be made under this Division by a worker at any time after —

(a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 178(1)(b); and

(b) the worker suffering the injury has served on the employer a certificate signed by a medical practitioner —

(i) in or to the effect prescribed by the regulations containing substantially the information sought in the form; or

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(ii) to the effect that the worker is unfit for work because of a recurrence of an injury in respect of which a certificate as first referred to has previously been served.

(2) An application for an order as to payment of statutory expenses before liability for those expenses is otherwise determined under this Act may be made by a worker at any time after —

(a) a claim for compensation by way of payment of statutory expenses has been made on an employer in accordance with section 178(1)(b); and

(b) the worker suffering the injury has served on the employer a certificate in or to the effect prescribed and signed by a medical practitioner to the effect that the expenses claimed are expenses incurred by the worker for treatment or services required in relation to the injury.

[Section 231 inserted by No. 42 of 2004 s. 130; amended by No. 16 of 2005 s. 25.]

232. Orders for interim weekly payments

(1) Subject to section 234, if —

(a) a period of not less than 21 days has elapsed since a worker served on the worker's employer the documents referred to in section 231(1); and

(b) the worker has not received the first of the weekly payments claimed,

an arbitrator may order the employer to pay weekly payments to the worker.

(2) An order under subsection (1) is referred to in this Division as an ***interim payment order***.

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(3) An arbitrator may make an interim payment order for weekly payments of compensation on an application under this Division unless it appears to the arbitrator that —

(a) the claim concerned would have minimal prospects of success under Part XI;

(b) insufficient medical evidence is available concerning the nature or period of incapacity of the worker; or

(c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.

(4) An interim payment order can be made subject to conditions.

(5) A further interim payment order can be made after the expiry of any earlier order.

[Section 232 inserted by No. 42 of 2004 s. 130.]

233. Orders for interim payment of statutory expenses

(1) Subject to section 234, if —

(a) a period of not less than 21 days has elapsed since a worker served on the worker's employer the documents referred to in section 231(2); and

(b) the worker has not received the statutory expenses claimed,

an arbitrator may order the employer to pay statutory expenses to the worker.

(2) An order under subsection (1) is referred to in this Division as an ***interim payment order***.

(3) An arbitrator may make an interim payment order for statutory expenses unless it appears to the arbitrator that —

(a) the claim concerned would have minimal prospects of success under Part XI;

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(b) insufficient evidence is available as to whether or not the expenses claimed are reasonable; or

(c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.

(4) An interim payment order can be made subject to conditions.

(5) A further interim payment order can be made after the expiry of any earlier order.

[Section 233 inserted by No. 42 of 2004 s. 130.]

234. Limits on interim payment orders

(1) An arbitrator is not to order the payment of weekly payments of compensation for a period that exceeds 12 weeks.

(2) An arbitrator may order payment of weekly payments during a period that is before the order is made, but that period is not to exceed 10 weeks.

(3) An arbitrator is not to make an interim payment order for payment of statutory expenses for an amount that is more than 5% of the prescribed amount.

[Section 234 inserted by No. 42 of 2004 s. 130.]

235. Effect of interim payment order

(1) The payment of compensation in accordance with an interim payment order —

(a) is not an admission of liability by the person paying the compensation; and

(b) does not prevent a question of liability from being heard and determined on an application under section 58 or otherwise under this Act as if the compensation had not been paid.

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(2) Refusal to make an interim payment order is not a finding as to liability in respect of the matter concerned.

[Section 235 inserted by No. 42 of 2004 s. 130.]

236. Recovery of payments

If an arbitrator subsequently determines that a person is not liable to pay compensation by way of the weekly payments or statutory expenses that have been paid in accordance with an interim payment order, the following provisions apply —

(a) the worker or other person who received that compensation is not required to refund the compensation unless the arbitrator otherwise orders under paragraph (b);

(b) if the arbitrator is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, the arbitrator may order the worker or other person concerned to refund the whole or a specified part of the compensation;

(c) the arbitrator may (instead of making an order for a refund) order any other person whom the arbitrator determines was liable for the whole or any part of the compensation to reimburse the person who paid the compensation;

(d) the compensation is to be excluded from any determinations of the claims experience of the employer for the purposes of calculating the premium payable by the employer for a policy of insurance.

[Section 236 inserted by No. 42 of 2004 s. 130.]

237. Revocation of interim payment order

(1) An arbitrator may revoke an interim payment order at any time.

(2) When an interim payment order is revoked the obligation to pay compensation under the order ceases.

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(3) The revocation of an interim payment order does not affect the requirement to pay the compensation before the revocation.

(4) Revocation of, or refusal to revoke, an interim payment order is not a finding as to liability in respect of the matter concerned.

[Section 237 inserted by No. 42 of 2004 s. 130.]

Division 3 — Interim suspension or reduction orders

[Heading inserted by No. 42 of 2004 s. 130.]

238. Interim suspension or reduction order

(1) An application for an order suspending or reducing weekly payments may be made under this Division by an employer —

(a) at the same time as lodging an application under Part XI in respect of the same matter (the ***Part XI application***); or

(b) after lodging an application under Part XI in respect of the same matter (the ***Part XI application***) and before that application is determined.

(2) The arbitrator may order that a specified number of weekly payments are suspended or reduced but is not to suspend or reduce more than 12 weekly payments.

(3) An order under subsection (2) is referred to in this Division as an ***interim suspension order*** or an ***interim reduction order***, as the case requires.

(4) The arbitrator may make the interim suspension or reduction order unless it appears to the arbitrator that —

(a) the Part XI application has minimal prospects of success; or

(b) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.

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(5) An interim suspension or reduction order can be made subject to conditions.

(6) A further interim suspension or reduction order can be made after the expiry of any earlier order.

[Section 238 inserted by No. 42 of 2004 s. 130.]

239. Effect of Part XI determination on the same matter as a matter determined under this Division

(1) If —

(a) an interim suspension order is made under section 238(2); and

(b) an arbitrator dismisses the Part XI application,

the weekly payments of the worker during the period of suspension are to be paid.

(2) If —

(a) an interim suspension order is made under section 238(2); and

(b) on the Part XI application an arbitrator orders that the weekly payments be increased or reduced,

the weekly payments of the worker during the period of suspension are to be paid as if the order under Part XI had effect during that period.

(3) If —

(a) an interim reduction order is made under section 238(2); and

(b) on the Part XI application an arbitrator dismisses the application or orders that the weekly payments be increased,

the weekly payments of the worker during the period of reduction are to be paid as if the order under Part XI had effect during that period.

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(4) Nothing in this Division affects the operation of section 71 in relation to a determination under Part XI of an application in respect of the same matter as an application that has been dismissed under this Division.

[Section 239 inserted by No. 42 of 2004 s. 130.]

240. Revocation of interim suspension or reduction order

(1) An arbitrator may revoke an interim suspension or reduction order at any time.

(2) When an interim suspension order is revoked —

(a) the obligation to make weekly payments recommences from the date on which the suspension is revoked; and

(b) the worker is to be paid the weekly payments that were not paid during the period of suspension unless the arbitrator orders otherwise.

(3) When an interim reduction order is revoked —

(a) the obligation to make weekly payments as if the interim reduction order had not been made recommences from the date on which the interim reduction order is revoked; and

(b) the worker is to be paid any amount of weekly payments to which the worker would have been entitled if the interim reduction order had not been made unless the arbitrator orders otherwise.

(4) Revocation of, or refusal to revoke, an interim suspension or reduction order is not a finding as to liability in respect of the matter concerned.

[Section 240 inserted by No. 42 of 2004 s. 130.]

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Division 4 — Expedited determination of minor claims

[Heading inserted by No. 42 of 2004 s. 130.]

241. Application for determination of minor claim

(1) An application for an order as to payment of not more than 12 weekly payments in respect of a period prior to the application may be made under this Division by a worker at any time after —

(a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 178(1)(b); and

(b) the worker suffering the injury has served on the employer a certificate signed by a medical practitioner —

(i) in or to the effect prescribed by the regulations containing substantially the information sought in the form; or

(ii) to the effect that the worker is unfit for work because of a recurrence of an injury in respect of which a certificate as first referred to has previously been served.

(2) An application for an order as to payment of statutory expenses not exceeding 5% of the prescribed amount may be made by a worker at any time after —

(a) a claim for compensation under this Act by way of payment of statutory expenses has been made on an employer in accordance with section 178(1)(b); and

(b) the worker suffering the injury has served on the employer a certificate in or to the effect prescribed by the regulations and signed by a medical practitioner to the effect that the expenses claimed are expenses incurred by the worker for treatment or services required in relation to the injury.

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(3) If —

(a) a period of not less than 21 days has elapsed since a worker served on the worker's employer the documents referred to in subsection (1) or (2), as the case requires;

(b) the worker has not received the first of the weekly payments or the statutory expenses claimed; and

(c) an arbitrator is satisfied that the worker is entitled to some or all of the compensation claimed,

the arbitrator may order the employer to pay the compensation to which it appears to the arbitrator the worker is entitled.

(4) An arbitrator may make an order for weekly payments of compensation unless it appears to the arbitrator that —

(a) the claim would have minimal prospects of success under Part XI;

(b) insufficient medical evidence is available concerning the nature or period of incapacity of the worker; or

(c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.

(5) An arbitrator may make an order for payment of statutory expenses unless it appears to the arbitrator that —

(a) the claim concerned would have minimal prospects of success under Part XI;

(b) insufficient evidence is available as to whether or not the expenses claimed are reasonable; or

(c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.

[Section 241 inserted by No. 42 of 2004 s. 130; amended by No. 16 of 2005 s. 26.]

Extract from www.slp.wa.gov.au, see that website for further information

242. Limits on minor claims orders

(1) An arbitrator is not to order the payment of weekly payments of compensation for a period that exceeds the period set out in the application.

(2) An arbitrator is not to make an order for payment of statutory expenses for an amount that exceeds the amount set out in the application.

[Section 242 inserted by No. 42 of 2004 s. 130.]

243. No recovery of compensation

A worker cannot be required to refund compensation paid to the worker under this Division.

[Section 243 inserted by No. 42 of 2004 s. 130.]

244. Production of documents

A worker or an employer may make an application under this Division for an order as to the production of documents, material or information under section 70 or 180 and an arbitrator may make the order accordingly.

[Section 244 inserted by No. 42 of 2004 s. 130.]

Extract from www.slp.wa.gov.au, see that website for further information

Part XIII — Questions of law and appeals

[Heading inserted by No. 42 of 2004 s. 130.]

245. Application of Part XI

(1) Unless the contrary intention appears in this Part —

(a) the provisions of Part XI apply to and in relation to the exercise of jurisdiction of the Commissioner under this Part as if references in Part XI to an arbitrator were references to the Commissioner; and

(b) in the exercise of jurisdiction under this Part the Commissioner has and may exercise or perform all of the powers, duties, responsibilities, authorities and jurisdictions of an arbitrator.

(2) A party to a proceeding or a witness appearing before the Commissioner has the same duties and responsibilities as a party to a proceeding or a witness appearing before an arbitrator.

(3) A person representing a party in a proceeding before the Commissioner has the same duties and responsibilities as a person representing a party in a proceeding before an arbitrator.

[Section 245 inserted by No. 42 of 2004 s. 130.]

246. Reference of question of law to Commissioner

(1) A novel or complex question of law arising in a proceeding before an arbitrator under Part XI may be referred by the arbitrator for the determination of the Commissioner.

(2) A question of law arising in a proceeding before an arbitrator under Part XI may, with the leave of the Commissioner, be referred by a party to the proceeding for the determination of the Commissioner.

(3) The Commissioner is not to grant leave unless satisfied that the question involves a novel or complex question of law.

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(4) The reference of a question of law under this section may be by stating a case on a question of law.

(5) On hearing a matter referred under this section, the Commissioner has jurisdiction to make such orders as the Commissioner thinks fit with regard to the matter and to the costs of and incidental to the hearing and determination of it.

[Section 246 inserted by No. 42 of 2004 s. 130.]

247. Appeal against decision of arbitrator

(1) A party to a dispute may, with the leave of the Commissioner, appeal to the Commissioner against a decision in respect of the dispute by an arbitrator under Part XI.

(2) Subject to subsection (3), the Commissioner is not to grant leave to appeal unless —

(a) in the case of an appeal in which an amount of compensation is at issue —

(i) a question of law is involved and the amount at issue in the appeal is both —

(I) at least $5 000 or such other amount as may be prescribed by the regulations; and

(II) at least 20% of the amount awarded in the decision appealed against;

or

(ii) a question of law is involved and, in the opinion of the Commissioner, the matter is of such importance that, in the public interest, an appeal should lie;

and

(b) in any other case, a question of law is involved.

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(3) The Commissioner may grant leave to appeal from a decision of an arbitrator on a matter referred under section 93D(10) if the appeal involves a question of law.

(4) An application for leave to appeal cannot be made later than 28 days after the making of the decision appealed against.

(5) An appeal under this section is to be by way of review of the decision appealed against.

(6) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the decision appealed against cannot be given on an appeal to the Commissioner except with the leave of the Commissioner.

(7) On hearing an appeal made under this section, the Commissioner may —

(a) affirm, vary, or quash the decision appealed against, or substitute, and make in addition, any decision that should have been made in the first instance; and

(b) subject to section 267, make any further or other decision, as to costs or otherwise, as the Commissioner thinks fit.

[Section 247 inserted by No. 42 of 2004 s. 130; amended by No. 16 of 2005 s. 27.]

248. Commencing appeal

(1) A person appealing to the Commissioner against a decision of an arbitrator is to do so in accordance with this Act.

(2) An appeal commences when the application is accepted by the Director.

[Section 248 inserted by No. 42 of 2004 s. 130.]

249. Commissioner hearing to be held in public

(1) Unless otherwise provided under this Act, hearings of the Commissioner are to be held in public.

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(2) On the application of a party or on its own initiative the Commissioner may, in the circumstances described in subsection (3), order that a hearing or any part of it be held in private.

(3) The Commissioner may make an order under subsection (2) if the Commissioner considers it is necessary to do so —

(a) to avoid prejudicing the administration of justice;

(b) to avoid endangering the physical or mental health or safety of any person;

(c) to avoid the publication of confidential information or information the publication of which would be contrary to the public interest; or

(d) for any other reason in the interests of justice.

[Section 249 inserted by No. 42 of 2004 s. 130.]

250. Effect of decision against which appeal made

(1) The Commissioner may, by order, stay the operation of a decision of an arbitrator pending the determination of an application for leave to appeal from the decision and of any appeal.

(2) Subject to any order made by the Commissioner, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement the decision.

[Section 250 inserted by No. 42 of 2004 s. 130.]

251. Commissioner may state case

(1) When a question of law arises before the Commissioner, the Commissioner may state a case for the decision of the Court of Appeal on that matter.

(2) A case may be stated under this section despite a decision having been made or given by the Commissioner.

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[Section 251 inserted by No. 42 of 2004 s. 130; amended by No. 16 of 2005 s. 32(3).]

252. Indemnity as to costs

(1) If the Commissioner has stated a case for the decision of the Court of Appeal, the Commissioner may in the Commissioner's absolute discretion indemnify any of the parties against the costs or part of the costs of the proceedings resulting from a case being stated.

(2) Any moneys payable to a party by reason of an indemnity under subsection (1) when certified by the Commissioner as payable are to be paid by WorkCover WA from moneys standing to the credit of the General Account.

[Section 252 inserted by No. 42 of 2004 s. 130; amended by No. 16 of 2005 s. 32(3); No. 77 of 2006 Sch. 1 cl. 189(9).]

253. Decisions of Commissioner

(1) Except as otherwise provided by this Act a decision of the Commissioner —

(a) is final and binding on the parties and is not subject to an appeal; and

(b) is not to be vitiated because of any informality or want of form.

(2) A decision of the Commissioner or anything done under this Act in the process of coming to a decision of the Commissioner is not amenable to judicial review.

(3) The Commissioner may reconsider any matter that has been dealt with by the Commissioner and rescind, alter or amend any decision previously made or given by the Commissioner.

[Section 253 inserted by No. 42 of 2004 s. 130.]

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254. Appeal against decision of Commissioner

(1) A party to a proceeding before the Commissioner may by leave of the Court of Appeal appeal to the Court of Appeal from a decision of the Commissioner in the proceeding on a question of law.

[(2) deleted]

(3) The Court of Appeal may —

(a) affirm, vary, or set aside the decision of the Commissioner;

(b) make any decision that the Commissioner could have made in the proceeding; or

(c) send the matter back to the Commissioner for reconsideration, either with or without the hearing of further evidence, in accordance with any directions or recommendations that the Court considers appropriate,

and, in any case, may make any order the Court considers appropriate.

(4) An appeal, or an application for leave to appeal, is to be made in accordance with the rules of the Supreme Court and within the period of 28 days after —

(a) the day on which the Commissioner's decision is given; or

(b) if the Commissioner gives a decision that is not in writing and the party then requests the Commissioner to give a written decision, the day on which the written reasons are given.

(5) If leave is granted, the appeal is to be instituted in accordance with the rules of the Supreme Court and within the period of 21 days after the day on which leave is granted.

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(6) The Court of Appeal may extend a time limit fixed by this section, and the extension may be given even though the time limit has passed.

[Section 254 inserted by No. 42 of 2004 s. 130; amended by No. 16 of 2005 s. 32(4)-(6).]

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Part XIV — Offences

[Heading inserted by No. 42 of 2004 s. 130.]

255. Failing to comply with decision

(1) A person who fails to comply with a decision of a dispute resolution authority commits an offence.

Penalty: $5 000.

(2) Subsection (1) does not apply if, or to the extent that —

(a) the person is excused by section 206 from complying with that decision;

(b) the person has a reasonable excuse (other than an excuse mentioned in section 204(1) or 205) for failing to comply with the decision; or

(c) the decision is an order of the dispute resolution authority requiring the payment of money.

(3) If the dispute resolution authority made the decision without giving a person an opportunity to be heard, subsection (1) only applies to that person on the person being given personally or in accordance with subsection (4) —

(a) a copy of the decision that the Director has certified to be a true copy; and

(b) a copy of this section.

(4) If a dispute resolution authority is satisfied that it is not possible or appropriate for a person to be personally given the documents referred to in subsection (3), the dispute resolution authority may specify another method for service of the documents on the person under that subsection.

[Section 255 inserted by No. 42 of 2004 s. 130.]

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256. Failing to comply with summons

A person who, without reasonable excuse, fails to comply with a summons issued by a dispute resolution authority under this Act commits an offence.

Penalty: $2 000.

[Section 256 inserted by No. 42 of 2004 s. 130.]

257. Failing to give evidence as required

A person appearing before a dispute resolution authority commits an offence if the person —

(a) refuses to swear an oath or make an affirmation or statutory declaration when required by the dispute resolution authority to do so; or

(b) when required by a dispute resolution authority to give evidence that the person is competent and compellable to give, does not do so.

Penalty: $2 000.

[Section 257 inserted by No. 42 of 2004 s. 130.]

258. Giving false or misleading information

A person who gives to a dispute resolution authority information knowing it to be false or misleading in a material particular commits an offence.

Penalty: $5 000.

[Section 258 inserted by No. 42 of 2004 s. 130.]

259. Misbehaviour and other conduct

A person who —

(a) insults, or obstructs or hinders the performance of the functions of, a dispute resolution authority;

(b) insults, obstructs or hinders a person attending a hearing before a dispute resolution authority;

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(c) misbehaves at a hearing before a dispute resolution authority;

(d) interrupts a hearing before a dispute resolution authority; or

(e) obstructs or hinders a person from complying with an order or direction of a dispute resolution authority or a summons to attend before the dispute resolution authority,

commits an offence.

Penalty: $2 000.

[Section 259 inserted by No. 42 of 2004 s. 130.]

260. Contempt of Commissioner

(1) If the Commissioner is satisfied that an act or omission of a person would constitute a contempt of the Court if a proceeding of the Commissioner were a proceeding in the Supreme Court, the Commissioner may report that act or omission to the Supreme Court and the Court has jurisdiction to deal with the matter as if it were a contempt of that Court.

(2) If —

(a) subsection (1) applies to an act or omission by a person and that act or omission is also an offence under this Part; and

(b) the person has been dealt with under subsection (1) for the act or omission,

the person is not liable to be punished for the offence under this Act.

[Section 260 inserted by No. 42 of 2004 s. 130.]

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Part XV — Costs

[Heading inserted by No. 42 of 2004 s. 130.]

Division 1 — General

[Heading inserted by No. 42 of 2004 s. 130.]

261. Terms used

In this Part —

agent means a person who acts as agent for a person in connection with a dispute under this Act;

agent service means any service performed by a person —

(a) in the person's capacity as an agent; and

(b) in or for the purposes of a proceeding before a dispute resolution authority;

costs means —

(a) costs of a party (including fees, charges and disbursements);

(b) costs of a proceeding; and

(c) such other costs as may be prescribed by regulation;

costs determination means a determination published under section 273;

costs of a proceeding means costs of, or incidental to, a proceeding of a dispute resolution authority, other than costs of a party, or costs of the kind referred to in section 31D(5) and clause 18C(2) in relation to an approved medical specialist panel;

legal service means any service performed by a person —

(a) in the person's capacity as a legal practitioner; and

(b) in or for the purposes of a proceeding before a dispute resolution authority.

[Section 261 inserted by No. 42 of 2004 s. 130.]

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262. Costs to which this Part applies

(1) This Part applies to and in respect of costs payable on a party and party basis, on a practitioner and client basis or on any other basis, unless this Part or a regulation otherwise provides.

(2) The regulations may make provision for or with respect to excluding any class of matters from any or all of the provisions of this Part.

[Section 262 inserted by No. 42 of 2004 s. 130.]

263. This Part prevails over *Legal Profession Act 2008*

This Part and any regulations under this Part prevail to the extent of any inconsistency with the *Legal Profession Act 2008*, and in particular Part 10 of that Act.

[Section 263 inserted by No. 42 of 2004 s. 130; amended by No. 21 of 2008 s. 713(3).]

Division 2 — Costs of parties in proceedings and costs of proceedings

[Heading inserted by No. 42 of 2004 s. 130.]

264. Costs to be determined by dispute resolution authority

(1) Subject to this Division, costs are in the discretion of the relevant dispute resolution authority.

(2) A dispute resolution authority may determine by whom, to whom and to what extent costs are to be paid.

(3) A dispute resolution authority may order costs to be assessed on the basis set out in the *Legal Profession Act 2008* Part 10 Division 8 (or in relevant regulations under section 268) or on an indemnity basis.

(4) Any party to a proceeding may apply to a dispute resolution authority for an order as to costs.

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(5) A dispute resolution authority is not to order the payment of costs by a worker unless the dispute resolution authority is satisfied that the costs relate to an application made by the worker that was frivolous or vexatious, fraudulent or made without proper justification.

(6) If a dispute resolution authority is satisfied that a part only of the application was frivolous or vexatious, fraudulent or made without proper justification, the dispute resolution authority may order the worker to pay the costs relating to that part of the application.

(7) Without limiting section 265, the regulations may make provision in relation to the making of orders for the payment by a party of the costs of another party so as to —

(a) promote the early settlement of issues and disputes by agreement; and

(b) discourage unnecessary delay, excessive attendances and excessive preparation of documentation.

[Section 264 inserted by No. 42 of 2004 s. 130; amended by No. 21 of 2008 s. 713(4).]

265. Costs unreasonably incurred by representative

(1) If in any proceeding before a dispute resolution authority or in any matter under this Act which is resolved by agreement, costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, of a legal practitioner or agent representing a party (the ***representative***), a dispute resolution authority may make an order —

(a) disallowing the costs, as between the representative and the client;

(b) directing the representative to repay the client costs which the client has been ordered to pay to any other party to the proceeding; and

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(c) directing the representative personally to indemnify any other person than the client against costs payable by the person indemnified.

(2) A dispute resolution authority may by order exempt any costs or proportion of any costs from the operation of this section if of the opinion that it would be unjust not to do so because the representative concerned made all reasonable efforts to avoid unnecessary litigation in the proceeding or for any other reason should not be held responsible for the incurring of the costs concerned.

[Section 265 inserted by No. 42 of 2004 s. 130.]

266. Agent's costs

An agent is not entitled to be paid or recover any amount for an agent service unless the agent is a registered agent.

[Section 266 inserted by No. 42 of 2004 s. 130.]

267. Appeal costs

Despite section 264 —

(a) an order for costs on the ground that an appeal was successful is not to be made by the Commissioner against a worker; and

(b) if the appellant is a worker and is unsuccessful on an appeal, the Commissioner is not to make an order for the payment of the appellant's costs on the appeal by any other party to the appeal.

[Section 267 inserted by No. 42 of 2004 s. 130.]

268. Regulations for assessment of costs

(1) If a dispute resolution authority makes an order for the payment of costs and does not fix the amount of costs, that amount is to be assessed or settled in accordance with the regulations.

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(2) Without limiting subsection (1), the regulations may —

(a) make provision for or with respect to any matter for or in connection with which provision is made by the *Legal Profession Act 2008* Part 10 Division 8;

(b) adopt, with or without modification, any of the provisions of the *Legal Profession Act 2008* Part 10 Division 8; and

(c) make provision for or with respect to the assessment of costs by an arbitrator or another officer of the DRD.

(3) To the extent that regulations under this section make provision for the costs payable to a legal practitioner, those regulations displace the provisions of the *Legal Profession Act 2008*.

[Section 268 inserted by No. 42 of 2004 s. 130; amended by No. 21 of 2008 s. 713(5) and (6).]

Division 3 — Maximum costs

[Heading inserted by No. 42 of 2004 s. 130.]

269. Costs Committee

(1) In this section —

Legal Costs Committee means the Legal Costs Committee established under the *Legal Profession Act 2008*.

(2) A committee called the Costs Committee is established.

(3) The Costs Committee is to be constituted by the following members —

(a) a presiding member who is to be a member of WorkCover WA;

(b) one or more other members of WorkCover WA; and

(c) 2 members of the Legal Costs Committee nominated by the chairperson of that Committee.

(4) The members are to be appointed by WorkCover WA.

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(5) If the chairperson of the Legal Costs Committee fails to nominate a member under subsection (3)(c) within 30 days after receiving a written request from WorkCover WA, WorkCover WA may appoint a person as a member for the purposes of subsection (3)(c) in place of a member of the Legal Costs Committee.

[Section 269 inserted by No. 42 of 2004 s. 130; amended by No. 21 of 2008 s. 713(7).]

270. Constitution and procedure of Costs Committee

(1) Subject to section 269, the constitution and procedure of, and other matters relating to, the Costs Committee —

(a) may be prescribed by the regulations;

(b) if not prescribed by the regulations, may be as directed in writing by WorkCover WA.

(2) To the extent that the procedure of the Costs Committee is not prescribed by the regulations or directed by WorkCover WA, the Costs Committee may determine its own procedure.

[Section 270 inserted by No. 42 of 2004 s. 130.]

271. Costs determination

(1) The Costs Committee may make a determination —

(a) fixing maximum costs for legal services and agent services;

(b) fixing maximum costs for matters that are not legal services or agent services but are related to a claim for compensation (for example, expenses for witnesses or medical reports).

(2) A provision of the determination —

(a) may authorise any matter or thing to be determined, applied or regulated by a specified person or body;

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(b) may fix a cost or amount by reference to a cost or amount fixed by a costs determination (as defined in the *Legal Profession Act 2008* section 252).

(3) The power under this section to make a determination for services or matters includes power to make a determination that no amount is recoverable for a particular service or matter or class of services or matters, with the result that a legal practitioner or agent is not entitled to be paid or recover any amount for the service or matter concerned.

(4) A costs determination may be amended or revoked by a subsequent costs determination.

[Section 271 inserted by No. 42 of 2004 s. 130; amended by No. 21 of 2008 s. 713(8).]

272. Consultation

(1) Before making a determination the Costs Committee may —

(a) publish notice of its intention and consider any submissions made to it in respect of the proposed determination; and

(b) make such other inquiries as it considers necessary to facilitate the making of the determination.

(2) In making a determination the Costs Committee —

(a) is not bound by the rules of evidence and may inform itself as it thinks fit; and

(b) is not required to conduct any proceeding in a formal manner.

[Section 272 inserted by No. 42 of 2004 s. 130.]

273. Approval and publication of determination

(1) The Costs Committee is to report to the Minister —

(a) a determination under section 271; and

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(b) the reasons for its decisions in respect of the determination.

(2) If the Minister approves the determination, the determination is to be published in the *Gazette*.

(3) A costs determination takes effect on and from —

(a) the day on which it is published in the *Gazette*; or

(b) if a later day is specified in the determination, the later day.

(4) Judicial notice is to be taken of —

(a) a costs determination published in the *Gazette*; and

(b) the day of publication of the determination.

[Section 273 inserted by No. 42 of 2004 s. 130.]

274. Effect of costs determination

(1) A legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by a costs determination.

(2) An agent is not entitled to be paid or recover for an agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by a costs determination.

(3) This section does not entitle a legal practitioner or agent to recover costs for a legal service or matter that a dispute resolution authority determines were unreasonably incurred.

[Section 274 inserted by No. 42 of 2004 s. 130.]

275. Agreement as to costs

(1) An agreement is not to be made for a legal practitioner or agent to receive, for any legal service or agent service, any greater reward than is provided for in a costs determination.

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(2) An agreement made contrary to this section is void.

[Section 275 inserted by No. 42 of 2004 s. 130.]

276. Division does not apply to Part IV proceedings

Nothing in this Division affects the operation of section 87 in relation to an action for damages independently of this Act.

[Section 276 inserted by No. 42 of 2004 s. 130.]

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Part XVI — Registered agents

[Heading inserted by No. 42 of 2004 s. 130.]

277. Registration of agents

(1) This section applies to the following persons —

(a) an officer of an organisation as defined in the *Industrial Relations Act 1979*;

(b) an officer of an association of employers or employees registered under the *Workplace Relations Act 1996* of the Commonwealth;

(c) a person employed by an insurer or self-insurer;

(d) a person (other than a legal practitioner) employed by a legal practitioner or an incorporated legal practice;

(e) an employee or officer of an organisation prescribed by the regulations;

(f) a person, or a person in a class of persons, prescribed by the regulations.

(2) A person to whom this section applies may apply for registration as an agent in accordance with the regulations.

(3) Regulations are to —

(a) provide for a scheme of registration of persons for the purposes of this section and the procedure for obtaining registration;

(b) prescribe the circumstances in which, and the procedures by which, a person may be refused registration, or registered subject to conditions, or the registration may be suspended or cancelled;

(c) provide for applications for review by the State Administrative Tribunal of decisions refusing, suspending or cancelling registration or imposing conditions upon registration; and

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(d) provide for any other matter necessary or convenient to be prescribed for the purposes of this section.

(4) A person is not to be registered under regulations made under this section unless that person can demonstrate that the person has professional indemnity insurance, or has sufficient material resources, of a kind prescribed by the regulations to provide professional indemnity.

[Section 277 inserted by No. 42 of 2004 s. 130; amended by No. 16 of 2005 s. 28.]

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Part XVII — The Dispute Resolution Directorate

[Heading inserted by No. 42 of 2004 s. 130.]

Division 1 — Establishment and objectives

[Heading inserted by No. 42 of 2004 s. 130.]

278. DRD established

A directorate called the Dispute Resolution Directorate is established.

[Section 278 inserted by No. 42 of 2004 s. 130.]

279. Main objectives of the DRD

(1) The main objectives of the DRD are —

(a) to provide a fair and cost effective system for the resolution of disputes under this Act;

(b) to reduce administrative costs across the workers' compensation system;

(c) to provide a dispute resolution service that —

(i) is timely and ensures that workers' entitlements are paid promptly;

(ii) meets user expectations in relation to accessibility, approachability and professionalism;

(iii) is effective in settling matters;

(iv) leads to durable agreements between the parties in accordance with this Act;

and

(d) to establish effective communication and liaison with interested parties concerning the role of the DRD.

(2) In exercising their functions, the Commissioner, the arbitrators, the Director, and other officers of the DRD are to have regard to the DRD's objectives.

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[Section 279 inserted by No. 42 of 2004 s. 130.]

280. DRD's constitution

The following persons constitute the DRD —

(a) the Commissioner;

(b) the Director;

(c) the arbitrators;

(d) other officers of the DRD.

[Section 280 inserted by No. 42 of 2004 s. 130.]

Division 2 — Commissioner

[Heading inserted by No. 42 of 2004 s. 130.]

281. Appointment of Commissioner

(1) A person is to be appointed as the Commissioner by the Governor on the recommendation of the Minister.

(2) A person cannot be the Commissioner unless the person is a judge of the District Court.

(3) Before recommending a person for appointment as the Commissioner, the Minister is to consult the Chief Justice of Western Australia and the Chief Judge of the District Court.

[Section 281 inserted by No. 42 of 2004 s. 130.]

282. Terms and conditions of service

Schedule 8 has effect with respect to the tenure, remuneration and conditions of service of the Commissioner and other matters provided for in that Schedule.

[Section 282 inserted by No. 42 of 2004 s. 130.]

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283. Declaration of inability to act

The Commissioner may declare himself unable to act in respect of a particular matter by reason of —

(a) an actual or potential conflict of interest; or

(b) having to perform other functions under this Act.

[Section 283 inserted by No. 42 of 2004 s. 130.]

284. Acting appointment

(1) The Governor may appoint a person who is a judge of the District Court, or is eligible for appointment as a judge of the District Court, to act in the office of Commissioner —

(a) during a vacancy in that office;

(b) during any period or during all periods when the person holding the office of Commissioner, or a person appointed under this subsection, is unable to perform the functions of that office or is absent from the State; or

(c) in relation to any matter in respect of which the person holding the office of Commissioner, or a person appointed under this subsection, has under section 283 declared himself unable to act.

(2) An appointment under this section —

(a) may be made at any time and may be terminated at any time by the Governor; and

(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) If a person appointed under this section is a judge of the District Court, Schedule 8 clause 3 has effect in relation to the person.

(4) A person acting under this section for the reason mentioned in subsection (1)(c) may perform functions of the Commissioner in relation to the matter for which the person is appointed even

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though the Commissioner is at the same time performing other functions of the office.

(5) If a person is acting under this section for the reason mentioned in subsection (1)(c), a reference to the Commissioner in a provision of this Act that is relevant to the performance by that person of a function of the Commissioner in relation to the matter for which that person is appointed includes a reference to that person.

(6) The validity of anything done by or in relation to a person purporting to act under this section is not to be called into question on the ground that —

(a) the occasion for an appointment under this section had not arisen;

(b) there is a defect or irregularity in the appointment;

(c) the appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

[Section 284 inserted by No. 42 of 2004 s. 130.]

285. Functions of Commissioner

The Commissioner has the functions conferred under this Act or any other written law.

[Section 285 inserted by No. 42 of 2004 s. 130.]

Division 3 — Arbitrators

[Heading inserted by No. 42 of 2004 s. 130.]

286. Arbitrators

(1) Arbitrators are to be officers of WorkCover WA.

(2) A person is not to become an arbitrator without the approval of the Minister.

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(3) A person cannot be approved as an arbitrator unless the person is a legal practitioner.

[Section 286 inserted by No. 42 of 2004 s. 130.]

287. Control and direction of arbitrators

(1) An arbitrator is, in the exercise of his functions, subject to the general control and direction of the Director.

(2) An arbitrator is not subject to direction as to the decision to be given in a particular matter.

[Section 287 inserted by No. 42 of 2004 s. 130.]

Division 4 — Director Dispute Resolution and staff

[Heading inserted by No. 42 of 2004 s. 130.]

288. Director Dispute Resolution

(1) The Director Dispute Resolution is to be an officer of WorkCover WA.

(2) A person is not to become the Director Dispute Resolution without the approval of the Minister.

(3) A person is not eligible for approval as the Director Dispute Resolution unless the person is a legal practitioner.

[Section 288 inserted by No. 42 of 2004 s. 130.]

289. Functions and responsibilities of Director

(1) In addition to the Director's functions under this or any other written law, the Director has and may exercise all the functions of an arbitrator.

(2) The Director is responsible for the administration of the DRD and the allocation of work to arbitrators.

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(3) The Director is subject to the general control and direction of the chief executive officer in relation to the administration of the DRD.

(4) In matters concerning the resolution of disputes the Director is responsible directly to the Minister.

[Section 289 inserted by No. 42 of 2004 s. 130.]

290. Delegation by Director

(1) The Director may delegate to another officer of the DRD a power or duty given to the Director under this Act.

(2) The Director is to make the delegation in writing signed by the Director.

(3) An officer of the DRD to whom a power or duty is delegated under this section cannot delegate that power or duty.

(4) An officer of the DRD exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the Director to perform a function through an officer or agent.

[Section 290 inserted by No. 42 of 2004 s. 130.]

291. Staff of DRD

(1) The chief executive officer is to make officers of WorkCover WA available to assist, as officers of the DRD under the control of the Director, in the administration of the DRD and the exercise of the functions of the DRD.

(2) Otherwise, the services and facilities of WorkCover WA may be used for the purposes of this Act on such terms as are agreed by the Director and the chief executive officer.

[Section 291 inserted by No. 42 of 2004 s. 130.]

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Part XVIII — Regulations, rules and practice notes

[Heading inserted by No. 42 of 2004 s. 130.]

292. Regulations

(1) The Governor may make regulations —

(a) prescribing such forms as may be necessary or expedient for the purposes of this Act;

(b) regulating the operations of the DRD and the persons who constitute the DRD;

(c) regulating the operations of medical assessment panels, approved medical specialist panels and specialised retraining assessment panels;

(d) with respect to matters of general or special application, which may apply to both employers and workers, for the prevention or minimising of occurrences of injuries in employment or places of employment in the State;

(e) providing for the allowances to be paid to witnesses, and the circumstances in which, and extent to which, they are to be paid from moneys standing to the credit of the General Account;

(f) with respect to the implementation by medical practitioners who issue more than one certificate to a worker for the purposes of this Act of the code of practice (injury management) issued under section 155A(1);

(g) with respect to injury management and related matters;

(h) with respect to specialised retraining programs and related matters;

(i) prescribing penalties not exceeding $1 000 for any non-compliance with or any contravention of any regulation;

(j) regulating the meetings and proceedings of WorkCover WA's governing body;

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(k) prescribing the fees and expenses payable with respect to establishing and maintaining registers;

(l) prescribing scales of the maximum amount of commission or brokerage for insurance agents and brokers in respect of workers' compensation insurance business;

(m) providing for any matters which by this Act are required or permitted to be prescribed or which may be necessary or convenient to prescribe (either generally or in any particular case) for giving effect to this Act.

(2) The Governor, on the recommendation of WorkCover WA, may make regulations —

(a) fixing scales of fees to be paid to —

(i) medical specialists and other medical practitioners;

(ii) dentists;

(iii) physiotherapists;

(iv) chiropractors;

(v) occupational therapists;

(vi) clinical psychologists;

(vii) speech pathologists; and

(viii) persons providing treatment of a kind approved for the purposes of the definition of ***approved treatment*** in section 5(1),

for attendance on, and treatment of, workers suffering injuries that are compensable under this Act;

(b) fixing scales of fees to be paid to approved vocational rehabilitation providers.

(3) The Governor, on the recommendation of WorkCover WA, may make regulations fixing scales of the maximum fees to be paid to approved medical specialists for making or attempting to make assessments referred to in Part VII Division 2.

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(4) WorkCover WA is not to recommend the making of a regulation under subsection (2) or (3) unless it has first negotiated with any body it considers has a relevant interest in the regulation.

(5) Without limiting subsection (4), WorkCover WA is not to recommend the making of a regulation under subsection (2)(a)(i) unless it has first negotiated with the Australian Medical Association (WA) Incorporated.

(6) A regulation may require any matter or thing to be verified by statutory declaration.

(7) Any regulations made under this section may adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act or under any Act of the Commonwealth or the United Kingdom, or any of the tables, standards, rules, codes or other specifications of any body specified in the regulations.

[Section 292 inserted by No. 42 of 2004 s. 130; amended by No. 77 of 2006 Sch. 1 cl. 189(9).]

293. DRD Rules

(1) The Commissioner may, after consultation with the Director, make rules of the DRD prescribing all matters that are required or permitted by this Act to be prescribed by the DRD Rules, or are necessary or convenient to be prescribed by the DRD Rules for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), DRD Rules may make provision for or with respect to —

(a) the organisation and management of the business of the DRD;

(b) the practice and procedure governing the jurisdiction, functions and proceedings of the Commissioner and arbitrators;

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(c) limiting the number of medical reports in connection with a claim or any aspect of a claim and, in particular, limiting the number of medical reports that may be admitted in evidence in a proceeding before a dispute resolution authority;

(d) limiting the number of expert witnesses that may be called by any party and otherwise restricting the calling of expert witnesses by a party;

(e) the practice and procedure governing medical assessment panels, approved medical specialist panels and specialised retraining assessment panels; and

(f) records of the DRD.

(3) A DRD Rule may require any matter or thing to be verified by statutory declaration.

(4) DRD Rules —

(a) are rules of court under the *Interpretation Act 1984*;

(b) must be published in the *Gazette*;

(c) take effect from the date of publication or from any later date or dates that are specified in the rules; and

(d) must be laid before each House of Parliament within 6 sitting days of the House next following the publication of the rules.

(5) If either House of Parliament passes a resolution, of which notice has been given at any time within 6 sitting days after the rules have been laid before it, disallowing the whole or a part of the rules, the rules or the part of it disallowed ceases to have effect.

(6) If the whole or part of a rule is disallowed, the validity of any proceedings taken or of anything done under the rules or the part of it in the meantime is not affected.

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(7) If such a resolution is passed, notice of the fact must be published in the *Gazette* as soon as is practicable.

[Section 293 inserted by No. 42 of 2004 s. 130.]

294. Practice notes

(1) The Commissioner may issue practice notes about —

(a) the practice and procedure of the Commissioner;

(b) the practice and procedure of arbitrators; and

(c) the giving of orders under Part XII.

(2) The Commissioner is to give the Minister a copy of each practice note the Commissioner issues as soon as practicable after issuing it.

(3) A practice note is not a DRD Rule and does not form part of the DRD Rules.

[Section 294 inserted by No. 42 of 2004 s. 130.]

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Part XIX — Miscellaneous

[Part XIX heading, formerly Part XII heading, renumbered by No. 42 of 2004 s. 154(2).]

295. Public Service

(1) For the purpose of carrying out the powers, duties and obligations conferred or imposed upon WorkCover WA by this Act or any other Act, WorkCover WA with the approval of the employing authority, within the meaning of the *Public Sector Management Act 1994*, of the officers and employees may make use of the services of any of the officers and employees of the Public Service.

(2) The chief executive officer and other officers of WorkCover WA shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*.

(3) The duties of the officers of WorkCover WA shall include such duties as are prescribed and as are directed by WorkCover WA.

[Section 295, formerly section 177, amended by No. 86 of 1986 s. 5; No. 72 of 1992 s. 16(5); No. 32 of 1994 s. 19; No. 42 of 2004 s. 150 and 152 and renumbered as section 295 by No. 42 of 2004 s. 154(1).]

296. Delegation by chief executive officer

(1) The chief executive officer may delegate to another officer of WorkCover WA any power or duty of the chief executive officer under another provision of this Act, but not a power or duty that WorkCover WA has delegated to the chief executive officer under section 101AA.

(2) The delegation must be in writing signed by the chief executive officer.

(3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

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(4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the chief executive officer to perform a function through an officer or agent.

[Section 296, inserted as section 177A by No. 42 of 2004 s. 131 and renumbered as section 296 by No. 42 of 2004 s. 154(1).]

297. Agreements and receipts under this Act exempt from duty

Any agreement in writing and any memorandum of agreement (whether under seal or not) as to any matter under this Act, or the repealed Act, and any receipt given for or upon the payment of any money payable under this Act, or the repealed Act, or under any such agreement, shall be exempt from all duty chargeable under the *Duties Act 2008*.

[Section 297, formerly section 178, renumbered as section 297 by No. 42 of 2004 s. 154(1); amended by No. 12 of 2008 Sch. 1 cl. 42.]

298. Order for detention of ship

(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river in the State or in any waters within the territorial jurisdiction of the State, the District Court may, upon its being shown to the court by WorkCover WA applying summarily that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the State, issue an order directed to the Sheriff requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security to be approved by the District Court to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon.

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(2) The Sheriff may detain the ship in accordance with the order.

(3) In any legal proceedings to recover such compensation, the person giving security may be made the defendant, and the production of the order of the District Court made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

(4) If the owner of a ship is a corporation, such corporation shall, for the purpose of this section, be deemed to reside in the State if it has an office in the State at which service of process can be effected.

(5) If a ship after detention in pursuance of this section, or after service on the master of any notice of an order for detention under this section, proceeds to sea before the ship is released by competent authority, the master of the ship, and also the owner and any person who sends the ship to sea, if that owner or person is party or privy to the offence, commits an offence.

Penalty: $5 000.

(6) If the master proceeds to sea with the ship in contravention of this section, and takes to sea any person required to detain the ship, the owner and the master of the ship shall each be liable to pay a further penalty at the rate of $200 for every day until such person returns to the place from which he was taken, or until the expiration of such time as would enable him after leaving the ship to return to such place.

[Section 298, formerly section 179, amended by No. 34 of 1999 s. 57; No. 42 of 2004 s. 150 and renumbered as section 298 by No. 42 of 2004 s. 154(1); amended by No. 59 of 2004 s. 133.]

299. Judicial notice

All courts and all persons acting judicially shall take notice of —

(a) the signature of a person who is, or was the Commissioner, an arbitrator or the Director;

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(aa) the fact that a person referred to in paragraph (a) is or was the Commissioner, an arbitrator or the Director, as the case requires;

(b) the seal of WorkCover WA;

(c) the official signature of a person holding or acting in —

(i) an office under any provision of the *Workers' Compensation Act 1912*[9] in force from time to time before the repeal of that Act; or

(ii) an office under any provision of this Act in force from time to time,

and the appointment and official character of any such person.

[Section 299, formerly section 180, amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 132 and 150 and renumbered as section 299 by No. 42 of 2004 s. 154(1).]

300. District Court to provide information to WorkCover WA

WorkCover WA may make a written request to the Registrar of the District Court to provide WorkCover WA with such information concerning actions to which Part IV applies as WorkCover WA specifies and the Registrar of the District Court is to provide that information to WorkCover WA.

[Section 300, inserted as section 180A by No. 42 of 2004 s. 133 and renumbered as section 300 by No. 42 of 2004 s. 154(1).]

301. Prohibition of contracting out

Except as provided by this Act, its provisions apply notwithstanding any contract to the contrary.

[Section 301, formerly section 181, renumbered as section 301 by No. 42 of 2004 s. 154(1).]

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302. Deductions towards compensation not lawful

(1) An employer or any person on his behalf, or an insurer or any person on its behalf, shall not, directly or indirectly, take or receive any money from any worker whether by way of deduction from wages or otherwise, in respect of any liability of an employer to pay compensation under this Act.

(2) Where money is so taken or received from any worker, whether with the consent of such worker or not, he may sue and recover the amount of that money from the employer, insurers, or person who took or received it.

(3) A person contravening subsection (1) commits an offence.

Penalty: $2 000.

[Section 302, formerly section 182, amended by No. 34 of 1999 s. 49; renumbered as section 302 by No. 42 of 2004 s. 154(1).]

303. Payments not assignable

(1) A payment of compensation, or a sum paid by way of redemption thereof, is not capable of being assigned, charged or attached, and shall not pass to another person by operation of the law, nor shall any claim be set off against such payment or sum, except in respect of voluntary advances of future compensation made by an employer or insurer with the approval of the Director.

(2) A person who purports or agrees to do anything the doing of which is prevented by subsection (1) commits an offence and is liable to a fine of $5 000.

[Section 303, formerly section 183, amended by No. 48 of 1993 s. 28(1); No. 34 of 1999 s. 50; No. 42 of 2004 s. 134 and renumbered as section 303 by No. 42 of 2004 s. 154(1).]

303A. Making employment conditional on avoidance arrangement

(1) If a person executes work for another person (***E***) under an avoidance arrangement, E commits an offence.

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Penalty: $5 000.

(2) The question of whether the person executes work for E under an avoidance arrangement is to be determined in accordance with section 175AA(1) and (2).

[Section 303A inserted by No. 16 of 2005 s. 14.]

304. Protection from liability

(1) This section applies to —

(a) WorkCover WA;

(b) a member of the governing body of WorkCover WA;

(c) an officer of WorkCover WA;

(d) the Commissioner;

(e) a member of a medical assessment panel;

(f) an approved medical specialist;

(g) a member of a specialised retraining assessment panel; and

(h) any other person performing a function under this Act.

(2) An action in tort does not lie against a person to whom this section applies for anything that the person does or omits to do in good faith in the performance of a function under this Act.

(3) The Crown is also relieved of any liability that it might otherwise have had for a person having done anything as described in subsection (2).

(4) The protection given by this section applies even though the thing done as described in subsection (2) may have been capable of being done whether or not this Act had been enacted.

(5) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 304, inserted as section 184 by No. 42 of 2004 s. 135 and renumbered as section 304 by No. 42 of 2004 s. 154(1).]

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305. Immunity

(1) To the extent that this section is inconsistent with anything expressly stated in another provision of this Act, this section does not apply.

(2) Each of the following persons has the same protection and immunity as a judge of the District Court has in the performance of his duties as a judge —

(a) the Commissioner when performing the functions of a Commissioner;

(b) an arbitrator when performing the functions of an arbitrator.

(3) A person representing a party in a proceeding before a dispute resolution authority has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the District Court.

(4) A party to a proceeding before a dispute resolution authority has the same protection and immunity as a party to proceedings in the District Court.

(5) A person appearing as a witness before a dispute resolution authority has the same protection and immunity as a witness has in proceedings in the District Court.

[Section 305, inserted as section 185 by No. 42 of 2004 s. 135 and renumbered as section 305 by No. 42 of 2004 s. 154(1).]

306. Protection for compliance with this Act

(1) No civil or criminal liability attaches to a person for compliance, or purported compliance, in good faith, with a requirement of this Act.

(2) In particular, if a person produced a document or other material as required under this Act, no civil liability attaches to the person for producing the document or material, whether the liability would arise under a contract or otherwise.

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[Section 306, inserted as section 186 by No. 42 of 2004 s. 135 and renumbered as section 306 by No. 42 of 2004 s. 154(1).]

307. Proceedings for defamation not to lie

No action or proceeding, civil or criminal, lies against the State, against a Minister or against a person employed or engaged by the State, in respect of the printing or publishing of a transcript of a proceeding before a dispute resolution authority or a decision, or reasons for a decision, of a dispute resolution authority.

[Section 307, inserted as section 187 by No. 42 of 2004 s. 135 and renumbered as section 307 by No. 42 of 2004 s. 154(1).]

308. Fraud

A person who fraudulently obtains or fraudulently attempts to obtain any benefit under this Act, by malingering or by making any false claim or statement, and any person who, by a false statement or other means, aids or abets a person in so obtaining or attempting to obtain, commits an offence.

Penalty: $5 000.

[Section 308, formerly section 188, amended by No. 34 of 1999 s. 51; renumbered as section 308 by No. 42 of 2004 s. 154(1).]

309. Who can take proceedings for offences

(1) Proceedings for an offence against this Act may be taken by a person authorised by the chief executive officer to do so.

(2) An authorisation under subsection (1) may be given generally or in relation to a specified offence or specified offences.

(3) If a prosecution notice alleging an offence against this Act purports to be made or sworn by a person authorised by the chief executive officer to take proceedings for offences of that kind, it is to be presumed, in the absence of proof to the contrary, that the prosecution notice was made or sworn by such a person.

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[Section 309, inserted as section 188B by No. 42 of 2004 s. 137 and renumbered as section 309 by No. 42 of 2004 s. 154(1); amended by No. 84 of 2004 s. 80.]

310. Time limit for taking proceedings

Proceedings for an offence against this Act cannot be commenced more than 2 years after the date on which the offence is alleged to have been committed.

[Section 310, inserted as section 188C by No. 42 of 2004 s. 137 and renumbered as section 310 by No. 42 of 2004 s. 154(1).]

311. General penalty

A person who commits an offence against this Act for which no special penalty is provided by this Act is liable to a penalty of $2 000.

[Section 311, formerly section 189, amended by No. 34 of 1999 s. 57; renumbered as section 311 by No. 42 of 2004 s. 154(1).]

312. Fines

A penalty imposed for an offence against this Act shall be paid to the General Account for use by WorkCover WA.

[Section 312, formerly section 190, amended by No. 78 of 1995 s. 138; No. 42 of 2004 s. 150 and renumbered as section 312 by No. 42 of 2004 s. 154(1); amended by No. 77 of 2006 Sch. 1 cl. 189(9).]

313. Penalties not affected

Nothing in this Act affects any proceedings for a fine or penalty under the enactments relating to mines, factories, or workshops, or the application of such a fine or penalty.

[Section 313, formerly section 191, renumbered as section 313 by No. 42 of 2004 s. 154(1).]

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314. WorkCover WA may specify alternative form of sending information

(1) Notwithstanding any other provision of this Act, a person who is required or permitted under this Act to send or otherwise provide information to WorkCover WA by means of any notice, notification, particulars, return or other document shall, if WorkCover WA so requests, send or otherwise provide the information in any form specified by WorkCover WA in which it is able to be read, whether with the use of a device or otherwise.

(2) In subsection (1) —

WorkCover WA includes the chief executive officer.

[Section 314, inserted as section 192 by No. 34 of 1999 s. 52; amended by No. 42 of 2004 s. 138 and 150 and renumbered as section 314 by No. 42 of 2004 s. 154(1).]

315. Publication of prescribed amount and average weekly earnings

(1) On or before the 1 July on which a financial year begins the Minister is to publish a notice in the *Gazette* setting out, in relation to the financial year —

(a) the prescribed amount;

(b) Amount A for the purposes of each of sections 93F and 93K; and

(c) Amount C for the purposes of Schedule 1 clause 11.

(2) Publication under subsection (1) is for public information only and the operation of this Act is not affected by a failure to publish or a delay or error in publication.

[Section 315, formerly section 192A, inserted as 193 by No. 34 of 1999 s. 32(11); renumbered as 192A by No. 74 of 2003 s. 134(4); amended by No. 42 of 2004 s. 139 and renumbered as section 315 by No. 42 of 2004 s. 154(1).]

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Part XX — Repeal, savings, and transitional

[Part XX heading, formerly Part XIII heading, renumbered by No. 42 of 2004 s. 154(3).]

316. Terms used

In this Part —

former Board means the Workers' Compensation Board constituted under the repealed Act;

former Supplementary Board means the Workers' Compensation Supplementary Board constituted under the repealed Act;

new Board means the Workers' Compensation Board continued and constituted under this Act;

new Supplementary Board means the Workers' Compensation Supplementary Board continued and constituted under this Act;

proclaimed date means the date on which this Part comes into operation [1].

[Section 316, formerly section 193, renumbered as section 316 by No. 42 of 2004 s. 154(1).]

317. Repeal

The *Workers' Compensation Act 1912* is repealed.

[Section 317, formerly section 194, renumbered as section 317 by No. 42 of 2004 s. 154(1).]

318. Operation of *Interpretation Act 1918*

The *Interpretation Act 1918* [10], and in particular sections 15 and 16 of that Act, apply to and in respect of the repealed Act except to the extent that this Act provides otherwise.

[Section 318, formerly section 195, renumbered as section 318 by No. 42 of 2004 s. 154(1).]

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319. No renewal of liability or entitlement

Nothing in this Act renews a liability that had been discharged, or an entitlement which had been extinguished, under the repealed Act.

[Section 319, formerly section 196, renumbered as section 319 by No. 42 of 2004 s. 154(1).]

320. Moneys paid under repealed Act taken into account

Where by virtue of section 4 there is under this Act —

(a) liability to pay compensation or to pay for the provision of other benefits, or both; and

(b) entitlement to receive compensation or other benefits, or both,

for or in relation to an injury, in determining that liability and the extent of it and that entitlement and the extent of it, moneys paid or required to be paid under the repealed Act for or in relation to the same injury shall be taken into account and deemed to be moneys paid or required to be paid under this Act, the intention being that for or in relation to the same injury a liability and an entitlement under the 2 Acts merge into a liability and entitlement under and subject to this Act.

[Section 320, formerly section 197, amended by No. 42 of 2004 s. 146 and 147 and renumbered as section 320 by No. 42 of 2004 s. 154(1).]

321. Compensation for injuries mentioned in Schedule 2

Where on or after the date on which section 4 comes into operation a worker elects under section 24 in respect of an injury which was caused by an accident that occurred before that date the compensation payable for the injury shall be in accordance with the amount indicated in column 2 of the Second Schedule of the repealed Act in respect of that injury at the date of the accident, but otherwise Division 2 of Part III

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applies to and in respect of compensation payable for that injury.

[Section 321, formerly section 199, renumbered as section 321 by No. 42 of 2004 s. 154(1).]

322. Child's allowance

Where any weekly amount is payable on or after the proclaimed date under Item (II), (III) or (IV) of clause 1(a)(i) of the First Schedule of the repealed Act, that weekly amount shall be increased to be at each time when it is so payable the equivalent of a child's allowance payable under this Act at that time.

[Section 322, formerly section 200, renumbered as section 322 by No. 42 of 2004 s. 154(1).]

323. Continuation

(1) On and after the proclaimed date —

(a) each person who, immediately before the proclaimed date, held office on the former Board or the former Supplementary Board shall be deemed to have been appointed under and subject to this Act to the corresponding office on the new Board or the new Supplementary Board, as the case may be, and shall be deemed to have been so appointed on the day on which he was appointed to that office under the repealed Act, and —

(i) a person who, immediately before the proclaimed date, held office as Chairman of the former Board, is a judge of the new Board and shall be deemed to have been appointed as such under and subject to this Act; and

(ii) a person who, immediately before the proclaimed date, held office as Chairman of the former Supplementary Board, is a judge of the new Supplementary Board and shall be deemed

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to have been appointed as such under and subject to this Act;

(b) a person referred to in paragraph (a) is not required to take oaths or affirmations as provided by section 112 or 113 before performing his duties under this Act;

(c) each registration of a memorandum of agreement which, immediately before the proclaimed date, was in force under the repealed Act shall be deemed to have been made under this Act and shall continue in force under this Act subject to the repealed Act;

(d) a memorandum of agreement made but not registered for the purposes of the repealed Act may be registered under this Act and if it is registered shall have force under this Act subject to the repealed Act;

(e) each award, order, or decision which, immediately before the proclaimed date, was in force under the repealed Act shall continue in force under this Act subject to the repealed Act;

(f) a memorandum of agreement continued in force under paragraph (c) or having force under paragraph (d), or an award or order or a decision continued in force under paragraph (e), may be reviewed under this Act subject to the repealed Act;

(g) all applications, matters, and proceedings commenced under the repealed Act pending or in progress immediately before the proclaimed date may be continued, completed, or enforced under this Act subject to the repealed Act and subject to section 4 of this Act;

(h) applications, matters, and proceedings in respect of rights, duties, obligations, and liabilities arising under the repealed Act before the proclaimed date may be instituted, continued, completed, or enforced under this Act subject to the repealed Act and subject to section 4 of this Act;

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(i) all moneys which, pursuant to applications, matters, and proceedings completed under paragraphs (g) or (h), would have been payable to the Workers' Compensation Board Fund under section 27 of the repealed Act shall be paid to WorkCover WA for the General Account;

(j) all moneys which, pursuant to applications, matters, and proceedings completed under paragraphs (g) or (h), would have been payable into the custody of the Board under clause 1A of the repealed Act shall be paid into the custody of WorkCover WA for the benefit of those entitled in accordance with the order of the Board, and WorkCover WA shall place the moneys in the Trust Account;

(k) all policies of insurance in respect of liability for compensation and other benefits which, immediately before the proclaimed date, were in force shall be deemed to have been obtained in respect of liability for compensation and other benefits under this Act and shall, subject to this Act, continue in force accordingly until the expiry date specified in the policy.

(2) Where a person is deemed to have been appointed under subsection (1), he shall continue to retain his existing and accruing rights including his rights, if any, under the *Judges' Salaries and Pensions Act 1950* or the *Superannuation and Family Benefits Act 1938* [11, 12] as if his service under and subject to the repealed Act were service under and subject to this Act.

[Section 323, formerly section 201, amended by No. 42 of 2004 s. 150 and renumbered as section 323 by No. 42 of 2004 s. 154(1); No. 77 of 2006 Sch. 1 cl. 189(8) and (9).]

324. References to the Board, the Supplementary Board or officers

A reference, however expressed, in any other Act or in any regulation, notice, or statutory instrument of any kind made, published, or in force under this or any other Act to the

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Workers' Compensation Board, the Workers' Compensation Supplementary Board, or to officers of those former Boards shall, unless the contrary intention appears, be read and construed as a reference to the corresponding term in this Act.

[Section 324, formerly section 202, renumbered as section 324 by No. 42 of 2004 s. 154(1).]

[Former s. 203 omitted under the Reprints Act 1984 s. 7(4)(e).]

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Schedules

Schedule 1 — Compensation entitlements

[Heading inserted by No. 42 of 2004 s. 141(1).]

1. Death — dependants wholly dependent — notional residual entitlement

(1) Subject to subclauses (2) and (3), where death results from the injury and the worker leaves —

(a) a dependant who —

(i) is not of a kind referred to in clause 1A; and

(ii) is wholly dependent upon the worker's earnings;

or

(b) a child or step-child in respect of whom an election to receive the amount of a provisional apportionment has been registered under clause 1C,

or more than one of those persons, in respect and for the benefit only of all those dependants, a sum equal to the notional residual entitlement of the worker.

(2) If death results from the injury and a worker dies leaving —

(a) a spouse or de facto partner;

(b) a parent; or

(c) a child or step-child in respect of whom an election to receive the amount of a provisional apportionment has been registered under clause 1C,

or more than one of those persons, wholly dependent upon the worker's earnings, whether or not there are other dependants wholly dependent upon the worker's earnings, there is to 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.

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(3) Subject to clause 1C, in the event of there being more than one dependant wholly dependent on a worker's earnings, the amount payable under this clause is to be apportioned between them as may be agreed upon or, in default of agreement, according to the respective financial losses of support suffered by them, which apportionment is to be determined on application under Part XI.

[Clause 1 inserted by No. 42 of 2004 s. 141(1).]

1A. Death — dependants wholly dependent — child's allowance

Subject to clause 1B, where death results from the injury and the worker leaves any dependants wholly dependent upon the worker's earnings —

(a) 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 or step-child attains the age of 16 years;

(b) 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 or step-child attains the age of 21 years or ceases to be a full-time student whichever is the sooner;

(c) 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 an arbitrator in the arbitrator's absolute discretion decides should receive continued support, a child's allowance weekly until such time as the arbitrator orders or until the child or step-child attains the age of 21 years whichever is the sooner.

[Clause 1A inserted by No. 42 of 2004 s. 141(1).]

1B. Death — dependants wholly dependent — notional residual entitlement or child's allowance

(1) Where death results from the injury and the worker dies leaving —

(a) a child or step-child of the worker wholly dependent upon the worker's earnings who, apart from this subclause, would be entitled to a child's allowance under clause 1A; and

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(b) no spouse or de facto partner wholly dependent upon the worker's earnings,

or where death results from the injury and the worker dies leaving —

(c) a child or step-child of the worker wholly dependent upon the worker's earnings who, apart from this subclause, would be entitled to a child's allowance under clause 1A;

(d) no spouse or de facto partner who is a parent of that child or step-child and who is wholly dependent upon the worker's earnings; and

(e) a spouse or de facto partner who is not a parent of that child or step-child and who is wholly dependent upon the worker's earnings,

or more than one of those persons, in respect of and for the benefit of a dependant referred to in paragraph (a) or (c) — a child's allowance under clause 1A(a), (b) or (c) as the case may be, or an apportionment of the notional residual entitlement of the worker, as determined under clause 1C.

(2) Where death results from the injury and the worker dies leaving a dependant wholly dependent upon the worker's earnings who —

(a) is not a dependant to whom subclause (1) applies; and

(b) apart from this clause, would be entitled to a child's allowance under clause 1A,

the compensation entitlement of that dependant is whichever of the following an arbitrator determines as likely to be in the best interests of that dependant —

(c) a sum equal to 25% of the notional residual entitlement of the worker;

(d) a child's allowance under clause 1A(a), (b) or (c) as the case may be.

(3) In the event of a sum being determined under subclause (2)(c) where there is more than one such dependant, the amount is to be apportioned between them as may be agreed or, in default of agreement, according to the respective financial losses of support suffered by them, which apportionment is to be determined by an arbitrator.

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[Clause 1B inserted by No. 42 of 2004 s. 141(1).]

1C. Determination of entitlement under clause 1B

(1) A dependant referred to in clause 1B(1)(a) or (c) is to be notified by the Director of the dependant's entitlement to elect to receive a child's allowance under clause 1A or an apportionment of the notional residual entitlement of the worker.

(2) The dependant may, within 30 days of receiving the notification, elect in the manner prescribed by the regulations to receive the amount of the apportionment or a child's allowance under clause 1A.

(3) If an election by a dependant referred to in clause 1B(1)(a) or (c) is not made under subclause (2) and registered by the Director, that dependant is to receive a child's allowance under clause 1A.

(4) In the event of there being more than one dependant who elects to receive the apportionment under this clause, or who is otherwise entitled to receive an apportionment under clause 1, the compensation entitlement of each of those dependants is to be determined as follows —

(a) the amount of the notional residual entitlement is to be apportioned between them as may be agreed or, in default of agreement, an arbitrator is to determine the amount to be provisionally apportioned between each of the dependants, according to the respective financial losses of support suffered by them and the arbitrator is to notify each of the dependants of the amount provisionally apportioned to that dependant;

(b) any dependant referred to in clause 1B(1)(a) or (c) and notified under paragraph (a) may elect to receive the amount of the provisional apportionment or a child's allowance under clause 1A;

(c) if an election is not made under paragraph (b) in accordance with subclause (6) and registered by the Director —

(i) that dependant is to receive a child's allowance; and

(ii) an arbitrator is to reapportion the amounts to be paid to each dependant who is not receiving a child's allowance.

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(5) A notification for the purposes of subclause (1) or (4)(a) is to be given in the prescribed manner and form.

(6) A dependant referred to in subclause (4)(b) may, within 30 days of receiving the notification, elect in the prescribed manner to receive the amount of the provisional apportionment or a child's allowance.

(7) The Director may refuse to register an election of a dependant under this clause if not satisfied that the dependant has been independently advised of the financial consequences of the election.

[Clause 1C inserted by No. 42 of 2004 s. 141(1).]

2. Death — partial dependants who are not children

Where death results from the injury and the worker does not leave a dependant wholly dependent upon his earnings (other than a dependant of a kind referred to in clause 1A) but leaves a dependant (other than of a kind referred to in clause 1A) 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 an arbitrator 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.

[Clause 2 amended by No. 48 of 1993 s. 19(1) and 28(1); No. 42 of 2004 s. 141(2), 147 and 149.]

3. Death — partial dependants who are children

Where death results from the injury and the worker does not leave a dependant wholly dependent upon his earnings but leaves a dependant of a kind referred to in clause 1A, 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 an arbitrator 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.

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[Clause 3 amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 141(3), 147 and 149.]

4. Death — no dependant

Where death results from the injury 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.

[Clause 4 amended by No. 34 of 1999 s. 53(a); No. 42 of 2004 s. 147.]

5. Death — where not resulting from the injury 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, an order for redemption has not been made under section 67 and no memorandum of agreement for payment of a lump sum in redemption has been recorded under section 76, and the worker dies but the death does not result from the injury —

(1) and the worker leaves any spouse, de facto partner, 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 an arbitrator 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

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(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 an arbitrator;

(2) and if the worker does not leave any spouse, de facto partner, child, or step-child wholly dependent upon, or supported by, his earnings but leaves any spouse, de facto partner, 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 an arbitrator.

[Clause 5 amended by No. 48 of 1993 s. 19(1) and 28(1); No. 33 of 1999 s. 8; No. 28 of 2003 s. 215(b) and (c); No. 42 of 2004 s. 141(4), 147 and 149; No. 16 of 2005 s. 29.]

*[**6.** Deleted by No. 34 of 1999 s. 53(b).]*

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 injury a weekly payment during the incapacity equal to the weekly earnings of the worker calculated and varied in accordance with this Schedule.

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(2) Subject to section 56 and subclause (3), where partial incapacity for work results from the injury, 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 injury.

(3) An entitlement of a worker to weekly payments for an injury under this Act ceases if and when the total weekly payments for that injury reaches the prescribed amount, unless an arbitrator makes an order to the contrary under section 217, 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, 18A, and 19 but subject to the limitations on those expenses as provided in clauses 17(1) and 18A(1c).

(5) Unless otherwise authorised by WorkCover WA, 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 an arbitrator made under section 156B, is deemed for the purposes of this clause to be totally incapacitated.

[Clause 7 amended by No. 85 of 1986 s. 12(1)(a); No. 48 of 1993 s. 28(1); No. 34 of 1999 s. 32(12); No. 42 of 2004 s. 141(5) and (6), 146, 147, 149, 150 and 154(4).]

8. Deemed total incapacity

Where a worker who has so far recovered from his injury as to be fit for employment of a certain kind satisfies an arbitrator 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 injury, the arbitrator may, without limiting the arbitrator's powers of review, order that the worker's incapacity be treated, or

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continue to be treated, as total incapacity, for such period, and subject to such conditions, as the order may provide.

[Clause 8 amended by No. 42 of 2004 s. 141(7) and 147.]

9. No incapacity — medical expenses

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

[Clause 9 amended by No. 42 of 2004 s. 141(8) and 147.]

10. Absence from work for medical attendance

Where absence from work arises from a necessary attendance for a medical or like purpose that is authorised 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

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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) any allowance paid on a regular basis as part of the worker's earnings and related to the number or pattern of hours worked by the worker; and

(c) any other allowance prescribed by the regulations;

Amount B means —

(a) in the case of a director who is a worker for a company other than a company that is exempt under section 164 —

(i) the average weekly earnings of the director over the period in respect of which a statement was last made in respect of the director under section 160(2b), determined by averaging the aggregate amount so stated; or

(ii) if a statement has not been made in respect of the director under section 160(2b), the average weekly earnings of the director determined under subclause (2a);

(b) in the case of a director who is a worker for a company that is exempt under section 164, the average weekly earnings of the director determined under subclause (2b);

and

(c) in any other case, 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 injury occurs in the employment that the worker is in when the injury 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;

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Amount C means, during a financial year —

(a) the amount obtained by multiplying by 2 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;

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.

(2a) For the purposes of paragraph (a)(ii) of the definition of ***Amount B*** the average weekly earnings of a director of a company are to be determined —

(a) if the director has been a director of the company for a period of less than one year, by averaging the earnings paid to the director by the company over that period ending on the day before the injury occurs as a worker of the company;

(b) if the director has not been paid any earnings by the company before an injury occurs as a worker of that company, by averaging the estimate of earnings of the director furnished by the company under section 160(2a); and

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(c) otherwise, by averaging the earnings paid to the director by the company over the period of one year ending on the day before the injury occurs as a worker of the company.

(2b) For the purposes of paragraph (b) of the definition of ***Amount B*** the average weekly earnings of a director of a company are to be determined —

(a) if the director has been a director of the company for a period of less than one year, by averaging the earnings paid to the director by the company over that period ending on the day before the injury occurs as a worker of the company;

(b) if the director has not been paid any earnings by the company before an injury occurs as a worker of that company, by estimating the average weekly earnings on the basis of any relevant contract, award or agreement with the company; and

(c) otherwise, by averaging the earnings paid to the director by the company over the period of one year ending on the day before the injury occurs as a worker of the company.

(2c) The earnings referred to in subclauses (2a) and (2b) are to be verified, to the extent practicable, by supporting particulars provided by the company.

(3) In the case of a worker whose earnings are prescribed by an industrial award when the injury occurs, weekly earnings are —

(a) for the 1st to the 13th weekly payments: Amount A but not more than Amount C or less than Amount D;

(b) for weekly payments after the 13th: 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 subclause (3) does not apply, weekly earnings are —

(a) for the 1st to the 13th weekly payments: Amount B but not more than Amount C or less than Amount E;

(b) for weekly payments after the 13th: 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 subclause (6) —

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(a) the references in the definition of ***Amount A*** in subclause (2) to overtime and any bonus or allowances; and

(b) the references in the definition of ***Amount Aa*** in subclause (2) to allowances,

are references to those items averaged over the period of 13 weeks ending at the date of 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 subclause (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 subclause (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 13th, 26th or 52nd, or after such other numbers of weekly payments as are prescribed.

[Clause 11 inserted by No. 34 of 1994 s. 32(13); amended by No. 42 of 2004 s. 141(9)-(14) and 147; No. 16 of 2005 s. 15.]

*[**11A.** Deleted by No. 34 of 1999 s. 32(13).]*

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 injury 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.

[Clause 12 amended by No. 34 of 1999 s. 32(14) and (19); No. 42 of 2004 s. 147.]

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 —

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(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 injury 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 injury occurs as ordinary hours which constitute a week's work, no deduction shall be made.

[Clause 13 amended by No. 34 of 1999 s. 32(15)-(17) and (19); No. 42 of 2004 s. 147.]

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.

[Clause 15 amended by No. 34 of 1999 s. 53(c).]

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

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made after the injury 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.

[Clause 16 inserted by No. 44 of 1985 s. 41; amended by No. 34 of 1999 s. 32(18) and (19); No. 42 of 2004 s. 147.]

17. Payment of medical and other expenses

In addition to weekly payments of compensation payable, a sum is payable equal to the reasonable expenses incurred or likely to be 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 injury 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

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expenses upon any subsequent increase in the prescribed amount;

(1aa) the first assessment of a worker for the purposes of section 93L in respect of a particular injury and any previous attempt at an assessment that resulted in a finding that the worker's condition had not stabilised to the extent required for a normal evaluation, as defined in section 146C to be made, but not including the cost of any travel, meals, or lodging;

(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 —

(a) the amount prescribed by the regulations for the purposes of this subclause; or

(b) $7 000,

whichever is the greater amount;

(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, the worker suffers a personal injury by accident;

(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 an injury suffered by a worker but not exceeding the amount applying in accordance with section 5A;

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(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 effect of an injury 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.

[Clause 17 amended by No. 44 of 1985 s. 41(1)(c); No. 85 of 1986 s. 12(1)(b); No. 96 of 1990 s. 48(1)(b) and (c); No. 34 of 1999 s. 53(a); No. 42 of 2004 s. 141(15), 146 and 147.]

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 an arbitrator in any other case, the worker occupies more expensive hospital accommodation than that to which the prescribed charges refer an arbitrator may, on the application of the worker, determine that a rate higher than those prescribed shall be the rate for hospital charges.

[Clause 18 amended by No. 48 of 1993 s. 28(1); No. 103 of 1994 s. 18; No. 42 of 2004 s. 149.]

18A. Payment of additional expenses

(1) Where the worker has incurred reasonable expenses referred to in clause 17(1) in excess of the maximum amount provided for by that subclause, an arbitrator may, subject to subclauses (1c)(a) and (2), if the arbitrator considers that the maximum amount is inadequate, allow such additional sum as the arbitrator thinks proper in the circumstances.

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(1a) Where the worker is likely to incur reasonable expenses referred to in clause 17(1) in excess of the maximum amount provided for by that subclause, an arbitrator may, subject to subclauses (1c)(a) and (2), if the arbitrator considers that the maximum amount is likely to be inadequate, allow such specific additional sum as the arbitrator thinks proper in the circumstances.

(1b) Where —

(a) a worker has incurred reasonable expenses referred to in clause 17(1) in excess of the maximum amount provided for by that subclause;

(b) an additional sum has been allowed in the exercise of a discretion under subclause (1) or (1a) in respect of the expenses; and

(c) the worker is likely to incur reasonable expenses referred to in clause 17(1) in excess of the aggregate of the maximum amount provided for by clause 17(1) and the $50 000 allowable under subclause (1) or (1a),

an arbitrator may, subject to subclauses (1c)(b) and (2aa), allow such further additional sum or sums as the arbitrator thinks proper in the circumstances.

(1c) An arbitrator is not to allow —

(a) an additional sum exceeding $50 000, or additional sums exceeding in aggregate $50 000, in the exercise of a discretion under subclause (1) or (1a); or

(b) a further additional sum exceeding the prescribed amount or further additional sums exceeding in aggregate the prescribed amount, in the exercise of a discretion under subclause (1b).

(1d) In subclause (1c)(b) —

prescribed amount means —

(a) $250 000; or

(b) if a greater amount is prescribed by the regulations, that greater amount.

(2) An arbitrator shall not allow an additional sum in the exercise of a discretion under subclause (1) or (1a) unless the arbitrator considers

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that such a sum ought to be allowed, having regard to the social and financial circumstances and the reasonable financial needs of the worker.

(2aa) An arbitrator is not to allow a further additional sum in the exercise of a discretion under subclause (1b) unless —

(a) the worker and the worker's employer agree that the worker's degree of permanent whole of person impairment, as defined in clause 18C(3), is not less than 15%, or the worker has a certificate of an approved medical specialist given under section 146H indicating the worker has a degree of permanent whole of person impairment, as defined in clause 18C(3), of not less than 15%;

(b) if the employer disputes the assessment of the approved medical specialist referred to in paragraph (a), a determination is made in accordance with clause 18C that the worker's degree of permanent whole of person impairment is not less than 15%; and

(c) the arbitrator determines that —

(i) such a sum ought to be allowed, having regard to the social and financial circumstances and the reasonable financial needs of the worker;

(ii) the circumstances in relation to the medical and associated conditions, treatment and management of the worker are exceptional circumstances as prescribed by the regulations and satisfactory prescribed evidence of those circumstances has been produced to the arbitrator; and

(iii) the further additional sum is required for reasonable expenses likely to be incurred in respect of surgical attendance and treatment, hospital treatment and maintenance or post-operative health treatment or related expenses, of a kind referred to in clause 17(1), (3), (4) or (5).

(2ab) If permitted by section 145A to do so, the arbitrator may refer a question arising under subclause (2aa)(c)(ii) to a medical assessment panel for determination.

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(2ac) No further determination under subclause (2aa)(c)(ii) is required in respect of a second or later exercise of discretion under subclause (1b) in respect of a worker if the amount allowed is for expenses likely to be incurred in the course of following a management plan, as defined in regulations made under this subclause, produced when a determination was first made in respect of the worker under subclause (2aa)(c)(ii).

(2a) An application under subclause (1a) may be made at any time after the reasonable expenses referred to in clause 17(1) incurred by the worker exceed 60% of the maximum amount provided for by that subclause.

(3) An application under subclause (1b) —

(a) may be made at any time after —

(i) an additional sum has been allowed to the worker under subclause (1) or (1a); and

(ii) that additional sum allowed exceeds, in whole or in aggregate, $30 000;

but

(b) may not be made after the final day within the meaning of clause 18B.

(4) The insurer of the employer, if the employer is insured in accordance with this Act, or otherwise the employer, is to —

(a) notify the worker when the reasonable expenses referred to in clause 17(1) incurred by the worker exceed 60% of the maximum amount provided for by that subclause; and

(b) notify the worker when an additional sum allowed to the worker under subclause (1) or (1a) exceeds, in whole or in aggregate, $30 000.

Penalty: $1 000.

[Clause 18A inserted by No. 85 of 1986 s. 12(1)(c); amended by No. 96 of 1990 s. 48(1)(d); No. 72 of 1992 s. 23; No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 141(16)-(23) and 149.]

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18B. Final day for clause 18A(1b) application

(1) If a claim for compensation by way of weekly payments has been made in accordance with section 178(1)(b) with respect to an injury of a worker, the final day for making an application by that worker under clause 18A(1b) is the last day of the period of 5 years after the day on which the claim for compensation is made unless a later day is fixed under subclause (2) or (3).

(2) If, after the expiry of the period of 3 months after the day on which the claim is made —

(a) an arbitrator, acting under section 58(1) or (2), determines the question of liability to make the weekly payments claimed; or

(b) the worker is first notified that liability is accepted in respect of the weekly payments claimed,

the final day is the last day of the period 4 years and 9 months after the day of the act described in paragraph (a) or (b) that was most recently done unless a later day is fixed under subclause (3).

(3) The Director may, in accordance with the regulations, from time to time extend the final day, but only if the Director is satisfied that —

(a) in the case of a worker whose final day, as determined under subclause (1) or (2), is within 8 weeks after the coming into operation of section 141(22) of the *Workers' Compensation Reform Act 2004* [1], the worker has, in accordance with the regulations and before the final day, requested an approved medical specialist to assess the worker's degree of permanent whole of person impairment, but the worker was not given, or it would be impracticable to give, the worker the documents required to make an application under clause 18A(1b) before the final day; or

(b) in any other case, the worker has, in accordance with the regulations and at least 8 weeks before the final day, requested an approved medical specialist to assess the worker's degree of permanent whole of person impairment, but the worker was not given, or it would be impracticable to give, the worker the documents required to make an application under clause 18A(1b) before the final day.

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(4) An extension under subclause (3) is to be to a day that is not more than one year after the day that would have been the final day had there been no extension under that subclause.

(5) An extension is to be in writing and the Director is required to give the worker and employer each a copy of the extension.

(6) An extension may be given even though the final day has passed.

[Clause 18B inserted by No. 42 of 2004 s. 141(24).]

18C. Dispute as to degree of permanent whole of person impairment

(1) In the exercise of a discretion under clause 18A(1b), for the purposes of clause 18A(2aa)(b) an arbitrator may —

(a) determine the degree of permanent whole of person impairment; or

(b) refer the question as to the degree of permanent whole of person impairment for assessment by an approved medical specialist panel in accordance with sections 146A and 146E and make a determination accordingly.

(2) If a determination is made that the worker's degree of permanent whole of person impairment is not less than 15%, the arbitrator may order the employer to pay all or any of the costs or expenses connected with the dispute, including expenses connected with the referral to an approved medical specialist panel.

(3) In this clause, and in clauses 18A and 18B —

degree of permanent whole of person impairment means the degree of permanent whole of person impairment, evaluated as described in sections 146A and 146E, resulting from the injury or injuries arising from a single event, as defined in subsection (4).

(4) In the definition of ***degree of permanent whole of person impairment*** in subclause (3) —

event means anything that results, whether immediately or not and whether suddenly or not, in an injury or injuries of a worker and the term includes continuous or repeated exposure to conditions that result in an injury or injuries of a worker.

[Clause 18C inserted by No. 42 of 2004 s. 141(24).]

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18D. Interim payment of additional expenses

(1) If —

(a) the worker has incurred or is likely to incur reasonable expenses referred to in clause 17(1) in excess of the maximum amount provided for by that subclause; and

(b) an application is made under clause 18A(1) or (1a) for an additional sum in respect of those expenses,

an arbitrator may, before that application is determined, allow such interim sum, but not exceeding $2 000, as the arbitrator thinks proper in the circumstances.

(2) For the purposes of calculating whether a sum of $50 000 has been or will be allowed under clause 18A, an interim sum under subclause (1) in respect of an application under clause 18A(1) or (1a) is taken to be a sum allowed in the exercise of a discretion under clause 18A(1) or (1a).

[Clause 18D inserted by No. 42 of 2004 s. 141(25).]

19. Travelling

(1) Where a worker is required by his employer, his employer's duly authorised 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 the worker's vehicle running expenses, if any, at the prescribed rate and any other 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.

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(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.

[Clause 19 amended by No. 34 of 1999 s. 53(d).]

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Schedule 2 — Table of compensation payable

[Heading inserted by No. 42 of 2004 s. 142(1).]

Part 1

[Heading inserted by No. 42 of 2004 s. 142(1).]

Item	Column 1 Nature of injury or impairment	Column 2 Ratio which the sum payable herein bears to the prescribed amount. %
	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

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• Item	Column 1 **Nature of injury or impairment**	Column 2 **Ratio which the sum payable herein bears to the prescribed amount.**
12.	Total loss of smell	25
	ARM	
13.	Loss of arm at or above elbow	90
14.	Loss of arm below elbow	80
	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
27A.	Total loss of distal phalanx of each finger of the same hand (not including the thumb) in one accident	31

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• Item	Column 1 **Nature of injury or impairment**	Column 2 **Ratio which the sum payable herein bears to the prescribed amount.**
	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
	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

[Part 1 amended by No. 44 of 1985 s. 42; No. 48 of 1993 s. 20; No. 34 of 1999 s. 54; No. 42 of 2004 s. 142(2).]

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Part 2

[Heading inserted by No. 42 of 2004 s. 142(3).]

Item	Column 1 Nature of injury or impairment	Column 2 Ratio which the sum payable herein bears to the prescribed amount. %
	EYES	
40.	Impairment of sight of both eyes	100
41.	Impairment of sight of an only eye	100
42.	Impairment of sight of one eye	50
43.	Impairment of binocular vision	50
	HEARING	
44.	Impairment of hearing	75
	SPEECH	
45.	Impairment of power of speech	75
	BODY AND MENTAL	
46.	Impairment of mental capacity	100
47.	Impairment of spinal cord function	100
	SENSORY	
48.	Impairment of sense of taste and smell	50
49.	Impairment of sense of taste	25
50.	Impairment of sense of smell	25
	ARM	
51.	Impairment of arm at or above elbow	90
52.	Impairment of arm below elbow	80
	HAND	
53.	Impairment of both hands	100
54.	Impairment of hand and foot	100
55.	Impairment of hand or thumb and 4 fingers	80

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• Item	Column 1 **Nature of injury or impairment**	Column 2 **Ratio which the sum payable herein bears to the prescribed amount.**
56.	Impairment of thumb	35
57.	Impairment of forefinger	17
58.	Impairment of middle finger	13
59.	Impairment of ring finger	9
60.	Impairment of little finger	6
61.	Impairment of movement of joint of thumb.....	17
62.	Impairment of distal phalanx of thumb	20
63.	Impairment of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx	15
64.	Impairment of distal phalanx of forefinger	10
65.	Impairment of distal phalanx of	
	— middle finger	8
	— ring finger	6
	— little finger	4
66.	Impairment of distal phalanx of each finger of the same hand (not including the thumb) in one accident	31
	LEG	
67.	Impairment of leg at or above knee	70
68.	Impairment of leg below knee	65
	FEET	
69.	Impairment of both feet	100
70.	Impairment of foot	65
71.	Impairment of great toe	20
72.	Impairment of any other toe	8
73.	Impairment of 2 phalanges of any other toe	5
74.	Impairment of phalanx of great toe	8

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• Item	Column 1 **Nature of injury or impairment**	Column 2 **Ratio which the sum payable herein bears to the prescribed amount.**
75.	Impairment of phalanx of any other toe	4
	BACK, NECK AND PELVIS	
76.	Impairment of the back (thoracic spine or lumbar spine or both)	75
77.	Impairment of the neck (including cervical spine)	55
78.	Impairment of the pelvis	30
	MISCELLANEOUS	
79.	Impairment of genitals	50
80.	Impairment from facial scarring or disfigurement	80
81.	Impairment from bodily, other than facial, scarring or disfigurement	50
82.	AIDS	100

[Part 2 inserted by No. 42 of 2004 s. 142(3).]

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Schedule 3 — Specified industrial diseases

Column 1 Description of Disease	Column 2 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 vectors or agents concerned in the transmission of that disease, or where that action can be reasonably presumed.
*Poisoning by trinitrotoluene or by benzol or its nitro and amido derivatives (dinitrobenzol, aniline and others)	Any process involving the use of trinitrotoluene or of the nitro and amido derivatives of benzol or its preparations or compounds.
Poisoning by a homologue of benzol	Any process involving the use of homologue of benzol.
*Poisoning by carbon bisulphide	Any process involving the use of carbon bisulphide or its preparations or compounds.
Poisoning by a halogen derivative of a hydrocarbon of the aliphatic series	Any process involving the use of a halogen derivative or a hydrocarbon of the aliphatic series.
*Poisoning by nitrous fumes	Any process in which nitrous fumes are evolved.

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Column 1 **Description of Disease**	**Column 2** **Description of Process**
*Poisoning by fluorine	Any process in which fluorine is used.
*Poisoning by cyanogen compounds	Any process in which cyanogen compounds are used.
*Poisoning by carbon monoxide	Any process in which carbon monoxide is used, or evolved.
*Leptospirosis; endemic typhus, scrub typhus, Brill's disease, swineherds disease, plague, mite dermatitis and scrub itch	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.
*Chrome ulceration	Any process involving the use of chromic acid or bichromate of ammonium, potassium, or sodium, or their preparations.
Effects of insolation	Work entailing prolonged exposure to sunlight.
Effects of electrical currents	Workers exposed to electrical currents.
Any dematosis, ulceration or injury to the skin or ulceration or injury to the mucous membranes of the mouth 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	Any industrial process.

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Column 1 Description of Disease	Column 2 Description of Process
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 — (a) radium and other radioactive substances; (b) X-rays; (c) lasers.	Any process involving exposure to the action of radium, radioactive substances, X-rays or 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.]~~42; (see Orders made under s. 45[48]).]

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Schedule 4 — Specified losses of functions

Column 1 Loss of Function	Column 2 Description of Process
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.

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Schedule 5 — Exceptions to cessation of weekly payments by reason of age

[Section 56]

1. Terms used

(1) In this Schedule —

proclaimed date means the date on which this Schedule comes into operation [1];

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 if the relevant minimum award rates are not published, the accumulative sum (in the form of the nearest whole number of dollars) obtained by varying the accumulative sum applying on the previous 1 July 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); 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 or dependent de facto partner, or both, the sum of $34.50;

(b) in relation to a worker without a dependent spouse or dependent de facto partner, the sum of $20,

or such higher amounts as are respectively prescribed.

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

[Clause 1 amended by No. 34 of 1999 s. 55(1); No. 28 of 2003 s. 216(1).]

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1A. Successive lung diseases to be regarded as one

If a worker, at the same time or successively, suffers more than one of the injuries of pneumoconiosis, mesothelioma, or lung cancer, they are to be regarded for the purposes of this Schedule as the same injury, being the injury for which the worker has claimed compensation under this Act, or as a progression of that injury.

[Clause 1A inserted by No. 34 of 1999 s. 55(2); amended by No. 42 of 2004 s. 147 and 148(1).]

2. Worker who would have worked after age 65

Where the worker shows to the satisfaction of the employer or, in the case of dispute, an arbitrator that, if incapacity resulting from the injury 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 injury 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).

[Clause 2 amended by No. 96 of 1990 s. 49(a); No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 147 and 149.]

3. Incapacity for work resulting from injuries 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 injuries 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 injuries before that date and, immediately before then, he was entitled to weekly payments of compensation for any incapacity resulting from that injury under the repealed Act, in respect of any incapacity resulting from that injury on or after the proclaimed date he is entitled to receive weekly payments.

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(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 injuries before attaining that age and, immediately before attaining that age, he was entitled to weekly payments for any incapacity resulting from that injury, in respect of any incapacity resulting from that injury 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 injuries of the worker occurs or has occurred on or after his attaining that age, in respect of any incapacity arising from that injury 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 injuries of the worker occurs on or after the day on which the *Workers' Compensation and Assistance Amendment Act 1984* comes into operation [1], in respect of any incapacity arising from that injury 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 injuries and the injury 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 injury 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 injury 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.

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(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 injury of lung cancer before that day and, immediately before then, he was entitled to weekly payments of compensation for any incapacity resulting from that injury, in respect of any incapacity resulting from that injury 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 injury 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 injury, in respect of any incapacity resulting from that injury 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 injury of lung cancer on or after attaining that age, in respect of any incapacity arising from that injury he is entitled to receive weekly payments;

(d) where a worker who was aged 65 or more on the relevant day suffers the injury of lung cancer on or after the relevant day, in respect of any incapacity arising from that injury 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

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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].

[Clause 3 inserted by No. 104 of 1984 s. 8; amended by No. 96 of 1990 s. 49(b); No. 42 of 2004 s. 147 and 148(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

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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.

[Clause 4 inserted by No. 104 of 1984 s. 8; amended by No. 96 of 1990 s. 49(c).]

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 injury; and

(b) that form is filed with the Director, 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.

[Clause 5 inserted by No. 104 of 1984 s. 8; amended by No. 48 of 1993 s. 28(1); No. 42 of 2004 s. 143(1) and 147.]

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;

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(b) for the injury from which the incapacity resulted —

(i) the worker is not entitled to further compensation; and

(ii) clauses 9, 10, 17, 18, 18A 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.

[Clause 6 inserted by No. 104 of 1984 s. 8; amended by No. 42 of 2004 s. 143(2) and 147.]

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 injury and a dependent spouse or dependent de facto partner, survives him —

(i) the employer is liable to pay into the custody of WorkCover WA for the benefit of the spouse or de facto partner, as a lump sum the aggregate of the supplementary amount for a worker with a dependent spouse or dependent de facto partner 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 WorkCover WA by or on behalf of the dependent spouse or dependent de facto partner in respect of the manner in which that amount or any part of it is applied and that dependant is entitled to receive that lump sum;

(ii) if application is made to WorkCover WA under subparagraph (i) by or on behalf of more than one such dependant, the lump sum referred to in that subparagraph is to be apportioned between the dependants according to the respective financial losses of support suffered by them, which apportionment is to be determined by an arbitrator,

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and those dependants are entitled to receive that lump sum as so apportioned; and

(iii) the dependent spouse or dependent de facto partner is also entitled to receive, and the employer is liable to pay weekly, from the date of the worker's death and during the lifetime of the dependent spouse or dependent de facto partner, the supplementary amount at the rate for a worker without a dependent spouse or dependent de facto partner, and where 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 an arbitrator;

and

(c) clauses 1, 2, 3, 4, 5 and 17(2) of Schedule 1 do not apply in respect of the worker's death.

[Clause 7 inserted by No. 104 of 1984 s. 8; amended by No. 28 of 2003 s. 216(2); No. 42 of 2004 s. 147, 149 and 150.]

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

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injury 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.

[Clause 8 inserted by No. 104 of 1984 s. 8; amended by No. 96 of 1990 s. 49(d); No. 42 of 2004 s. 147.]

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

(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 injury 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.

[Clause 9 inserted by No. 96 of 1990 s. 49(e); amended by No. 42 of 2004 s. 147.]

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Schedule 6 — Adjacent areas

[s. 20]

[Heading inserted by No. 36 of 2004 s. 13.]

1. Terms used

In this Schedule —

continental shelf and ***territorial sea*** have the same meanings as those terms have in the Seas and Submerged Lands Act;

Petroleum Act means the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth [13];

Seas and Submerged Lands Act means the *Seas and Submerged Lands Act 1973* of the Commonwealth.

[Clause 1 inserted by No. 36 of 2004 s. 13.]

2. Adjacent areas

(1) The ***adjacent area*** for New South Wales, Victoria, South Australia or Tasmania is so much of the area described in Schedule 2 to the Petroleum Act in relation to that State as is within the outer limits of the continental shelf and includes the space above and below that area.

(2) The ***adjacent area*** for Queensland is —

(a) so much of the area described in Schedule 2 to the Petroleum Act in relation to Queensland as is within the outer limits of the continental shelf;

(b) the Coral Sea area (within the meaning of subsection (7) of section 5A of the Petroleum Act) other than the territorial sea within the Coral Sea area;

(c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 4 February 1983 under section 7 of the Seas and Submerged Lands Act; and

(d) the space above and below the areas described in paragraphs (a), (b) and (c).

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(3) The ***adjacent area*** for Western Australia is so much of the area described in Schedule 2 to the Petroleum Act in relation to Western Australia as —

(a) is within the outer limits of the continental shelf; and

(b) is not within Area A of the Zone of Cooperation,

and includes the space above and below that area.

(4) The ***adjacent area*** for the Northern Territory is —

(a) so much of the area described in Schedule 2 to the Petroleum Act in relation to the Northern Territory as —

(i) is within the outer limits of the continental shelf; and

(ii) is not within Area A of the Zone of Cooperation;

(b) the adjacent area for the Territory of Ashmore and Cartier Islands (within the meaning of subsection (3) of section 5A of the Petroleum Act) other than the territorial sea within that area; and

(c) the space above and below the areas described in paragraphs (a) and (b).

(5) However, the adjacent area for a State does not include any area inside the limits of any State or Territory.

[Clause 2 inserted by No. 36 of 2004 s. 13.]

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Schedule 7 — Noise induced hearing loss

[Section 24A]

[Heading inserted by No. 36 of 1988 s. 12.]

1. Terms used

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* comes into operation [1].

[Clause 1 inserted by No. 36 of 1988 s. 12.]

2. Audiometric tests

(1) A worker employed in a prescribed workplace 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.

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(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.

[Clause 2 inserted by No. 36 of 1988 s. 12.]

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.

[Clause 3 inserted by No. 36 of 1988 s. 12.]

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 chief executive officer.

(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 WorkCover WA 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 chief executive officer; or

(b) any other person prescribed in circumstances, if any, prescribed.

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(4) A person who contravenes subclause (2) or (3) commits an offence.

[Clause 4 inserted by No. 36 of 1988 s. 12; amended by No. 42 of 2004 s. 150 and 152.]

5. Communication and storage of audiometric test results

(1) WorkCover WA 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 or 31E, to the worker's employer; and

(b) to an arbitrator, where required to do so under section 73(6).

(1a) WorkCover WA 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) WorkCover WA 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.

(3) Subject to subclause (2), WorkCover WA may store the results of audiometric tests delivered to it under clause 4(2) in any form that enables the results stored, or information from those results, to be read, whether with the use of a device or otherwise.

[Clause 5 inserted by No. 36 of 1988 s. 12; amended by No. 48 of 1993 s. 43; No. 34 of 1999 s. 56(1); No. 42 of 2004 s. 144(1) and 150.]

6. Reference to medical assessment panel

If permitted by section 145A to do so, an arbitrator may refer a question that arises under section 24A or 31E regarding audiometric testing or hearing loss, including whether or to what extent hearing loss is noise induced hearing loss, for determination by a medical assessment panel.

[Clause 6 inserted by No. 42 of 2004 s. 144(2).]

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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 WorkCover WA to the effect that the test results are disputed WorkCover WA 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 or 31E 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 Account.

[Clause 7 inserted by No. 36 of 1988 s. 12; amended by No. 49 of 1996 s. 64; No. 42 of 2004 s. 144(3) and 150; No. 77 of 2006 Sch. 1 cl. 189(9).]

8. Determination of hearing loss

(1) The results of an audiometric test carried out on a worker and stored in any form by WorkCover WA 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 WorkCover WA 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 dealt with as a dispute under Part XI.

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(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 or 31E 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 or 31E as if the worker had undergone the test at the commencement of that employment.

[Clause 8 inserted by No. 36 of 1988 s. 12; amended by No. 48 of 1993 s. 28(1); No. 34 of 1999 s. 56(3); No. 42 of 2004 s. 144(4) and (5) and 150.]

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.

[Clause 9 inserted by No. 36 of 1988 s. 12.]

10. Prescribed workplaces

Workplaces shall be prescribed for the purposes of this Schedule.

[Clause 10 inserted by No. 36 of 1988 s. 12.]

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Schedule 8 — Terms and conditions of service of Commissioner

[s. 282]

[Heading inserted by No. 42 of 2004 s. 145.]

1. Tenure of Commissioner's office

(1) The term for which a person is appointed as the Commissioner is to be fixed in the instrument of appointment and is to be not longer than 5 years.

(2) The Commissioner's eligibility for reappointment or the term for which the Commissioner may be reappointed is not affected by an earlier appointment.

[Clause 1 inserted by No. 42 of 2004 s. 145.]

2. Vacating office prematurely

(1) The Commissioner may resign from office by giving the Governor a signed letter of resignation.

(2) A resignation is not effective until the Governor has accepted it.

(3) If a resignation is accepted it takes effect when it is accepted or at any later date stated in the letter.

(4) A person who has resigned from office as the Commissioner is not precluded from again being appointed to the office.

(5) A person who holds office as the Commissioner does so during good behaviour but the Governor may, on the address of both Houses of Parliament, terminate the person's term of office.

(6) If a person who holds office as the Commissioner becomes ineligible, because of section 281(2), to hold the office, the person's term of office terminates.

[Clause 2 inserted by No. 42 of 2004 s. 145.]

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3. Commissioner's status as District Court judge

(1) The appointment of a person as the Commissioner does not affect the person's tenure of office as, or status as, a judge of the District Court nor the payment of the person's salary or allowances as a judge nor any other rights or privileges of the person as a judge.

(2) A person's service in the office of Commissioner is to be taken for all purposes to be service in the person's office of judge of the District Court.

(3) Nothing in this Act prevents a person who holds office as Commissioner from doing anything in the person's capacity as a judge of the District Court.

(4) A person's resignation from office as Commissioner or the termination of a person's term of office as Commissioner does not affect the person's office as a judge of the District Court.

[Clause 3 inserted by No. 42 of 2004 s. 145.]

4. Completion of matters

(1) A former Commissioner may, despite the expiration of the Commissioner's term of appointment, complete or otherwise continue to deal with any matters relating to proceedings before the Commissioner that have been heard or partly heard by the Commissioner before the expiration of that term.

(2) While completing or otherwise dealing with matters under subclause (1), a former Commissioner is taken to have all the powers and immunities as the Commissioner that the former Commissioner had immediately before the expiration of that person's term as the Commissioner.

[Clause 4 inserted by No. 42 of 2004 s. 145.]

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Notes

[1] This is a compilation of the *Workers' Compensation and Injury Management Act 1981* and includes the amendments made by the other written laws referred to in the following table [1a, 48]. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Workers' Compensation and Assistance Act 1981 [14]	86 of 1981	23 Nov 1981	3 May 1982 (see s. 2 and *Gazette* 8 Apr 1982 p. 1205)
Workers' Compensation and Assistance Amendment Act 1983	16 of 1983	7 Nov 1983	7 Nov 1983
Workers' Compensation and Assistance Amendment Act (No. 2) 1983	79 of 1983	22 Dec 1983	22 Dec 1983
Health Legislation Amendment Act 1984 Pt. XXIV	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and *Gazette* 15 Jun 1984 p. 1629)
Workers' Compensation and Assistance Amendment Act 1984 [15]	104 of 1984	19 Dec 1984	19 Dec 1984 (see s. 2)
Workers' Compensation and Assistance Amendment Act 1985 [16-19]	44 of 1985	20 May 1985	s. 1 and 2: 20 May 1985; s. 3(1) and (2) and 26: 20 May 1985 (see s. 2(1)); s. 3(3), 4-9, 13-18, 21, 22, 24, 27-37, 39-43: 28 Jun 1985 (see s. 2(2) and *Gazette* 14 Jun 1985 p. 2134); s. 25: 1 Jul 1985 (see s. 2(3)); s. 20: 25 Oct 1985 (see s. 2(2) and *Gazette* 25 Oct 1985 p. 4100); s. 23: 7 Feb 1986 (see s. 2(2) and *Gazette* 7 Feb 1986 p. 425); s. 38: 25 Jul 1986 (see s. 2(2) and *Gazette* 25 Jul 1986 p. 2453)
Acts Amendment (Financial Administration and Audit) Act 1985 s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and *Gazette* 30 Jun 1986 p. 2255)

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Short title	Number and year	Assent	Commencement
Workers' Compensation and Assistance Amendment Act 1986 [20]	33 of 1986	1 Aug 1986	1 Aug 1986 (see s. 2)
State Government Insurance Commission Act 1986 s. 46(2)	51 of 1986	5 Aug 1986	1 Jan 1987 (see s. 2 and *Gazette* 19 Dec 1986 p. 4859)
Workers' Compensation and Assistance Amendment Act (No. 2) 1986	85 of 1986	5 Dec 1986	Act other than s. 7 and 11: 5 Dec 1986 (see s. 2(1)); s. 7 and 11: 22 May 1987 (see s. 2(2) and *Gazette* 22 May 1987 p. 2167)
Acts Amendment (Workers' Compensation and Assistance) Act 1986 Pt. III	86 of 1986	5 Dec 1986	2 Jan 1987
Reprint of the *Workers' Compensation and Assistance Act 1981* as at 6 Feb 1987 (includes amendments listed above except those in the *Workers' Compensation and Assistance Amendment Act (No. 2) 1986* s. 7 and 11)			
Workers' Compensation and Assistance Amendment Act 1987 [21]	21 of 1987	25 Jun 1987	23 Jul 1987
Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987 Pt. VII	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and *Gazette* 12 Feb 1988 p. 397)
Workers' Compensation and Assistance Amendment Act 1988 Pt. 2	36 of 1988	24 Nov 1988	1 Mar 1991 (see s. 2 and *Gazette* 1 Mar 1991 p. 967)
Workers' Compensation and Assistance Amendment Act 1990 [22, 23]	96 of 1990	22 Dec 1990	s. 1 and 2: 22 Dec 1990; Act other than s. 1 and 2: 8 Mar 1991 (see s. 2 and *Gazette* 8 Mar 1991 p. 1030)
Reprint of the *Workers' Compensation and Rehabilitation Act 1981* as at 9 Oct 1991 (includes amendments listed above) (errata in *Gazette* 1 May 1992 p. 1866)			
Acts Amendment (Parliamentary, Electorate and Gubernatorial Staff) Act 1992 Pt. 6	40 of 1992	2 Oct 1992	3 Nov 1992 (see s. 2 and *Gazette* 3 Nov 1992 p. 5389)

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Short title	Number and year	Assent	Commencement
Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1992	72 of 1992	15 Dec 1992	s. 1 and 2: 15 Dec 1992; Act other than s. 1, 2, 6-8: 24 Dec 1992 (see s. 2 and *Gazette* 24 Dec 1992 p. 6277); s. 6-8: 5 Feb 1993 (see s. 2 and *Gazette* 5 Feb 1993 p. 975)
Employers' Indemnity Supplementation Fund Amendment Act 1993 s. 14	1 of 1993	19 Jul 1993	19 Jul 1993 (see s. 2)
Financial Administration Legislation Amendment Act 1993 s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
Mines Regulation Amendment Act 1993 s. 13	30 of 1993	16 Dec 1993	24 Dec 1993 (see s. 2 and *Gazette* 24 Dec 1993 p. 6796)
Workers' Compensation and Rehabilitation Amendment Act 1993 [24-33]	48 of 1993 (as amended by No. 34 of 1999 Pt. 3 and No. 42 of 2004 s. 172)	20 Dec 1993	Pt. 1-3: 20 Dec 1993 (see s. 2(1)); s. 21, 23, 25, 28(1) (only so far as it gives effect to Sch. 1 cl. 13, 14, 27(a)(i), (b)(i) and (c) and 31) of Pt. 4, and Pt. 5 (other than s. 36-38, 41 and 43): 24 Dec 1993 (see s. 2(2) and *Gazette* 24 Dec 1993 p. 6795); balance: 1 Mar 1994 (see s. 2(2) and *Gazette* 24 Dec 1993 p. 6795)
Reprint of the *Workers' Compensation and Rehabilitation Act 1981* as at 14 Mar 1994 (includes amendments listed above)			
Acts Amendment (Public Sector Management) Act 1994 s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and *Gazette* 30 Sep 1994 p. 4948)
Mines Safety and Inspection Act 1994 s. 109	62 of 1994	7 Nov 1994	9 Dec 1995 (see s. 2 and *Gazette* 8 Dec 1995 p. 5935)
Hospitals Amendment Act 1994 s. 18	103 of 1994	11 Jan 1995	3 Feb 1995 (see s. 2 and *Gazette* 3 Feb 1995 p. 333)
Occupational Safety and Health Legislation Amendment Act 1995 s. 48	30 of 1995	11 Sep 1995	1 Oct 1995 (see s. 2 and *Gazette* 15 Sep 1995 p. 4301)
Sentencing (Consequential Provisions) Act 1995 Pt. 84	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632)

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Short title	Number and year	Assent	Commencement
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Financial Legislation Amendment Act 1996 s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Reprint of the *Workers' Compensation and Rehabilitation Act 1981* as at 29 Jan 1999 (includes amendments listed above)			
Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1999 [34]	33 of 1999	5 Oct 1999	5 Oct 1999 (see s. 2)
Workers' Compensation and Rehabilitation Amendment Act 1999 [35-37]	34 of 1999 (as amended by No. 37 of 1999 s. 3) (as affected by No. 35 of 2004 Pt. 2)	5 Oct 1999	s. 5, 14, 15, 32, 48(a)(iv), 53(a), (c) and (d)(ii): 5 Oct 1999 (see s. 2(1)); balance: 15 Oct 1999 (see s. 2(2) and *Gazette* 15 Oct 1999 p. 4889 and Printers correction to proclamation in *Gazette* 19 Nov 1999 p. 5797)
Workers' Compensation and Rehabilitation Amendment Act 2000	44 of 2000	17 Nov 2000	Act other than s. 1, 2 and 4(2)(b): 5 Oct 1999 (see s. 2(1)); s. 1, 2 and 4(2)(b): 17 Nov 2000 (see s. 2(2))
Corporations (Consequential Amendments) Act 2001 Pt. 57	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285)
Reprint of the *Workers' Compensation and Rehabilitation Act 1981* as at 14 Sep 2001 (includes amendments listed above)			
Acts Amendment (Equality of Status) Act 2003 Pt. 63	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and *Gazette* 30 Jun 2003 p. 2579)
Racing and Gambling Legislation Amendment and Repeal Act 2003 Pt. 15 [38]	35 of 2003	26 Jun 2003	1 Aug 2003 (see s. 2 and *Gazette* 29 Jul 2003 p. 3259)
Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 72 and 96	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722)

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Short title	Number and year	Assent	Commencement
Statutes (Repeals and Minor Amendments) Act 2003 s. 134	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Workers' Compensation (Common Law Proceedings) Act 2004	35 of 2004	25 Oct 2004	s. 5(1) and (2): 5 Oct 1999 (see s. 2(2)); balance: 25 Oct 2004 (see s. 2(1))
Workers' Compensation and Rehabilitation Amendment (Cross Border) Act 2004 [39]	36 of 2004 (as amended by this Act s. 16, 17(5) and 19)	28 Oct 2004	s. 1 and 2: 28 Oct 2004; Act other than s. 1, 2 and Pt. 3: 22 Dec 2004 (see s. 2 and *Gazette* 21 Dec 2004 p. 6143); Pt. 3: 14 Nov 2005 (see s. 2(2) and *Gazette* 1 Nov 2005 p. 4975)
Workers' Compensation Reform Act 2004 [40, 41]	42 of 2004 (as amended by No. 16 of 2005 s. 4-7)	9 Nov 2004	s. 1 and 2: 9 Nov 2004; s. 3, 4(b), 5, 8(1) in so far as it deletes the definitions of ***Commission***, ***Committee***, ***Executive Director*** and ***the Chairman of the Commission***, s. 8(2) in so far as it inserts the definitions of ***chief executive officer***, ***the Chairman of WorkCover WA***, and ***WorkCover WA***, s. 8(3)(a), (b), (d), (e) and (i), 9, 19, 23-26, 28-35, 38-39, 40(a), 55(3)(b), 57(a) and (b), 64, 65(1), 80-86, 87(8), 88(1)-(4), 89-91, 93(a), (c), and (d), 94-95, 97, 98(1), (2) and (3)(a), 99-100, 101(1), 102, 111-113, 115-117, 122, 123(1)-(5), 124, 125(1), 126(1), (2), (3) and (5), 127, 131, 133, 135, 137-138, 140, 141(4)(a), (5)(a), (8)-(14), (15)(a), (c) and (d), and (21), 143(2), 150-153 and Pt. 4 (other than Div. 3): 4 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7131);

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Short title	Number and year	Assent	Commencement
			s. 4(a) and (c), 6 and 7, 8(1) other than the definitions of ***Commission***, ***Committee***, ***Executive Director*** and ***the Chairman of the Commission***, s. 8(2) other than the definitions of ***chief executive officer***, ***the Chairman of WorkCover WA***, and ***WorkCover WA***, s. 8(3)(c), (f)-(h) and (4)-(5), 11-18, 20-22, 27, 36, 37, 40(b), 41-54, 55(1), (2), (3)(a) and (4), 56, 57(c)-(e), 58-63, 65(2), 66-79, 87(1)-(7), 88(5), 92, 93(b), 96, 98(3)(b) and (c), 101(2), (3) and (4)(b), 103-110, 114, 118, 119, 120(2) and (3), 121, 123(6), 125(2), 126(4), 128-130, 132, 134, 136, 139, 141(1)-(3), (4)(b), (5)(b), (6), (7), (15)(b) and (e), (16)-(20), (22)-(25), 142, 143(1), 144-149, 154 and 182-188: 14 Nov 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7131 and 17 Jun 2005 p. 2657); Para (b) of proclamation published 31 Dec 2004 p. 7131 revoked (see *Gazette* 17 Jun 2005 p. 2657); s. 10 repealed by No. 16 of 2005 s. 4; s. 101(4)(a) deleted by No. 16 of 2005 s. 5; s. 120(1) repealed by No. 16 of 2005 s. 6
Acts Amendment (Court of Appeal) Act 2004 s. 37 (Sch. 1 cl. 28) [42]	45 of 2004 (as amended by No. 16 of 2005 s. 31)	9 Nov 2004	1 Feb 2005 (see s. 2 and *Gazette* 14 Jan 2005 p. 163)
Courts Legislation Amendment and Repeal Act 2004 Pt. 19	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)

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Short title	Number and year	Assent	Commencement
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78 and 80 (Sch. 2 cl. 156 and 157) [43]	84 of 2004 (as amended by No. 2 of 2008 s. 78(10))	16 Dec 2004	s. 78 and 80 (Sch. 2 cl. 156 and 157 — the amendment to s. 188B(3)): 2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Reprint 6: The *Workers' Compensation and Injury Management Act 1981* as at 5 Aug 2005 (includes amendments listed above except those in the *Workers' Compensation and Rehabilitation Amendment (Cross Border) Act 2004* Pt. 3 and certain provisions of the *Workers' Compensation Reform Act 2004*)			
Workers' Compensation Legislation Amendment Act 2005 Pt. 3, 4 and s. 32 [44, 45]	16 of 2005	27 Sep 2005	s. 30(1) and (2): 1 Jul 2005 (see s. 2(2)); s. 30(3): 27 Sep 2005 (see s. 2(1)); Pt. 3 and s. 32: 14 Nov 2005 (see s. 2(3))
Limitation Legislation Amendment and Repeal Act 2005 Pt. 9	20 of 2005	15 Nov 2005	15 Nov 2005 (see s. 2)
Chiropractors Act 2005 Sch. 3 cl. 8 [46]	31 of 2005	12 Dec 2005	1 Aug 2007 (see s. 2 and *Gazette* 31 Jul 2007 p. 3789)
Reprint 7: The *Workers' Compensation and Injury Management Act 1981* as at 3 Feb 2006 (includes amendments listed above except those in the *Chiropractors Act 2005*)			
Financial Legislation Amendment and Repeal Act 2006 s. 4 and Sch. 1 cl. 189	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Criminal Law and Evidence Amendment Act 2008 s. 73	2 of 2008	12 Mar 2008	27 Apr 2008 (see s. 2 and *Gazette* 24 Apr 2008 p. 1559)
Duties Legislation Amendment Act 2008 Sch. 1 cl. 42	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
Legal Profession Act 2008 s. 713	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)
Medical Practitioners Act 2008 Sch. 3 cl. 54	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and *Gazette* 25 Nov 2008 p. 4989)
Reprint 8: The *Workers' Compensation and Injury Management Act 1981* as at 8 May 2009 (includes amendments listed above)			

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Short title	Number and year	Assent	Commencement
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 139	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Acts Amendment (Bankruptcy) Act 2009 s. 94	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))

[1a] On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
Acts Amendment (ICWA) Act 1996 s. 38 [47]	45 of 1996 (as amended by No. 42 of 2004 s. 155)	25 Oct 1996	To be proclaimed (see s. 2)
State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 74 [12]	43 of 2000 (as amended by No. 42 of 2004 s. 174)	2 Nov 2000	To be proclaimed (see s. 2(2))

[2] The name of the State Government Insurance Commission was changed to the Insurance Commission of Western Australia by the *Acts Amendment (ICWA) Act 1996* s. 8 (see also note 47).

[3] Under the *Acts Amendment (ICWA) Act 1996* s. 31(2)(h), a reference to the State Government Insurance Corporation in a written law is, unless because of the context it would be inappropriate so to do, to be construed, or have effect, as if it had been amended to be a reference to the Insurance Commission of Western Australia (see also note 47).

[4] Repealed by the *Industrial Relations (Consequential Provisions) Act 1998* (C'th). Now see *Workplace Relations Act 1996* (C'th).

[5] The *Workers' Compensation Act Amendment Act (No. 2) 1977* s. 3 became operative on 28 Nov 1977.

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[6] The effect of this section was removed by the *Western Australian Marine Act 1982* s. 135, subject to the savings provisions in section 135(4) of that Act.

[7] Repealed by the *Statute Stocktake Act 1999* (C'th).

[8] The *Workers' Compensation (Common Law Proceedings) Act 2004* Pt. 2 may also be relevant.

[9] Repealed by s. 317 of this Act.

[10] Repealed by the *Interpretation Act 1984*.

[11] The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39, but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26.

[12] On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 74 (as amended by the *Workers' Compensation Reform Act 2004* s. 174) had not come into operation. It reads as follows:

> **74.** ***Workers' Compensation and Injury Management Act 1981* amended**
>
> Section 201(2) of the *Workers' Compensation and Injury Management Act 1981* is amended by deleting "or the *Superannuation and Family Benefits Act 1938*".
>
> *[Section 74 amended by No. 42 of 2004 s. 174.]*

[13] Repealed by the *Offshore Petroleum (Repeals and Consequential Amendments) Act 2006* (C'th). Now see *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (C'th).

[14] Now known as the *Workers' Compensation and Injury Management Act 1981*; short title changed (see note under s. 1).

[15] The *Workers' Compensation and Assistance Amendment Act 1984* s. 9 and 10 are transitional and validation provisions that are of no further effect.

[16] The *Workers' Compensation and Assistance Amendment Act 1985* s. 4(2) is a savings provision relating to the s. 10A inserted by s. 4(1) of that Act. That s. 10A was replaced by the *Workers' Compensation Legislation Amendment Act 2005* s. 9.

[17] The *Workers' Compensation and Assistance Amendment Act 1985* s. 23(2) and 41(2) read as follows:

> **23.** **Section 74 amended and transitional**
>
> (2) Section 74 of the principal Act shall —

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(a) where the latest disability or recurrence of the worker occurs on or after the coming into operation of this section — apply as amended by this section; and

(b) except as provided in paragraph (a) — continue to apply notwithstanding the coming into operation of this section as if this section had not been enacted.

41. Schedule 1 amended and transitional

(2) Clause 17 of Schedule 1 of the principal Act as amended by subsection (1) applies to and in respect of liability and the extent of liability to pay, and entitlement and the extent of entitlement to receive, benefits for such expenses as are provided for in that clause incurred before, on or after the coming into operation of this section but nothing in subsection (1) shall revive or increase the entitlement to such expenses where a worker had received a sum equal to 10% of the prescribed amount or such further amount as the Board had allowed under that clause before the coming into operation of this section.

[18] The *Workers' Compensation and Assistance Amendment Act 1985* s. 10-12, 19, 44 and 45 were repealed without having come into operation by the *Workers' Compensation and Assistance Amendment Act 1988* s. 13.

[19] The *Workers' Compensation and Assistance Amendment Act 1985* s. 30(2) was a transitional provision that was repealed by the *Workers' Compensation and Assistance Amendment Act 1990* s. 30(2).

[20] The *Workers' Compensation and Assistance Amendment Act 1986* s. 6(2) reads as follows:

6. Section 153A inserted and validation

(2) Any minimum premium recommended by the Committee for the purposes of Part VIII of the principal Act before the commencement of this section is deemed to be, and always to have been, lawfully recommended by the Committee and properly chargeable by an insurer.

[21] The *Workers' Compensation and Assistance Amendment Act 1987* s. 6(2) is a validation provision that is of no further effect.

[22] The *Workers' Compensation and Assistance Amendment Act 1990* s. 48(2) reads as follows:

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48. Schedule 1 amended

(2) Clause 17 of Schedule 1 of the principal Act as amended by subsection (1) applies to and in respect of liability and the extent of liability to pay, and entitlement and the extent of entitlement to receive, benefits for such expenses as are provided for in that clause incurred before, on, or after the coming into operation of this section but nothing in subsection (1) revives or increases the entitlement to such expenses where a worker has received under that clause a sum equal to 20% of the prescribed amount, or such further amount as the Board has allowed under clause 18A of that Schedule, before the coming into operation of this section.

[23] The *Workers' Compensation and Assistance Amendment Act 1990* s. 50 and 51 read as follows:

50. Transitional

(1) The amendments effected by this Act that relate to rehabilitation do not apply in respect of a disability that occurred before the commencement of section 35 of this Act, and the principal Act shall apply in respect of any such disability as if the amendments effected by this Act that relate to rehabilitation had not been enacted.

(2) Without limiting subsection (1), the amendments effected by sections 8, 9 and 19 of this Act do not apply in respect of a claim that was made before the commencement of section 8 of this Act, and the principal Act shall apply in respect of any such claim as if the amendments effected by sections 8, 9 and 19 of this Act had not been enacted.

51. Transitional and Schedule 5

(1) In this section ***the amended Schedule*** means Schedule 5 to the principal Act as amended by section 49 of this Act.

(2) Where there is under the amended Schedule —

(a) liability to pay compensation or to pay for the provision of other benefits, or both; and

(b) entitlement to receive compensation or other benefits, or both,

for or in relation to the disability of lung cancer, in determining that liability and the extent of it and that entitlement and the extent of it moneys already paid or required to be paid under clause 2 of Schedule 5 to the principal Act shall be taken into account and deemed to be moneys paid or required to be paid under the amended Schedule.

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[24] The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 4(4) reads as follows:

4. Part IV amended and application provision

(4) The provisions inserted by subsection (3) have no operation in relation to a cause of action in respect of which legal proceedings have been instituted before 4 p.m. on 30 June 1993 and, regardless of when legal proceedings are instituted, sections 93E and 93F of those provisions have no operation in relation to a cause of action arising wholly before 1 July 1993 but otherwise the provisions inserted by subsection (3) apply to causes of action arising before the commencement of this section in the same way as they apply to causes of acting arising after that commencement.

[25] The *Workers' Compensation and Rehabilitation Amendment Act 1993* Pt. 2 Div. 2 (as amended by the *Workers' Compensation and Rehabilitation Amendment Act 1999* Pt. 3 and the *Workers' Compensation Reform Act 2004* s. 172(2)) reads as follows:

Division 2 — Further transitional provisions

5. Definitions

(1) In this Division —

affected person means a person having a notifiable cause;

improved statutory benefits means the benefits under the principal Act that would be applicable if the amendments made by this Act to Schedule 2 to the principal Act and to the prescribed amount had been made immediately before the date of the accident that caused the injury or the date of the audiometric test that showed that a loss or diminution of the worker's hearing had been incurred, as the case requires;

notifiable cause means a cause of action that arose wholly before 1 July 1993 in respect of a disability for which, because of section 93D of the principal Act, damages are prevented from being awarded other than under this Division;

preliminary questions, in relation to a notifiable cause, means —

(a) whether or not a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on that cause; and

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(b) if the relevant employer or insurer would be likely to be found liable for damages, whether or not the damages that a court would be likely to award, but for section 93D of the principal Act, would be significant damages;

relevant employer or insurer, in relation to a notifiable cause, means the employer against whom the affected person has the cause of action or the person insuring the employer against liability arising out of that cause;

significant damages means damages of which —

(a) the amount attributable to non-pecuniary loss; or

(b) the amount attributable to future pecuniary loss,

is equal to or more than $25 000.

(2) Unless the contrary intention appears, expressions in this Division that are used in the principal Act have the same respective meanings in this Division as they have in the principal Act.

6. Registration of certain causes of action

(1) WorkCover WA is to keep a register containing particulars of notifiable causes registered under this Division and persons who have those causes.

(2) WorkCover WA is to register a notifiable cause if it was notified of the cause before 5 p.m. on 29 July 1993.

(3) WorkCover WA may, not later than 30 June 1994, register a notifiable cause if it is satisfied that there is good reason for notice of the cause not having been given until after 5 p.m. on 29 July 1993.

(4) The functions of WorkCover WA under this section in respect of a notifiable cause are to be performed within 21 days after the day on which it is notified of the cause.

[Section 6 amended by No. 34 of 1999 s. 59; No. 42 of 2004 s. 172(2).]

7. Appeals for registration

(1) A person seeking to have a notifiable cause registered under section 6(3) who is dissatisfied with the decision of WorkCover WA may appeal to the Minister against the decision.

(2) The Minister may dismiss or allow the appeal and, if the appeal is allowed, WorkCover WA is to register the cause.

[Section 7 amended by No. 42 of 2004 s. 172(2).]

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8. Certificate of registration

WorkCover WA, upon registering a notifiable cause, is to give to the affected person a certificate to the effect that the cause is registered and within 21 days notify the relevant employer or insurer in writing accordingly.

[Section 8 amended by No. 42 of 2004 s. 172(2).]

9. Negotiations with employer or insurer

(1) Within 60 days after the day on which the affected person is given a certificate of registration of a cause of action, the affected person may submit to the relevant employer or insurer details of the claim for damages in respect of the disability from which the cause arose, together with a copy of the certificate.

(2) The employer or insurer may, within 60 days after the day on which details of the claim are submitted in accordance with subsection (1) —

(a) notify the affected person in writing that the employer's liability is accepted and either —

(i) offer to pay to the affected person in settlement of the claim an amount specified in the notice; or

(ii) decline to pay on the grounds that the damages are not significant damages;

or

(b) notify the affected person in writing that the employer's liability is not accepted.

(3) Nothing in a notice under subsection (2) is admissible in court proceedings for the award of damages in respect of the disability.

(4) Without limiting the other matters that may be taken into account by a court but subject to section 12(3) and (4), in making an order as to costs the court shall have regard to whether or not a person has acted within the time specified in this section.

10. Improved statutory benefits available if liability accepted

(1) An affected person who is notified under section 9 that liability is accepted may, whether or not damages are considered to be significant, discontinue proceedings, if any, in respect of the cause and opt for the improved statutory benefits.

(2) An offer made under section 9(2)(a)(i) to an affected person lapses if the person opts for the improved statutory benefits.

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11. Consequences of filing certificate in court proceedings

(1) If an affected person —

(a) has commenced court proceedings in respect of a registered cause (whether the cause was registered before or after the proceedings were commenced); and

(b) has, within 90 days after the day on which the certificate was given, filed the certificate of registration in the proceedings and given a copy of the certificate to each other party to the proceedings,

the relevant employer or insurer may within 60 days after the day on which the certificate is filed, apply to a District Court Judge for a declaration as to the preliminary questions or either of those questions that is in dispute.

(2) If, in the circumstances mentioned in subsection (1)(a) and (b), the relevant employer or insurer does not apply under subsection (1) to a District Court Judge within the time provided by that subsection, the affected person may —

(a) discontinue the proceedings and opt for the improved statutory benefits; or

(b) continue the proceedings and enjoy the exemption given by section 13(1).

(3) If, on an application under subsection (1), the District Court Judge declares that a court would not be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause, this Division has no further application in relation to that cause.

(4) If, on an application under subsection (1), the District Court Judge declares that —

(a) a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause; and

(b) the damages that a court would be likely to award but for section 93D of the principal Act would not be significant damages,

this Division has no further application in relation to that cause unless the affected person discontinues the proceedings and opts for the improved statutory benefits.

(5) If, on an application under subsection (1), the District Court Judge declares that —

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(a) a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause; and

(b) the damages that a court would be likely to award but for section 93D of the principal Act would be significant damages,

the affected person may —

(c) discontinue the proceedings and opt for the improved statutory benefits; or

(d) continue the proceedings and enjoy the exemption given by section 13(1).

[Section 11 amended by No. 34 of 1999 s. 60.]

12. Offer to settle

(1) If the proceedings are continued in the circumstances described in subsection (2) or (5) of section 11, the relevant employer or insurer is to make an offer to settle, or consent to judgment, in the proceedings.

(2) The offer is to be made within 60 days after —

(a) the last day on which the application under section 11(1) could have been made; or

(b) the day on which the declaration under section 11(5) was made,

as the case requires, unless the proceedings had been commenced less than 120 days before the day by which the offer would otherwise be required to be made in which case the offer is to be made within 120 days after the day on which the proceedings were commenced.

(3) If the offer is not accepted nor withdrawn and the court awards damages in an amount that is not more than 120% of the amount offered, the costs of the proceedings are to be paid by the affected person.

(4) If the court awards damages in an amount that is more than 120% of the amount offered, the costs of the proceedings are to be paid by the relevant employer or insurer.

(5) If an offer is not made as required by this section or an offer is made but withdrawn, a nil amount is taken for the purposes of subsection (4) to have been offered.

13. Exemption from effect of section 93D

(1) If proceedings in respect of a cause are continued in the circumstances described in subsection (2) or (5) of section 11,

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section 93D of the principal Act has no operation in relation to the cause.

(2) Unless, in the proceedings continued, the court has decided that the disability did not result from the negligence or other tort of the employer, the affected person may, at any time, discontinue the proceedings and opt for the improved statutory benefits.

(3) If the court decides that the relevant employer or insurer is liable for damages but the damages are not significant damages, no damages are to be awarded but the affected person is to be taken to have opted under this Division for the improved statutory benefits.

14. Consequences of opting for improved statutory benefits

(1) An affected person opting for the improved statutory benefits is to do so by notice in writing given to the relevant employer or insurer and, if court proceedings have been commenced, a copy of the notice is to be filed in the proceedings.

(2) If under this Division an affected person opts for the improved statutory benefits, the benefits available to the person under the principal Act are the improved statutory benefits but otherwise this Division has no further application in relation to that cause.

(3) Subsection (2) applies whether or not the full extent of the benefits to which a person would be entitled under the principal Act but for this section had already been received when the person opts for the improved statutory benefits.

15. Time limits for bringing proceedings

(1) If the time limited for bringing proceedings for a notifiable cause would, but for this subsection, expire or have expired at any time after 4 p.m. on 30 June 1993 but before the day that is 90 days after the day on which a certificate of the registration of that cause under this Division is given, the time for bringing those proceedings is extended to the day that is 90 days after the day on which the certificate is given.

(2) The extension of time given by subsection (1) does not limit any extension given by a court.

16. Fund to bear cost of declarations

WorkCover WA is to pay from the General Fund to the Consolidated Fund such amount as the Treasurer directs in respect of the cost to the State of dealing with applications for declarations under this Division by a District Court Judge.

[Section 16 amended by No. 42 of 2004 s. 172(2).]

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17. Leave not required if certificate filed

Section 93D(4) and (5) of the principal Act do not apply to the commencement of proceedings in respect of a registered cause if the certificate of registration was issued not more than 90 days before the proceedings are commenced and, when the proceedings are commenced, the certificate is filed.

[26] The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 18(3) reads as follows:

18. Section 5 amended

(3) The increase in the prescribed amount effected by subsection (1) has effect on and from 1 July 1993.

[27] The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 19(2) reads as follows:

19. Schedule 1 amended

(2) The amendments made by subsection (1) have effect on and from 1 July 1993.

[28] The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 20(2) reads as follows:

20. Schedule 2 amended

(2) The amendments made by subsection (1) have effect on and from 1 July 1993.

[29] The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 27 reads as follows:

27. Transitional provision as to proceedings

(1) On the commencement of section 24, all proceedings pending before the Board are to be transferred to the Director and dealt with as if they had been referred for conciliation.

(2) In this section —

Board has the meaning given to that expression by the principal Act as in force immediately before the commencement of section 24;

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Director has the meaning given to that expression by the principal Act as amended by section 21.

30 The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 28(2) reads as follows:

Part 4 — Amendments Concerning Dispute Resolution and Compensation Magistrates Courts

28. Other transitional, consequential and incidental matters

(2) Regulations may be made amending the principal Act (including any provision amended by Schedule 1) to deal with any matter of a transitional nature that arises from the amendments made by this Part or to deal with any matter that is consequential on or incidental to those amendments.

31 The amendments in the *Workers' Compensation and Rehabilitation Amendment Act 1993* Sch. 1 cl. 28 which sought to amend s. 73(4) will not be included because of amendments to s. 73(4) made by Sch. 1 cl. 16 of that Act.

32 The amendments in the *Workers' Compensation and Rehabilitation Amendment Act 1993* Sch. 1 cl. 30 which sought to amend s. 73(1) and (6) will not be included because of amendments to s. 73 made by Sch. 1 cl. 16 of that Act.

33 The amendments in the *Workers' Compensation and Rehabilitation Amendment Act 1993* Sch. 1 cl. 30 which sought to amend Sch. 7 cl. 6(1)(a), 6(2)(a) and 8(3) will not be included because of amendments made by Sch. 1 cl. 27 of that Act.

34 The *Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1999* s. 7(3) is a transitional provision relating to the s. 84E inserted by s. 7(2) of that Act. That s. 84E was repealed by the *Workers' Compensation Reform Act 2004* s. 67.

35 The *Workers' Compensation and Rehabilitation Amendment Act 1999* s. 32(6), (7) and (8) (as amended by the *Workers' Compensation and Rehabilitation Amendment Act (No. 3) 1999* s. 3) read as follows:

32. Amendments about awarding damages and related matters (sections 5, 61, 84ZH, 84ZR and 193, Part IV Division 2 and Schedule 1), and saving and transitional provisions

(6) In subsections (7) and (8) —

amended provisions means Part IV Division 2 of the principal Act as amended by this section;

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assent day means the day on which this Act receives the Royal Assent;

former provisions means Part IV Division 2 of the principal Act before it was amended by this section.

(7) The amended provisions do not affect the awarding of damages in proceedings —

(a) commenced before the assent day; or

(b) for the commencement of which the District Court gave leave under the former provisions before the assent day,

and the former provisions continue to apply in relation to those proceedings.

(8) If weekly payments of compensation in respect of a disability —

(a) commenced before the assent day; or

(b) were ordered by a dispute resolution body to commence before the assent day,

and the termination day referred to in section 93E of the amended provisions —

(c) was before the assent day;

(d) is the assent day; or

(e) would not be more than 3 months after the assent day,

the termination day is to be regarded as being the day that is 3 months after the assent day.

[Subsection (8) amended by No. 37 of 1999 s. 3.]

[36] The *Workers' Compensation and Rehabilitation Amendment Act 1999* s. 46(2), (3) and (4) read as follows:

46. Part X Division 3 inserted and transitional provisions

(2) A person who —

(a) before the commencement of section 35, was authorized by the Commission under the former section 103 as an inspector; or

(b) before the commencement of section 44, was authorized by the Minister under the former section 172,

is to be regarded as having been authorized by the Commission as an inspector under section 175A(1) of the principal Act and as having taken the oath required by section 175A(2).

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(3) If —

(a) a requirement made under the former section 103 by a person referred to in subsection (2)(a); or

(b) a request or requirement made under the former section 172 or 172A by a person referred to in subsection (2)(b),

has not been complied with when this section commences, it is to be regarded as a requirement made under section 175B of the principal Act and for that purpose this section is taken to have commenced before the request or requirement was made.

(4) In subsections (2) and (3) —

former section means a section of the principal Act as in force before its repeal by this Act.

[37] The *Workers' Compensation and Rehabilitation Amendment Act 1999* s. 56(2) reads as follows:

56. Schedule 7 amended and transitional provisions

(2) Clause 5(3) of Schedule 7 to the principal Act, as inserted in the principal Act by subsection (1), applies to and in relation to the results of audiometric tests whether delivered to the Commission before or after the commencement of that subsection.

[38] The *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 19 reads as follows:

19. Power to amend regulations

(1) The Governor, on the recommendation of the Minister, may make regulations amending subsidiary legislation made under any Act.

(2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of the RWWA Act or this Act.

(3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

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[39] The *Workers' Compensation and Rehabilitation Amendment (Cross Border) Act 2004* Pt. 2 Div. 2 (as amended by s. 16, 17(5) and 19 of that Act) reads as follows:

Division 2 — Transitional

14. Transitional provisions

(1) In this section —

amendments means amendments made to the principal Act by this Act;

commencement day means the day on which this Part comes into operation;

principal Act means the *Workers' Compensation and Rehabilitation Act 1981*,

and other terms used have meanings consistent with the meanings they have in the principal Act.

(2) The amendments do not apply in respect of an injury that occurred before the commencement day, and the principal Act applies in respect of such an injury as if the amendments had not been made.

(3) If the death of a worker results from both an injury that occurred before the commencement day and an injury that occurred on or after that day, the worker is, for the purposes of the application of the amendments to and in respect of the death of the worker, to be treated as having died as a result of the injury that occurred on or after that day.

(4) If a period of incapacity for work resulted both from an injury that occurred before the commencement day and an injury that occurred on or after that day, the incapacity is, for the purposes of the application of the amendments to and in respect of that incapacity for work, to be treated as having resulted from an injury that occurred on or after that day.

(5) Neither the amendments nor subsections (3) and (4) affect the apportionment of liability under Part III Division 6 of the principal Act in a case where one or more of the injuries concerned occurred before the commencement day and one or more occurred on or after that day.

(6) A policy of insurance that an employer has against liability under the principal Act and that is in force at the beginning of the commencement day covers the employer, for as long as the policy

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remains in force, for the employer's liability under the principal Act as amended by this Act.

[Section 14 amended by No. 36 of 2004 s. 16, 17(5) and 19.]

40 The *Workers' Compensation Reform Act 2004* s. 114(3) and Pt. 4 (as amended by the *Workers' Compensation Legislation Amendment Act 2005* s. 7) read as follows:

114. Section 152 amended and transitional provision

(3) The amendment made by subsection (1) does not apply to the charging of a loading in so far as the loading relates to a period of insurance that commenced before the commencement of that subsection.

Part 4 — Transitional provisions

Division 1 — General

176. Interpretation

In this Division unless the contrary intention appears —

principal Act means the *Workers' Compensation and Rehabilitation Act 1981* as in force immediately before the coming into operation of the provision in which the term is used;

amended Act means the *Workers' Compensation and Injury Management Act 1981* as in force immediately after the coming into operation of the provision in which the term is used.

177. Application of *Interpretation Act 1984*

The provisions of this Part do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by this Act.

178. Transitional regulations

(1) If this Act does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of the amendments effected by this Act, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed for providing for the matter or issue.

(2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision —

(a) of this Act; or

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(b) of the *Interpretation Act 1984* as it applies to the amendments made by this Act,

the Governor may by regulations —

(c) modify that provision to remove that anomaly; and

(d) make such provision as is necessary or expedient to carry out the intention of that provision.

(3) If regulations made under subsection (1) or (2) provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.

(4) If regulations contain a provision referred to in subsection (3), the provision does not operate so as —

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

179. Power to amend subsidiary regulations

(1) The Governor, on the recommendation of the Minister, may make subsidiary legislation amending subsidiary legislation made under any Act.

(2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by subsidiary legislation is necessary or desirable as a consequence of the enactment of this Act.

(3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

Division 2 — Transitional provisions relating to statutory entitlements

180. Section 217 of the *Workers' Compensation and Injury Management Act 1981*

(1) Despite the enactment of section 217 of the amended Act, if, before the day on which section 130 of this Act comes into operation the total weekly payments by way of compensation

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payable under Schedule 1 clause 7 of the principal Act for that disability have reached the prescribed amount within the meaning of that Act, the total liability of the employer of a worker under section 217 of the amended Act in respect of that disability or incapacity is not to exceed the lesser of the amounts set out in section 84E(3)(a) and (b) of the principal Act as in force immediately before the coming into operation of section 130 of this Act.

(2) If, after the coming into operation of section 130 of this Act, a claim for damages in respect of an incapacity that has been settled by agreement independently of the principal Act is disapproved under section 92 of the amended Act, section 217 of the amended Act applies in respect of the total liability of the employer of the worker.

181. Transitional provisions — amendments to Schedule 1

(1) Where the death of a worker occurred before the coming into operation of section 141(1) of this Act, Schedule 1 clause 1 of the principal Act as in force immediately before the coming into operation of section 141(1) of this Act applies in relation to the compensation entitlements of the worker as if section 141(1) of this Act had not been enacted.

(2) Amount Aa as determined under Schedule 1 clause 11 of the amended Act as amended by subsections (9) and (12) of section 141 of this Act applies in relation to all weekly payments payable on or after the coming into operation of those subsections, but no weekly payments payable before those subsections come into operation are affected by the amendments effected by those subsections.

(3) Schedule 1 clause 11(3) of the amended Act as amended by section 141(10) of this Act does not apply in relation to weekly earnings of a worker who, before the coming into operation of section 141(10) of this Act, has received 4 weekly payments of compensation, and Schedule 1 clause 11(3) of the principal Act applies in respect of those weekly earnings as if the amendment had not been enacted.

(4) Schedule 1 clause 11(4) of the amended Act as amended by section 141(11) of this Act does not apply in relation to weekly earnings of a worker who, before the coming into operation of section 141(11) of this Act, has received 4 weekly payments of compensation, and Schedule 1 clause 11(4) of the principal Act applies in respect of those weekly earnings as if the amendment had not been enacted.

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(5) Schedule 1 clause 18A of the amended Act as amended by section 141 of this Act does not apply to compensation payable to a worker if, before the coming into operation of section 141(16) of this Act —

(a) an election by the worker under section 93E(3)(b) of the principal Act in respect of the disability has been registered;

(b) an order for redemption of the liability for incapacity has been made under section 67(4) of the principal Act or any order for settlement or redemption of the liability has been made under Part IIIA of that Act;

(c) an agreement in respect of the whole of the liability for incapacity or as to the amount of compensation payable for the incapacity has been registered under Part III Division 7 of the principal Act; or

(d) the worker's claim for damages in respect of the injury or incapacity has been settled by agreement independently of the principal Act.

(6) Subsection (5)(d) does not apply if, after the coming into operation of section 141(16) of this Act, the settlement is disapproved under section 92 of the amended Act.

Division 3 — Transitional provisions relating to dispute resolution

182. Interpretation

(1) In this Division —

commencement day means the day on which section 130 of this Act comes into operation;

Director Dispute Resolution has the meaning given to ***Director*** in the amended Act;

Director of Conciliation and Review has the meaning given to ***Director*** in the principal Act;

pending proceeding means —

(a) any matter the conciliation, review or other determination of which has been sought but not commenced before a dispute resolution body; or

(b) any matter that has been partly or fully heard or otherwise dealt with before, but not determined by, a dispute resolution body.

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(2) The following expressions have the same meaning in this Division as they had in the principal Act before it was amended by this Act —

(a) "compensation magistrate's court";

(b) "conciliation officer";

(c) "dispute resolution body";

(d) "review officer".

(3) Unless the contrary intention appears, words and expressions used in this Part have the same meaning as they have in the amended Act.

183. Conciliation and review

(1) A pending proceeding referred for conciliation under Part IIIA Division 2 of the principal Act, referred for review under Part IIIA Division 3 of that Act or otherwise referred to a conciliation officer or a review officer for determination under that Act or the subject of an application to a conciliation officer or a review officer under that Act —

(a) is, on and from the commencement day, taken to be a proceeding pending before an arbitrator; and

(b) is to be heard and determined by an arbitrator as if the referral or application were an application made under the amended Act.

(2) A dispute resolution authority to whom a pending proceeding is transferred under this section may —

(a) receive in evidence any transcript of evidence in a proceeding before a dispute resolution body relating to that matter; and

(b) adopt, as the dispute resolution authority thinks fit, any finding or decision of a dispute resolution body relating to that matter.

(3) The Director Dispute Resolution may give directions for the purpose of dealing with issues arising when the amended Act confers on a dispute resolution authority jurisdiction to deal with a matter that, before that jurisdiction was conferred, was dealt with by a dispute resolution body.

(4) Directions given under subsection (3) may modify the provisions of the amended Act, or the rules or regulations made under that Act, to such extent as is necessary or expedient to apply any of the general principles described in this section in a proceeding of a particular kind and to ensure a smooth transfer of proceedings from dispute resolution bodies to dispute resolution authorities.

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(5) On and from the commencement day, anything ordered, decided, or otherwise done by a conciliation officer or review officer in respect of a matter under the amended Act before the commencement day becomes of the same effect as if, and enforceable as if, it were ordered, decided or done by an arbitrator under the provisions of the amended Act authorising an arbitrator to order, decide, or do corresponding things after the commencement day.

184. Compensation magistrate's court

(1) A matter referred to a compensation magistrate's court under section 84ZM of the principal Act, but which the court has not commenced to hear before the commencement day, is to be transferred to the Commissioner and is to be dealt with by the Commissioner as if it had been referred under section 246(1) of that Act as amended by this Act.

(2) On and from the commencement day —

(a) any pending proceeding before a compensation magistrate's court; and

(b) any matter that has been determined by a review officer and —

(i) would have been appealable to a compensation magistrate's court had the law in force immediately before the commencement day continued to apply; or

(ii) was the subject of an appeal to a compensation magistrate's court that was not determined before the commencement day,

is to continue to be dealt with and determined as if the law in force immediately before the commencement day had continued in force.

(3) The principal Act as in force before the commencement day continues to apply to the extent that is necessary to enable a compensation magistrate's court to continue to deal with and determine a matter under this section and to enable appeals to be dealt with and implemented.

(4) Anything ordered, decided or otherwise done by a compensation magistrate's court under this section or before the commencement day is to be given effect and enforced, and is subject to appeal and may be dealt with on appeal, as if the principal Act as in force before the commencement day continued to apply.

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(5) Without limiting sections 84ZP and 115 of the principal Act as in force on 13 November 2005, a compensation magistrate's court acting under this section may remit a matter to an arbitrator for determination, with or without any direction.

[Section 184 amended by No. 16 of 2005 s. 7.]

185. Existing summonses and warrants

(1) If immediately before the commencement day a summons or other process issued by a review officer under Part IIIA of the principal Act is in force, then on the commencement day the summons, warrant or other process is to be taken to be a summons or other process issued under Part XI of the amended Act.

(2) If immediately before the commencement day a summons issued by a review officer under Part IIIA of the principal Act is in force and requires the person to attend before, or to produce documents to, a review officer, then on the commencement day the summons is to be taken to require the person to attend before, or produce the documents to, an arbitrator at the place specified in the summons.

186. Director of Conciliation and Review

(1) In this section —

former function means a function of the Director Dispute Resolution that is substantially similar to a function that before the commencement day was performed by the Director of Conciliation and Review.

(2) On the commencement day —

(a) any matter involved in the performance of a former function is to be transferred to the Director Dispute Resolution;

(b) any application, referral or other thing made, or otherwise directed or given to the Director of Conciliation and Review to do with the performance of the former function becomes of the same effect as if it had been referred or given to the Director Dispute Resolution to be dealt with under the amended Act; and

(c) anything decided, or otherwise done by the Director of Conciliation and Review in the performance of a former function becomes of the same effect as if, and enforceable as if, it were decided, or done by the Director Dispute Resolution under the provisions authorising the Director Dispute Resolution to decide, or do corresponding things after the commencement day.

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(3) For the purposes of subsection (1), section 183(2), (3) and (4) apply as if a reference in that section to a dispute resolution body includes a reference to the Director of Conciliation and Review and a reference in that section to a pending proceeding includes a reference to a matter referred to in subsection (1).

187. Records

(1) All records of a dispute resolution body relating to a matter that is transferred to a dispute resolution authority under section 183 of this Act, and all records of the Director of Conciliation and Review, are to be given to the Director Dispute Resolution.

(2) A compensation magistrate's court is to cause the Director Dispute Resolution to be given —

(a) a record of anything referred to in section 184 that the compensation magistrate's court orders, decides, or otherwise does; and

(b) all records relating to a matter that is transferred, or that the compensation magistrate's court finishes dealing with, under section 184.

188. Deemed eligibility for approval as Director or arbitrator

(1) The person who, immediately before the coming into operation of section 130 of the *Workers' Compensation Reform Act 2004*, was the Director of Conciliation and Review is taken to be eligible for approval under section 288(3) of the amended Act as the Director Dispute Resolution.

(2) An officer of WorkCover WA who, immediately before the coming into operation of section 130 of the *Workers' Compensation Reform Act 2004*, was a review officer is taken to be eligible for approval under section 286(3) of the amended Act as an arbitrator.

(3) Subsection (2) does not apply to a person seconded to, or acting in, the office of a review officer immediately before the coming into operation of section 130 of the *Workers' Compensation Reform Act 2004*.

Division 4 — Transitional provisions relating to Part VIII amendments

189. Transitional provisions for Part VIII amendments

(1) When the Part VIII amendments come into operation (the ***commencement time***), any effect that anything done before the commencement time by the former Committee would have had if

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those amendments had not been made continues as if the corresponding thing had been done by WorkCover WA.

(2) In subsection (1) —

WorkCover WA has the meaning given to that term by the *Workers' Compensation and Injury Management Act 1981*;

corresponding thing means anything done by WorkCover WA after the commencement of the Part VIII amendments that would have substantially the same effect after the commencement as what was done by the former Committee would have had if the Part VIII amendments had not been made;

former Committee means the Premium Rates Committee under the *Workers' Compensation and Rehabilitation Act 1981* as in force before the commencement of the Part VIII amendments;

Part VIII amendments means the amendments that sections 104 to 117 and 150 to 153 make to Part VIII of the *Workers' Compensation and Rehabilitation Act 1981*.

[41] The amendments in the *Workers' Compensation Reform Act 2004* s. 146, 147 and 148(2) which sought to amend s. 15 will not be included because s. 15 has been repealed by the *Workers' Compensation and Rehabilitation Amendment (Cross Border) Act 2004* s. 5.

The amendments in the *Workers' Compensation Reform Act 2004* s. 146 and 147 which sought to amend s. 16(1a) will not be included because s. 16(1a) has been repealed by the *Workers' Compensation and Rehabilitation Amendment (Cross Border) Act 2004* s. 6(1).

The amendments in the *Workers' Compensation Reform Act 2004* s. 148(1) which sought to amend s. 16(2) will not be included because of amendments to s. 16(2) made by the *Workers' Compensation and Rehabilitation Amendment (Cross Border) Act 2004* s. 6(2).

The amendments in the *Workers' Compensation Reform Act 2004* s. 147 which sought to amend s. 23 will not be included because s. 23 has been replaced by the *Workers' Compensation and Rehabilitation Amendment (Cross Border) Act 2004* s. 8.

[42] The *Acts Amendment (Court of Appeal) Act 2004* Sch. 1 cl. 29 which was proclaimed to commence on 1 July 2005 (see *Gazette* 14 Jan 2005 p. 163), is not included because the sections in the *Workers' Compensation and Injury Management Act 1981* that it purports to amend were not in operation on 1 July 2005. Subsequently Sch. 1 cl. 29 was repealed by the *Workers' Compensation Legislation Amendment Act 2005* s. 31.

[43] The *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* Sch. 2 cl. 157 (the amendment to s. 175H(2)(c)) was deleted without

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having come into operation by the *Criminal Law and Evidence Amendment Act 2008* s. 78(10).

[44] The *Workers' Compensation Legislation Amendment Act 2005* s. 9(2) reads as follows:

> **9. Section 10A replaced and transitional provision**
>
> (2) Nothing in this section affects or limits the operation of the *Workers' Compensation and Injury Management Act 1981* in relation to a director of a company if that director, at any time before the coming into operation of this section, received, or was entitled to receive, compensation under that Act, and for that purpose that Act continues to apply in relation to the director as if this section had not been enacted.

[45] The *Workers' Compensation Legislation Amendment Act 2005* s. 30(3) reads as follows:

> **30. Section 5 amended and transitional provision**
>
> (3) In determining the compensation payable to a dependant of a worker under clause 1 or 2 in accordance with the *Workers' Compensation and Injury Management Act 1981* as amended by subsection (2) —
>
> (a) any compensation paid under the relevant clause before this Act received the Royal Assent is to be deducted; and
>
> (b) if an apportionment of compensation has been determined or agreed in relation to compensation under the relevant clause before this Act receives the Royal Assent, any compensation payable under the relevant clause after this Act receives the Royal Assent is to be apportioned in a like manner.

[46] The amendment in the *Chiropractors Act 2005* s. 109 which sought to amend s. 176(1b)(d) is not included because s. 176 had been replaced by the *Workers' Compensation Reform Act 2004* s. 130 before the amendment purported to come into operation.

[47] On the date as at which this compilation was prepared, the *Acts Amendment (ICWA) Act 1996* Sch. 1 it. 16 (as amended by the *Workers' Compensation Reform Act 2004* s. 155(2)(a)) had not come into operation. It reads as follows:

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Schedule 1 — Consequential amendments to other Acts

16. *Workers' Compensation and Rehabilitation Act 1981*

Section 5(1)	(a)	After the definition of "industrial disease premium", insert the following definition — " ***Insurance Commission of Western Australia*** means the body continued under that name under the *Insurance Commission of Western Australia Act 1986*; ".
	(b)	Delete the definitions of "State Government Insurance Commission" and "State Government Insurance Corporation".
Section 162(1)		Delete "State Government Insurance Commission", substitute "Insurance Commission of Western Australia".
Section 163		Delete "State Government Insurance Commission", substitute "Insurance Commission of Western Australia".

[Item 16 amended by No. 42 of 2004 s. 155(2)(a).]

[48] Under s.45 the following order in council was published in *Gazette* 19 Jun 2009 p. 2253:

Workers' Compensation and Injury Management Act 1981

Workers' Compensation and Injury Management (Specified Industrial Diseases) Order 2008

Made by the Governor in Executive Council under section 45 of the Act.

1. Citation

This order is the *Workers' Compensation and Injury Management (Specified Industrial Diseases) Order 2008*.

2. Addition to Schedule 3

Extract from www.slp.wa.gov.au, see that website for further information

The disease and the process named in the Table are included in Schedule 3.

Column 1 Description of Disease	**Column 2 Description of Process**
Pleural plaques (diffuse pleural fibrosis)	Any process entailing substantial exposure to asbestos dust.

Note: In accordance with section 45(2) of the Act this order takes effect on the expiration of 3 months from the date of publication in the *Gazette*.

Extract from www.slp.wa.gov.au, see that website for further information