



Western Australia

**Workers Compensation and Injury  
Management Amendment (Common Law  
Election Validation) Act 2024**

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As at 29 Oct 2024

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# Workers Compensation and Injury Management Amendment (Common Law Election Validation) Act 2024

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# **Workers Compensation and Injury Management Amendment (Common Law Election Validation) Act 2024**

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**No. 40 of 2024**

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***An Act to amend the *Workers Compensation and Injury Management Act 2023*.***

*[Assented to 29 October 2024]*

The Parliament of Western Australia enacts as follows:

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**1. Short title**

This is the *Workers Compensation and Injury Management Amendment (Common Law Election Validation) Act 2024*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**3. Act amended**

This Act amends the *Workers Compensation and Injury Management Act 2023*.

**4. Part 16 inserted**

After section 709 insert:

**Part 16 — Validation**

**710. Terms used**

- (1) In this Part —

***agreement*** means an agreement referred to in section 93L(2)(a) of the former Act before 1 July 2024;

***assessment*** means an assessment referred to in section 93L(2)(b) of the former Act before 1 July 2024;

***Director*** has the meaning given in section 5(1) of the former Act before 1 July 2024;

***extended limitation period*** means the period of 12 months beginning on validation day;

**former Act** means the *Workers' Compensation and Injury Management Act 1981* (including subsidiary legislation made under that Act, unless otherwise indicated);

***Neville v Choice One Pty Ltd*** means the decision of the Court of Appeal in *Neville v Choice One Pty Ltd* [2024] WASCA 104;

**transitional period** means the period beginning on 5 September 2024 and ending on the day before validation day;

**validated election** has the meaning given in subsection (2), subject to section 712;

**validation day** means the day on which the *Workers Compensation and Injury Management Amendment (Common Law Election Validation) Act 2024* section 3 comes into operation.

- (2) A **validated election** is an election purportedly made before 1 July 2024 under section 93K(4)(a) of the former Act if —
- (a) before 1 July 2024, the Director recorded the required agreement or assessment under section 93L(2) of the former Act; but
  - (b) the Director did not do so before the election was purportedly made.

### **711. Validated elections**

- (1) A validated election —
- (a) is taken to have been, at all times before validation day, as lawful, valid and effective as it would have been had the Director recorded the required agreement or assessment under section 93L(2) of the former Act before the validated election was purportedly made; and

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- (b) is taken to be, at all times on and after validation day, as lawful, valid and effective as it would be had the Director recorded the required agreement or assessment under section 93L(2) of the former Act before the validated election was purportedly made.
- (2) Subsections (3) to (7) —
  - (a) supplement subsection (1); and
  - (b) are not to be construed as limiting the effect of subsection (1) or each other.
- (3) The former Act, as in force at any time before 1 July 2024 or as it continues to apply at any time on or after 1 July 2024 under Part 14 of this Act or otherwise, is taken to have had, or to have, the same effect at that time as if the Director had recorded the required agreement or assessment under section 93L(2) of the former Act before the validated election was purportedly made.
- (4) Any written law (including this Act) in force at any time before, on or after validation day is taken to have had, or to have, the same effect at that time as if the Director had recorded the required agreement or assessment under section 93L(2) of the former Act before the validated election was purportedly made.
- (5) Anything done, or purportedly done, before, on or after validation day is taken to be, and to have always been, as lawful, valid and effective as it would be, or would have been, had the Director recorded the required agreement or assessment under section 93L(2) of the former Act before the validated election was purportedly made.
- (6) In subsection (5), a reference to the doing of anything includes a reference to an omission to do anything.

- (7) The functions, rights, obligations and liabilities of the State, and of all persons and bodies, are taken to be, and to have always been, the same as if the Director had recorded the required agreement or assessment under section 93L(2) of the former Act before the validated election was purportedly made.
- (8) Without limiting the effect of this section, this section has effect for the purposes of —
  - (a) any court proceedings seeking damages in reliance on the validated election —
    - (i) that were commenced before validation day but were not finalised before validation day (by judgment, settlement, dismissal, discontinuance or otherwise); or
    - (ii) that are commenced on or after validation day;
  - and
  - (b) any appeal proceedings in respect of court proceedings seeking damages in reliance on the validated election if the appeal proceedings —
    - (i) were commenced before validation day but were not finalised before validation day; or
    - (ii) are commenced on or after validation day.

**712. Election considered in *Neville v Choice One Pty Ltd***

The election purportedly made on 28 March 2019 that was considered in *Neville v Choice One Pty Ltd* is not a validated election.

**713. Court proceedings struck out, stayed or dismissed before validation day**

- (1) This section applies if, before validation day —
  - (a) court proceedings were commenced seeking damages in reliance on a validated election; and
  - (b) the court proceedings were struck out, stayed or dismissed by the court on the ground that the Director did not record the required agreement or assessment under section 93L(2) of the former Act before the validated election was purportedly made.
- (2) On or after validation day, if the court, on an application made by the person seeking damages, is satisfied that it is just and reasonable to do so, the court may, on whatever terms it thinks fit, set aside or vary the order that struck out, stayed or dismissed the court proceedings.
- (3) Alternatively, or if the court refuses to act under subsection (2) on an application, new court proceedings seeking damages in reliance on the validated election may be commenced on or after validation day under Part 7 Divisions 1 to 4 of this Act as provided for under Part 14 of this Act.
- (4) Subsection (5) applies to commencing new court proceedings under subsection (3) if the period of 3 years referred to in the *Limitation Act 2005* section 14(1) that, apart from subsection (5), would apply to commencing the court proceedings —
  - (a) expired before validation day; or
  - (b) expires on or after validation day but before the extended limitation period expires.

- (5) The *Limitation Act 2005* applies as if section 14(1) of that Act referred to the extended limitation period instead of the period of 3 years.
- (6) If the court acts under subsection (2) or new court proceedings are commenced under subsection (3), the *Law Reform (Miscellaneous Provisions) Act 1941* section 4 applies for the purposes of the recommenced or new proceedings disregarding any requirement in that section that proceedings were pending at the time of death.

**714. Court proceedings discontinued before validation day**

- (1) This section applies if —
  - (a) court proceedings were commenced before validation day seeking damages in reliance on a validated election; and
  - (b) during the transitional period, the court proceedings were discontinued by the person seeking the damages.
- (2) On or after validation day, the court may, on an application made by the person seeking damages, allow the discontinuance of the court proceedings to be withdrawn on whatever terms the court thinks fit if the court is satisfied that —
  - (a) it is just and reasonable to do so; and
  - (b) the court proceedings were discontinued on the ground that the Director did not record the required agreement or assessment under section 93L(2) of the former Act before the validated election was purportedly made.

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- (3) Alternatively, or if the court refuses to act under subsection (2) on an application, new court proceedings seeking damages in reliance on the validated election may be commenced on or after validation day under Part 7 Divisions 1 to 4 of this Act as provided for under Part 14 of this Act.
- (4) Subsection (5) applies to commencing new court proceedings under subsection (3) if the period of 3 years referred to in the *Limitation Act 2005* section 14(1) that, apart from subsection (5), would apply to commencing the court proceedings —
  - (a) expired before validation day; or
  - (b) expires on or after validation day but before the extended limitation period expires.
- (5) The *Limitation Act 2005* applies as if section 14(1) of that Act referred to the extended limitation period instead of the period of 3 years.
- (6) If the court acts under subsection (2) or new court proceedings are commenced under subsection (3), the *Law Reform (Miscellaneous Provisions) Act 1941* section 4 applies for the purposes of the recommenced or new proceedings disregarding any requirement in that section that proceedings were pending at the time of death.

**715. Second election made under Part 7 of this Act**

- (1) This section applies in relation to a validated election if, during the transitional period, the person who purportedly made the validated election made an election (the *second election*) under Part 7 of this Act to retain the right to seek damages in respect of the injury that was the subject of the validated election.

- (2) The application of section 711 to the validated election —
- (a) does not affect any of the following —
    - (i) the second election;
    - (ii) the application of Part 7 of this Act in relation to, or in consequence of, the second election;
    - (iii) the registration of the second election under Part 7 of this Act, despite section 421(6) of this Act;
    - (iv) any court proceedings seeking damages in reliance on the second election that were commenced before validation day;
- and
- (b) does not prevent the commencement of court proceedings on or after validation day seeking damages in reliance on the second election and, if such court proceedings are commenced, does not affect the court proceedings; and
  - (c) does not prevent damages being awarded in court proceedings referred to in paragraph (a)(iv) or (b).

**716. No right of recovery for compensation paid**

- (1) This section applies to a person who purportedly made a validated election if, during the transitional period, an amount of compensation was paid to the person under Part 2 of this Act in respect of the injury that was the subject of the validated election.

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- (2) Despite the application of section 711 to the validated election, the amount of compensation is not recoverable from the person.

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