

Workers' Compensation and Rehabilitation Act 1981

Workers' Compensation and Rehabilitation Amendment Regulations (No. 4) 1999

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Workers' Compensation and Rehabilitation Amendment Regulations (No. 4) 1999*.

2. Commencement

These regulations come into operation on the later of —

- (a) the day on which the *Workers' Compensation and Rehabilitation Amendment Act 1999* receives the Royal Assent; and
- (b) the day on which these regulations are published in the *Gazette*.

3. The regulations amended

The amendments in these regulations are to the *Workers' Compensation and Rehabilitation Regulations 1982**.

[* Reprinted as at 14 February 1995.

For amendments to 6 October 1999 see 1998 Index to Legislation of Western Australia, Table 4, p. 354, and Gazette 13 and 16 April, and 22 June, 1999.]

4. Regulation 8A repealed

Regulation 8A is repealed.

5. Regulation 9 amended

Regulation 9 is amended by deleting "(1), (2) and".

6. Part 3A inserted

After regulation 19I the following Part is inserted —

“

Part 3A — Constraints on awards of common law damages

19J. Assessment of degree of disability

- (1) A referral under section 93D(5) of the Act is to be made in the form of Form 22 in Appendix I.

- (2) A notification under section 93D(7) of the Act is to be —
 - (a) made in the form of Form 23 in Appendix I; and
 - (b) accompanied by a copy of the medical evidence produced to the Director under section 93D(6) of the Act.
- (3) A notification under section 93D(8) of the Act is to be made in the form of Form 23 in Appendix I.

19K. Agreement as to degree of disability

- (1) An agreement as to the degree of disability for the purposes of section 93E(3)(a), (4) or (9) of the Act is to be made in the form of Form 24 in Appendix I and lodged with the Director.
- (2) On receipt of the agreement the Director is to —
 - (a) record the agreement in a register kept for that purpose; and
 - (b) complete the relevant section of the agreement form and give a copy of it to the worker and the employer.

19L. Determination of degree of disability

- (1) The Director is to be notified as soon as practicable after a dispute resolution body determines a question referred to it under section 93D(10) of the Act.
- (2) On receipt of the notification the Director is to —
 - (a) record the determination in a register kept for that purpose; and
 - (b) give a copy of the determination to the worker, the employer and the employer's insurer.

19M. Election to retain right to seek damages

- (1) An election under section 93E(3)(b) of the Act is to be made in the form of Form 25 in Appendix I and lodged with the Director.
- (2) A worker may withdraw the election by giving a notice in the form of Form 26 to the Director before the election is registered under subregulation (3).
- (3) Subject to subregulations (4) and (5), on receipt of the election the Director is to —
 - (a) register the election in a register kept for that purpose; and
 - (b) complete the relevant section of the election form and give a copy of it to the worker and the employer.

- (4) If the election is lodged before an agreement or determination as to the degree of disability is recorded under section 93E(4) of the Act, the Director must not register the election until at least 14 days after the agreement or determination is recorded.
- (5) The Director may decline to register an election if the Director is satisfied that the worker does not fully understand the consequences of the registration of the election.
- (6) An election registered under subregulation (3) is taken to have been registered —
 - (a) if subregulation (4) applied in relation to it, on the day after the 14th day referred to in that subregulation; or
 - (b) otherwise, on the day on which it is received by the Director.

19N. Extension of time to make election

- (1) The Director may grant an extension of time under section 93E(7) of the Act if the Director is satisfied that the worker's disability is of such seriousness that the worker is likely to require major surgery within the next 6 months.
- (2) An application for an extension of time is to be —
 - (a) made in the form of Form 27 in Appendix I;
 - (b) accompanied by medical evidence from a medical practitioner who is a specialist in a relevant field of medicine; and
 - (b) lodged with the Director at least 21 days before the termination day.
- (3) Within 14 days of receiving the application the Director is to —
 - (a) decide whether to grant the extension; and
 - (b) complete the relevant section of the application form and give a copy of it to the worker and the employer.

19O. Application for compensation

An application for compensation under section 93E(11) of the Act is to be made and dealt with in accordance with the *Workers' Compensation (Conciliation and Review) Rules 1994* as if it were an application referring for conciliation a dispute as to the amount of compensation.

7. Appendix I amended

- (1) Form 2B in Appendix I is amended in the paragraph headed "**Injured worker's declaration**" by inserting at the end of the paragraph —

“

I also understand that I can only claim damages at common law for my injury if it is agreed or determined that I am at least 16% disabled and I lodge an election within the time specified in the *Workers' Compensation and Rehabilitation Act 1981* (which in most cases is 6 months after the commencement of weekly compensation payments).

”.

- (2) Appendix I is amended after Form 21 by inserting the following forms —

“

Form 22

Workers' Compensation and Rehabilitation Act 1981

Referral of Question of Degree of Disability

[r. 19J(1)]

Worker's details

Surname		Other names	
<input style="width: 90%;" type="text"/>		<input style="width: 90%;" type="text"/>	
Date of birth	Sex	Occupation	
<input style="width: 80%;" type="text"/>	<input style="width: 80%;" type="text"/>	<input style="width: 95%;" type="text"/>	
Address			
<input style="width: 95%;" type="text"/>			Postcode
<input style="width: 95%;" type="text"/>			<input style="width: 80%;" type="text"/>
Telephone no.			
<input style="width: 95%;" type="text"/>			

Employer's details

Name	
<input style="width: 95%;" type="text"/>	
Address	
<input style="width: 95%;" type="text"/>	
Postcode	
Telephone no.	WorkCover no. (if known)
<input style="width: 80%;" type="text"/>	<input style="width: 80%;" type="text"/>
Contact person	
<input style="width: 95%;" type="text"/>	
Title	Telephone no.
<input style="width: 80%;" type="text"/>	<input style="width: 80%;" type="text"/>

Injury details

Description of injury	
<input style="width: 95%; height: 30px;" type="text"/>	
Date injury occurred	Date weekly compensation commenced (if applicable)
<input style="width: 80%;" type="text"/>	<input style="width: 80%;" type="text"/>
Degree of disability As assessed by medical practitioner	Relevant level of disability (see s. 93E(3) of the Act)
<input style="width: 80%;" type="text"/>	<input type="checkbox"/> not less than 30% <input type="checkbox"/> not less than 16%

Signature of worker _____	Date	<input style="width: 80%; height: 20px;" type="text"/>
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Lodging this form

This form should be lodged with —

Director, Conciliation and Review Directorate
WorkCover WA
Perth, Western Australia

You must also give to the Director medical evidence from a medical practitioner indicating that, in his or her opinion, your degree of disability is not less than the relevant level.

Form 23

*Workers' Compensation and Rehabilitation Act 1981***Notice of Referral of Question of Degree of Disability**

[r. 19J(2), (3)]

Worker's details

Surname	Other names
<input type="text"/>	<input type="text"/>
Address	Postcode
<input type="text"/>	<input type="text"/>
Telephone no.	Occupation
<input type="text"/>	<input type="text"/>

Employer's details

Name	
<input type="text"/>	<input type="text"/>
Address	Postcode
<input type="text"/>	<input type="text"/>
Telephone no.	WorkCover no. (if known)
<input type="text"/>	<input type="text"/>

Injury details

Description of injury

Date injury occurred

Degree of disability as assessed by medical practitioner

Relevant level of disability

not less than 30%

not less than 16%

Question referred

The question of whether the worker's degree of disability is or is not less than the relevant level has been referred to the Director, Conciliation and Review Directorate, for consideration.

Medical evidence

Accompanying this notice is a copy of the medical evidence provided by the worker which indicates that in the opinion of the worker's medical practitioner the worker's degree of disability is not less than the relevant level.

Objection

If you (the employer) consider the worker's degree of disability is less than the relevant level, you should complete the bottom section of this form and return it to the Director within 21 days of receiving this notice.

If you do not notify the Director within 21 days you will be taken to have agreed that the worker's degree of disability is not less than the relevant level

Signature of Director	Date
<input type="text"/>	<input type="text"/>

Employer's objection

Employer's assessment of degree of disability		
Signature of employer _____	Date	<input type="text" value="/ /"/>

Form 24

Workers' Compensation and Rehabilitation Act 1981

Degree of Disability Agreement

[r. 19K(1), (2)]

Worker's details

Surname	Other names
<input type="text"/>	<input type="text"/>
Address	
<input type="text"/>	Postcode
Telephone no.	Occupation
<input type="text"/>	<input type="text"/>

Employer's details

Name	
<input type="text"/>	<input type="text"/>
Address	
<input type="text"/>	Postcode
Telephone no.	WorkCover no. (if known)
<input type="text"/>	<input type="text"/>

Injury details

Description of injury

Date injury occurred

Agreement

Agreed degree of disability (insert actual figure eg. 22%) %

Agreed degree of disability is —

not less than 30%

not less than 16%

Signature of Worker _____	Date	<input type="text" value="/ /"/>
Signature of witness _____	Name of witness	_____

Signature of Employer _____	Date	<input type="text" value="/ /"/>
Signature of witness _____	Name of witness	_____

Recording of agreement

Date of recording	Record no.
<input type="text"/>	<input type="text"/>

Signature of Director	_____	Date	<input type="text" value="/ /"/>
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Form 25

*Workers' Compensation and Rehabilitation Act 1981***Election to Retain Right to Seek Damages**

[r. 19M(1), (3)]

Worker's details

Surname	<input type="text"/>		Other names	<input type="text"/>
Date of birth	Sex	<input type="text"/>	Occupation	<input type="text"/>
Address		<input type="text"/>		
		Postcode		
Telephone no.	<input type="text"/>		Occupation	<input type="text"/>

Employer's detail

Name	<input type="text"/>		
Address	<input type="text"/>		
		Postcode	
Telephone no.	<input type="text"/>		WorkCover no. (if known)
Contact person	<input type="text"/>		
Title	<input type="text"/>		Telephone no.
		<input type="text"/>	

Injury details

Description of injury	<input type="text"/>	
Date injury occurred	Degree of disability (as assessed by medical practitioner)	<input style="width: 50px;" type="text" value="%"/>
<input type="text"/>		

Signature of Worker	_____	Date	<input type="text" value="/ /"/>
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Warning .

The registration of this election will, in most cases, prevent you from continuing to receive statutory benefits under the *Workers' Compensation and Rehabilitation Act 1981*.

You should seek appropriate independent advice before lodging this form.

Registration of election

Date of registration Registration no.

Signature of Director _____ Date / /

Form 26

*Workers' Compensation and Rehabilitation Act 1981***Withdrawal of Election to Retain Right to Seek Damages**

[r. 19M(2)]

Worker's details

Surname Other names

Address Postcode

Employer's detail

Name

Address Postcode

Election details

Date election lodged

Signature of Worker _____ Date / /

Form 27

*Workers' Compensation and Rehabilitation Act 1981***Application for Extension of Time to Make Election**

[r. 19N(2)]

Worker's details

Surname Other names

Date of birth Sex Occupation

Address Postcode

Telephone no. Occupation

Employer's detail

Name

Address Postcode

Telephone no. WorkCover no. (if known)

Contact person

Title Telephone no.

Injury details

Description of injury

--

Date injury occurred

--

Degree of disability

(as assessed by worker's medical practitioner)

%

Extension of time sought

Extension sought until

--

**Signature of
Worker**

Date

/ /

Lodging this form

This form should be lodged with —

Director, Conciliation and Review Directorate

WorkCover WA

Perth, Western Australia

You must also give to the Director medical evidence from a medical practitioner who is a specialist in a relevant field of medicine indicating that your disability is of such seriousness that you are likely to require major surgery within the next 6 months.

Granting of extension

An extension of time to make an election under section 93E(3)(b) of the Act —

 is granted until / / OR is not granted
**Signature of
Director**

Date

/ /

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.
