



Western Australia

Workers Compensation and Injury Management Act 2023

Workers Compensation and Injury Management Act 2023

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Defined terms

Workers Compensation and Injury Management Act 2023

An Act —

- **to provide for employers to be liable to compensate workers who suffer injuries from employment; and**
- **to establish a scheme for compulsory insurance against that liability; and**
- **to provide for the management of those injuries; and**
- **to provide for the resolution of disputes; and**
- **to make administrative and other related provisions; and**
- **to make consequential and related amendments to, and repeals of, various written laws.**

Part 1 — Preliminary

Division 1 — General

1. Short title

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

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 (but only Division 1) — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 14 (but only Divisions 1, 4 and 10 and only sections 542, 543, 545, 574, 579, 603, 606 and 609) — on the day after assent day;
- (c) Part 15 Division 3 Subdivision 18 —
 - (i) if the *Criminal Law (Mental Impairment) Act 2023* section 188 comes into operation on or before assent day — when section 66 of this Act comes into operation; or
 - (ii) otherwise — when the *Criminal Law (Mental Impairment) Act 2023* section 188 comes into operation;
- (d) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

4. No contracting out

- (1) The application of this Act or any of its provisions cannot be excluded, restricted or modified by contract, agreement or other arrangement, except as provided by this Act.
- (2) A person who enters into a contract, agreement or other arrangement that purports to exclude, restrict or modify the application of this Act or any of its provisions, except as provided by this Act, commits an offence.

Penalty for this subsection: a fine of \$15 000.

Division 2 — Terms used

5. Terms used

In this Act —

AIDS means acquired immune deficiency syndrome;

approved form means a form approved by the CEO under section 496 for the purposes of the provision in which the term is used;

approved permanent impairment assessor has the meaning given in section 193(1);

approved workplace rehabilitation provider means a workplace rehabilitation provider granted approval under section 173(1);

arbitration rules has the meaning given in section 382(1);

Arbitration Service means the Workers Compensation Arbitration Service established under section 307(1)(b);

arbitrator means a person designated as an arbitrator under section 309(1);

Board means WorkCover WA's board provided for in section 452;

CEO means the person holding or acting in the office of chief executive officer of WorkCover WA;

certificate of capacity, in relation to a worker's injury, means a certificate issued in accordance with section 169;

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

compensation means compensation under this Act;

conciliation rules has the meaning given in section 381(1);

Conciliation Service means the Workers Compensation Conciliation Service established under section 307(1)(a);

conciliator means a person designated as a conciliator under section 309(1);

degree of permanent impairment means —

- (a) degree of permanent impairment of a part or faculty of the body; or
- (b) degree of permanent whole of person impairment;

DI Fund means the WorkCover WA Default Insurance Fund established under section 256(1);

Director means the WorkCover WA officer designated under section 308(1) as the Director;

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

dispute resolution authority means the Director, the Registrar, a conciliator or an arbitrator;

document includes anything that falls within 1 or more of the following —

- (a) a record of information, irrespective of how the information is recorded or stored or able to be recovered;
- (b) a thing on which there is writing;
- (c) a map, plan, graph, drawing or photograph;

- (d) a thing on which there are marks, figures, symbols or perforations that have a meaning for persons qualified to interpret them;
- (e) a thing from which images, sounds or writings can be reproduced with or without the aid of anything else;
- (f) a thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

dust disease has the meaning given in section 115;

dust disease impairment compensation means lump sum compensation under section 119 for impairment resulting from a dust disease;

employer has the meaning given in section 12 (and see also sections 13 to 16);

General Account means the WorkCover WA General Account established under section 488(1);

general maximum amount has the meaning given in section 538(1);

group self-insurer licence has the meaning given in section 200;

health professional means —

- (a) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* to practise a health profession (other than as a student); or
- (b) a person who is not resident in a State but who is recognised as a health professional for the purposes of this Act by WorkCover WA;

HIV means human immunodeficiency virus;

incapacity claim has the meaning given in section 23;

income compensation means compensation under Part 2 Division 3;

injured worker means a worker who has suffered an injury in respect of which compensation is payable;

injury has the meaning given in section 6;

injury by disease means an injury that is a disease, or the recurrence, aggravation or acceleration of a pre-existing disease, as provided by section 6;

inspector means a staff member designated as an inspector under section 508(1);

Insurance Commission means the Insurance Commission of Western Australia referred to in the *Insurance Commission of Western Australia Act 1986*;

insured employer means an employer who is insured under a workers compensation policy;

insurer means an employer's insurer under a workers compensation policy;

licensed insurer has the meaning given in section 200;

medical and health expense has the meaning given in section 71;

medical and health expenses compensation means compensation under Part 2 Division 4;

medical and health expenses general limit amount has the meaning given in section 69;

medical practitioner means —

- (a) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession; or
- (b) a person who is not resident in a State but who is recognised as a medical practitioner for the purposes of this Act by WorkCover WA;

mesothelioma means a malignant disease of the inside lining of any 1 or more of the following —

- (a) the chest wall (pleura);

(b) the pericardium;

(c) the abdomen (peritoneum);

miscellaneous expense has the meaning given in section 81;

miscellaneous expenses compensation means compensation under Part 2 Division 5;

noise-induced hearing loss has the meaning given in section 107;

permanent impairment compensation means lump sum compensation under Part 2 Division 7;

provisional payments means provisional payments made to a worker in accordance with section 36;

Registrar means the WorkCover WA officer designated under section 308(1) as the Registrar;

return to work, in relation to a worker who has an incapacity for work, means —

- (a) the worker holding or returning to the position that the worker held immediately before becoming incapacitated if it is reasonably practicable for the employer who employed the worker at the time the incapacity 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, whether with the employer who employed the worker at the time the incapacity occurred or another employer —
 - (i) for which the worker is qualified; and
 - (ii) that the worker is capable of performing;

return to work program means a return to work program established under section 160(2);

self-insurer has the meaning given in section 200;

self-insurer licence has the meaning given in section 200;

settlement agreement means a settlement agreement referred to in Part 2 Division 12;

ship —

- (a) means any kind of vessel used in navigation by water, however propelled or moved; and
- (b) includes any of the following vessels used wholly or primarily in navigation by water —
 - (i) a barge, lighter or other floating vessel;
 - (ii) an air-cushion vehicle or other similar craft;

staff member means any of the following —

- (a) a WorkCover WA officer;
- (b) a person engaged or appointed under the *Public Sector Management Act 1994* section 100 for the purposes of this Act;
- (c) a person referred to in section 480(1);

State includes a Territory;

Trust Account means the WorkCover WA Trust Account established under section 494(1);

uninsured employer has the meaning given in section 265;

WorkCover WA means the body established under section 445(1);

WorkCover WA officer means the CEO or a public service officer appointed under section 479(1);

WorkCover WA website means a website maintained or controlled by or on behalf of WorkCover WA;

worker has the meaning given in section 12(2) (and see also sections 13 to 16);

workers compensation policy has the meaning given in section 202(1);

working director has the meaning given in section 16(1);

workplace rehabilitation expense means an expense that is for the provision of a workplace rehabilitation service;

workplace rehabilitation expenses compensation means compensation under Part 2 Division 6;

workplace rehabilitation service means a service provided in accordance with the regulations by an approved workplace rehabilitation provider for the purpose of assisting an injured worker to return to work.

Division 3 — Injury and injury from employment

6. Injury

(1) In this Act —

injury means an injury from employment that is —

- (a) a personal injury by accident; or
 - (b) a disease, or the recurrence, aggravation or acceleration of a pre-existing disease.
- (2) A personal injury by accident is an injury from employment if the injury arises out of or in the course of the employment or while the worker is acting under the employer's instructions.
- (3) Unless otherwise provided in this Act, a disease, or the recurrence, aggravation or acceleration of a pre-existing disease, is an injury from employment if —
- (a) the disease is contracted, or the recurrence, aggravation or acceleration is suffered, in the course of the employment, whether at or away from the place of employment; and
 - (b) the employment contributed to a significant degree to the contraction of the disease, or the recurrence, aggravation or acceleration of the pre-existing disease.

Note for this subsection:

Section 116 determines whether a dust disease is an injury from employment.

- (4) In determining whether particular employment contributed to a significant degree to the contraction of a disease, or to the recurrence, aggravation or acceleration of a pre-existing disease, account must be taken of the following —
- (a) the duration of the employment;
 - (b) the nature of, and particular tasks involved in, the employment;
 - (c) the likelihood of the disease, or the recurrence, aggravation or acceleration of a pre-existing disease, occurring despite the employment;
 - (d) the existence of any hereditary factors relating to the occurrence of the disease;
 - (e) matters affecting the worker's health generally;
 - (f) activities of the worker not related to the employment.

7. Exclusion of injury: reasonable administrative action

- (1) In this section —
- administrative action*** includes any of the following actions —
- (a) an appraisal of the worker's performance;
 - (b) suspension action;
 - (c) disciplinary action;
 - (d) anything done in connection with an action described in paragraph (a), (b) or (c);
 - (e) anything done in connection with the worker's demotion, dismissal or retrenchment, or the worker's failure to obtain a promotion, reclassification, transfer or other benefit, or to retain any benefit, in connection with the worker's employment.
- (2) A psychological or psychiatric disorder, including any physiological effect of the disorder on the nervous system, that a worker experiences is not an injury from employment if it results wholly or predominantly from —

- (a) administrative action, not being administrative action that is unreasonable and harsh on the part of the employer; or
- (b) the worker's expectation of administrative action or of a decision by the employer in relation to administrative action.

8. Injury from employment: work related attendances

A personal injury by accident suffered by a worker is taken to be an injury from employment if the injury occurs —

- (a) while the worker attends at a place for educational purposes —
 - (i) as required by the terms of that employment; or
 - (ii) with the employer's consent and for the purpose of, or in connection with, that employment;
- or
- (b) while the worker attends at a place for any treatment of an injury or other purpose the cost of which is payable as compensation in respect of the injury; or
- (c) while the worker attends at a place to participate in a return to work program or to undertake workplace rehabilitation.

9. Journeys

- (1) In this section —
work journey means a journey arising out of or in the course of a worker's employment.
- (2) A personal injury by accident suffered by a worker must not be regarded as arising out of or in the course of the worker's employment if the injury is suffered —
 - (a) during a journey to or from a place at which the worker resides, whether or not temporarily; or

- (b) while a work journey is substantially interrupted for a purpose unconnected with the worker's employment, or after an interruption of that kind; or
- (c) during a substantial deviation from a work journey for a purpose unconnected with the worker's employment, or after a deviation of that kind.

10. Prescribed diseases taken to be from certain employment

- (1) The regulations may —
 - (a) specify diseases for the purposes of this section (each a *prescribed disease*); and
 - (b) for each prescribed disease specify 1 or more kinds of employment as *prescribed employment* for that disease.
- (2) If a worker suffers an injury by a prescribed disease and the employment in which the worker works at the time of suffering the injury, or in which the worker worked at any time before suffering the injury, is prescribed employment for the disease, the injury is taken to be injury from that employment unless the employer proves that the injury was not from that employment.

Note for this subsection:

Section 6 determines whether an injury by a disease is from employment. An employer can prove that the injury was not from employment by proving that —

- (a) it was not suffered in the course of the employment; or
 - (b) the employment did not contribute to a significant degree to the injury.
- (3) The regulations may —
 - (a) impose conditions or limitations on the operation of this section; and
 - (b) specify the day on which an injury that under this section is taken to be from prescribed employment is taken to have been suffered.

- (4) Unless the regulations otherwise provide, this section extends to —
- (a) an injury suffered before, and employment before, the coming into operation of the regulation by which the disease concerned is specified as a prescribed disease; and
 - (b) an injury suffered before, and employment before, this section comes into operation.
- (5) This section does not prevent it from being established independently of this section that an injury by a prescribed disease is from employment whether or not the employment is prescribed employment for the disease.

11. Diseases of firefighters taken to be from employment

- (1) In this section —

firefighter disease means a disease that is —

- (a) listed in column 1 of the Table; or
- (b) a cancer prescribed by the regulations to be a firefighter disease;

firefighting employment means employment by or under the Crown in right of the State a substantial part of the duties of which consists of firefighting duties, being employment that is —

- (a) covered by an industrial instrument, as defined in section 57(1), that applies to firefighting or by an agreement that wholly or partly regulates the terms or conditions of employment as a firefighter; or
- (b) prescribed by the regulations to be firefighting employment;

hazardous fire means —

- (a) a fire in a building; or

- (b) a fire in a vehicle, whether designed to move under its own power or to be towed and whether or not still movable; or
- (c) a fire involving non-organic refuse or rubbish created by humans; or
- (d) a fire that is prescribed by the regulations to be a hazardous fire;

hazardous firefighting employment, in relation to a worker, means firefighting employment during which the worker —

- (a) is engaged as a member or officer of a permanent fire brigade, as defined in the *Fire Brigades Act 1942* section 4(1); or
- (b) attends hazardous fires at a rate at least equivalent to the rate of 5 hazardous fires per year;

qualifying period means —

- (a) for a disease listed in column 1 of the Table — the qualifying period specified for that disease in column 2 of the Table; and
- (b) for a cancer prescribed by the regulations to be a firefighter disease — the qualifying period prescribed by the regulations for that cancer.

Table

Item	Column 1 Disease	Column 2 Qualifying period
1.	Primary site brain cancer	5 years
2.	Primary site bladder cancer	15 years
3.	Primary site kidney cancer	15 years
4.	Primary non-Hodgkin's lymphoma	15 years

Item	Column 1 Disease	Column 2 Qualifying period
5.	Primary leukaemia	5 years
6.	Primary site breast cancer	10 years
7.	Primary site testicular cancer	10 years
8.	Multiple myeloma	15 years
9.	Primary site prostate cancer	15 years
10.	Primary site ureter cancer	15 years
11.	Primary site colorectal cancer	15 years
12.	Primary site oesophageal cancer	15 years

- (2) An injury by a firefighter disease suffered by a worker is taken to be from firefighting employment in which the worker was engaged if all of the requirements for the application of this section to the injury as specified in subsection (3) are satisfied, unless the employer proves that the injury was not from that employment.

Note for this subsection:

Section 6 determines whether an injury by a disease is from employment. An employer can prove that the injury was not from employment by proving that —

- (a) it was not suffered in the course of the employment; or
- (b) the employment did not contribute to a significant degree to the injury.

- (3) The requirements for the application of this section to an injury by a firefighter disease suffered by a worker are as follows —

- (a) when the injury is suffered the worker (whether or not still in firefighting employment) has been in firefighting employment for at least a period of, or periods in aggregate amounting to, the qualifying period for the disease;
 - (b) the employer is satisfied that when the injury is suffered the worker has been in hazardous firefighting employment for at least a period of, or periods in aggregate amounting to, the lesser of the following —
 - (i) 5 years;
 - (ii) the qualifying period for the disease.
- (4) In the case of a cancer prescribed by the regulations to be a firefighter disease for the purposes of this section —
 - (a) this section does not apply to an injury by the firefighter disease suffered by a worker before the day specified in the regulations as the day on and after which this section applies to the injury; and
 - (b) the regulations may impose other conditions or limitations on the operation of this section.
- (5) The day on which a worker's injury by a firefighter disease is taken to have been suffered is the earlier of the following —
 - (a) the day on which the worker becomes totally or partially incapacitated for work by reason of the injury;
 - (b) the day on which the injury is first diagnosed by a medical practitioner.

Division 4 — Worker and employer

12. Meaning of “worker” and “employer”

- (1) In this section —
person includes —
 - (a) the State or an agency or instrumentality of the State;
and

- (b) the Crown, or an agency or instrumentality of the Crown, in any of its other capacities;

training contract means a training contract registered under the *Vocational Education and Training Act 1996* Part 7 Division 2.

- (2) An individual is a **worker** if —

- (a) the individual has entered into, or works under, a contract of service with a person, whether the contract is express or implied, oral or written; or

- (b) the individual —

- (i) has entered into a contract with a person to work as an apprentice, or works under a contract with a person as an apprentice, whether the contract is express or implied, oral or written; and

- (ii) has entered into a training contract that specifies the individual is undertaking an apprenticeship;

or

- (c) the individual has contracted with a person for the performance of work by the individual and —

- (i) the work is not work in the course of or incidental to a trade or business regularly carried on by the individual in the individual's own name or under a business or firm name; and

- (ii) the individual does not sublet the contract; and

- (iii) if the individual employs a worker, the individual performs part of the work personally.

- (3) The person with whom the worker has entered into the contract, or for whom the worker works under the contract, is the worker's **employer**.

Note for this section:

Section 215 sets out circumstances in which both a principal and contractor are taken to be employers of a worker.

13. Prescribed workers and excluded workers

- (1) The regulations may provide that an individual of a specified class or description who otherwise would not be, or might not be, a worker under section 12(2) is a worker for the purposes of this Act.
- (2) The regulations must provide for the identification of the person who is the employer for the purposes of this Act of each individual who is a worker under regulations made under subsection (1).
- (3) The regulations may provide that an individual of a specified class or description who otherwise would be, or might be, a worker under section 12(2) is not a worker for the purposes of this Act.

14. Labour hire arrangements

- (1) In this section —
labour hire employment means employment of an individual (the *employee*) under a contract of employment pursuant to which the services of the employee are temporarily lent or let on hire by the employer (the *labour hirer*) to another person (the *host*).
- (2) If employment is labour hire employment, the employee is a worker for the purposes of this Act.
- (3) If employment is labour hire employment, the labour hirer (and not the host) is the worker's employer for the purposes of this Act for work done personally by the worker for the host but only if the following conditions are satisfied —
 - (a) there is no contract between the worker and the host for the work to be done for the host;
 - (b) if the labour hirer is a corporation — the worker is not a director of the corporation.

- (4) A reference in subsection (3) to work done for the host includes work done for another person —

- (a) at the direction of the host; or
- (b) under an arrangement between the labour hirer and the host.

Notes for this section:

- 1. This section does not make an employment agent the employer of a person for whom the agent finds work if the worker is engaged directly by the person for whom the work is to be done. It makes the labour hirer the employer only if there is no contractual relationship between the worker and the host.
- 2. Under Part 5 Division 2 the host may be liable as “principal” to pay compensation to the worker as well as the labour hirer under this section. The “principal” may then recover compensation from the labour hirer (see section 217) in specific circumstances.

15. Jockeys

- (1) In this section —

licensed means licensed under the *Racing and Wagering Western Australia Act 2003*;

licensed facility means a place licensed as —

- (a) a racecourse; or
- (b) a training track; or
- (c) a trial track;

licensed jockey means a person licensed as a jockey;

licensed trainer means a person licensed as a trainer of thoroughbred racing horses;

Racing and Wagering Western Australia means the body of that name established under the *Racing and Wagering Western Australia Act 2003* section 4;

registered club means a racing club registered under the *Racing and Wagering Western Australia Act 2003*.

- (2) A person who is a licensed jockey is a worker for the purposes of this Act if the person —
 - (a) is riding a horse in any race run under the management of a registered club; or
 - (b) is engaged in performing, for a licensed trainer, riding work or the usual duties of a jockey.
- (3) The employer for the purposes of this Act of a person who, under subsection (2), is a worker is —
 - (a) Racing and Wagering Western Australia unless paragraph (b) applies; or
 - (b) the licensed trainer for whom the person is engaged when the person is performing for the licensed trainer riding work or the usual duties of a jockey but not at a licensed facility and not when riding a horse in any race run under the management of a registered club.

16. Working directors

- (1) In this section —
 - company director** has the meaning given to the term **director** in the *Corporations Act 2001* (Commonwealth) section 9;
 - insurance information requirements** means the requirements of section 203 that apply when a company effects or renews a workers compensation policy on the basis that a director of the company is a worker;
 - working director**, in relation to a company, means a company director of the company, whether or not the director would be a worker if this section did not apply —
 - (a) who does work for or on behalf of the company; and
 - (b) whose remuneration, by whatever means, as a company director of the company is in substance for personal manual labour or services.

- (2) A working director is not a worker for the purposes of this Act except to the extent that this section provides otherwise.
- (3) A company may apply under Part 5 for the issue or renewal of a workers compensation policy on the basis that a working director of the company is a worker.
- (4) If a company applies under Part 5 for the issue or renewal of a workers compensation policy on the basis that a working director of the company is a worker and the company complies with the insurance information requirements —
 - (a) the working director is a worker for the purposes of this Act; and
 - (b) the company is the employer of the working director for the purposes of this Act.
- (5) If the company fails to comply with the insurance information requirements that apply after the end or termination of the period of insurance, a working director ceases to be a worker under subsection (4) unless and until the company provides the insurer with the information that is required for compliance with those requirements.
- (6) If a company is a self-insurer —
 - (a) a working director of the company is a worker for the purposes of this Act; and
 - (b) the company is the employer of the working director for the purposes of this Act.
- (7) A working director is not a worker for the purposes of section 267.

Part 2 — Compensation for injury

Division 1 — General principles

17. Employer liable for compensation

- (1) An employer is liable for compensation if a worker suffers an injury from employment with the employer.
- (2) If an employer's liability to pay compensation has been accepted (or is taken to have been accepted) or has been determined by an arbitrator, the employer must pay compensation to the worker.

Penalty for this subsection: a fine of \$10 000.

18. Forms of compensation

Compensation takes 1 or more of the following forms —

- (a) income compensation payable for injury that results in total or partial incapacity of the worker for work;
- (b) compensation for medical and health expenses;
- (c) compensation for miscellaneous expenses;
- (d) compensation for workplace rehabilitation expenses;
- (e) lump sum compensation for permanent impairment from personal injury by accident;
- (f) lump sum compensation for noise-induced hearing loss;
- (g) lump sum compensation for permanent impairment from a dust disease;
- (h) compensation on the death of a worker.

19. Employment must be connected with this State

- (1) Liability for compensation arises only if the worker's employment is connected with this State.

Note for this subsection:

The State with which employment is connected is determined under Part 12.

- (2) The fact that a worker is outside this State when the injury occurs does not prevent liability for compensation under this Act arising from an injury from employment that is connected with this State.
- (3) There is no liability for compensation in respect of an injury suffered by a worker outside Australia if the worker —
- (a) has never resided in Australia; or
 - (b) has been continuously resident outside Australia for more than 24 months when the injury occurs.
- (4) Subsection (3)(b) does not apply if the injury suffered by the worker is —
- (a) an injury by dust disease; or
 - (b) an injury by firefighter disease, as defined in section 11(1).

20. Compensation excluded: serious and wilful misconduct

- (1) In this section —
- drug of addiction*** has the meaning given in the *Misuse of Drugs Act 1981* section 3(1).
- (2) An employer is not liable for compensation if it is proved before an arbitrator that the worker's injury is attributable to —
- (a) voluntary consumption by the worker of alcoholic liquor or of a drug of addiction, or both, that impairs the proper functioning of the worker's faculties; or

- (b) the worker's failure to use protective equipment, clothing or accessories provided by the employer for the worker's use; or
 - (c) other serious and wilful misconduct by the worker.
- (3) Subsection (2) does not exclude liability if the worker's injury has serious and permanent effects on the worker or results in the death of the worker.
- (4) Subsection (2)(b) does not exclude liability if it is proved that there was a reasonable excuse for the worker's failure.

21. Compensation excluded: certain employment on ship

An employer is not liable for compensation if the worker's injury is from employment on a ship and the *Seafarers Rehabilitation and Compensation Act 1992* (Commonwealth) applies to the worker's employment.

22. Person not to be paid twice

- (1) In this section —
other recompense means —
 - (a) compensation received under the laws of a place other than this State; or
 - (b) an amount for which judgment has been obtained against the employer independently of this Act.
- (2) Compensation is not payable to a person for a matter to the extent that the person has received or obtained other recompense for the same matter.
- (3) If a person receives compensation for a matter and subsequently receives or obtains other recompense for the same matter, the person from whom compensation is received may recover, as a debt due, from the person who received it the amount of compensation paid to the extent that it does not exceed the amount of the other recompense.

Division 2 — Claiming compensation

Subdivision 1 — Preliminary

23. Terms used

In this Division —

deferred decision notice has the meaning given in section 28(4);

incapacity claim means a claim for compensation for which the certificate of capacity given to the employer when making the claim (as provided by section 25) specifies that the worker has an incapacity for work;

liability decision notice means a notice that complies with the requirements of section 28 for a liability decision notice.

24. Application of Division

This Division applies only to a claim for any 1 or more of the following kinds of compensation —

- (a) income compensation;
- (b) medical and health expenses compensation;
- (c) miscellaneous expenses compensation;
- (d) dust disease impairment compensation.

Subdivision 2 — Claim process

25. Making claim for compensation

- (1) A claim for compensation must be made within 12 months after the injury occurs.
- (2) The claim is made when the worker has given to the employer —
 - (a) a completed claim form in the approved form; and
 - (b) a certificate of capacity for the claim.

- (3) Different claim forms can be approved for different kinds of claims.
- (4) An approved claim form must include an authority a worker may opt to give to —
 - (a) consent to the disclosure to, and collection by, a person specified in the authority of any medical, health and personal information that is relevant to any of the following —
 - (i) the worker's injury;
 - (ii) the worker's claim for compensation or entitlement to compensation;
 - (iii) injury management for the worker's injury;and
 - (b) consent to the disclosure of the information collected to a person specified in the authority.
- (5) A failure to make a claim for compensation within the period required by subsection (1) or a defect or inaccuracy in the claim form, certificate of capacity or details of the claim does not invalidate the claim if —
 - (a) the failure, defect or inaccuracy results from mistake, absence from the State or another reasonable cause; or
 - (b) the failure, defect or inaccuracy would not prejudice the employer's defence in proceedings that might arise out of the claim.

26. Insured employer must give claim to insurer

- (1) An insured employer must, within 7 days after a worker claims compensation from the employer in accordance with section 25, give the worker's claim to the insurer.

Penalty for this subsection: a fine of \$5 000.

- (2) An insured employer gives a worker's claim to the insurer by giving to the insurer the claim form and certificate of capacity that the worker gave to the employer.

27. Worker may give claim to insurer if employer defaults

- (1) If an insured employer from which a worker has claimed compensation fails to give the claim to the insurer in accordance with section 26, the worker may give the claim to the insurer.
- (2) A worker gives a claim to the insurer by either —
- (a) giving the insurer a copy of the claim form and certificate of capacity given to the employer; or
 - (b) giving the insurer another completed claim form (in the approved form) with a certificate of capacity for the claim.
- (3) A claim that a worker gives to an insurer is taken to have been given to the insurer by the employer at the time the worker gives it to the insurer and the insurer must deal with the claim accordingly.
- (4) WorkCover WA may, for the purposes of this section, disclose to a worker the identity and other details of an employer's insurer.

28. Insurer or self-insurer to make decision on liability

- (1) Within 14 days after a claim is given to an insurer or self-insurer, the insurer or self-insurer must give the worker and an insured employer a liability decision notice for the claim.

Note for this subsection:

If the claim is in respect of a dust disease, the time within which a liability decision notice must be given is 14 days after the insurer or self-insurer is notified of the determination of a Dust Disease Medical Panel in respect of the claim (instead of within 14 days after the claim is given to the insurer or self-insurer). See section 121.

- (2) A liability decision notice is a notice in the approved form stating that —
- (a) the insurer or self-insurer accepts that the employer is liable to compensate the worker for the injury to which the claim relates; or
 - (b) the insurer or self-insurer accepts that the employer is or may be liable to compensate the worker for the injury to which the claim relates but there are 1 or more liability questions (as defined in section 34(2)) in relation to the acceptance; or
 - (c) the insurer or self-insurer does not accept that the employer is liable to compensate the worker for the injury to which the claim relates.

Note for this subsection:

Sections 30 and 34 provide for the determination by an arbitrator of the liability of an employer for compensation to which a liability decision notice relates.

- (3) In the case of an incapacity claim, the liability decision notice must also state whether or not the insurer or self-insurer accepts that the employer is liable to pay income compensation for incapacity for work.

Note for this subsection:

Division 3 provides for income compensation.

- (4) A liability decision notice need not be given if a decision on liability cannot be made and the insurer or self-insurer instead gives the worker and the insured employer, within 14 days after the claim is given to the insurer or self-insurer, a notice (a ***deferred decision notice***) in the approved form stating that a decision on liability has been deferred.
- (5) An insurer or self-insurer who fails to give a liability decision notice or deferred decision notice as and when required by this section commits an offence.

Penalty for this subsection: a fine of \$5 000.

- (6) If an insurer or self-insurer fails to give a liability decision notice or deferred decision notice as and when required by this section —
- (a) the insurer or self-insurer is taken to have accepted that the employer is liable to compensate the worker for the injury to which the claim relates; and
 - (b) in the case of an incapacity claim — the insurer or self-insurer is taken to have accepted that the employer is liable to pay income compensation for incapacity for work.

Note for this subsection:

The employer's obligation to pay income compensation to the worker arises when the insurer or self-insurer is taken to have accepted liability to compensate the worker and the compensation for which the employer is liable includes income compensation. See section 47.

- (7) A reference in this section and in a liability decision notice to liability of the employer to compensate the worker for the injury includes —
- (a) the employer's liability to compensate the worker for the injury, irrespective of whether another employer may be wholly or partly liable to compensate the worker for the injury because the injury may be from employment with another employer or more than 1 other employer; and
 - (b) the employer's liability under section 34(3) to make payments of compensation for the injury for which another employer may be partly liable; and
 - (c) the employer's liability under section 35(3) to make payments of compensation for the injury for which another employer may be wholly or partly liable.
- (8) For the purposes of the application of this section to a self-insurer —
- (a) a claim made on an employer who is a self-insurer is considered to have been given to the self-insurer when it is made by the worker; and

- (b) a requirement to give a notice to an insured employer does not apply to the self-insurer.

29. Requirements when decision on liability deferred

- (1) If an insurer or self-insurer gives a deferred decision notice for a worker's claim, the insurer or self-insurer must give a liability decision notice for the claim as soon as practicable and in any event before the day prescribed by the regulations for the purposes of this section (the *deemed liability acceptance day*).

Note for this subsection:

The employer is also required to make provisional payments if a liability decision notice has not been given before the day prescribed under section 36 as the provisional payments day.

- (2) An insurer or self-insurer who fails to give a liability decision notice before the deemed liability acceptance day commits an offence.

Penalty for this subsection: a fine of \$5 000.

- (3) If a liability decision notice has not been given before the deemed liability acceptance day —
 - (a) the insurer or self-insurer is taken to have accepted that the employer is liable to compensate the worker for the injury to which the claim relates; and
 - (b) in the case of an incapacity claim — the insurer or self-insurer is taken to have accepted that the employer is liable to pay income compensation for incapacity for work.

Note for this subsection:

The employer's obligation to pay income compensation to the worker arises when the insurer or self-insurer is taken to have accepted liability to compensate the worker and the compensation for which the employer is liable includes income compensation. See section 47.

30. Determination by arbitrator of question about liability for compensation

- (1) If a liability decision notice given by an insurer or self-insurer states that liability for compensation is not accepted, an arbitrator may on application by the worker hear and determine the question of liability.
- (2) A liability decision notice is considered to state that liability for compensation is not accepted if —
 - (a) the notice states that the insurer or self-insurer does not accept that the employer is liable to compensate the worker for the injury to which the claim relates; or
 - (b) the notice states that the insurer or self-insurer does not accept that the employer is liable to pay income compensation for incapacity for work.
- (3) When an arbitrator determines the question of the employer's liability to compensate the worker for the injury, the arbitrator may also determine the compensation (if any) to which the worker is entitled and make any order the arbitrator considers appropriate in the circumstances.

31. Claims on uninsured employers

- (1) If an employer is an uninsured employer in respect of a liability to pay compensation for an injury to a worker, this Division applies in respect of a claim for the compensation as if the employer were a self-insurer.

Notes for this subsection:

1. WorkCover WA may exercise the rights of the uninsured employer in respect of the claim — see section 272.
 2. Section 265 defines **uninsured employer**.
- (2) An employer who is an uninsured employer in respect of a liability to pay compensation for an injury to a worker must give

notice to WorkCover WA in the approved form within 7 days after receiving a claim for the compensation.

Penalty for this subsection: a fine of \$5 000.

- (3) Subsection (2) does not apply to an employer who is an uninsured employer because the employer's insurer has refused to indemnify the employer against the liability as permitted by section 241.

Note for this subsection:

An insurer is required under section 241(3) to give WorkCover WA notice of a refusal to indemnify an employer.

32. Worker to provide information about other employment

- (1) A worker who makes an incapacity claim must give notice to the employer or the insurer as required by subsection (2) of any remunerated work that the worker does for any other employer after the claim is made.

Penalty for this subsection: a fine of \$5 000.

- (2) The worker's notice must —
- (a) provide the information required by the regulations; and
 - (b) be given to the employer or insurer before the end of the period required by the regulations.
- (3) If the worker is a working director, the notice required by subsection (1) must be given by the worker to the insurer and a notice given by the worker's employer to the insurer is taken to have been given by the worker.
- (4) An insurer or self-insurer must, in accordance with the regulations, inform a worker who makes an incapacity claim of the worker's obligations under subsection (1).
- (5) Subsection (1) does not apply unless the insurer or self-insurer has complied with subsection (4).

33. Incapacity after claim made

The regulations may make provision for or with respect to the following in connection with a claim for compensation if a certificate of capacity did not specify that the worker had an incapacity for work but a subsequent certificate of capacity specifies that the worker has an incapacity for work —

- (a) the amendment of the claim to enable the claim to be properly dealt with as including a claim for income compensation;
- (b) the obligations of employers, insurers and self-insurers in respect of the claim;
- (c) the obligations of an insurer or self-insurer to make a decision on the employer's liability to pay income compensation;
- (d) the circumstances in which an insurer or self-insurer is taken to have accepted that the employer is liable to pay income compensation for incapacity for work.

34. Claiming compensation when question as to liability or apportionment between employers

- (1) Except as provided in subsection (8), this section applies when —
 - (a) a worker makes a claim under section 25 for compensation from the employer who last employed the worker in employment in which the worker claims the worker's injury was suffered (the *last employer*); and
 - (b) the last employer's insurer or the self-insurer gives the worker a liability decision notice under section 28 or 29 accepting that the employer is or may be liable to compensate the worker for the injury to which the claim relates but indicating there are 1 or more liability questions in relation to the acceptance.

- (2) A *liability question* is a question as to any of the following —
- (a) whether another employer (a *relevant employer*) is wholly or partly liable to compensate the worker because the injury is or may be from employment during a period with another employer or more than 1 other employer;
 - (b) how the liability to compensate the worker is to be apportioned between employers;
 - (c) which insurer is liable to indemnify an employer liable to compensate the worker.
- (3) The last employer is liable to deal with the claim and make payments of compensation as if the last employer were wholly liable and the last employer's insurer must indemnify the last employer for the payments.
- (4) Each relevant employer is liable to make to the last employer any contributions as, in default of agreement, may be determined by an arbitrator.
- (5) If the worker or last employer applies for determination by an arbitrator of a liability question —
- (a) the last employer may join as a party to the dispute any employer who may be wholly or partly liable to pay the compensation; and
 - (b) the arbitrator may determine that an employer who is a party to the dispute is wholly or partly liable to compensate the worker; and
 - (c) the arbitrator may make 1 or more of the following orders —
 - (i) an order requiring the payment of compensation by the last employer or a relevant employer;
 - (ii) an order requiring reimbursement of compensation paid by the last employer or a relevant employer;

- (iii) an order for the apportionment of liability for compensation between employers.
- (6) If an insurer applies for determination by an arbitrator of a dispute as to the liability of the insurer to indemnify an employer liable to compensate a worker, the arbitrator may make 1 or more of the following orders —
 - (a) an order requiring 1 or more insurers to indemnify the employer;
 - (b) an order for apportionment of the liability to indemnify the employer;
 - (c) an order requiring the reimbursement of compensation by 1 insurer to another.
- (7) The worker must provide to the last employer any information in the worker's possession that the last employer may reasonably request for the purpose of identifying any employment in which the worker was employed before or after employment with the last employer and in which the worker has or may have suffered an injury from employment.
- (8) This section does not apply to —
 - (a) a claim to which section 35 applies; or
 - (b) a claim for noise-induced hearing loss.

35. Claiming compensation for certain diseases when more than 1 employer liable

- (1) In this section —
 - disease compensation** means compensation payable for injury by disease that is —
 - (a) a prescribed disease under section 10 taken to be from certain employment under that section; or
 - (b) a dust disease;
 - relevant employer** means an employer who employs a worker in relevant employment;

relevant employment means employment in respect of which there is a liability for disease compensation.

- (2) Disease compensation may be claimed from the employer who last employed the worker in relevant employment (the ***last employer***) even if there is a question as to which of 2 or more relevant employers is liable to compensate the worker or how that liability is to be apportioned between 2 or more relevant employers.
- (3) The last employer is liable to deal with the claim and make payments of compensation as if the last employer were wholly liable and the last employer's insurer must indemnify the last employer for any of the payments.
- (4) Subsection (3) applies irrespective of whether the insurer has accepted in a liability decision notice under section 28 or 29 that the employer is liable to compensate the worker.
- (5) If there are 2 or more relevant employers in respect of a claim for disease compensation, each relevant employer is liable to make to the last employer any contributions as, in default of agreement, may be determined by an arbitrator.
- (6) In a proceeding for the determination of a dispute as to the liability for contribution by relevant employers, an arbitrator may make an order requiring the payment of compensation by any relevant employer or for the apportionment of liability for compensation between relevant employers.
- (7) If the worker or last employer applies for determination by an arbitrator of a question mentioned in subsection (2) —
 - (a) the last employer may join as a party to the dispute any relevant employer; and
 - (b) the arbitrator may determine that a relevant employer who is a party to the dispute is wholly or partly liable to compensate the worker; and

- (c) the arbitrator may make an order requiring the reimbursement of compensation by 1 relevant employer to another.
- (8) If an insurer applies for determination by an arbitrator of a dispute as to the liability of the insurer to indemnify an employer liable to compensate a worker, the arbitrator may make 1 or more of the following orders —
 - (a) an order requiring 1 or more insurers to indemnify the employer;
 - (b) an order for apportionment of the liability to indemnify the employer;
 - (c) an order requiring the reimbursement of compensation by 1 insurer to another.
- (9) The worker must provide to the last employer any information in the worker's possession that the last employer may reasonably request for the purpose of identifying any relevant employment in which the worker was employed before employment with the last employer.

Subdivision 3 — Provisional payments

36. Requirement for provisional payments

- (1) If an insurer or self-insurer gives a deferred decision notice for a worker's claim but has not given a liability decision notice for the claim before the day prescribed by the regulations as the provisional payments day, the employer is required to make provisional payments as provided by this Subdivision.
- (2) An employer who fails to make a provisional payment as and when required by this Subdivision commits an offence.
Penalty for this subsection: a fine of \$10 000.

37. Compensation for which provisional payments are required

Provisional payments are required to be made for any medical and health expenses compensation and income compensation to which the worker would be entitled had the insurer or self-insurer accepted that the employer is liable to compensate the worker for the injury concerned.

38. Calculating the amount of a provisional payment

The amount of a provisional payment must be calculated as if the provisional payment were a payment of the kind of compensation for which the provisional payment is required.

39. How and when provisional payments are to be made

A provisional payment in respect of a particular kind of compensation must be paid at the time and in the manner in which a payment of that kind of compensation would be payable if the worker were entitled to that kind of compensation.

40. Provisional payments of medical and health expenses compensation

- (1) Provisional payments in respect of medical and health expenses compensation are to be made for the period that begins on the day on which the worker's injury occurred and ends on the earliest of the following days —
 - (a) the day on which the insurer or self-insurer gives a liability decision notice for the claim to the worker;
 - (b) the day on which the insurer or self-insurer is taken under section 29(3) to accept that the employer is liable to compensate the worker for the injury.
- (2) The total amount of provisional payments in respect of medical and health expenses compensation is limited to 5% of the medical and health expenses general limit amount applying on the day the last of those provisional payments is made.

41. Provisional payments of income compensation

Provisional payments in respect of income compensation are to be made for the period that begins on the day on which the worker first has an incapacity for work as a result of the injury and ends on the earliest of the following days —

- (a) the day on which a certificate of capacity is issued that specifies that the worker no longer has any incapacity for work;
- (b) the day on which the insurer or self-insurer gives a liability decision notice for the claim to the worker;
- (c) the day on which the insurer or self-insurer is taken under section 29(3) to accept that the employer is liable to compensate the worker for the injury.

42. Insurer required to indemnify for provisional payments

The insurer of an insured employer must indemnify the employer for provisional payments that the employer is required to make under this Subdivision.

Penalty: a fine of \$10 000.

43. Status and effect of provisional payments

- (1) A provisional payment made to a worker must be taken into account for the following purposes as if it were a payment of the compensation in respect of which it is made —
 - (a) discharging a liability of the employer to pay compensation to the worker;
 - (b) calculating the total amount of compensation, or compensation of a particular kind, paid to the worker.
- (2) A payment made to a worker as a provisional payment is considered to be a provisional payment made to the worker even if the payment was made before the obligation to make the provisional payment arose.

- (3) Except as provided in subsection (1), a provisional payment made to a worker is not a payment of compensation and, unless the worker's claim involved fraud, is not recoverable from a worker even if the employer is found not to have been liable for compensation in respect of the injury concerned.

44. Other employer or insurer liable

- (1) If an employer makes provisional payments in respect of a worker's claim for compensation and it is agreed between the persons concerned or it is determined by an arbitrator that another employer is liable for the whole or part of the compensation —
- (a) the employer making the provisional payments may recover as a debt due from the other employer the whole or part of the payments made according to the extent of the compensation for which the other employer is liable; and
 - (b) the provisional payments recoverable from the other employer are taken to have been made to the worker by the other employer.
- (2) If an insurer by way of indemnity makes provisional payments in respect of a worker's claim for compensation by an employer and it is agreed between the persons concerned or it is determined by an arbitrator that another insurer is required to indemnify that or another employer for liability to pay the whole or part of the compensation —
- (a) the insurer making the provisional payments may recover as a debt due from the other insurer the whole or part of the payments made according to the extent of the compensation for which the other insurer is required to indemnify that or another employer; and
 - (b) the provisional payments recoverable from the other insurer are taken to have been made to the worker by the other insurer for the employer it is liable to indemnify.

- (3) Subsection (2) extends to a self-insurer as if provisional payments made by a self-insurer were provisional payments made by an insurer by way of indemnity.

Division 3 — Income compensation

Subdivision 1 — Preliminary

45. Terms used

In this Division —

board and lodging means accommodation and any meals, laundry services and other benefits having a monetary value provided together with the accommodation;

bonus or allowance means any bonus or incentive, shift allowance, weekend or public holiday penalty allowance, district allowance, industry allowance, meal allowance, living allowance, clothing allowance, travelling allowance or other allowance;

earnings, of a worker —

- (a) means any amount paid or payable to the worker —

- (i) as wages or salary; or
- (ii) as a piece rate or commission; or
- (iii) for a specified quantity of work for a specified sum; or
- (iv) as a bonus or allowance; or
- (v) as an over award or service payment; or
- (vi) for overtime;

and

- (b) includes —

- (i) the monetary value of board and lodging provided to the worker by the employer as payment for work, ascertained under section 58; and

- (ii) any payment in money or money's worth paid to or for the benefit of the worker that the regulations prescribe as included in the earnings of a worker;

but

- (c) does not include —
 - (i) income compensation paid to the worker; and
 - (ii) any component of the worker's earnings that the regulations prescribe as excluded from the earnings of a worker;

income compensation general limit amount means the amount that is equal to the general maximum amount;

overtime means time worked in excess of the number of ordinary working hours.

Subdivision 2 — Entitlement to income compensation

46. Entitlement to income compensation for incapacity for work

A worker is entitled to be paid income compensation under this Subdivision if the worker's injury results in total or partial incapacity of the worker for work.

47. Obligation to pay income compensation

- (1) An employer's obligation to pay income compensation to a worker for an injury arises when the insurer or self-insurer accepts (or is taken to have accepted) or an arbitrator determines that —
 - (a) the employer is liable to compensate the worker for the injury; and
 - (b) the compensation for which the employer is liable includes income compensation.

- (2) The employer must, except as otherwise provided under this Act —
- (a) make the first payment of income compensation within 14 days after the employer's obligation to pay income compensation arises, with the first payment to include payments that have accrued from the day on which the worker first has an incapacity for work as a result of the injury; and
 - (b) make subsequent payments of income compensation to the worker on the employer's usual pay days and in the way the worker would normally be paid.

Penalty for this subsection: for each income compensation payment not made when due — a fine of \$5 000.

- (3) The employer must make a payment in compliance with this section whether or not the employer has been indemnified for the payment by the employer's insurer.
- (4) A person is not liable to be convicted of an offence under subsection (2) and under section 17(2) in respect of the same failure.

Note for this section:

Provisional payments by the employer in respect of income compensation are taken into account for the purposes of this section as income compensation paid by the employer — see section 43.

48. Total or partial incapacity for work

- (1) For any period during which a worker is totally incapacitated for work, the amount of income compensation must be calculated in accordance with Subdivision 3.
- (2) For any period during which a worker is partially incapacitated for work, the amount of income compensation is obtained by calculating, in accordance with Subdivision 3, the amount that would apply if the worker were totally incapacitated for work

and deducting from it the amount the worker earns, or is able to earn, in suitable employment.

Note for this subsection:

Section 50 provides for an arbitrator to be able, in certain circumstances, to order that a worker who is partially incapacitated for work is taken to be totally incapacitated for work.

- (3) A worker is not entitled to any income compensation for a time during which the worker earns, or is able to earn, in suitable employment an amount equal to or greater than the amount of income compensation that would apply if the worker were totally incapacitated for work.

49. Worker not to be prejudiced by resuming work

If a worker who has an incapacity for work resulting from an injury resumes or attempts to resume work, and is unable, on account of the injury, to perform or continue to perform the work, the resumption or attempted resumption of work or the inability to perform or continue to perform the work does not prejudice any entitlement to compensation under this Act that the worker would otherwise have.

50. Order that worker is taken to be totally incapacitated

- (1) A worker who has a partial incapacity for work and has been unable to obtain suitable employment may apply for an arbitrator to order that the worker is taken to be totally incapacitated for work.
- (2) On application under this section, an arbitrator may order that the worker is taken to be totally incapacitated for work while the order is effective.
- (3) The order may specify —
 - (a) the period for which it is effective; and
 - (b) conditions that must be satisfied for the order to be effective.

- (4) The order must not be made unless the arbitrator is satisfied that —
- (a) the worker has taken all reasonable steps to obtain, and has failed to obtain, suitable employment; and
 - (b) the failure to obtain suitable employment is wholly or mainly a result of the injury.

51. General limit on total income compensation

- (1) A worker's entitlement to income compensation for incapacity for work resulting from an injury ceases when the total of all amounts of income compensation paid to the worker for that incapacity reaches the income compensation general limit amount.

Note for this subsection:

The income compensation general limit amount is equal to the general maximum amount provided for by section 538(1).

- (2) Any additional income compensation paid as ordered by an arbitrator under section 52(4) must not be counted for the purposes of this section as income compensation paid to the worker.

Note for this section:

Provisional payments by the employer in respect of income compensation are taken into account for the purposes of this section as income compensation paid by the employer — see section 43.

52. Additional income compensation

- (1) In this section —
former rate means the weekly rate at which a worker's final payment of income compensation under this Subdivision (other than under this section) is calculated.
- (2) A worker may apply for an arbitrator to order that the worker is entitled to additional income compensation for incapacity for work resulting from an injury.

- (3) The application may be made only if —
- (a) the total of all amounts of income compensation paid for the worker's incapacity exceeds 75% of the income compensation general limit amount applying when the application is made; and
 - (b) the employer's liability for compensation in respect of the injury concerned has not been commuted by a settlement agreement registered under Division 12.

Note for this subsection:

Provisional payments by the employer in respect of income compensation are taken into account for the purposes of this subsection as income compensation paid by the employer — see section 43.

- (4) On application under this section, an arbitrator may order that the worker is entitled to additional income compensation if the arbitrator is satisfied that —
- (a) the worker's injury has resulted in the permanent total incapacity of the worker for work; and
 - (b) the additional income compensation should be allowed, having regard to the social and financial circumstances and the reasonable financial needs of the worker.
- (5) The arbitrator must, having regard to the matters referred to in subsection (4)(b), specify in the order the weekly rate at which additional income compensation is to be calculated, being a rate not exceeding the former rate.
- (6) The order may specify —
- (a) the period for which the worker is entitled to the additional income compensation; or
 - (b) the maximum total amount of all additional income compensation that may be made for the worker's incapacity.
- (7) The order may, in an appropriate case, require additional income compensation to be paid for the period from the end of

the last period in respect of which the worker previously received income compensation to the day on which the order is made, and the order may specify when arrears for that period are to be paid.

- (8) The order must not result in the total amount of all additional income compensation that may be paid for the worker's incapacity being capable of exceeding the lesser of —
- (a) the amount that is 75% of the income compensation general limit amount applying on the day on which the order is made; and
 - (b) the amount calculated by multiplying the former rate by the number of weeks in the period of the expectation of life of the worker as at the commencement of the first period for which additional income compensation is to be paid.

Subdivision 3 — Calculation of income compensation

53. Terms used

In this Subdivision —

jockey means a person who is a worker because of section 15;

maximum weekly rate of income compensation means the amount prescribed by the regulations as the maximum weekly rate of income compensation;

pre-injury weekly rate of income, of a worker, means the worker's pre-injury weekly rate of income calculated as provided by section 54.

54. Worker's pre-injury weekly rate of income

- (1) A worker's pre-injury weekly rate of income is —
- (a) unless paragraph (b) applies — the worker's average weekly rate of earnings in the position the worker held on the day on which the worker's injury occurred; or

- (b) if, on the day on which the worker's injury occurred, the worker concurrently held 2 or more positions as a worker, whether in the employment of the same or different employers — the weekly rate obtained by aggregating the worker's average weekly rates of earnings in the positions the worker held.
- (2) A worker's average weekly rate of earnings in a position the worker held on the day on which the worker's injury occurred is calculated over —
 - (a) the period of 1 year ending on the day before the day on which the worker's injury occurred; or
 - (b) if the worker had been employed in that position for less than 1 year when the injury occurred — the period beginning on the day on which the worker commenced to be employed in that position and ending on the day before the day on which the worker's injury occurred.

Note for this subsection:

Section 59 makes special provision for calculating a working director's average weekly rate of earnings.

- (3) For the purposes of this section, 2 or more positions that a worker holds consecutively in the employment of the same employer are taken to be the same position if, having regard to responsibilities, status, level of remuneration and other factors, they are equivalent positions.
- (4) If, at any time during a period over which subsection (2) requires a worker's average weekly rate of earnings in a position to be calculated, the employer provides board and lodging to the worker (in addition to paying the worker's other earnings, if any) as payment for work, the monetary value, if any, of the provision of the board and lodging ascertained according to section 58 must be included when calculating the worker's average weekly rate of earnings over that period.

- (5) If a worker has taken leave without pay during a period over which subsection (2) requires the worker's average weekly rate of earnings in a position to be calculated, the part of the period for which the worker was on the leave must be excluded in making the calculation.
- (6) In subsection (5) —
leave without pay means time off work without pay on leave that is authorised or consented to by an employer for a period the worker would otherwise be required to work.
- (7) If a worker did not, on the day on which the worker's injury occurred, hold a position with the employer liable to pay income compensation, a reference in this section to the day on which the worker's injury occurred is a reference to the day on which the worker last held a position with the employer before the worker's injury occurred.

55. Amount of income compensation

- (1) The amount of a payment of income compensation for a worker who is totally incapacitated for work must be calculated as provided by this section.

Note for this subsection:

For a period during which a worker is partially incapacitated for work, see section 48(2).

- (2) To the extent that the payment of income compensation is for a period within the first 26 weeks in which income compensation is payable to the worker, the amount is calculated at the worker's pre-injury weekly rate of income except as otherwise provided in section 56 or 57.
- (3) To the extent that the payment of income compensation is for a period after the first 26 weeks in which income compensation is payable to the worker, the amount is calculated at 85% of the worker's pre-injury weekly rate of income except as otherwise provided in section 56 or 57.

- (4) For the purposes of subsections (2) and (3) —
- (a) a week is a period of 7 consecutive days that starts on the day of the week that is the first day for which the worker is entitled to income compensation; and
 - (b) a week is a week in which income compensation is payable if income compensation is payable for any day or days during the week.
- (5) For the calculation under this section, an amount must be added to or deducted from the worker's pre-injury weekly rate of income from time to time to the extent, if any, necessary to reflect any percentage increase or decrease in base rate of pay (but not in any payment for overtime or in any bonus or allowance) that —
- (a) is effective after the day on which the worker's injury occurred; and
 - (b) would, or having regard to all the circumstances is likely to, have applied to the worker had the worker not been injured.

56. Maximum weekly rate of income compensation

If the amount of any payment of income compensation calculated under section 55 or 57(3)(b) for any period would represent a weekly rate of payment exceeding the maximum weekly rate of income compensation applying at that time, the amount of the payment must be reduced to the amount representing a payment at that maximum weekly rate.

57. Minimum weekly rate of income compensation

- (1) In this section —
- base award rate*** means the base weekly rate of pay, excluding payments for overtime and any bonus or allowance, applying to a worker —
- (a) under provisions of an industrial instrument that applied when the worker's injury occurred, or provisions of

another industrial instrument that substantially replace those provisions; or

- (b) under an agreement that specifies the worker's rate of pay by reference to an industrial instrument;

base award rate component, of a worker's earnings, means the component of the earnings that derives from the base award rate, if any, applying to the worker;

industrial instrument means, according to the employment in the context of which the term is used —

- (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*; or
- (b) an industrial agreement, as defined in the *Industrial Relations Act 1979* section 7(1); or
- (c) a fair work instrument, as defined in the *Fair Work Act 2009* (Commonwealth) section 12; or
- (d) an award, order, agreement or other instrument that is of a class prescribed by the regulations;

regular additional earnings, of a worker, means any of the following —

- (a) any over award or service payment paid on a regular basis as part of the worker's earnings;
- (b) any allowance (including any payment for overtime) 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;
- (c) any other allowance prescribed by the regulations.

- (2) If the amount of any payment of income compensation calculated under section 55 for any period would represent a weekly rate of payment less than the minimum weekly rate referred to in subsection (3), the amount of the payment is, unless subsection (7) provides that no minimum weekly rate

applies, to be increased to the amount representing a payment at that minimum weekly rate.

- (3) The minimum weekly rate at which income compensation must be paid is the greater of the following —
- (a) the minimum amount to which the worker would, if the worker had not been injured, have been entitled under the *Minimum Conditions of Employment Act 1993* to be paid in a week for working, on the basis on which the worker was working when the injury occurred, in the employment in which the worker was working when the injury occurred;
 - (b) the sum of —
 - (i) the base award rate component, if any, of the earnings to which the worker would, if the worker had not been injured, have been entitled to be paid in a week for working, on the basis on which the worker was working when the injury occurred, in the employment in which the worker was working when the injury occurred; and
 - (ii) the regular additional earnings component, if any, of the worker's earnings included in the calculation of the worker's pre-injury weekly rate of income.
- (4) For the purposes of this section, in an agreement mentioned in paragraph (b) of the definition of **base award rate** in subsection (1), the reference to an industrial instrument is taken to include an industrial instrument containing provisions that substantially replace the relevant provisions of the industrial instrument.
- (5) If an industrial instrument mentioned in the definition of **base award rate** in subsection (1) becomes redundant or obsolete without its relevant provisions being replaced as mentioned in paragraph (a) of that definition or in subsection (4), the base award rate for the purposes of this section is the base weekly

rate of pay referred to in that definition applying before the industrial instrument becomes redundant or obsolete as adjusted to reflect the timing and extent of any subsequent percentage increase in minimum wages resulting from a national minimum wage order made under the *Fair Work Act 2009* (Commonwealth).

- (6) If, on the day on which the worker's injury occurred, the worker concurrently held 2 or more positions as a worker, whether in the employment of the same or different employers, subsection (3)(b) does not apply and the minimum weekly rate for the worker is the minimum weekly rate under subsection (3)(a).
- (7) No minimum weekly rate applies under this section if —
 - (a) the only component of the worker's pre-injury weekly rate of income is the monetary value of the provision of board and lodging; or
 - (b) the worker is a working director of a company; or
 - (c) the worker is a jockey; or
 - (d) the worker is a worker of a class prescribed by the regulations as excluded from the application of the minimum weekly rate.

58. Monetary value of board and lodging

- (1) This section deals with ascertaining the monetary value, if any, of —
 - (a) board and lodging provided to a worker by the employer (in addition to the worker's other earnings, if any) as payment for work at any time during the period over which section 54(2) requires the worker's average weekly rate of earnings to be calculated; and
 - (b) board and lodging provided to a worker by the employer during any period for which the worker is entitled to receive income compensation from the employer.

- (2) When calculating a worker's average weekly rate of earnings over a period for the purpose of ascertaining the worker's pre-injury weekly rate of income, the monetary value, if any, of the provision of board and lodging for a period that section 54(4) requires to be included in the calculation must be assessed as described in subsection (4).
- (3) For any period during which an employer provides board and lodging to a worker during a period for which the worker is entitled to income compensation from the employer —
 - (a) the monetary value, if any, of the provision of board and lodging must be assessed as described in subsection (4); and
 - (b) to the extent, if any, of its monetary value assessed in accordance with paragraph (a), the provision of board and lodging is taken to be payment towards income compensation to which the worker is entitled.
- (4) An assessment under subsection (2) or (3) of the monetary value, if any, of the provision of board and lodging for a period must be made in accordance with the regulations but so as not, in any case, to attribute a monetary value exceeding an amount calculated by taking the number of full days for which board and lodging provided by the employer to the worker during that period had a monetary value and multiplying it by the maximum board and lodging daily amount prescribed by the regulations as applying when the worker's injury occurred.

Note for this section:

Section 57(7)(a) states that no minimum weekly rate at which income compensation must be paid applies if the monetary value of the provision of board and lodging is the only component of the worker's pre-injury weekly rate of income.

59. Working directors

- (1) In this section —

declared remuneration, of a working director who is a worker, means —

- (a) the amount of remuneration stated as actually paid or payable to the working director during a period of insurance in a remuneration statement for the most recent period of insurance ending before the day on which the worker's injury occurred; or
- (b) if a remuneration statement was not provided for the most recent period of insurance ending before the day on which the worker's injury occurred — the amount of remuneration stated in a remuneration estimate as the amount estimated to be paid or payable to the working director over the period of insurance during which the worker's injury occurred;

remuneration estimate means an estimate provided to an employer's insurer in compliance with section 203 of the aggregate amount of remuneration to be paid or payable to a working director over a period of insurance;

remuneration statement means a statement provided to an employer's insurer in compliance with section 203 of the aggregate amount of remuneration actually paid or payable to a working director during a period of insurance.

- (2) This section applies to the calculation of a worker's average weekly rate of earnings in a position as a working director for the purposes of ascertaining the worker's pre-injury weekly rate of income under section 54(1).
- (3) The average weekly rate of earnings of a working director of a company that is an insured employer is —
- (a) the weekly rate calculated by averaging the declared remuneration of the working director over the period to which the declared remuneration relates; or

- (b) if there is no declared remuneration of the working director — the weekly rate calculated in accordance with the default calculation method under subsection (4).
- (4) The default calculation method for calculating a working director's average weekly rate of earnings is as follows —
 - (a) the worker's earnings are taken to include all of the worker's remuneration as a working director that is paid or payable during the period over which section 54(2) requires the worker's average weekly rate of earnings to be calculated; and
 - (b) the average weekly rate of those earnings is calculated over that period.
- (5) To the extent that it is practicable to do so, before the amount of a worker's remuneration as a working director of a company that is an insured employer is used in a calculation to which this section applies, particulars of the amount must be verified by the company.
- (6) The average weekly rate of earnings of a working director of a company that is a self-insurer must be calculated in accordance with the default calculation method under subsection (4) except that, if no remuneration was in fact paid or payable to the working director during the period concerned, remuneration is taken to have been of an amount estimated on the basis of any relevant contract, award or agreement.

60. Public holidays

A public holiday that falls within a period for which an employer is liable to pay income compensation to a worker is included as a part of the period for which the employer is liable to pay the income compensation but —

- (a) the employer is not otherwise liable to make any payment to the worker in respect of that holiday; and

- (b) the employer is not liable to give the worker any time off work in place of that holiday.

Note for this section:

The *Interpretation Act 1984* section 5 defines **public holiday**.

61. Leave while entitled to income compensation

- (1) In this section —

sick leave includes leave known as personal leave, or leave by another name, that is substantially of the same nature as sick leave;

take leave, with reference to annual leave, long service leave or sick leave, means —

- (a) to take time off work with pay on leave of that kind; or
 - (b) to receive a monetary payment instead of taking time off work with pay on leave of that kind.
- (2) For any period for which a worker is entitled to receive income compensation —
 - (a) the worker is entitled to take annual leave or long service leave that the worker could have taken if the worker had not been entitled to receive income compensation for that period; and
 - (b) the worker's entitlement to receive income compensation and the amount of those payments are not affected by the worker being entitled to take, or taking, annual leave or long service leave for all or any of that period; and
 - (c) the worker is not entitled to take sick leave for an absence from work because of the worker's injury; and
 - (d) the worker accrues entitlements to annual leave, long service leave and sick leave that the worker would have

accrued if the worker had not been entitled to receive income compensation for that period.

Note for this subsection:

The *Fair Work Act 2009* (Commonwealth) section 130(1) prevents a worker to whom it applies from taking sick leave during a period for which income compensation is paid.

- (3) If an employer pays a worker any amount as a sick leave entitlement for any period for which the worker subsequently receives income compensation —
- (a) the amount paid to the worker as a sick leave entitlement is taken to have been paid as, or towards, income compensation; and
 - (b) the employer must reinstate any period of sick leave to which the sick leave entitlement relates.

Subdivision 4 — Reducing, suspending and discontinuing income compensation

62. Restrictions on reduction, suspension or discontinuation of income compensation

An employer must not reduce, suspend or discontinue income compensation payments to a worker except —

- (a) to give effect to any provision of this Act as to the calculation of the amount of compensation that is payable or any limit on the amount of compensation that is payable; or
- (b) to give effect to a direction of a conciliator or an order of an arbitrator; or
- (c) in accordance with section 63, 64, 65 or 66; or

- (d) with the written consent of the worker given in the approved form.

Penalty: a fine of \$10 000.

Note for this section:

Paragraph (a) covers changes to the amount of compensation that could result from changes to indexed amounts, changes to award rates of pay, or a change to the rate of compensation after the first 26 weeks of incapacity.

63. Reducing or discontinuing income compensation on basis of worker's return to work

- (1) An employer must not reduce or discontinue income compensation payments to a worker on the basis of the worker's return to work unless the employer has informed the worker in accordance with the regulations of —
 - (a) the basis for the reduction or discontinuance with reference to the position to which the worker has returned; and
 - (b) the amount, if any, of income compensation that will be paid to the worker for any partial incapacity for work.
- (2) An arbitrator dealing with an application for determination of a dispute about a reduction or discontinuation of income compensation payments under this section may —
 - (a) determine whether the worker has returned to work; and
 - (b) determine the amount of income compensation payments; and
 - (c) make an order as to the making of those payments and the amount, if any, of those payments.

64. Reducing or discontinuing income compensation on basis of medical evidence

- (1) The requirements of this section must be complied with before an employer is permitted to reduce or discontinue income

compensation payments on the basis of medical evidence from a medical practitioner as to —

- (a) the worker's capacity for work; or
- (b) the extent to which the worker's incapacity for work is a result of the worker's injury.

(2) The requirements of this section for a proposed reduction or discontinuation of income compensation payments (the ***proposed action***) are as follows —

- (a) the employer must give the worker written notice in accordance with the regulations of the proposed action together with a copy of the medical evidence on the basis of which it is proposed to take that action;
- (b) the worker must be allowed a period of 21 days after the requirements of paragraph (a) are complied with in which to apply for resolution by conciliation of a dispute about the proposed action (a ***dispute resolution application***);
- (c) if the worker makes a dispute resolution application within that 21-day period, the employer cannot proceed with the proposed action before the dispute resolution process for the dispute has been finalised as provided by this section;
- (d) if the worker does not make a dispute resolution application within that 21-day period, the employer is permitted to proceed with the proposed action.

(3) The dispute resolution process for a dispute about a proposed action is considered to have been finalised when 1 of the following occurs —

- (a) the dispute is resolved by conciliation;
- (b) the dispute is not resolved by conciliation and the period for making an application for determination of the dispute by arbitration expires without the application having been made;

- (c) an application for determination of the dispute by arbitration is made and an arbitrator determines the matter or matters in dispute;
 - (d) an application for resolution of the dispute by conciliation or determination of the dispute by arbitration is not accepted or is discontinued or dismissed.
- (4) An arbitrator dealing with an application for determination of a dispute about a proposed reduction or discontinuation of income compensation payments under this section may —
 - (a) determine the amount of the income compensation payments; and
 - (b) make an order as to the making of those payments and the amount, if any, of those payments.
- (5) For determining, for the purposes of this section, the amount of any income compensation payments, an arbitrator may —
 - (a) treat the worker's capacity for work, if any, as being of the degree the arbitrator sees fit; and
 - (b) without limiting the matters to which the arbitrator may have regard, take into consideration whether a return to work program has been established for the worker and the worker's participation in the return to work program, if any.
- (6) This section does not limit any power of a conciliator in a proceeding on a dispute to direct the suspension or reduction of income compensation payments.

65. Worker not residing in State: failure to provide declaration

- (1) The regulations may require a worker who is entitled to income compensation and who does not reside in this State to provide the insurer or self-insurer at specified intervals with declarations in the approved form by the worker and a medical practitioner

as to the worker's capacity for work (the *required declarations*).

- (2) Payment of income compensation to a worker can be suspended for a failure by the worker to provide the required declarations before the end of an interval at which the declarations are required.
- (3) Before payment of income compensation can be suspended under this section, the insurer or self-insurer must first give the worker a written notice in the approved form (a *warning notice*) —
 - (a) informing the worker of the worker's obligation to provide the required declarations before the end of the interval at which the declarations are required; and
 - (b) stating that payment of income compensation to the worker will be suspended from a specified date (the *suspension date*) if the worker fails to provide the required declarations.
- (4) The warning notice can be given no earlier than 14 days before the end of the interval at which the declarations are required and the suspension date must be a date that is at least 14 days after the warning notice is given and not earlier than the end of the interval at which the declarations are required.
- (5) Payment of income compensation is suspended from the suspension date until the worker provides the required declarations and the insurer or self-insurer receives the required declarations.

Note for this subsection:

Suspension of income compensation payments only affects income compensation payments payable in respect of the period of suspension. Income compensation payments must recommence after the suspension period if the worker is otherwise entitled to income compensation payments in respect of the period after the suspension period. See section 67.

- (6) A worker may apply for an arbitrator to determine a question as to whether payment of income compensation to the worker was lawfully suspended under this section for a particular period and an arbitrator may determine the question and make any order the arbitrator considers appropriate in the circumstances.

66. Suspension of income compensation while worker in custody

- (1) In this section —

chief executive officer (prisons) means the chief executive officer as defined in the *Prisons Act 1981* section 3(1);

registrar (MIRT) means the registrar of the Mental Impairment Review Tribunal established by the *Criminal Law (Mental Impairment) Act 2023*;

relevant government authority means the authority principally assisting the Minister responsible for administering the relevant law in the administration of that law;

relevant law means the law under which the worker is in custody or is serving the term of imprisonment.

- (2) Payment of income compensation to a worker must be suspended for any period during which the worker is —
- (a) in custody under a law of the Commonwealth, this State or another State, other than custody of a kind prescribed by the regulations; or
 - (b) otherwise serving a term of imprisonment of a kind prescribed by the regulations.
- (3) Before payment of income compensation can be suspended under this section, the employer must have written confirmation from the relevant government authority of the factual circumstances mentioned in subsection (2) in relation to the worker and the date from which those circumstances applied.
- (4) A worker may apply for an arbitrator to determine a question as to whether payment of income compensation to the worker was lawfully suspended under this section for a particular period and

an arbitrator may determine the question and make any order the arbitrator considers appropriate in the circumstances.

- (5) The chief executive officer (prisons), the registrar (MIRT) and any other relevant government authority prescribed by the regulations must provide written confirmation for the purposes of subsection (3) in the circumstances, and in the manner and form, provided for by the regulations.

[Section 66 amended: No. 21 of 2023 s. 706.]

67. Effect of suspension of income compensation payments

- (1) If payment of income compensation to a worker is lawfully suspended under this Act for a period, no income compensation is payable to the worker in respect of the period of suspension unless an arbitrator otherwise orders.
- (2) Suspension of income compensation payments does not affect any entitlement to income compensation in respect of any period after the period of suspension.

68. Power of arbitrator to review disputed income compensation payments

- (1) An arbitrator may review the payment of income compensation to a worker on the application of the worker or the employer.
- (2) On a review under this section, the arbitrator may make any order for the payment of income compensation to the worker to be suspended, adjusted or discontinued as the arbitrator considers appropriate.
- (3) The arbitrator's order has effect from the day specified in the order and, in the case of a suspension, until the day or time specified in the order.

Division 4 — Compensation for medical and health expenses

69. Terms used

In this Division —

medical and health expenses general limit amount means the amount that is 60%, or a greater percentage, if any, prescribed by the regulations, of the general maximum amount;

medical and health service means anything an expense for which is a medical and health expense;

reasonable, in relation to a medical and health expense, has the meaning given in section 72;

special expense means a medical and health expense that is —

- (a) an expense in respect of surgical attendance and treatment; or
- (b) an expense in respect of hospital fees and charges for any health service, as defined in the *Health Services Act 2016* section 7, provided to the worker in a hospital, as defined in the *Health Services Act 2016* section 8; or
- (c) an expense in respect of post-operative medical treatment; or
- (d) an expense related to an expense described in paragraph (a), (b) or (c);

special increase means an increase by an order under section 78(3) in the medical and health expenses general limit amount for a claim;

special increase limit amount means the amount that is 190%, or a greater percentage, if any, prescribed by the regulations, of the medical and health expenses general limit amount;

standard increase means an increase by an order under section 77(2) in the medical and health expenses general limit amount for a claim;

standard increase limit amount means the amount that is 40%, or a greater percentage, if any, prescribed by the regulations, of the medical and health expenses general limit amount.

70. Medical and health expenses compensation under this Division

- (1) Compensation (*medical and health expenses compensation*) is payable under this Division in the form of payment of the amount of reasonable medical and health expenses incurred or to be incurred by a worker as a result of the worker's injury.
- (2) An employer's obligation to pay medical and health expenses compensation arises when the insurer or self-insurer accepts (or is taken to have accepted) or an arbitrator determines that the employer is liable to compensate the worker for the injury.
- (3) An employer's liability for medical and health expenses compensation applies to medical and health expenses incurred after the worker's injury occurs and extends to medical and health expenses incurred before the employer's obligation to pay medical and health expenses compensation arises.

Note for this section:

Provisional payments in respect of medical and health expenses compensation are to be treated as compensation paid for medical and health expenses — see section 43.

71. Expenses that are medical and health expenses

- (1) In this Division —
medical and health expense means an expense that is for any of the following —
 - (a) medicines and medical requisites;
 - (b) medical or surgical attendance and treatment, including, if necessary, medical or surgical attendance and treatment by specialists;
 - (c) hospital fees and charges for any health service, as defined in the *Health Services Act 2016* section 7,

provided to the worker in a hospital, as defined in the *Health Services Act 2016* section 8;

- (d) the treatment and maintenance in a nursing home, as defined in the *Private Hospitals and Health Services Act 1927* section 2(1), of a worker certified by a medical practitioner as —
 - (i) being permanently totally incapacitated for work; and
 - (ii) requiring continuing treatment and maintenance that cannot be administered in the worker's domestic environment;
 - (e) dental attendance and treatment;
 - (f) the provision of hearing aids, artificial teeth or artificial eyes;
 - (g) if the injury renders their use necessary, the provision of spectacles or contact lenses;
 - (h) health services prescribed by the regulations to be services the expenses in respect of which are medical and health expenses.
- (2) Regulations prescribing health services as described in paragraph (h) of the definition of ***medical and health expense*** in subsection (1) may operate by reference to the person or class of persons providing the service.
- (3) An expense is not a medical and health expense for the purposes of this Division if the expense is of a kind that is compensable as a miscellaneous expense under Division 5.

72. Requirement that medical and health expenses be reasonable

- (1) For a medical and health expense to be considered ***reasonable*** for the purposes of this Division —
 - (a) it must be reasonably necessary for the worker to incur the expense; and

- (b) the amount and charging of the expense —
 - (i) must be in accordance with a scale of fees and charges in respect of medical and health services fixed by an order under section 73; or
 - (ii) if no fixed scale of fees and charges applies, must be reasonable having regard to prevailing market rates and any other relevant circumstances;
 - and
 - (c) the charging of the expense must be in accordance with the relevant conditions, if any, provided for in an order under section 73(3)(d).
- (2) The regulations may provide for the principles to be applied in determining whether it is reasonably necessary for a worker to incur a medical and health expense.

73. Medical and health expenses order

- (1) The Minister, on the recommendation of WorkCover WA, may make an order fixing the maximum amount of compensation payable for a medical and health expense for a medical and health service.
- (2) The maximum amount for which an employer is liable for a medical and health expense for a medical and health service must not exceed the amount, if any, that is fixed as the maximum amount of compensation for that medical and health service by an order under this section.
- (3) An order under this section may —
 - (a) fix the maximum amount —
 - (i) by reference to a specified fee or charge for a medical and health expense for a medical and health service; or

- (ii) by reference to an amount of a fee or charge for a medical and health expense for a medical and health service calculated or determined in a specified manner; or
 - (iii) by reference to the provisions of other publications under subsection (5);and
 - (b) provide for the maximum amount fixed in respect of any particular medical and health service to vary —
 - (i) by reference to different factors of a specified kind (for example, by reference to the person who provides the service or the circumstances in which it is provided); or
 - (ii) by reference to the provisions of other publications under subsection (5);and
 - (c) fix a maximum amount for medical and health services provided together or in combination; and
 - (d) without limiting paragraphs (a), (b) and (c), provide for conditions that apply to charging for the provision of a medical and health service —
 - (i) by conditions specified in the order; or
 - (ii) by reference to the provisions of other publications under subsection (5).
- (4) Without limiting the ways in which a maximum amount fixed in an order may be varied, the order may —
- (a) provide for the maximum amount to be varied by a periodic variation in accordance with a specified methodology (an *adjustment methodology*); and
 - (b) provide for different adjustment methodologies for different maximum amounts.

- (5) Without limiting the ways in which a maximum amount may be fixed or conditions specified in an order under this section, the order may adopt or fix a maximum amount or specify conditions by reference to 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.
- (6) An order under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Note for this subsection:

Under the *Interpretation Act 1984* section 43(4), a power to make subsidiary legislation includes a power to amend or repeal the subsidiary legislation.

74. Eligibility to provide compensable medical and health services

- (1) The regulations may prescribe requirements (*provider eligibility requirements*) for a provider of a medical and health service that a person must satisfy in order that compensation is payable for a medical and health expense for a medical and health service provided by the person.
- (2) An employer is not liable for compensation for medical and health expenses for a medical and health service provided by a person if the person does not satisfy the provider eligibility requirements, if any, for a provider of the service.

75. General limit on compensation for medical and health expenses

The total amount of medical and health expenses compensation paid in respect of a worker's injury must not exceed the medical and health expenses general limit amount.

Note for this section:

The medical and health expenses general limit amount is 60% (or a greater percentage prescribed by the regulations) of the general maximum amount. The medical and health expenses general limit amount for a claim can be increased by a standard increase under

section 77(2) or a special increase under section 78(3). The total amount of compensation paid includes any provisional payments (see section 43).

76. Notice to worker that 60% of general limit reached

When the total amount of medical and health expenses compensation paid in respect of a worker's injury reaches 60% of the medical and health expenses general limit amount, the employer or, if the employer is an insured employer, the employer's insurer must within 14 days give the worker notice of that fact in the approved form.

Penalty: a fine of \$5 000.

77. Standard increase in compensation limit

- (1) A worker may apply to an arbitrator at any time for an increase in the medical and health expenses general limit amount for the worker's injury (the *general limit for the claim*).
- (2) On application under this section, an arbitrator may order an increase in the general limit for the claim if the arbitrator —
 - (a) is satisfied that the worker has incurred, or is likely to incur, reasonable medical and health expenses in an amount that is in excess of the general limit; and
 - (b) considers that the increase should be allowed, having regard to the social and financial circumstances and the reasonable financial needs of the worker.
- (3) The amount by which the general limit for the claim may be increased by an order under subsection (2) —
 - (a) must be decided after taking into account the amount of any payment for medical and health expenses that the employer or insurer voluntarily made to the worker beyond the amounts to which the worker was entitled under this Act; and
 - (b) is limited by the requirement that the increase (or the total of all standard increases), together with any

amounts required by paragraph (a) to be taken into account, must not exceed the standard increase limit amount.

78. Increase for special expenses in the medical and health expenses general limit amount

- (1) A worker may apply to an arbitrator for an increase for special expenses in the medical and health expenses general limit amount for the worker's injury (the *general limit for the claim*) beyond the standard increase limit amount.

Note for this subsection:

Subsection (6) imposes a 5-year limit on an application under this section for a special increase.

- (2) An application under this section may be made only if —
- (a) the general limit for the claim has been increased by a standard increase; and
 - (b) the worker has incurred, or is likely to incur, reasonable special expenses in excess of those that can be provided for by a standard increase.
- (3) On application under this section, an arbitrator may order that the general limit for the claim is increased if —
- (a) the worker has a degree of permanent whole of person impairment of at least 15% as a result of the worker's injury as determined under section 79; and
 - (b) the arbitrator is satisfied that the worker has incurred, or is likely to incur, reasonable special expenses in excess of those that can be provided for by a standard increase; and
 - (c) the arbitrator is satisfied in accordance with the regulations of any other matter of which the regulations require the arbitrator to be satisfied under this paragraph; and

- (d) the arbitrator considers that the increase should be allowed, having regard to the social and financial circumstances and the reasonable financial needs of the worker.
- (4) The amount of a special increase —
 - (a) applies only for the payment of compensation for special expenses; and
 - (b) must be decided after taking into account the amount of any payment for medical and health expenses that, since the most recent standard increase, the employer or insurer voluntarily made to the worker beyond the general limit for the claim; and
 - (c) is limited by the requirement that the increase (or the total of all special increases), together with any amounts required by paragraph (b) to be taken into account, must not exceed the special increase limit amount.
- (5) The arbitrator is not required to be satisfied of the matters described in subsection (3)(c) if the expenses for which the special increase is sought are incurred or likely to be incurred in the course of following a plan for managing and treating the worker's medical and associated conditions with which the arbitrator granting a previous special increase was satisfied.
- (6) An application for a special increase cannot be made more than 5 years after the relevant determination of liability for the injury and for that purpose the relevant determination of liability is considered to have occurred on the latest of the following —
 - (a) the day on which the worker is first notified that the insurer or self-insurer has accepted that the employer is liable to compensate the worker for the injury;
 - (b) the day on which the insurer or self-insurer is taken to have accepted that the employer is liable to compensate the worker for the injury;

- (c) the day on which it is determined by an arbitrator that the employer is liable to compensate the worker for the injury.

79. Assessment of degree of permanent impairment for special increase

- (1) A worker may, for the purpose of obtaining a special increase, apply for an assessment under Part 4 of the worker's degree of permanent whole of person impairment.
- (2) If the assessment returns a finding that the worker has a degree of permanent whole of person impairment of at least 15% as a result of the worker's injury, the worker may give that assessment to the worker's employer together with notice that the worker intends to apply for a special increase in the medical and health expenses general limit amount.
- (3) The worker is taken for the purposes of a special increase under section 78(3) to have a degree of permanent whole of person impairment of at least 15% as a result of the worker's injury if the worker gives the worker's employer an assessment and notice in accordance with subsection (2) and —
 - (a) the employer gives written notice to the worker that the assessment is not disputed; or
 - (b) the employer fails to dispute the assessment within the period specified in subsection (4); or
 - (c) the employer disputes the assessment within the period specified in subsection (4) and the dispute is determined by an arbitrator determining that the worker has a degree of permanent whole of person impairment of at least 15% as a result of the worker's injury.
- (4) An employer can dispute an assessment by giving the worker written notice of the dispute within 14 days after the worker notifies the employer that the worker intends to apply for a special increase.

- (5) If the assessment is disputed, an arbitrator may on application by the worker determine the dispute by determining whether the worker has a degree of permanent whole of person impairment of at least 15% as a result of the worker's injury.
- (6) The arbitrator may order the employer to pay all or any of the costs and expenses connected with a dispute that is the subject of an application for resolution under this section.

80. Effect of participation in catastrophic injuries support scheme

The employer of a worker ceases to be liable for medical and health expenses compensation to the extent that the compensation is for expenses incurred or to be incurred after the worker becomes a participant in the catastrophic injuries support scheme under the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*.

Division 5 — Compensation for miscellaneous expenses

81. Term used: miscellaneous expense

In this Division —

miscellaneous expense means an expense that is a miscellaneous expense under a provision of this Division.

82. Compensation for reasonable miscellaneous expenses

- (1) Compensation (*miscellaneous expenses compensation*) is payable under this Division in the form of payment of the amount of reasonable miscellaneous expenses incurred or to be incurred by a worker as a result of the worker's injury.
- (2) An employer's obligation to pay miscellaneous expenses compensation arises when the insurer or self-insurer accepts (or is taken to have accepted) or an arbitrator determines that the employer is liable to compensate the worker for the injury.

- (3) An employer's liability for miscellaneous expenses compensation applies to miscellaneous expenses incurred after the worker's injury occurs and extends to miscellaneous expenses incurred before the employer's obligation to pay compensation arises.

Note for this section:

This Division deals separately with each kind of expense for which compensation may be paid under this Division but does not impose a limit on the aggregate amount of all kinds of compensation that may be paid under this Division.

83. Expenses that are miscellaneous expenses

An expense is a miscellaneous expense for the purposes of this Division if the expense is for any of the following —

- (a) first aid and emergency transport, as provided by section 85;
- (b) a wheelchair or similar appliance, as provided by section 86;
- (c) a surgical appliance or artificial limb, as provided by section 87;
- (d) repair or replacement of clothing damaged or destroyed, as provided by section 88;
- (e) repair or replacement of an artificial aid damaged or destroyed, as provided by section 89;
- (f) travel, as provided by section 90;
- (g) assessment of degree of permanent impairment, as provided by section 91.

84. Requirement that miscellaneous expenses be reasonable

- (1) For a miscellaneous expense to be considered to be reasonable for the purposes of this Division —
- (a) it must be reasonably necessary for the worker to incur the expense; and
 - (b) the amount of the expense must be reasonable.

- (2) The regulations may provide for the principles to be applied in determining whether it is reasonably necessary for a worker to incur a miscellaneous expense.

85. First aid and emergency transport

An expense is a miscellaneous expense if it is for —

- (a) first aid to the worker; or
- (b) emergency transport for the worker to attend a hospital or other place for medical treatment.

86. Wheelchair

- (1) An expense is a miscellaneous expense if it is for providing the use of a wheelchair or similar appliance to the worker when the worker has suffered —
- (a) the loss of both legs; or
 - (b) paralysis of both legs.
- (2) The regulations may limit the amount payable to a worker as compensation for a miscellaneous expense under this section.

87. Surgical appliance or artificial limb

- (1) An expense is a miscellaneous expense if it is for providing the worker with a suitable surgical appliance or artificial limb.
- (2) A surgical appliance or artificial limb is suitable if —
- (a) it is capable of relieving any effect of the worker's injury; and
 - (b) it complies with any standard prescribed by the regulations.

88. Clothing

- (1) An expense is a miscellaneous expense if it is for the repair or replacement of clothing damaged or destroyed in the accident that results in the worker's injury.

- (2) Compensation for a miscellaneous expense under this section is payable as if the expense were incurred as a result of the worker's injury.

Note for this section:

An expense under this section is incurred as a result of the accident and not as a result of the injury that results from the accident. Subsection (2) requires the expense to be treated as an expense incurred as a result of the worker's injury because section 82 requires that for compensation to be payable for a miscellaneous expense it must be incurred as a result of the worker's injury.

89. Repair or replacement of artificial aids

- (1) In this section —

artificial aid means a hearing aid, artificial limb, artificial teeth, artificial eyes, spectacles or contact lenses;

work accident means an accident that arises out of or in the course of a worker's employment or while a worker is acting under the employer's instructions.

- (2) An expense is a miscellaneous expense if it is for —

- (a) the repair or replacement of any artificial aid damaged or destroyed in a work accident even if the worker did not suffer any injury as a result of the work accident; or
- (b) services by way of consultations, examinations or prescriptions that are rendered by medical practitioners, dentists or other qualified persons and reasonably required in connection with the repair or replacement referred to in paragraph (a).

- (3) Compensation for a miscellaneous expense under this section is payable as if the expense were incurred as a result of personal injury by accident suffered by the worker as a result of the work accident.

Note for this section:

An expense under this section is incurred as a result of the work accident and not as a result of an injury (if any) that results from the accident. Subsection (3) requires the expense to be treated as incurred

as a result of an injury suffered in the work accident because section 82 requires that for compensation to be payable for a miscellaneous expense it must be incurred as a result of a work injury.

90. Travel

- (1) An expense is a miscellaneous expense if it is a reasonable expense for —
 - (a) the running costs of the use of the worker's vehicle for approved travel; or
 - (b) any fare or other cost of approved travel; or
 - (c) meals and accommodation reasonably required in connection with approved travel.
- (2) Travel by a worker for the purposes of the provision of any thing an expense for which is a medical and health expense or a miscellaneous expense is approved travel if it is —
 - (a) travel that the worker is required to undertake by the employer; or
 - (b) travel that the worker is advised to undertake by a medical practitioner; or
 - (c) travel that the worker establishes is necessary in the particular circumstances of the case.
- (3) Travel by a worker is also approved travel for the purposes of this section if —
 - (a) the travel is for the purpose of the assessment of the worker's degree of permanent impairment for the purposes of any provision of this Act; and
 - (b) the worker establishes that the travel is necessary for that purpose in the particular circumstances of the case.
- (4) The regulations may specify the rates at which expenses referred to in this section are taken to be reasonable.

91. Assessment of permanent impairment

- (1) An expense is a miscellaneous expense if it is for an assessment of the worker's degree of permanent impairment requested by the worker for any of the following purposes (each an *allowable purpose*) —
 - (a) establishing eligibility for compensation under Division 7 as required by section 105;
 - (b) satisfying the requirements of section 421;
 - (c) obtaining a special increase in the medical and health expenses general limit amount as required by section 79.
- (2) Only 1 assessment for each allowable purpose is compensable under this section together with any assessment for any previous attempt at obtaining the assessment if the previous attempt resulted in a finding that the worker's condition had not stabilised to the extent required for the assessment to be made.

92. Effect of participation in catastrophic injuries support scheme

The employer of a worker ceases to be liable for miscellaneous expenses compensation to the extent that the compensation is for expenses incurred or to be incurred after the worker becomes a participant in the catastrophic injuries support scheme under the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*.

Division 6 — Compensation for workplace rehabilitation expenses

93. Compensation for workplace rehabilitation expenses

- (1) Compensation (*workplace rehabilitation expenses compensation*) is payable under this Division in the form of payment of the amount of workplace rehabilitation expenses incurred or to be incurred as a result of a worker's injury.

- (2) An employer's liability to pay workplace rehabilitation expenses compensation arises when it is reasonably necessary for an approved workplace rehabilitation provider to provide a workplace rehabilitation service in accordance with the regulations.
- (3) The regulations may include provision for or with respect to the following —
 - (a) the circumstances in which it is reasonably necessary for an approved workplace rehabilitation provider to provide a workplace rehabilitation service;
 - (b) the services that can be provided for the purposes of workplace rehabilitation under this Act;
 - (c) who can request the provision of workplace rehabilitation services and the process for selecting, engaging or changing workplace rehabilitation providers;
 - (d) the circumstances in which a workplace rehabilitation service may or must be terminated.

94. Workplace rehabilitation fees and charges order

- (1) The Minister, on the recommendation of WorkCover WA, may make an order fixing scales of fees and charges for workplace rehabilitation services provided by approved workplace rehabilitation providers.
- (2) If an order is made under subsection (1), the amount of a workplace rehabilitation expense must be in accordance with a scale of fees and charges fixed by the order.
- (3) The fees and charges may be fixed by reference to any of the following —
 - (a) the service provided;
 - (b) time spent providing the service;
 - (c) the circumstances in which the service is provided;

- (d) the outcome of the service provided;
 - (e) any other criteria specified in the order.
- (4) Without limiting the ways in which a fee or charge fixed in an order may be varied, the order may —
 - (a) provide for the fee or charge to be varied by a periodic variation in accordance with a specified methodology (an ***adjustment methodology***); and
 - (b) provide for different adjustment methodologies for different fees and charges.
- (5) The order may specify requirements for the billing of fees and charges.
- (6) The order 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.
- (7) An order under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Note for this subsection:

Under the *Interpretation Act 1984* section 43(4), a power to make subsidiary legislation includes a power to amend or repeal the subsidiary legislation.

95. General limit on compensation for workplace rehabilitation expenses

- (1) In this section —
workplace rehabilitation expenses compensation limit means the amount that is 7%, or a greater percentage, if any, prescribed by the regulations, of the general maximum amount.
- (2) The total amount of workplace rehabilitation expenses compensation paid in respect of a worker's injury must not exceed the workplace rehabilitation expenses compensation limit.

96. Effect of participation in catastrophic injuries support scheme

The employer of a worker ceases to be liable for workplace rehabilitation expenses compensation to the extent that the compensation is for expenses incurred or to be incurred after the worker becomes a participant in the catastrophic injuries support scheme under the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*.

Division 7 — Lump sum compensation for permanent impairment from personal injury by accident

97. Entitlement to lump sum permanent impairment compensation

- (1) Compensation (*permanent impairment compensation*) is payable under this Division as a lump sum amount for permanent impairment suffered by a worker as a result of an injury that is personal injury by accident.
- (2) Permanent impairment compensation is payable only for permanent impairment of a kind described in column 1 of the Table to section 101.
- (3) Permanent impairment compensation for permanent impairment resulting from a worker's injury is payable only when the employer's liability to the worker for compensation for the injury is commuted by a settlement agreement registered under Division 12.

98. Amount of permanent impairment compensation based on degree of permanent impairment

- (1) The amount of permanent impairment compensation payable is the amount calculated under section 101 on the basis of the worker's degree of permanent impairment resulting from the injury.

- (2) The worker's degree of permanent impairment resulting from an injury is —
- (a) in the case of impairment of a part or faculty of the body, the degree of permanent impairment of that part or faculty of the body; or
 - (b) in the case of impairment from scarring or disfigurement, the degree of permanent whole of person impairment resulting from the injury.

99. Worker's degree of permanent impairment

- (1) For the purpose of calculating the amount of permanent impairment compensation to which a worker is entitled, the worker's degree of permanent impairment resulting from an injury is —
- (a) the degree of permanent impairment agreed by the worker and employer as provided by section 105; or
 - (b) if section 105 does not result in agreement as to the degree of permanent impairment — the degree of permanent impairment determined by an arbitrator under section 106.
- (2) In the case of permanent impairment comprising the contracting of AIDS that under section 104(1)(b) is taken to be a permanent impairment of the worker resulting from the infection of the worker with HIV the worker's degree of permanent impairment is 100%.

100. Limit on permanent impairment compensation

- (1) The total amount of permanent impairment compensation payable under this Division for permanent impairment suffered as a result of an injury must not exceed the general maximum amount applying on the day on which the injury occurred and this is the ***lump sum limit*** for the purposes of section 101.

- (2) In the case of a worker suffering more than 1 impairment as a result of an injury, the limit imposed by this section on the total amount of permanent impairment compensation payable applies as a limit on the aggregate of the amounts of permanent impairment compensation payable for each of those impairments.

101. Calculating permanent impairment compensation

- (1) The amount of permanent impairment compensation payable under this Division for a permanent impairment described in column 1 of the Table is —
- (a) if the degree of permanent impairment is 100% — the amount that is the percentage of the lump sum limit indicated for the impairment in column 2 of the Table; or
 - (b) if the degree of permanent impairment is less than 100% — the amount calculated by multiplying the percentage degree of permanent impairment by the percentage of the lump sum limit that is indicated for the impairment in column 2 of the Table.

Example for this subsection:

For permanent impairment of the sight of 1 eye, the Table indicates 50% of the lump sum limit. This is the amount of permanent impairment compensation payable for a degree of permanent impairment of the sight of 1 eye of 100%. For less than 100% permanent impairment (for example, 80%), the amount of permanent impairment compensation is calculated as 80% of 50% (to arrive at 40%) of the lump sum limit.

- (2) For the purposes of determining the amount of permanent impairment compensation for a permanent impairment resulting from an injury, the amount of the lump sum limit is that amount as applying on the day on which the injury occurs.

Workers Compensation and Injury Management Act 2023**Part 2** Compensation for injury**Division 7** Lump sum compensation for permanent impairment from personal injury by accident**s. 101**

Table

Item	Column 1 Permanent impairment	Column 2 % of lump sum limit
EYES		
1.	Impairment of sight of both eyes	100
2.	Impairment of sight of an only eye	100
3.	Impairment of sight of 1 eye	50
4.	Impairment of binocular vision	50
HEARING		
5.	Impairment of hearing	75
SPEECH		
6.	Impairment of power of speech	75
BODY AND MENTAL		
7.	Impairment of mental capacity	100
8.	Impairment of spinal cord function	100
SENSORY		
9.	Impairment of sense of taste and smell	50
10.	Impairment of sense of taste	25
11.	Impairment of sense of smell	25

Workers Compensation and Injury Management Act 2023

Compensation for injury
Lump sum compensation for permanent impairment from
personal injury by accident

Part 2
Division 7

s. 101

Item	Column 1 Permanent impairment	Column 2 % of lump sum limit
ARM		
12.	Impairment of arm at or above elbow	90
13.	Impairment of arm below elbow	80
HAND		
14.	Impairment of both hands	100
15.	Impairment of hand and foot	100
16.	Impairment of hand or thumb and 4 fingers	80
17.	Impairment of thumb	35
18.	Impairment of forefinger	17
19.	Impairment of middle finger	13
20.	Impairment of ring finger	9
21.	Impairment of little finger	6
22.	Impairment of movement of joint of thumb	17
23.	Impairment of distal phalanx of thumb	20

Workers Compensation and Injury Management Act 2023**Part 2** Compensation for injury**Division 7** Lump sum compensation for permanent impairment from personal injury by accident**s. 101**

Item	Column 1 Permanent impairment	Column 2 % of lump sum limit
24.	Impairment of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx	15
25.	Impairment of distal phalanx of forefinger	10
26.	Impairment of distal phalanx of middle finger	8
27.	Impairment of distal phalanx of ring finger	6
28.	Impairment of distal phalanx of little finger	4
29.	Impairment of distal phalanx of each finger of the same hand (not including the thumb) in 1 accident	31
LEG		
30.	Impairment of leg at or above knee	70
31.	Impairment of leg below knee	65
FEET		
32.	Impairment of both feet	100

Workers Compensation and Injury Management Act 2023

Compensation for injury
Lump sum compensation for permanent impairment from
personal injury by accident

Part 2
Division 7

s. 101

Item	Column 1 Permanent impairment	Column 2 % of lump sum limit
33.	Impairment of foot	65
34.	Impairment of great toe	20
35.	Impairment of any toe other than great toe	8
36.	Impairment of 2 phalanges of any toe other than great toe	5
37.	Impairment of phalanx of great toe	8
38.	Impairment of phalanx of any toe other than great toe	4
BACK, NECK AND PELVIS		
39.	Impairment of the back (thoracic spine or lumbar spine or both)	75
40.	Impairment of the neck (including cervical spine)	55
41.	Impairment of the pelvis	30
MISCELLANEOUS		
42.	Impairment of genitals	50
43.	Impairment from facial scarring or disfigurement	80

Item	Column 1 Permanent impairment	Column 2 % of lump sum limit
44.	Impairment from bodily, other than facial, scarring or disfigurement	50
45.	AIDS	100

102. Further permanent impairment from subsequent injury

- (1) In this section —

compensable injury means an injury to a worker that is a personal injury by accident in respect of which permanent impairment compensation under this Division has been paid or is payable to the worker.

- (2) If a worker has, by a compensable injury, suffered a permanent impairment described in column 1 of the Table to section 101 and by a subsequent compensable injury suffers further permanent impairment of the same body part or faculty —

- (a) the amount of permanent impairment compensation payable for that further impairment is the amount that is proportionate to any increase (resulting from that subsequent compensable injury) in the degree of permanent impairment; and
- (b) the amount of permanent impairment compensation payable for each further impairment must be calculated on the basis of the permanent impairment compensation amount applying on the day on which each subsequent compensable injury occurred.

103. Compensable impairment not to exceed 100%

If a worker has received permanent impairment compensation in respect of an impairment of a body part or faculty for a degree

of permanent impairment of 100% (in 1 payment for a degree of permanent impairment of 100% or in several payments each for a degree of permanent impairment of less than 100%) the worker is not entitled to any further permanent impairment compensation in respect of that impairment.

104. Special provisions for AIDS

- (1) For the purposes of this Division —
 - (a) an injury that is the infection of a worker with HIV by accident arising out of or in the course of employment or while the worker is acting under the employer's instructions is taken to be a personal injury by accident; and
 - (b) the subsequent contracting by the worker of AIDS is taken to be a permanent impairment of the worker resulting from the infection of the worker with HIV; and
 - (c) the degree of permanent impairment of the worker for AIDS resulting from the infection of the worker with HIV is taken to be 100%; and
 - (d) the infection of the worker with HIV is taken to have occurred on the day on which a medical practitioner certifies that the worker has contracted AIDS.
- (2) The regulations may make provision for or with respect to claiming compensation for permanent impairment for AIDS.
- (3) An arbitrator may determine a dispute as to whether —
 - (a) the worker was infected with HIV by accident arising out of or in the course of employment or while acting under the employer's instructions; and
 - (b) the worker subsequently contracted AIDS.
- (4) Section 105 and Part 4 Division 3 do not apply to permanent impairment compensation for AIDS.

105. Agreement as to degree of permanent impairment

- (1) To be eligible for permanent impairment compensation under this Division for permanent impairment suffered as a result of an injury, a worker must —
 - (a) have an assessment under Part 4 of the worker's degree of permanent impairment resulting from the injury; and
 - (b) give the employer a copy of the assessment (the *original assessment*) together with a notice (the *permanent impairment notice*) in the approved form requesting the employer to indicate whether or not the employer agrees with the assessed degree of permanent impairment.
- (2) The employer must, within 28 days after being given the permanent impairment notice —
 - (a) notify the worker, in the manner required by that notice, whether the employer does or does not agree with the assessed degree of permanent impairment; and
 - (b) if the employer does not agree with the assessed degree of permanent impairment — request a further assessment under Part 4 of the worker's degree of permanent impairment with the cost of that further assessment to be paid by the employer.
- (3) If the employer does not comply with subsection (2), the employer is taken to agree with the assessed degree of permanent impairment.
- (4) If the employer requests a further assessment of the worker's degree of permanent impairment under subsection (2), the employer must, within 14 days after obtaining the further assessment, give the worker a copy of the further assessment and either —
 - (a) agree with the degree of permanent impairment indicated in the original assessment; or

- (b) negotiate with the worker to agree on a degree of permanent impairment that is within the range of the original assessment and the further assessment.

Note for this subsection:

The worker and the employer cannot agree a degree of permanent impairment that is outside the range of the original assessment and the further assessment.

- (5) A degree of permanent impairment is within the range of the original assessment and the further assessment if it is not more than the higher of those assessments and not less than the lower of those assessments.
- (6) An agreement as to the worker's degree of permanent impairment must be recorded in the manner required by the permanent impairment notice.

106. Determination by arbitrator when worker and employer fail to agree degree of permanent impairment

- (1) If section 105 does not result in agreement as to the worker's degree of permanent impairment, the worker may apply for an arbitrator to determine the worker's degree of permanent impairment.
- (2) An arbitrator may determine the worker's degree of permanent impairment and is not prevented from determining a degree of permanent impairment that is outside the range of the original assessment and the further assessment under section 105.
- (3) If the degree of permanent impairment is determined to be not less than the degree of permanent impairment indicated in the original assessment under section 105, the arbitrator may order that the employer pay all or any of the costs and expenses connected with the dispute.

Division 8 — Lump sum compensation for noise-induced hearing loss

107. Terms used

In this Division —

assessed NIHL, of a worker, means the percentage loss of hearing suffered by the worker that is assessed by an NIHL assessment to be noise-induced hearing loss, as provided by section 111;

assessment, of hearing loss, includes assessment of the extent of hearing loss;

further NIHL means noise-induced hearing loss suffered by a worker that is in addition to noise-induced hearing loss for which the worker has previously received noise-induced hearing loss compensation;

hearing loss means total or partial loss or diminution of hearing that is permanent;

initial NIHL means noise-induced hearing loss suffered by a worker who has not previously received noise-induced hearing loss compensation;

NIHL assessment has the meaning given in section 111(1);

NIHL maximum compensation amount means the amount that is 75% of the general maximum amount;

noise-induced hearing loss —

- (a) means a hearing loss that is noise-induced and due to the nature of any employment; but
- (b) does not include a hearing loss that is a personal injury by accident;

noise-induced hearing loss compensation means compensation payable under this Division as provided by section 108.

108. Lump sum compensation for noise-induced hearing loss

- (1) Compensation (*noise-induced hearing loss compensation*) is payable under this Division as a lump sum amount for noise-induced hearing loss suffered by a worker and for that purpose noise-induced hearing loss suffered by a worker that is due to the nature of employment with an employer is taken to be an injury from employment with the employer.
- (2) Compensation for noise-induced hearing loss suffered by a worker is payable only under this Division and no compensation for noise-induced hearing loss is payable under any other provision of this Act.
- (3) Noise-induced hearing loss compensation is payable only for noise-induced hearing loss as assessed by an NIHL assessment.
- (4) A claim for noise-induced hearing loss compensation must be made in accordance with the regulations.

109. Minimum compensable hearing loss

A worker is not entitled to noise-induced hearing loss compensation unless —

- (a) in the case of initial NIHL, the assessed NIHL of the worker that is initial NIHL is at least 10%; or
- (b) in the case of further NIHL, the assessed NIHL of the worker that is further NIHL is at least 5%.

110. Calculation of amount of compensation

- (1) The amount of noise-induced hearing loss compensation to which a worker is entitled is —
 - (a) for initial NIHL — the amount calculated by multiplying the worker's assessed NIHL (expressed as a percentage) that is initial NIHL by the NIHL maximum compensation amount applying on the date of the assessment of initial NIHL; or

- (b) for further NIHL — the amount calculated by multiplying the worker's assessed NIHL (expressed as a percentage) that is further NIHL by the NIHL maximum compensation amount applying on the date of the assessment of further NIHL.
- (2) A worker's entitlement to noise-induced hearing loss compensation ceases when the total of all amounts of noise-induced hearing loss compensation paid to the worker reaches the NIHL maximum compensation amount.

111. Assessment and evidence of noise-induced hearing loss

- (1) In this Division —
NIHL assessment means an assessment made in accordance with the regulations of the hearing loss suffered by a worker during a period (the *assessment period*) and of whether and to what extent that hearing loss is noise-induced hearing loss (the *assessed NIHL* of the worker).
- (2) Assessed NIHL must be expressed as a percentage loss of hearing.
- (3) An NIHL assessment is sufficient evidence for the purposes of a claim for noise-induced hearing loss compensation that the assessed NIHL of the worker is hearing loss that is noise-induced hearing loss due to employment during the assessment period.

112. Apportionment of NIHL compensation between employers

- (1) If noise-induced hearing loss suffered by a worker is due to employment with more than 1 employer, liability for noise-induced hearing loss compensation must be apportioned in accordance with the regulations between those employers.
- (2) An arbitrator may determine a dispute about the apportionment between employers of liability for noise-induced hearing loss.

113. Disputes about hearing loss

- (1) An arbitrator may determine a dispute about any of the following matters (*hearing loss matters*) concerning hearing loss suffered by a worker —
 - (a) the results of an NIHL assessment of the worker;
 - (b) the extent of hearing loss suffered by the worker;
 - (c) whether and to what extent hearing loss suffered by the worker is noise-induced hearing loss.
- (2) A hearing loss matter cannot be disputed except on the basis of evidence provided by an NIHL assessment.

114. Regulations

- (1) The regulations may make provision for or with respect to the following —
 - (a) the testing for and assessment of hearing loss in workers, including procedures for testing and assessment and testing standards and who is responsible for arranging, conducting or paying for assessments;
 - (b) the compulsory testing and monitoring for hearing loss in workers;
 - (c) the persons who are authorised for the purposes of the regulations to test for and assess hearing loss in workers or conduct testing and monitoring of workers for hearing loss;
 - (d) the methods and equipment authorised or required to be used for the purposes of the regulations to test for and assess hearing loss in workers or to conduct testing and monitoring of workers for hearing loss;
 - (e) the conduct of NIHL assessments, including the procedures for NIHL assessments and who is responsible for arranging, conducting or paying for NIHL assessments;

- (f) the persons who are authorised for the purposes of the regulations to make an NIHL assessment;
 - (g) requiring a worker who claims noise-induced hearing loss compensation to disclose to specified persons specified information relevant to the claim;
 - (h) authorising WorkCover WA to disclose to specified persons information about claims for noise-induced hearing loss compensation and the workers who have made those claims;
 - (i) claiming noise-induced hearing loss compensation;
 - (j) the handling of claims for noise-induced hearing loss compensation, including required timeframes for the making of decisions on claims and the payment of compensation;
 - (k) the apportionment of liability for noise-induced hearing loss compensation between employers;
 - (l) providing for fees payable to persons who are authorised for the purposes of the regulations —
 - (i) to test for and assess hearing loss in workers or conduct testing and monitoring of workers for hearing loss; or
 - (ii) to make an NIHL assessment;
 - (m) the making and keeping of records in respect of hearing tests and assessments conducted under the regulations and in respect of NIHL assessments;
 - (n) access to and communication of the results of hearing tests and assessments conducted under the regulations and of NIHL assessments.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following in connection with

the apportionment of liability for noise-induced hearing loss compensation between employers —

- (a) prescribing a methodology for the apportionment of liability between employers;
- (b) requiring liability to be apportioned between employers on the basis of a determination by WorkCover WA of appropriate apportionment;
- (c) requiring a particular employer to be responsible for the claims handling process and the payment of compensation (with an entitlement to contribution from other employers).

Division 9 — Compensation for dust disease

Subdivision 1 — Preliminary

115. Terms used

In this Division —

dust disease means an injury suffered by a worker that section 116 provides is a dust disease;

dust disease compensation claim means a claim for compensation in respect of a dust disease;

Dust Disease Medical Panel or **Panel** means a Dust Disease Medical Panel constituted under section 124.

116. Dust disease taken to be from certain employment

- (1) This section applies if —
 - (a) a worker suffers an injury by a disease listed in column 1 of the Table (the **injury**); and
 - (b) the employment in which the worker works at the time of suffering the injury or in which the worker worked at any time before suffering the injury involved the exposure listed for that disease in column 2 of the Table (the **relevant exposure**).

- (2) If this section applies, the injury —
- (a) is a dust disease; and
 - (b) is taken to be an injury from the employment unless the employer proves that —
 - (i) the injury was not suffered in the course of the employment, whether at or away from the place of employment; or
 - (ii) the relevant exposure of the worker in the course of the employment was trivial or minimal.
- (3) Section 6(3) does not apply in determining whether a dust disease is an injury from employment.

Table

Item	Column 1 Disease	Column 2 Exposure
1.	Pneumoconiosis or silicosis	Exposure to mineral dust harmful to the lungs, including silica and asbestos
2.	Mesothelioma	Exposure to asbestos
3.	Lung cancer	Exposure to asbestos
4.	Diffuse pleural fibrosis contracted on or after 19 September 2009	Exposure to asbestos

117. Day on which dust disease injury is suffered

An injury by dust disease is taken to have been suffered on whichever is the earlier of the following —

- (a) the day on which the worker becomes totally or partially incapacitated for work by reason of the injury;

- (b) the day that a Dust Disease Medical Panel makes a determination under section 123 that the worker is or was suffering from a dust disease.

118. Dust diseases taken to be single injury

If a worker suffers more than 1 dust disease, whether concurrently or successively and whether resulting from employment with the same employer or different employers, those dust diseases are together taken to be a single injury for the purposes of a dust disease compensation claim and compensation under this Act.

Note for this section:

This section does not affect the operation of Part 7.

Subdivision 2 — Compensation for dust disease

119. Entitlement to lump sum compensation for permanent impairment from dust disease

- (1) A worker who suffers an injury by dust disease that results in some degree of permanent whole of person impairment is entitled to lump sum compensation under this section in addition to any other compensation to which the worker is entitled.
- (2) The amount of lump sum compensation to which a worker is entitled under this section is the amount that is 30%, or a greater percentage, if any, prescribed by the regulations, of the general maximum amount applying on the day on which the determination of a Dust Disease Medical Panel under section 123 is made in relation to the worker's claim.
- (3) Lump sum compensation under this section is payable only when the employer's liability to the worker for compensation for the injury is commuted by a settlement agreement registered under Division 12.

120. No entitlement to compensation until Panel determination

A worker is not entitled to compensation in respect of a dust disease (whether under section 119 or otherwise) until a Panel has made the determination required under section 123 in respect of the worker's claim for that compensation.

121. Claiming dust disease compensation

For a dust disease compensation claim, the time within which a liability decision notice must be given under section 28 is 14 days after the insurer or self-insurer is notified under section 127(5) of the determination of a Panel in respect of the claim (instead of within 14 days after the claim is given to the insurer or self-insurer).

Note for this section:

Division 2 applies to a dust disease compensation claim subject to this section.

122. Compensation claims to be referred to CEO

- (1) An employer must, within 7 days after a dust disease compensation claim is made on the employer, give a copy of the claim to the CEO.

Penalty for this subsection: a fine of \$5 000.

- (2) This section does not affect the obligations of the employer under section 26.

123. Referral of claim to Panel

The CEO must refer a dust disease compensation claim to a Panel for determination of the following questions —

- (a) Is or was the worker suffering from diffuse pleural fibrosis, lung cancer, mesothelioma, pneumoconiosis or silicosis?

- (b) Is or was the worker incapacitated for work as a result of the injury by dust disease and, if so, what is or was the extent of the worker's incapacity for work?

Note for this question:

Incapacity for work and its extent is relevant for a claim for income compensation.

- (c) What is assessed to be the degree of permanent whole of person impairment resulting from the injury by dust disease?

Notes for this question:

1. Degree of permanent whole of person impairment is relevant for sections 119 and 426.
2. Lump sum compensation under this Subdivision is payable if the worker suffers some degree of permanent whole of person impairment but the worker's degree of permanent whole of person impairment must be at least 15% for the worker to be able to pursue a claim for damages — see sections 421 and 426.

Subdivision 3 — Dust Disease Medical Panels

124. Constitution of Panel

- (1) A Dust Disease Medical Panel is constituted by the CEO.

Note for this subsection:

A Panel is constituted for the purposes of determination of questions under section 123 or 426.

- (2) A Panel consists of at least 2 members appointed by the CEO, 1 of whom must be appointed as chairperson of the Panel.
- (3) At least 1 member of a Panel must be a medical practitioner who is a specialist in respiratory medicine.
- (4) Each other member of a Panel must be a medical practitioner who is a specialist in respiratory medicine or occupational medicine.

- (5) 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.

125. Panel practice and procedure

- (1) In determining the questions before it, a Panel —
 - (a) must act speedily and informally, and in accordance with good conscience, without regard to technicalities or legal forms; and
 - (b) except as provided under this Act, is not bound by rules of practice or evidence.
- (2) A person is not entitled to be represented in proceedings before a Panel.
- (3) A Panel is not authorised to treat a worker or require that a worker be treated.
- (4) A Panel may give the employer concerned the opportunity to produce documents or provide information for consideration by the Panel.
- (5) To the extent that the practice and procedure of a Panel are not prescribed by this Act or the regulations, they are to be as the Panel determines.

126. Panel powers

- (1) A Panel may, for the purpose of assisting it to determine the questions before it, require the worker concerned to do any 1 or more of the following —
 - (a) attend before the Panel and answer questions put by the Panel;
 - (b) produce documents or provide information to the Panel, or consent to another person producing documents or providing information to the Panel;

- (c) undergo medical examination by, or as directed by, the Panel;
 - (d) undergo specified medical tests and assessments and provide the Panel with results and reports from those tests and assessments.
- (2) Any information or document obtained from, or with the consent of, the worker must not be disclosed or given to any other person, except the person from whom it was obtained, without the consent of the worker.
- (3) A Panel may make arrangements in circumstances the Panel considers appropriate for a requirement for the worker concerned to attend before the Panel or to undergo a medical examination, medical test or assessment to be satisfied in a manner that does not require the personal attendance of the worker.

127. Determination of Panel

- (1) A Panel's determination of the questions before it must be made as soon as practicable and in any event within 28 days after the Panel has obtained all the information and documents necessary for the making of the determination.
- (2) A Panel can make a determination without any physical examination of the worker concerned or the worker's attendance before the Panel if the chairperson considers it appropriate to do so in a particular case.
- (3) A question is determined by a unanimous decision (if the Panel consists of 2 members) or majority decision (if the Panel consists of more than 2 members) of the members of the Panel but if there is no unanimous or majority decision a question is determined by the decision of the chairperson.
- (4) A Panel's determination must be in writing in the approved form and must include the reasons for the determination.

- (5) A copy of the determination must be given to the CEO, the worker concerned, the worker's employer and the employer's insurer (if any) within 7 days after the determination is made.
- (6) The chairperson may correct any error that is apparent on the face of a determination.

128. Effect of determination

- (1) A determination of a Panel is final and binding on the worker concerned and the worker's employer and on any court or tribunal hearing a matter in which the determination is relevant.
- (2) The determination is not —
 - (a) to be vitiated because of any informality or want of form; or
 - (b) liable to be challenged, appealed against, reviewed, quashed or called into question by any court.

129. Variation or remaking of determination

A Panel may vary or rescind and remake a determination made by the Panel or another Panel if the Panel considers it necessary or desirable to do so because of a change in the worker's condition or degree of permanent whole of person impairment or in the extent of the worker's incapacity for work.

130. Remuneration and allowances of Panel members

A member of a Panel is entitled to be paid from the General Account any remuneration and allowances that the Minister may determine.

Division 10 — Compensation for death of worker

131. Terms used

In this Division —

child, of a worker —

- (a) means a person of any age of whom —
 - (i) the worker is a parent; or
 - (ii) the worker is a step-parent (whether or not the person was legally adopted by the worker);
- and
- (b) includes a person, of whom the worker is a parent, conceived before, but born after, the worker's death;

compensation order means an order of an arbitrator under section 140(4) determining a claim for compensation under this Division;

dependant, of a worker, means a partner, child or extended family member of the worker who —

- (a) was wholly or partly dependent on the earnings of the worker at the time of the worker's death; or
- (b) would have been wholly or partly dependent on the earnings of the worker at the time of the worker's death if the injury as a result of which the worker died had not occurred; or
- (c) in the case of a child, of whom the worker is a parent, conceived before, but born after, the worker's death — would have been wholly or partly dependent on the earnings of the worker at the time of the child's birth had the worker's death not occurred;

extended family member, of a worker, means —

- (a) a parent of the worker; or
- (b) a step-parent of the worker (whether or not the worker was legally adopted by the step-parent); or

- (c) a person to whom the worker stands in the place of a parent; or
- (d) a person who stands in the place of a parent to the worker; or
- (e) a sibling or half-sibling of the worker; or
- (f) a grandchild of the worker; or
- (g) a grandparent of the worker;

partner, of a worker, means a person who —

- (a) is the spouse or de facto partner of the worker; or
- (b) has previously been a spouse or de facto partner of the worker.

132. Compensation only payable as provided by compensation order

Compensation under this Division is payable only as specified in a compensation order.

Note for this section:

A compensation order is an order of an arbitrator under section 140(4) determining a claim for compensation under this Division. A compensation order is not required for the payment of compensation under section 135.

133. Lump sum compensation for death resulting from injury

- (1) Compensation is payable under this section if a worker who suffers an injury dies as a result of the injury.
- (2) In this section —

dependant lump sum entitlement amount (DLSE) means the amount that is 250%, or a greater percentage, if any, prescribed by the regulations, of the general maximum amount applying on the day on which the worker dies.

- (3) If the worker dies leaving a dependant or dependants as described in column 1 of an item in the Table, each partner and child of the worker is entitled to the amount of compensation

indicated for the dependant in column 2 of the Table opposite that item.

Table

Item	Column 1 Dependant or dependants	Column 2 Amount of entitlement
1.	Partners: 1 Children: 0	100% of the DLSE to the partner
2.	Partners: 1 Children: 1	90% of the DLSE to the partner 10% of the DLSE to the child
3.	Partners: 1 Children: 2 to 5	5% of the DLSE to each child Balance of the DLSE to the partner
4.	Partners: 1 Children: 6 or more	75% of the DLSE to the partner 25% of the DLSE divided equally between the children
5.	Partners: 2 or more Children: 0	100% of the DLSE divided so that each partner receives an amount proportionate to the loss of financial support suffered by that partner

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Item	Column 1 Dependant or dependants	Column 2 Amount of entitlement
6.	Partners: 2 or more Children: 1	90% of the DLSE divided between the partners so that each partner receives an amount proportionate to the loss of financial support suffered by that partner 10% of the DLSE to the child
7.	Partners: 2 or more Children: 2 to 5	5% of the DLSE to each child Balance of the DLSE divided between the partners so that each partner receives an amount proportionate to the loss of financial support suffered by that partner
8.	Partners: 2 or more Children: 6 or more	75% of the DLSE divided between the partners so that each partner receives an amount proportionate to the loss of financial support suffered by that partner

Item	Column 1 Dependant or dependants	Column 2 Amount of entitlement
		25% of the DLSE divided equally between the children
9.	Partners: 0 Children: 1	100% of the DLSE to the child
10.	Partners: 0 Children: 2 or more	100% of the DLSE divided equally between the children

- (4) The compensation for a partner or child of the worker applies whether or not the worker dies also leaving any extended family member who is a dependant.
- (5) If the worker dies not leaving a partner or child of the worker who is a dependant but leaving 1 extended family member who is a dependant, that extended family member is entitled to an amount that is reasonable and proportionate to the loss of financial support suffered by the extended family member, but not exceeding the DLSE applying on the day on which the worker dies.
- (6) If the worker dies not leaving a partner or child of the worker who is a dependant but leaving 2 or more extended family members who are dependants, each of those extended family members is entitled to an amount that is reasonable and proportionate to the loss of financial support suffered by the extended family member, but not exceeding, in total, the DLSE applying on the day on which the worker dies.

134. Allowance for eligible dependent children

- (1) In this section —
eligible dependent child, of a worker, means a child of the worker who is a dependant of the worker and —
- (a) is under 16 years of age; or
 - (b) is between 16 and 21 years of age and is a full-time student; or
 - (c) is the subject of an order in force under subsection (6) or (7).
- (2) A reference in this section to a child who is between 16 and 21 years of age is a reference to a child who has attained the age of 16 years but is under the age of 21 years.
- (3) If a worker who suffers an injury dies as a result of the injury, each eligible dependent child of the worker is entitled to receive an allowance (the *eligible dependent child allowance*) as compensation.
- (4) The eligible dependent child allowance is an amount per week that is the amount prescribed by the regulations as applying at the time the allowance is paid.
- (5) The eligible dependent child allowance is in addition to, and does not affect, any compensation under section 133 for a dependent child who is also an eligible dependent child.
- (6) An arbitrator may, in the arbitrator's absolute discretion, order in a compensation order that a child who is between 16 and 21 years of age and is not a full-time student is entitled to receive the eligible dependent child allowance by reason of circumstances.
- (7) If a dependent child who is between 16 and 21 years of age ceases to be eligible to receive the eligible dependent child allowance because the child is not a full-time student, an arbitrator may on application, in the arbitrator's absolute

discretion, order that the child is entitled to continue to receive the eligible dependent child allowance by reason of circumstances.

- (8) On application, an arbitrator may, in the arbitrator's absolute discretion, by a further order revoke an order under this section.

135. Funeral and medical expenses

- (1) Compensation is payable under this section if a worker who suffers an injury dies as a result of the injury.

- (2) In this section —

funeral expenses —

- (a) means expenses properly incurred in relation to the funeral and burial or cremation of the worker; and
- (b) includes fees and charges paid or payable to the Board or local government in which the care, control and management of a cemetery is vested under the *Cemeteries Act 1986*;

funeral expenses maximum amount means the amount prescribed by the regulations as the funeral expenses maximum amount.

- (3) A person who has incurred funeral expenses is entitled to compensation for the amount of the expenses incurred but not exceeding the funeral expenses maximum amount applying on the day on which the entitlement arises.
- (4) A person who has paid medical and health expenses incurred by the worker is entitled to compensation in the amount of the expenses incurred to the extent that those expenses are reasonable and have not been the subject of compensation paid to the worker under Division 4.
- (5) Despite section 132, compensation can be paid to a person under this section without a compensation order having been made.

136. Lump sum compensation for death not resulting from injury

- (1) If a worker who suffers an injury dies but the worker's death was not a result of the injury, compensation is payable under this section if —
- (a) the worker has received, or was entitled to receive, income compensation for total or partial incapacity for work resulting from the injury for a continuous period of at least 6 months immediately preceding the worker's death; and
 - (b) the worker's claim for compensation for the injury has not been settled under Division 12; and
 - (c) no memorandum of the terms of a settlement has been filed under section 433(3).
- (2) In this section —
- aggregated amount*** means the aggregate obtained by taking the weekly rate of income at which, if the worker had not died, income compensation would have been payable to the worker at the date of the worker's death assuming that the worker was totally incapacitated for work and applying that rate for a period of 1 year after the worker's death;
- eligible person*** means a person who is a partner or child and is a dependant.
- (3) If the worker dies leaving 1 eligible person, that eligible person is entitled to the aggregated amount.
- (4) If the worker dies leaving 2 or more eligible persons, each of those eligible persons is entitled to a portion of the aggregated amount determined using the Table in section 133 as if a reference to the DLSE in column 2 of the relevant item in that Table were a reference to the aggregated amount.

137. Claim for compensation under this Division

- (1) A claim for compensation under this Division must be made within 12 months after the date of the worker's death.
- (2) A claim may be made on the employer by, or on behalf of, a claimant.
- (3) Compensation for 2 or more claimants can be the subject of a single claim.
- (4) A claim must be made in the approved form and must be accompanied by supporting information and documents required by the approved form.
- (5) A failure to make a claim for compensation within the period required by subsection (1) or a defect or inaccuracy in the claim form or details of the claim does not invalidate the claim if —
 - (a) the failure, defect or inaccuracy results from mistake, absence from the State or another reasonable cause; or
 - (b) the failure, defect or inaccuracy would not prejudice the employer's defence in proceedings that might arise out of the claim.

138. Claims procedure: insured employer

- (1) An insured employer must give a claim for compensation under this Division made on the employer to the insurer within 7 days after the claim is made.

Penalty for this subsection: a fine of \$5 000.
- (2) On receiving a claim for compensation under this Division, an insurer must give a copy of the claim to WorkCover WA.
- (3) As soon as practicable after receiving a claim for compensation under this Division, an insurer must —
 - (a) give the claimant and the employer notice that liability is accepted in respect of the compensation claimed; or

- (b) give the claimant and the employer notice that liability is disputed in respect of some or all of the compensation claimed; or
 - (c) give the claimant notice requiring that additional information or documents specified in the notice be provided to enable a decision to accept or dispute liability for compensation to be made.
- (4) As soon as practicable after receiving information or documents required under subsection (3)(c), the insurer must give the claimant and the employer —
 - (a) notice that liability is accepted in respect of the compensation claimed; or
 - (b) notice that liability is disputed in respect of some or all of the compensation claimed.
- (5) A notice given under subsection (3) or (4) must be in the approved form and the insurer must give a copy of the notice to WorkCover WA.

139. Claims procedure: self-insurer or uninsured employer

- (1) An employer who is a self-insurer or an uninsured employer must, on receiving a claim for compensation under this Division, give a copy of the claim to WorkCover WA.

Note for this subsection:

Section 265 defines *uninsured employer*.

- (2) As soon as practicable after receiving a claim for compensation under this Division, the employer must give the claimant —
 - (a) notice that liability is accepted in respect of the compensation claimed; or
 - (b) notice that liability is disputed in respect of some or all of the compensation claimed; or
 - (c) notice requiring that additional information or documents specified in the notice be provided to enable

a decision to accept or dispute liability for compensation to be made.

- (3) As soon as practicable after receiving information or documents required under subsection (2)(c), the employer must give the claimant —
 - (a) notice that liability is accepted in respect of the compensation claimed; or
 - (b) notice that liability is disputed in respect of some or all of the compensation claimed.
- (4) A notice given under subsection (2) or (3) must be in the approved form and the employer must give a copy of the notice to WorkCover WA.

140. Determination of claim by arbitrator

- (1) An application may be made to the Registrar by or on behalf of a person claiming compensation under this Division for determination of the claim by order of an arbitrator.
- (2) The application may be made —
 - (a) at any time after the claimant receives a notice under section 138(3) or 139(2) about the claim; or
 - (b) if the claimant has not received the notice within 30 days after the day on which the claim is made on the employer — at any time after the end of that 30-day period.
- (3) The making of an application for determination of a claim does not affect the continued operation of section 138 or 139 in relation to the claim.
- (4) An arbitrator must make an order determining the claim and specifying whether the claimant is entitled to compensation in accordance with this Division and, if so, the amount of compensation to which the claimant is entitled.

141. Manner of payment: lump sum compensation

- (1) A compensation order for the payment of compensation to which a dependant of a deceased worker is entitled under section 133 or 136 must specify whether compensation for the dependant —
 - (a) must be paid to WorkCover WA and applied in the manner specified in the order; or
 - (b) must be paid to the dependant as specified in the order.
- (2) If a compensation order requires the compensation for a dependant to be paid to WorkCover WA and applied in the manner specified in the order, an arbitrator may on application order that the compensation must be —
 - (a) applied otherwise than in the manner specified in the compensation order; or
 - (b) paid to the dependant.

142. Manner of payment: child's allowance

- (1) In this section —

eligible dependent child allowance means compensation to which a dependant of a deceased worker is entitled under section 134.
- (2) A compensation order for the payment of an eligible dependent child allowance must provide for the insurer or employer to pay the amounts of eligible dependent child allowance to WorkCover WA weekly or at other intervals specified in the order.
- (3) WorkCover WA must make periodic payments of the eligible dependent child allowance to the dependant as specified in the compensation order but payment must not be made in advance of a periodic payment or by way of commutation.

- (4) Payment of an eligible dependent child allowance under a compensation order must continue as long as the dependant remains entitled to the allowance.
- (5) If a dependant's entitlement to an eligible dependent child allowance is based on the dependant being a full-time student, WorkCover WA may require evidence of participation in full-time study to be provided and may withhold payment of the allowance until that evidence is provided unless this would be contrary to an order of an arbitrator under section 134(7) that the dependant is entitled to continue to receive the allowance by reason of circumstances.
- (6) The liability of an insurer or employer to make payments under this section may be fully discharged by the payment to WorkCover WA of an amount calculated in accordance with the regulations as being the full amount of the eligible dependent child allowance that will be payable on the assumption that the allowance will be payable to the dependant until the dependant attains the age of 21 years.
- (7) An application by the insurer or employer to pay an amount in discharge of liability to make payments under this section may be made to WorkCover WA in the approved form when or after the compensation order is made.
- (8) If an amount paid to WorkCover WA by an employer or insurer under this section has been credited to the Trust Account under section 494(2)(b) and the entitlement of the dependant to the eligible dependent child allowance ends before the amount has been exhausted by periodic payments of the allowance, any surplus moneys standing to the credit of the Trust Account must be transferred to the General Account.
- (9) On application by or on behalf of the claimant, an arbitrator may make an order varying the terms of the compensation order in relation to a matter mentioned in subsection (2) or (3).

143. Effect of recovery of damages on applying trust money

- (1) In this section —

damages means —

- (a) damages due or payable to, or claimed by, a dependant of a deceased worker under the *Fatal Accidents Act 1959* for an injury causing the death of the worker; or
- (b) damages due or payable to, or claimed on behalf of, the estate of a deceased worker under the *Law Reform (Miscellaneous Provisions) Act 1941* for an injury causing the death of the worker;

judgment includes an acceptance of an offer to consent to judgment;

settlement includes —

- (a) a settlement by acceptance of an offer of compromise; and
- (b) a memorandum of the terms of a settlement that has been filed under section 433(3);

trust money, of a dependant, means money credited to the Trust Account under section 494(2)(b) in respect of the dependant.

- (2) Despite anything in this Act, in paying or otherwise applying or dealing with trust money of a dependant WorkCover WA must have regard to, and take into account, any judgment or settlement under which damages are payable to the dependant.
- (3) Without limiting subsection (2), a judgment in or settlement of an action for damages may include a direction to WorkCover WA as to how trust money of a dependant must be paid or otherwise applied or dealt with and WorkCover WA must give effect to the direction.
- (4) Notice must be given to WorkCover WA in the approved form by or on behalf of the claimant if —
 - (a) an action for damages is commenced; or

- (b) judgment is given or settlement takes place in an action for damages.

144. Application procedure

- (1) In this section —

application means —

- (a) an application for determination of a claim for compensation under this Division; or
- (b) an application for an order;

order means an order of an arbitrator under a provision of this Division (including a compensation order).

- (2) An application must be made to the Registrar in accordance with this Act and the arbitration rules and may be rejected by the Registrar if it does not comply.
- (3) An application can be made and received, and an order can be made, whether or not there is a dispute about liability or the payment of compensation.
- (4) A dispute or application in connection with a claim for compensation under this Division must not be the subject of conciliation and sections 331 and 332 do not apply to the dispute or application.

145. Inconsistency with other provisions

Unless otherwise expressly stated, a provision of this Division prevails to the extent, if any, that it is inconsistent with a provision of this Act that is not in this Division.

Division 11 — Other matters to do with compensation

146. Recovery of erroneous payments of compensation

- (1) WorkCover WA, an employer or an insurer may apply to an arbitrator for an order for the refund of an erroneous payment of

compensation made by WorkCover WA, the employer or the insurer.

- (2) A payment of compensation is erroneous if the recipient of the payment was not lawfully entitled to the payment or to any part of the amount of the payment.
- (3) An arbitrator dealing with the application may make any order for the refund of the whole or part of an erroneous payment of compensation that the arbitrator considers appropriate.
- (4) Instead of making an order for a refund, the arbitrator may order any person who the arbitrator determines was liable for the whole or any part of the compensation to reimburse the person who paid the compensation.
- (5) If the payment of compensation was in accordance with an order of an arbitrator, the arbitrator dealing with the application may make an order for a refund only if satisfied that the claim for the payment was fraudulent or made without proper justification.

147. Deductions from wages towards compensation not lawful

- (1) An employer or insurer or any person acting on behalf of an employer or insurer must not, directly or indirectly, take or receive any money from a worker whether by way of deduction from wages or otherwise in respect of any liability of an employer to pay compensation under this Act.

Penalty for this subsection: a fine of \$10 000.

- (2) If money is taken or received from a worker in contravention of this section, whether or not with the consent of the worker, the worker may sue for and recover the amount of that money from the employer, insurer or person who took or received it.

148. Recovery of cost of services provided to worker

- (1) An employer liable to pay medical and health expenses compensation or miscellaneous expenses compensation for a

service provided to a worker (a *compensable service*) may discharge the employer's liability to pay that compensation by paying to the provider of the service the whole or any part of the outstanding cost of the service.

- (2) If payment to the provider of a compensable service of the whole or any part of the cost of the service remains outstanding, the provider has the same rights to recover the outstanding amount from the employer as the worker has to recover medical and health expenses compensation or miscellaneous expenses compensation for the service.
- (3) The employer's liability to compensate the worker, and the worker's liability to pay the provider, for the cost of a compensable service is discharged to the extent of any amount paid by or recovered from the employer as provided by this section.
- (4) A dispute about the amount that a provider of a compensable service is entitled to recover from an employer under this section may be dealt with under Part 6.

Division 12 — Settlement of compensation claim

149. Commuting compensation liabilities by settlement agreement

- (1) An injured worker and the worker's employer may enter into an agreement in writing (a *settlement agreement*) that operates to —
 - (a) commute to a lump sum the liability of the employer to pay compensation to the worker in respect of the injury; and
 - (b) permanently discharge that liability of the employer.

Note for this subsection:

Lump sum compensation that is permanent impairment compensation or dust disease impairment compensation must be included in a settlement agreement — see section 150.

- (2) A settlement agreement must be in the approved form.
- (3) A settlement agreement is of no effect unless and until it is registered under this Division.
- (4) An agreement (however described) that purports to discharge a liability to pay compensation to a worker in respect of an injury is void unless the agreement is a settlement agreement registered under this Division.
- (5) A settlement agreement registered under this Division applies only to the employer's liability to pay compensation to the worker and does not affect any liability of the employer to pay compensation to a dependant of the worker under Division 10.

150. Lump sum compensation required to be included in settlement agreement

If a worker is entitled to permanent impairment compensation or dust disease impairment compensation —

- (a) a settlement agreement must include provision for commuting the liability for that compensation; and
- (b) the application for registration of the settlement agreement must be accompanied by the information and documents necessary to establish the worker's degree of permanent impairment resulting from the injury concerned.

Note for this section:

Under paragraph (b) the application must be accompanied by evidence of the agreement of the parties under section 105, the determination of an arbitrator under section 106 or the determination of the Dust Disease Medical Panel under section 123 as to the worker's degree of permanent impairment.

151. Effect on settlement of participation in catastrophic injuries support scheme

A settlement agreement must not provide for compensation in respect of medical and health expenses compensation,

miscellaneous expenses compensation or workplace rehabilitation expenses compensation for which the employer has ceased to be liable under section 80, 92 or 96 as a result of the worker becoming a participant in the catastrophic injuries support scheme under the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*.

152. Applying for registration of settlement agreement

- (1) An application for registration of a settlement agreement must be made to the Director in the approved form accompanied by —
 - (a) a copy of the settlement agreement; and
 - (b) supporting information and documents as required by the regulations and in the form, if any, approved by the CEO.
- (2) The Director may, with the agreement of the parties to a settlement agreement, rectify any error in the settlement agreement or supporting information and documents.
- (3) The regulations may —
 - (a) provide for procedural matters to do with the following —
 - (i) applying for the registration of a settlement agreement;
 - (ii) registration of a settlement agreement by the Director;
 - and
 - (b) prescribe circumstances in which an application for registration of a settlement agreement cannot be made.

153. Settlement agreement cannot apply to common law damages

A settlement agreement must not be registered if it provides for the liability of the employer to pay damages for an injury suffered by a worker to be commuted or otherwise discharged.

154. Scrutiny by Director of settlement agreement

- (1) The Director must refuse to register a settlement agreement unless —
 - (a) the Director is given a statement by the worker in the approved form acknowledging that the worker is aware of the consequences of registering the settlement agreement; and
 - (b) the Director is satisfied that —
 - (i) the settlement agreement is genuine; and
 - (ii) the amount of any permanent impairment compensation for which the settlement agreement provides is the correct amount to which the worker is entitled; and
 - (iii) the criteria, if any, prescribed by the regulations for registration of a settlement agreement are met.
- (2) The Director must refuse to register a settlement agreement if of the opinion that the agreement was obtained by fraud or undue influence or by other improper means.
- (3) The Director may defer a decision on registration of a settlement agreement until —
 - (a) the parties give the Director any further relevant information as the Director may request; and
 - (b) either or both of the parties attend before the Director and answer relevant questions as requested by the Director.
- (4) If registration of a settlement agreement is refused, the Director must refer the matter to the Registrar for allocation of the matter to an arbitrator for determination of the question of whether registration of the settlement agreement should be granted or refused.

155. Cancellation of registration of settlement agreement

- (1) On application made within 6 months after a settlement agreement is registered, an arbitrator may order the cancellation of the registration of the settlement agreement if the arbitrator is satisfied that the agreement was obtained by fraud or undue influence or by other improper means.
- (2) The arbitrator may make any other order the arbitrator thinks just, including an order as to any amount already paid under the agreement.

156. Implementation of settlement agreement

- (1) Any entitlement of a worker to compensation in respect of an injury to which a settlement agreement registered under this Division relates ceases on the date of registration of the agreement.

Note for this subsection:

Section 420 provides that damages must not be awarded against a worker's employer in respect of an injury if a settlement agreement has been registered in respect of the injury unless the injury is a dust disease.

- (2) An employer who is liable to pay an amount under a settlement agreement registered under this Division must pay the amount within 14 days after the agreement is registered or, if another law (including a Commonwealth law) prevents payment within that period, within 7 days after payment is permitted under that other law.

Penalty for this subsection: a fine of \$10 000.

157. Limit on lump sum compensation included in settlement agreement

- (1) In this section —
income compensation general limit amount has the meaning given in section 45;

total income compensation payments means the total of all the payments of income compensation to which a worker is entitled in respect of incapacity for work resulting from an injury, including payments already paid and payments the entitlement to which is to be commuted by a settlement agreement.

Note for this definition:

The amount of income compensation payments includes provisional payments of income compensation — see section 43(1).

- (2) The amount arrived at by adding the amount of permanent impairment compensation or dust disease impairment compensation to which a worker is entitled to the total income compensation payments to which the worker is entitled must not exceed the income compensation general limit amount.
- (3) The amount of permanent impairment compensation or dust disease impairment compensation to which a worker is entitled for the purposes of a settlement agreement that applies to that compensation must be reduced to the extent, if any, necessary to ensure compliance with subsection (2).

Note for this section:

This section can operate to reduce the amount of permanent impairment compensation or dust disease impairment compensation to which a worker is entitled but does not affect entitlement to medical and health expenses compensation, miscellaneous expenses compensation or workplace rehabilitation expenses compensation.

Part 3 — Injury management

Division 1 — General

158. Term used: treating medical practitioner

In this Part —

treating medical practitioner, in relation to a worker, means the medical practitioner who is the worker's treating medical practitioner under section 170.

159. Employer must establish injury management system

(1) In this section —

injury management system means a process setting out the steps to be followed when there is an injury from employment.

(2) An employer must ensure that —

- (a) an injury management system is established and implemented in accordance with the regulations in relation to workers employed by the employer; and
- (b) the injury management system is described in a document that is available to the workers.

Penalty for this subsection: a fine of \$5 000.

(3) The regulations may deal with the following —

- (a) the content of an injury management system, including the matters that must be included in an injury management system;
- (b) implementation of the injury management system.

Division 2 — Return to work

Subdivision 1 — Duties of employer, insurer and worker

160. Duty of employer to establish and implement return to work program

- (1) In this section —

return to work program means a program for assisting an injured worker to return to work in a timely, safe and durable way.

- (2) The employer of an injured worker must ensure that a return to work program is established for the worker as soon as practicable after the earliest of the following —
- (a) the day on which the worker's treating medical practitioner issues a certificate of capacity to the effect that the worker is partially incapacitated for work;
 - (b) the day on which the worker's treating medical practitioner advises the employer in writing that a return to work program should be established for the worker;
 - (c) the day on which, in proceedings under Part 6, an arbitrator determines, or the parties agree, that the worker has suffered an injury in respect of which compensation is payable and is partially incapacitated for work.

Penalty for this subsection: a fine of \$5 000.

- (3) The return to work program must, as far as is reasonably practicable, be established in consultation with the injured worker.
- (4) Subsection (2) does not require a return to work program to be established —
- (a) for a worker who has returned to work unless the worker has a partial incapacity for work; or
 - (b) in circumstances prescribed by the regulations.

- (5) The employer must ensure that the establishment, content and implementation of a return to work program are in accordance with the regulations.

Penalty for this subsection: a fine of \$5 000.

- (6) The regulations may —
- (a) specify minimum standards or requirements for the establishment, content and implementation of return to work programs; and
 - (b) require a return to work program to be in the approved form or include prescribed provisions.

161. Employer may be ordered to establish and implement return to work program

- (1) A worker may apply for an order of an arbitrator requiring the worker's employer to —
- (a) establish and implement a return to work program for the worker in accordance with section 160; or
 - (b) alter the terms of a return to work program for the worker.
- (2) The arbitrator may require the employer to establish and implement the return to work program if satisfied that —
- (a) the worker has suffered an injury in respect of which compensation is payable; and
 - (b) the worker is partially incapacitated for work; and
 - (c) the employer has failed to comply with section 160(2).
- (3) The arbitrator may require the employer to alter the terms of the return to work program if satisfied that any of the obligations placed on the worker under the return to work program are unreasonable.

162. Duties of insurer

- (1) When an insurer issues to an employer, or renews, an insurance policy the insurer must give the employer written notice of the employer's duties under section 160.

Penalty for this subsection: a fine of \$5 000.

- (2) If an insured employer requests the insurer to assist the employer to comply with any of the employer's duties under section 160, the insurer must take reasonable action —

- (a) to assist the employer to comply with the employer's duties that are the subject of the employer's request; and
- (b) to ensure that the employer complies with the duties that are the subject of the employer's request.

Penalty for this subsection: a fine of \$10 000.

- (3) If an insured employer requests the insurer to discharge any of the employer's duties under section 160 on behalf of the employer, the insurer must take reasonable action —

- (a) to discharge the employer's duties that are the subject of the employer's request; and
- (b) to comply with the duties that are the subject of the employer's request.

Penalty for this subsection: a fine of \$10 000.

163. Duties of worker

- (1) In this section —

progress certificate of capacity means a certificate of capacity issued after the certificate of capacity given under section 25(2)(b) to the worker's employer.

- (2) An injured worker must, in cooperation with the worker's employer, make reasonable efforts to return to work.

- (3) A worker for whom an employer is required to establish a return to work program must participate and cooperate in the establishment of the return to work program.
- (4) The worker must comply with any reasonable obligations placed on the worker under the worker's return to work program, including any obligation to undertake workplace rehabilitation.
- (5) The worker must comply with any requirement to attend a return to work case conference under section 165 and must participate and cooperate in the conference.
- (6) The worker must give each progress certificate of capacity issued to the worker to the worker's employer or the employer's insurer within 7 days after the certificate is given to the worker.
- (7) Subsection (6) does not apply if the health professional who issues the progress certificate of capacity gives a copy to the worker's employer or the employer's insurer within 7 days after the certificate is given to the worker.

164. Consequences of refusal or failure to comply with s. 163 duty

- (1) An employer may apply for an order of an arbitrator in respect of a worker's refusal or failure to comply with a duty under section 163.
- (2) If an arbitrator is satisfied that a worker, without reasonable excuse, refuses, or has failed, to comply with a duty under section 163 the arbitrator may do either or both of the following —
 - (a) order the worker to comply with the duty;
 - (b) order that the payment of income compensation to the worker is suspended.

- (3) Payment of income compensation to the worker is suspended from the day on which the arbitrator makes the order under subsection (2)(b) until the earliest of the following —
- (a) the day specified in the order as the day on which the order ceases to have effect;
 - (b) the day on which the order is revoked by an arbitrator;
 - (c) the day on which the worker's entitlement to income compensation ceases under subsection (4).

Note for this subsection:

Sections 67 and 323 provide for the effect of suspension of payments of income compensation.

- (4) If a worker refuses or fails to comply with a duty under section 163 for 1 month, or a period an arbitrator otherwise orders, after an order is made under subsection (2)(a) or (b) in relation to the duty, an arbitrator may order that the worker ceases to be entitled to income compensation in respect of the injury in relation to which the duty arose.
- (5) An arbitrator must not make an order under subsection (4) if the worker satisfies the arbitrator that the worker had a reasonable excuse for refusing or failing to comply with the duty after the order under subsection (2)(a) or (b) was made.

Subdivision 2 — Return to work case conferences

165. Attendance at return to work case conference

- (1) An injured worker who has an incapacity for work may be required to attend a conference (a ***return to work case conference***) arranged by the worker's employer, the employer's insurer, the worker's treating medical practitioner or an approved workplace rehabilitation provider for the purpose of

supporting the worker's recovery and enhancing opportunities for the worker's return to work.

Note for this subsection:

Section 163(5) imposes a duty on the worker to comply with a requirement under this section and to participate and cooperate in the conference.

- (2) In arranging a return to work case conference, the employer, insurer, medical practitioner or workplace rehabilitation provider must, by notice in writing given to the worker, specify the following —
- (a) the time and place of the conference;
 - (b) whether the worker must attend the conference in person or may participate in the conference by means of video link, audio link or other electronic means;
 - (c) that the worker must participate and cooperate in the conference.
- (3) Regulations may provide for the following —
- (a) the maximum number of times a worker may be required to participate in a return to work case conference and the maximum frequency of those conferences;
 - (b) the conduct of a return to work case conference;
 - (c) the matters that may be discussed at a return to work case conference;
 - (d) the persons who may attend or participate in a return to work case conference;
 - (e) any other matter relevant to a return to work case conference.

Subdivision 3 — Employment obligations relating to return to work

166. Employer must provide position during incapacity

- (1) In this section —

employment obligation period, for an injured worker, means the period of 12 months beginning on the day on which the worker first has an incapacity for work as a result of the injury;

suitable position, for an injured worker, means a position —

- (a) for which the worker is qualified; and
- (b) that the worker is capable of performing; and
- (c) that is most comparable in status and pay to the position the worker held immediately before having an incapacity for work.

- (2) The employer of an injured worker must, during the employment obligation period for the worker —

- (a) provide to the worker the position the worker held immediately before having an incapacity for work (the *pre-injury position*); or
- (b) ensure that the worker is provided with a suitable position if —
 - (i) it is not reasonably practicable to provide to the worker the pre-injury position; or
 - (ii) the worker does not have capacity to work in the pre-injury position.

Penalty for this subsection: a fine of \$10 000.

- (3) Subsection (2) does not apply if the worker is lawfully dismissed.

167. Host must cooperate with labour hirer

- (1) In this section —

host and *labour hirer* have the meanings given in section 14(1).

- (2) This section applies if —
- (a) a labour hirer is a worker's employer under section 14(3); and
 - (b) the worker has an incapacity for work as a result of an injury from employment with the labour hirer for work done for the host.
- (3) The host must, to the extent that it is reasonable to do so, cooperate with the labour hirer in respect of action taken by the labour hirer in order to comply with sections 160 and 166 to facilitate the worker's return to work.

Penalty for this subsection: a fine of \$5 000.

168. Dismissal of injured worker

- (1) In this section —
employment obligation period has the meaning given in section 166(1).
- (2) The employer of an injured worker must not, during the employment obligation period for the worker, dismiss the worker solely or mainly because the worker is totally or partially incapacitated for work.
Penalty for this subsection: a fine of \$10 000.
- (3) Without limiting subsection (2), the employer of an injured worker must not, during the employment obligation period for the worker, dismiss the worker for any reason unless the employer has given to the worker in accordance with subsection (4) a notice of intention to dismiss the worker.
Penalty for this subsection: a fine of \$10 000.
- (4) A notice of intention to dismiss a worker must —
- (a) be given to the worker at least 28 days before the dismissal takes effect; and
 - (b) be in the approved form.

- (5) This section does not affect any other right or obligation of a worker or employer under this Act or any other written law.

Division 3 — Certificates of capacity

169. Issue of certificate of capacity

- (1) A certificate of capacity, in relation to a worker's injury, must —
- (a) be in the approved form; and
 - (b) specify the following —
 - (i) the nature of the injury;
 - (ii) whether the worker has an incapacity for work and the extent of the incapacity for work, if any;
 - (iii) if the worker is partially incapacitated for work — the nature of duties the worker is able to perform and the nature of restrictions on the worker's capacity for work;
 - (iv) how long it is estimated the incapacity for work, if any, will continue;
 - (v) any other matter prescribed by the regulations.
- (2) A certificate of capacity must be issued by —
- (a) the worker's treating medical practitioner; or
 - (b) another health professional permitted under the regulations to issue the certificate.
- (3) The regulations may —
- (a) permit a health professional to issue a certificate of capacity by reference to —
 - (i) the health professional or a class of health professionals; and

- (ii) the circumstances in which the health professional is permitted to issue a certificate of capacity;

and

- (b) specify circumstances in which a health professional is not permitted to issue a certificate of capacity.

170. Treating medical practitioner

- (1) An injured worker is entitled to attend a medical practitioner (a *treating medical practitioner*) of the worker's own choice to perform the functions set out in subsection (3).
- (2) An injured worker must not be required to choose or attend a medical practitioner chosen or nominated by the worker's employer or the employer's insurer to perform any of the functions set out in subsection (3).
- (3) The treating medical practitioner has the following functions —
 - (a) to diagnose the nature of the worker's injury;
 - (b) to provide primary medical treatment to the worker and to coordinate medical treatment in relation to the worker's injury;
 - (c) to issue certificates of capacity;
 - (d) to monitor, review and advise on the worker's condition and treatment;
 - (e) to advise on the suitability of, and to specify restrictions on, duties the worker may be expected to perform;
 - (f) to participate in the development of a return to work program for the worker and in return to work case conferences.

Note for this section:

Under section 180 an insurer or self-insurer may require a worker to undergo examination by a medical practitioner, arranged and paid for by the employer, for the purpose of the medical practitioner providing a report as to the worker's medical condition.

171. Employer, insurer and agent of insurer must not be present at examination or treatment

A worker's employer, the employer's insurer or an agent of the insurer must not be present while a worker is being physically or clinically examined, or treated, by the worker's treating medical practitioner.

Division 4 — Workplace rehabilitation providers

172. Approval of workplace rehabilitation providers

- (1) A workplace rehabilitation provider may apply to WorkCover WA for approval for the purposes of this Act.
- (2) An application for approval must be in the approved form.

173. Determination of application for approval

- (1) WorkCover WA must —
 - (a) consider an application for approval of a workplace rehabilitation provider; and
 - (b) grant approval or refuse to grant approval.
- (2) The regulations may specify criteria that must be satisfied for the grant of approval.
- (3) The onus is on the applicant to satisfy WorkCover WA as to any matter that is relevant to the approval of the workplace rehabilitation provider.

174. Conditions of approval

- (1) An approval granted under section 173(1)(b) is subject to the following conditions —
 - (a) a condition that the fees and charges of the approved workplace rehabilitation provider will not exceed the fees and charges fixed by an order under section 94 and will comply with the requirements of that order;

- (b) any conditions prescribed by the regulations;
 - (c) any conditions imposed by WorkCover WA when the approval is granted or at any time during the currency of the approval.
- (2) WorkCover WA may, by written notice given to an approved workplace rehabilitation provider —
 - (a) impose conditions, or further conditions, to which the approval is subject; or
 - (b) vary any conditions imposed on the approval by WorkCover WA.
- (3) The conditions may apply, adopt or incorporate any matter contained in a document issued or published by WorkCover WA or some other person with or without modification or addition and whether in force at a particular time or from time to time.

175. Duration of approval

- (1) An approval under section 173(1)(b) may be granted for a fixed period determined by WorkCover WA or be granted to remain in force indefinitely.
- (2) An approval granted for a fixed period continues in force until the expiration of that period unless the approval is cancelled sooner.
- (3) An approval granted to remain in force indefinitely continues in force indefinitely unless and until it is cancelled or converted to an approval granted for a fixed period.
- (4) WorkCover WA may, by direction in writing to an approved workplace rehabilitation provider, convert the provider's approval from an approval granted to remain in force indefinitely to an approval granted for a fixed period specified in the direction.

176. Suspension or cancellation of approval

- (1) WorkCover WA may suspend or cancel the approval of an approved workplace rehabilitation provider if of the opinion that the approved workplace rehabilitation provider —
 - (a) does not satisfy any of the criteria that must be satisfied for the grant of approval of a workplace rehabilitation provider; or
 - (b) has failed to comply with any provision of this Act or the regulations; or
 - (c) has failed to comply with any condition of the approval.
- (2) A suspension or cancellation is effected by written notice given to the approved workplace rehabilitation provider.
- (3) The approval of a workplace rehabilitation provider may also be cancelled by WorkCover WA at the request of the approved workplace rehabilitation provider.

177. Register of approved workplace rehabilitation providers

- (1) WorkCover WA must maintain a register of the names and contact details of approved workplace rehabilitation providers.
- (2) The register may include other relevant information about approved workplace rehabilitation providers that WorkCover WA considers desirable for assisting interested parties to access an approved workplace rehabilitation provider appropriate to their needs.
- (3) The register must be available for inspection on the WorkCover WA website.
- (4) WorkCover WA may provide access to information on the register by any other means it considers appropriate.

178. Performance monitoring and review of approved workplace rehabilitation providers

- (1) WorkCover WA may monitor and review the activities of approved workplace rehabilitation providers to determine whether those activities are being carried out effectively, economically and efficiently and in compliance with this Act, the regulations and the conditions of any relevant approval.
- (2) WorkCover WA may inspect the financial and other records of an approved workplace rehabilitation provider for the purposes of the performance of the functions of WorkCover WA under subsection (1).
- (3) A person must not obstruct or hinder a person performing a function of WorkCover WA under this section as a delegate of WorkCover WA.
Penalty for this subsection: a fine of \$10 000.
- (4) An approved workplace rehabilitation provider must provide all reasonable assistance to WorkCover WA or a delegate of WorkCover WA for the purpose of facilitating the performance of functions of WorkCover WA under this section.
- (5) WorkCover WA may publish reports and other information concerning a review under this section as it thinks fit.

Part 4 — Medical assessment

Division 1 — Preliminary

179. Term used: Permanent Impairment Guidelines

In this Part —

Permanent Impairment Guidelines means guidelines in force under section 187(1) as applying from time to time.

Division 2 — Medical examination of worker

180. Power to require medical examination of worker

- (1) An insurer or self-insurer may require a worker who has claimed compensation to undergo examination by a medical practitioner arranged and paid for by the employer for the purpose of the medical practitioner providing a written report as to the worker's medical condition.
- (2) An insurer or self-insurer who is provided with a report from a medical practitioner as to a worker's medical condition based on an examination that the worker was required to undergo under this section must give a copy of the report to the worker within 14 days after the report is provided.
- (3) A worker who is provided with a report from a medical practitioner as to the worker's medical condition based on an examination that the worker was required to undergo under this section must give a copy of the report to the insurer or self-insurer within 14 days after the report is provided.
- (4) The regulations may provide for or with respect to the following —
 - (a) the maximum number of times a worker may be required under this section to undergo examination by a medical practitioner and the maximum frequency of those examinations;

- (b) conditions that apply to the imposition of a requirement to undergo examination;
- (c) the conduct of the examination;
- (d) any other matter relating to the examination, including requirements as to —
 - (i) the communication and reporting of the results of the examination;
 - (ii) the maximum amount payable for the examination and report.

181. Worker contravening requirement for medical examination

- (1) If a worker contravenes a requirement for a medical examination, an arbitrator may by order (a *suspension order*) —
 - (a) suspend payments of compensation to the worker; and
 - (b) suspend the worker's entitlement to take and prosecute any proceedings under this Act.
- (2) A worker contravenes a requirement for a medical examination if the worker without reasonable excuse fails to comply with a requirement under section 180 to undergo examination by a medical practitioner or obstructs the examination in any way.
- (3) A suspension order has effect from the day on which the arbitrator makes the order until the earlier of the following —
 - (a) the day on which the order is revoked; or
 - (b) the day on which an order is made under subsection (5).
- (4) An arbitrator must revoke a suspension order if satisfied that the worker is no longer contravening the requirement for a medical examination.
- (5) If an arbitrator determines that the worker's contravention of the requirement for a medical examination has continued for 1 month, or a longer period the arbitrator determines should be

allowed, after the suspension order was made, the arbitrator must order that —

- (a) the worker's entitlement to compensation under this Act ceases; and
 - (b) the worker's entitlement to take and prosecute any proceedings under this Act ceases.
- (6) The worker bears the onus of satisfying an arbitrator that the worker had a reasonable excuse for contravening a requirement for a medical examination.
- (7) If payment of medical and health expenses compensation, miscellaneous expenses compensation or workplace rehabilitation expenses compensation is suspended by a suspension order, compensation in respect of expenses incurred during the period of the suspension is not payable unless the order provides otherwise.

Note for this subsection:

Section 67 provides for the effect of suspension of payment of income compensation.

Division 3 — Assessing degree of permanent impairment

182. Assessments to which Division applies

This Division applies to an assessment of a worker's degree of permanent impairment for the purposes of —

- (a) section 79; or
- (b) Part 2 Division 7 or 9; or
- (c) Part 7 Division 2.

Note for this section:

Under Part 7 Division 2 an assessment of degree of permanent whole of person impairment of at least 15% is required for the purposes of an election to retain the right to seek common law damages, which is a prerequisite to the commencement of proceedings to recover damages. A court hearing a claim for damages is not bound by an assessment of degree of permanent whole of person impairment — see section 421.

183. Method of assessment

- (1) A worker's degree of permanent impairment must be assessed in accordance with the requirements of the Permanent Impairment Guidelines for the evaluation of degree of permanent impairment.
- (2) The degree of permanent impairment must be assessed as a percentage.

184. Assessing degree of permanent impairment when multiple injuries arise from single event

- (1) In this section —
event —
 - (a) means anything that results, whether immediately or not and whether suddenly or not, in injury to a worker; and
 - (b) includes continuous or repeated exposure to conditions that results in injury to a worker.
- (2) If a worker suffers more than 1 injury arising from a single event, the worker's degree of permanent whole of person impairment must be assessed as the degree of permanent whole of person impairment resulting from all of the worker's injuries arising from the event.

185. Secondary conditions disregarded in certain cases

- (1) In this section —
secondary condition means a condition, whether psychological, psychiatric or sexual, that, although it may result from an injury, arises as a secondary, or less direct, consequence of the injury.
- (2) In assessing a worker's degree of permanent impairment, any secondary condition must be disregarded if the assessment is for the purposes of —
 - (a) section 79; or
 - (b) Part 7 Division 2.

- (3) This section does not prevent a secondary condition from contributing in the assessment of damages by a court.

186. Assessment by approved permanent impairment assessor or Dust Disease Medical Panel

- (1) The assessment of a worker's degree of permanent impairment must be made by an approved permanent impairment assessor except as provided by subsection (2).
- (2) The assessment of a worker's degree of permanent impairment resulting from a dust disease must be made by a Dust Disease Medical Panel.

187. Permanent Impairment Guidelines

- (1) WorkCover WA must issue guidelines (the *Permanent Impairment Guidelines*) that make provision for or with respect to the evaluation of a worker's degree of permanent impairment.
- (2) The Permanent Impairment Guidelines 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.
- (3) WorkCover WA is not required to use the title "Permanent Impairment Guidelines" for the guidelines and may issue the Permanent Impairment Guidelines under a different title.
- (4) The *Interpretation Act 1984* sections 41, 42, 43 and 44 apply to the Permanent Impairment Guidelines as if they were regulations.

188. Requirement for injury to have stabilised

- (1) An assessment of a worker's degree of permanent impairment may return a finding that the worker's condition has not stabilised to the extent required for an assessment of the worker's degree of permanent impairment to be made in accordance with the Permanent Impairment Guidelines.

- (2) The Permanent Impairment Guidelines may provide for circumstances in which an assessment of a worker's degree of permanent impairment must be made even though the worker's condition has not stabilised.

189. Asymptomatic pre-existing disease

For a case in which the assessment of a worker's degree of permanent impairment involves taking into account a recurrence, aggravation or acceleration of any pre-existing disease that was to any extent asymptomatic before the worker's injury occurred, the Permanent Impairment Guidelines must not provide for a deduction to reflect the pre-existing nature of that disease to the extent that it was asymptomatic before the worker's injury occurred.

190. Request for assessment of permanent impairment

- (1) A request for an assessment of a worker's degree of permanent impairment must be in the approved form.
- (2) The request must contain all information that the approved form indicates is required.
- (3) The regulations may make provision for or with respect to the circumstances in which, and the persons by whom, a request for assessment of a worker's degree of permanent impairment can or must be made.
- (4) The regulations may require a worker who requests an assessment of the worker's degree of permanent impairment to provide any information described in the regulations for use in dealing with the request.

191. Powers of approved permanent impairment assessors

- (1) An approved permanent impairment assessor (the *assessor*) conducting an assessment of a worker's degree of permanent impairment may —
 - (a) in accordance with the regulations, require the worker to attend at a place specified by the assessor; and
 - (b) in accordance with the regulations, require the worker to produce any relevant document or provide any relevant information to the assessor; and
 - (c) in accordance with the regulations, require the worker to consent to another person who has any relevant document or information producing the document or providing the information to the assessor; and
 - (d) require the worker to undergo specified medical tests and assessments and provide the assessor with results and reports from those tests and assessments; and
 - (e) require the worker to answer any question about the injury; and
 - (f) require the worker to submit to examination by, or as requested by, the assessor.
- (2) The assessor may, in accordance with the regulations, require the employer or the employer's insurer to —
 - (a) produce any relevant document or provide any relevant information to the assessor; and
 - (b) consent to another person who has any relevant document or information producing the document or providing the information to the assessor.
- (3) An employer or insurer who fails to comply with a requirement imposed by an assessor under this section commits an offence.
Penalty for this subsection: a fine of \$5 000.
- (4) If a worker fails to comply with a requirement imposed by an assessor under this section, the assessor may defer making the

assessment of the worker's degree of permanent impairment until the worker complies with the requirement.

- (5) Regulations may be made for or with respect to the period within which a requirement imposed by an assessor under this section must be complied with if the period for complying is not specified in the requirement.
- (6) WorkCover WA may disclose to the assessor any information that WorkCover WA has in relation to the worker that may be relevant to the assessment of the worker's degree of permanent impairment.
- (7) An assessment is not to be vitiated because of any informality or want of form.

192. Report on results of assessment

- (1) An approved permanent impairment assessor (the *assessor*) who makes an assessment of a worker's degree of permanent impairment must give the worker, the employer and the employer's insurer a report in the approved form on the results of the assessment.
- (2) The report must include —
 - (a) a certificate as to the worker's degree of permanent impairment as assessed; and
 - (b) a statement of the reasons that justify the assessment; and
 - (c) other information required by the approved form.
- (3) If there is an error apparent on the face of a report, the assessor must correct the error if required to do so by the Director.
- (4) If the assessment returns a finding that the worker's condition has not stabilised to the extent required for an assessment of the worker's degree of permanent impairment, the assessor must notify the worker, the employer and the insurer of that finding.

Division 4 — Permanent impairment assessors

193. Approval of permanent impairment assessors

- (1) WorkCover WA may approve a medical practitioner as a permanent impairment assessor for the purposes of this Act (an *approved permanent impairment assessor*).
- (2) An application for approval must be in the approved form.
- (3) WorkCover WA may issue, and amend or revoke, criteria that must be satisfied for the approval of a medical practitioner as a permanent impairment assessor.
- (4) WorkCover WA must make the criteria applying for the time being publicly available on the WorkCover WA website and in any other manner it considers appropriate.
- (5) The criteria may apply, adopt or incorporate any matter contained in a document issued or published by WorkCover WA or some other person with or without modification or addition and whether in force at a particular time or from time to time.
- (6) WorkCover WA must —
 - (a) consider an application for approval as a permanent impairment assessor; and
 - (b) grant approval or refuse to grant approval.
- (7) The onus is on the applicant to satisfy WorkCover WA as to any matter that is relevant to the approval of a permanent impairment assessor.

194. Conditions of approval

- (1) An approval of a permanent impairment assessor is subject to the following conditions —

- (a) a condition that the fees and charges of the approved permanent impairment assessor will not exceed the fees and charges fixed by an order under section 195;
 - (b) a condition that the approved permanent impairment assessor will comply with the requirements of the Permanent Impairment Guidelines;
 - (c) any conditions prescribed by the regulations;
 - (d) any conditions imposed by WorkCover WA when the approval is granted or at any time during the currency of the approval.
- (2) WorkCover WA may, by written notice given to an approved permanent impairment assessor —
 - (a) impose conditions, or further conditions, to which the approval is subject; or
 - (b) vary any conditions imposed on the approval by WorkCover WA.

195. Minister may fix scale of fees and charges for permanent impairment assessment

- (1) The Minister, on the recommendation of WorkCover WA, may make an order fixing scales of fees and charges for services provided by approved permanent impairment assessors.
- (2) An order under this section 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.
- (3) An order under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Note for this subsection:

Under the *Interpretation Act 1984* section 43(4), a power to make subsidiary legislation includes a power to amend or repeal the subsidiary legislation.

196. Duration of approval

- (1) An approval of a permanent impairment assessor may be granted for a fixed period determined by WorkCover WA or be granted to remain in force indefinitely.
- (2) An approval granted for a fixed period continues in force until the expiration of that period unless the approval is cancelled sooner.
- (3) An approval granted to remain in force indefinitely continues in force indefinitely unless and until it is cancelled or converted to an approval granted for a fixed period.
- (4) WorkCover WA may, by direction in writing to an approved permanent impairment assessor, convert the approval from an approval granted to remain in force indefinitely to an approval granted for a fixed period specified in the direction.

197. Suspension or cancellation of approval

- (1) WorkCover WA may suspend or cancel the approval of a permanent impairment assessor if of the opinion that the approved permanent impairment assessor —
 - (a) does not satisfy any of the criteria that must be satisfied for the grant of approval of a permanent impairment assessor; or
 - (b) has failed to comply with any provision of this Act or any regulations made under this Act; or
 - (c) has failed to comply with any condition of the approval.
- (2) A suspension or cancellation is effected by written notice given to the approved permanent impairment assessor.
- (3) The approval of a permanent impairment assessor may also be cancelled by WorkCover WA at the request of the approved permanent impairment assessor.

198. Compliance audits and investigations

- (1) WorkCover WA may conduct audits and investigations (*compliance audits and investigations*) for the purpose of ensuring compliance by approved permanent impairment assessors with this Act, the regulations, the conditions of their approval and the Permanent Impairment Guidelines.
- (2) An approved permanent impairment assessor must, on request by WorkCover WA, provide information or produce documents to WorkCover WA for the purposes of a compliance audit or investigation.
- (3) The information or documents that WorkCover WA may request includes information or documents concerning the assessment of a worker's degree of permanent impairment.
- (4) For the purposes of this section an approved permanent impairment assessor is authorised to provide WorkCover WA with information or documents concerning the assessment of a worker's degree of permanent impairment without the consent of the worker.

199. Register of approved permanent impairment assessors

- (1) WorkCover WA must maintain a register of the names and contact details of approved permanent impairment assessors.
- (2) The register may include other relevant information about approved permanent impairment assessors WorkCover WA considers desirable for assisting interested parties to access an approved permanent impairment assessor who is appropriate to their needs.
- (3) The register must be available for inspection on the WorkCover WA website.
- (4) WorkCover WA may provide access to information on the register by other means it considers appropriate.

Part 5 — Insurance

Division 1 — General

200. Terms used

In this Part —

damages —

(a) means —

- (i) damages due or payable to, or claimed by, a worker for an injury caused to that worker by the tort of the worker's employer or the tort of any person for whose conduct the worker's employer is vicariously liable; or
- (ii) damages due or payable to, or claimed by, a dependant of a deceased worker under the *Fatal Accidents Act 1959* for an injury causing the death of the worker; or
- (iii) damages due or payable to, or claimed on behalf of, the estate of a deceased worker under the *Law Reform (Miscellaneous Provisions) Act 1941* for an injury causing the death of the worker; or
- (iv) the amount of any contribution or indemnity due or payable to, or claimed by, a concurrent tortfeasor under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* in respect of an injury to, or the death of, a worker;

but

- (b) does not include damages in respect of a liability imposed by contract that would not arise as a coordinate liability in tort;

deemed worker, in relation to an employer, means —

- (a) a worker of whom the employer would not be the employer but for being taken to be the employer by section 215; or
- (b) a person to whom the employer would be liable to pay compensation under Division 2 Subdivision 3 as a person who does work for the employer under an avoidance arrangement as provided by that Subdivision; or
- (c) if the employer is Racing and Wagering Western Australia — a person of whom Racing and Wagering Western Australia would not be the employer but for section 15;

group self-insurer licence means a self-insurer licence granted on terms that extend the licence to 1 or more specified related entities of the holder of the licence, as provided for by section 246(2);

industry classification means an industry classification in accordance with an industry classification order under section 253;

insurable damages means damages in respect of which an employer is required by section 202 to insure;

insurer licence means a licence under Division 3 Subdivision 1;

licensed insurer means the holder of an insurer licence;

remuneration means any payment in money or money's worth paid to or for the benefit of a worker that is prescribed by the regulations as remuneration for the purposes of this Part;

self-insurer means —

- (a) the holder of a self-insurer licence; and
- (b) a related entity, as defined in section 246(1), to which a group self-insurer licence extends;

self-insurer liability, of an employer, means a liability of the employer in respect of an injury to or the death of a worker that is a liability in respect of employment when the employer was a self-insurer and that is a liability in respect of which the employer would have been required to hold a workers compensation policy had the employer not been a self-insurer;

self-insurer licence means a licence under Division 4 Subdivision 1;

specialised insurer means a licensed insurer whose insurer licence is subject to a specialised insurer condition under section 234(1);

tort means negligence or other tort (including breach of statutory duty).

201. Agency arrangements

- (1) WorkCover WA may enter into an arrangement (an ***agency arrangement***) by contract or otherwise for the appointment of a person to act as agent for WorkCover WA in connection with the performance of any functions of WorkCover WA under this Part.
- (2) An agent is, in the performance of functions under an agency arrangement, subject to the direction and control of WorkCover WA as provided by the terms of the agency arrangement.
- (3) For the purposes of section 534, the exercise or purported exercise of a function of WorkCover WA under this Part by a person as agent of WorkCover WA under an agency arrangement is taken to be the exercise or purported exercise by the person of a function under this Part if done within the scope of the agent's actual authority to act.

Division 2 — Employer obligations

Subdivision 1 — Insurance requirements for employers

202. Requirement for employers to be insured

- (1) In this Act —

workers compensation policy means an insurance policy that insures an employer for the full amount of the following liabilities of the employer that arise in respect of employment during the period of insurance —

- (a) any liability of the employer that arises under this Act to pay compensation or make any other payment in respect of an injury to or the death of a worker;
 - (b) any liability of the employer to pay damages in respect of an injury to or the death of a worker if the employer is liable to pay compensation under this Act in respect of the injury or death, other than an injury to or the death of a deemed worker of the employer.
- (2) An employer must at all times have a current workers compensation policy issued by a licensed insurer.
- (3) Subsection (2) does not apply to an employer while the employer is a self-insurer.
- (4) The requirements of this section are subject to —
- (a) regulations under section 237(1); and
 - (b) section 289.

203. Information to be provided by employer to insurer

- (1) In this section —

relevant industry classification means an industry classification on the basis of which the premium payable by an employer for the issue or renewal of a workers compensation policy is calculated.

- (2) An employer applying for the issue or renewal of a workers compensation policy must provide to the licensed insurer an estimate, made to the best of the employer's knowledge, information and belief, of the aggregate amount of remuneration to be paid or payable by the employer to workers in each relevant industry classification over the proposed period of insurance.
- (3) As soon as practicable after the end or termination of the period of insurance, the employer must provide to the licensed insurer a statement of the aggregate amount of remuneration actually paid or payable by the employer to workers in each relevant industry classification over the period.
- (4) An employer applying for the issue or renewal of a workers compensation policy must provide to the licensed insurer any other information required by the regulations.
- (5) When a company applies to a licensed insurer to issue or renew a workers compensation policy on the basis that a director of the company is a worker, the company must include —
 - (a) in the estimate under subsection (2) — the name of the director and an estimate of the aggregate amount of remuneration to be paid or payable to the director over the proposed period of insurance; and
 - (b) in the statement under subsection (3) — a statement of the aggregate amount of remuneration actually paid or payable to the director over the period of insurance together with supporting particulars to verify that amount.
- (6) An estimate under subsection (2) and a statement under subsection (3) must be provided in the approved form.

204. Offences

- (1) An employer who fails to comply with a requirement of section 202 or 203 commits an offence.

Penalty for this subsection: a fine of \$10 000 in respect of each of the employer's workers to whom the offence relates.

- (2) An employer who is convicted of an offence for a failure to comply with a requirement of section 202 or 203 commits a separate and further offence in respect of each week after the day of the conviction during which the failure continues.

Penalty for this subsection: a fine of \$10 000 in respect of each of the employer's workers to whom the offence relates.

- (3) An employer who in purported compliance with a requirement under section 203 provides information or a statement that the employer knows to be false or misleading in a material particular commits an offence.

Penalty for this subsection: a fine of \$10 000 in respect of each of the employer's workers to whom the offence relates.

205. Evidence of non-compliance with insurance requirements

In any prosecution for an offence of failing to comply with a requirement of section 202 (an *insurance requirement*), proof that the employer failed to comply with an inspector's request to produce a workers compensation policy issued to the employer and in force at a specified date or between specified dates is, in the absence of evidence proving the contrary, sufficient evidence that the employer failed to comply with the insurance requirement at the specified date or between those specified dates.

206. Defence: employment not connected with this State

- (1) It is a defence to a prosecution for an offence of failing to comply with a requirement of section 202 or 203 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 worker's employment was not connected with this State.

Note for this subsection:

Section 529 provides for the State with which a worker's employment is connected.

- (2) If the employer's belief on reasonable grounds was that the worker's employment was connected with another State, the defence under subsection (1) 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.
- (3) An employer is considered to have workers compensation cover under the law of a State if the employer has insurance or registration under the law of the State in respect of liability for statutory workers compensation under that law.

207. Recovery of premiums avoided by employer

- (1) The court convicting an employer of an offence under section 204 must order (a *premium reimbursement 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 reason of the act or omission constituting the offence.
- (2) In making a premium reimbursement order, an amount that has already been taken into account in making a previous premium reimbursement order must not be taken into account.
- (3) A certificate executed by WorkCover WA and certifying that an amount specified in the certificate is the amount of any insurance premiums that an employer has avoided during a specified period by reason of an act or omission constituting an offence under section 204 is (without proof of its execution by WorkCover WA) admissible in any proceedings and is evidence of the matters specified in the certificate.

- (4) In the absence of information that would enable WorkCover WA to accurately determine the premium that would have been payable for the issue of a particular workers compensation policy, the following provisions have effect —
- (a) WorkCover WA is entitled to make an estimate of that premium (based on the information available to WorkCover WA);
 - (b) that estimate is presumed to be accurate as to the premium that would have been payable and cannot be challenged on the basis that insufficient information was available to enable the making of an accurate assessment, but can be challenged by the provision of information that enables a more accurate estimate to be made;
 - (c) if WorkCover WA's estimate is successfully challenged and as a result a more accurate estimate is substituted — the proceedings are not open to challenge merely because of the inaccurate estimate and may continue to be heard and be determined on the basis of the substituted assessment.
- (5) A premium reimbursement order is in addition to any fine imposed in respect of the offence.

208. Liability of responsible officers of corporations

- (1) In this section —
premium reimbursement order has the meaning given in section 207(1);
responsible officer, in relation to the commission of an offence by a body corporate, means a person who is convicted of that offence in accordance with subsection (2).
- (2) The *Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under section 204 of this Act.

- (3) If a premium reimbursement order is made requiring a body corporate convicted of an offence under section 204 to pay an amount to the General Account and all or any of the amount required to be paid remains unpaid, a responsible officer for the offence is liable for payment of the unpaid amount.
- (4) If there are 2 or more responsible officers, they are jointly and severally liable for payment of the unpaid amount.
- (5) WorkCover WA may sue for and recover from a responsible officer any unpaid amount for which the responsible officer is liable.
- (6) The amount required to be paid under a premium reimbursement order is reduced by any amount recovered from a responsible officer.

209. Records to be kept by employer

- (1) An employer must keep records of the following in respect of each period of insurance during which the employer is insured under a workers compensation policy —
 - (a) the number of workers insured under the policy;
 - (b) the industry classification on the basis of which the premium payable by the employer for the issue or renewal of the workers compensation policy was determined;
 - (c) the total remuneration paid during the period of insurance to workers insured under the policy;
 - (d) any other matter relating to information required to be provided by the employer to the insurer (or otherwise relevant to the calculation of premiums payable under workers compensation policies) that is required by the regulations to be recorded under this section.
- (2) An employer must retain a record kept under this section for not less than 7 years after the record was made.

- (3) A record required to be kept under this section must be kept in the manner, if any, required by the regulations.
- (4) A record kept for the purposes of this section may be combined with any record of remuneration required to be kept by an employer under any other Act but must not be combined in a manner that would prevent its disclosure under this Act.
- (5) WorkCover WA may require an employer to do any 1 or more of the following —
 - (a) supply to WorkCover WA within a specified period a full and correct statement of the information of which the employer is required to keep a record under this section;
 - (b) make available at a specified time and place for inspection by a specified person authorised by WorkCover WA the records required to be kept by the employer under this section relating to a specified period;
 - (c) make available at a specified time and place for inspection by a specified person authorised by WorkCover WA records of a specified kind in the possession of the employer that are relevant to —
 - (i) information provided by the employer to an insurer in connection with an application for the issue or renewal of a workers compensation policy; or
 - (ii) the calculation of premiums payable under a workers compensation policy; or
 - (iii) the determination of whether the employer or another employer is required to obtain a workers compensation policy or has paid the correct premium for a workers compensation policy.

- (6) WorkCover WA may provide information obtained by WorkCover WA from an employer under this section to any insurer for the purpose of assisting the insurer to determine whether the correct premium has been paid for a workers compensation policy issued by the insurer.
- (7) An employer who fails to comply with a requirement imposed under this section commits an offence.
Penalty for this subsection: a fine of \$5 000.

210. Insurer may recover underpaid premiums from employer

- (1) In this section —
premium information means information relevant to the calculation of the premium payable by an employer for a workers compensation policy.
- (2) If an employer has knowingly or unknowingly provided false or misleading premium information to the employer's insurer and as a result has been charged a lesser premium than would otherwise have been payable, the insurer may sue for and recover from the employer as a debt the full amount of the premium that could have been charged less any amount already paid as the premium.
- (3) If WorkCover WA is satisfied (whether as a result of an inspection or audit or otherwise) that an employer has knowingly or unknowingly provided false or misleading premium information to the employer's insurer, WorkCover WA may provide premium information about the employer to the insurer.
- (4) This section is not limited to premium information provided to an insurer pursuant to a requirement under this Act or the regulations and extends to premium information provided in or in connection with an application for the issue or renewal of a workers compensation policy.

211. Recovery of costs of audit of employer

- (1) In this section —

employer audit means an audit of an employer's records carried out by a licensed insurer under a provision of a workers compensation policy.

- (2) The reasonable costs incurred by a licensed insurer in connection with an employer audit by the insurer can be recovered by the insurer from the employer as a debt if the employer audit discloses —

- (a) a serious misstatement of premium information by the employer; or
- (b) the existence of any other circumstances prescribed by the regulations.

- (3) For the purposes of subsection (2)(a), an employer audit discloses a serious misstatement of premium information by an employer if the audit discloses that the employer has knowingly or unknowingly provided false or misleading information that is relevant to the calculation of the premium payable by the employer for a workers compensation policy and as a result has been charged a premium that is at least 25% less than the premium that would otherwise have been payable.

212. Certificate of currency

An employer who has obtained a workers compensation policy from a licensed insurer must ensure that a valid certificate of currency issued by the insurer in respect of the policy is available for inspection by WorkCover WA.

Penalty: a fine of \$5 000.

213. Workers compensation insurance brokers

- (1) In this section —

workers compensation insurance broker means a person who engages in a business that includes acting as agent for an

employer in connection with insurance required by this Act (*workers compensation insurance*).

- (2) The regulations may provide for or with respect to the following —
- (a) a scheme for the registration of workers compensation insurance brokers;
 - (b) regulating the conduct of the business activities of workers compensation insurance brokers in connection with workers compensation insurance;
 - (c) prescribing scales of the maximum amount of commission or brokerage that may be charged or recovered by a workers compensation insurance broker in connection with workers compensation insurance.
- (3) A scheme for the registration of workers compensation insurance brokers may include provision for the following —
- (a) eligibility for registration;
 - (b) the circumstances in which registration may be refused, suspended or cancelled;
 - (c) conditions on registration (including the result of or sanctions for the contravention of a condition of registration);
 - (d) prohibiting a person from engaging in the business of a workers compensation insurance broker unless the person is registered under the regulations.

Subdivision 2 — Contractors and subcontractors

214. Terms used

In this Subdivision —

contractor means a person who contracts for the execution of any work by or under the person;

principal means a person who contracts with a contractor for the execution of any work by or under the contractor.

215. Both principal and contractor taken to be employers

- (1) If a worker suffers an injury from employment with a contractor that is relevant employment as provided by subsection (2) —
 - (a) both the principal and the contractor are, for the purposes of this Act, taken to be employers of the worker; and
 - (b) both the principal and the contractor are jointly and severally liable to pay any compensation that the contractor would be liable to pay under this Act if the contractor were the sole employer.
- (2) Employment with a contractor from which a worker suffers an injury is relevant employment if —
 - (a) the employment is in performance of any work by or under the contractor; and
 - (b) the work on which the worker is employed is directly a part of or process in the trade or business of the principal; and
 - (c) the injury arises in respect of premises on which the principal has undertaken to do the work or that are otherwise under the control or management of the principal.
- (3) The principal is jointly and severally liable under this section in respect of compensation payable to a worker irrespective of whether any award of compensation is made against both the principal and the contractor or only against the contractor.
- (4) The right of recovery of WorkCover WA under Division 7 against an employer who is uninsured in respect of a liability to a worker extends to recovery against a principal who is uninsured in respect of the joint and several liability of the principal to the worker under this section.

- (5) The principal must be joined as a party to proceedings before an arbitrator in respect of compensation for which the principal is jointly and severally liable under this section.

216. Claim or proceedings against principal

- (1) In the application of this Act for the purposes of a claim or proceedings for compensation against the principal, a reference to the employer must be read as a reference to the principal except as provided by subsection (2).
- (2) For the purpose of calculating the amount of income compensation payments, a reference to the earnings of the worker in the employment concerned must be read as a reference to the earnings of the worker under the contractor.

217. Indemnity

- (1) The principal is entitled to indemnity from the contractor for the principal's liability under this Subdivision.
- (2) The right of indemnity under this section does not allow —
- (a) recovery by the principal from the worker of any amount that the worker receives from the contractor by way of compensation or damages in respect of an injury; or
 - (b) recovery by the principal from the worker of any amount that the worker receives from WorkCover WA under section 266 in respect of the contractor's liability to pay compensation or damages to the worker; or
 - (c) recovery by the principal of any amount from WorkCover WA.

218. Effect of judgment against principal or contractor

If the principal and the contractor are jointly and severally liable under this Subdivision, a judgment obtained against one is not a

bar to proceedings against the other except to the extent that the judgment has been satisfied.

219. Application of Subdivision to subcontractors

This Subdivision extends to subcontracts made for the execution of work, and for that purpose —

- (a) a reference to the principal is a reference to the original principal for whom the work is being done and each contractor who constitutes themselves a principal with respect to a subcontractor by contracting with the subcontractor for the execution by the subcontractor of the whole or any part of the work; and
- (b) a reference to the contractor is a reference to the original contractor and each subcontractor; and
- (c) a principal's right to indemnity is a right against each contractor standing between the principal and the worker.

220. Subdivision does not extend right to damages

Nothing in this Subdivision makes either a principal or a contractor liable to pay any damages that, but for this Subdivision, the principal or contractor would not be liable to pay.

221. Contractor remuneration information

- (1) In this section —

contract worker, of a principal, means a worker who by operation of this Subdivision is taken to be employed by the principal while employed by a contractor to the principal;

relevant period means the period during which a worker is engaged in work in respect of which the worker is a contract worker of the principal.

- (2) A principal is not required to comply with a requirement under section 203 in respect of remuneration of a contract worker of the principal if the principal shows when applying for the issue or renewal of a workers compensation policy that the contractor who employs the worker holds a workers compensation policy that extends to indemnifying the principal in respect of any liability that arises under this Subdivision in respect of the worker during the relevant period.
- (3) Section 209 extends to a principal who is indemnified under a workers compensation policy held by a contractor as if the principal were the employer insured under the policy except that the matters in respect of which the principal is required to keep a record under that section are limited to the following —
 - (a) details of the workers compensation policy under which the principal is indemnified as provided by subsection (2);
 - (b) any other matter prescribed by the regulations.

Subdivision 3 — Avoidance arrangements

222. What constitutes an avoidance arrangement

- (1) For the purposes of this Subdivision, a person (the **worker**) does work for another person (the **employer**) under an avoidance arrangement if —
 - (a) the work is done under an arrangement (whether or not the arrangement is with the employer) that is contrived to enable the employer to have the benefit of the worker's services without having liabilities and duties as the worker's employer under this Act; and
 - (b) while the arrangement is in effect the worker does work principally for the employer on behalf of a company of which the worker is an employee or director (the **company**); and

- (c) the work that the worker does for the employer is directly a part of or process in the trade or business of the employer.
- (2) It is sufficient evidence, in the absence of evidence proving the contrary, that an arrangement is contrived to enable the employer to have the benefit of the worker's services without having liabilities and duties as the worker's employer under this Act if it is established that —
 - (a) before doing work under the arrangement, the worker was the employer's worker and provided substantially similar services; or
 - (b) the employer intimated, before the arrangement was entered into, that the employer was unwilling to enter into an arrangement for the provision of substantially similar services that would have resulted in the worker being the employer's worker.

223. Offence if work done under avoidance arrangement

If a person does work for another person under an avoidance arrangement, the person for whom the work is done commits an offence.

Penalty: a fine of \$15 000.

224. Arbitrator's determination about avoidance arrangement

- (1) 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, doing work for another person under an avoidance arrangement.
- (2) In making a determination for the purposes of this section an arbitrator must not have regard to whether or not proceedings for an offence under section 223 have been instituted against the person for whom the work was done or to the outcome of those proceedings, if any.

225. Effect of avoidance arrangement on compensation and insurance

- (1) If a worker suffers an injury and the worker and the employer agree or an arbitrator determines that when the injury occurred the worker was doing work for the employer under an avoidance arrangement —
 - (a) the employer is liable to pay any compensation that the employer would have been liable to pay in respect of the injury if the worker had been the employer's worker when the work was done; and
 - (b) any workers compensation policy that the employer has in respect of the period when the work was done extends to the employer's liability under paragraph (a) to pay compensation and the insurer under the policy is entitled to indemnity from the employer for the cost of satisfying the insurer's liability under this paragraph; and
 - (c) the company is relieved of its duties and liabilities, if any, under this Act in respect of the payment of compensation to the worker, and in respect of its duties, if any, under Part 3 Division 2 in respect of the worker; and
 - (d) Subdivision 2 does not apply so as to entitle the employer to an indemnity from the company or the worker.
- (2) If the employer is liable under this section to pay compensation, this Act applies for purposes related to the compensation and duties under Part 3 Division 2 and matters related to the compensation and those duties as if —
 - (a) the employer were the actual employer of the worker; and
 - (b) for the purpose of calculating the amount of compensation, a reference to the earnings of the worker were a reference to the earnings of the company to the

extent that those earnings were for work done for the employer by the worker on behalf of the company.

- (3) The employer or any person on behalf of the employer, or an insurer of the employer or any person on the insurer's behalf, must not, directly or indirectly, take or receive any money or indemnity from the company or the worker in respect of any liability of the employer or the company to pay compensation in respect of the worker under this Act.

Penalty for this subsection: a fine of \$15 000.

- (4) An indemnity taken or received in contravention of this section is void.
- (5) If money is taken or received in contravention of subsection (3), whether with the consent of the company or the worker or not, the company or the worker, as the case requires, may sue and recover the amount of that money from the person who took or received it.

Division 3 — Licensed insurers

Subdivision 1 — Licensing of insurers

226. Offence: unlicensed insurers

A person must not issue or renew an insurance policy that is or that purports to be a workers compensation policy unless the person is a licensed insurer.

Penalty: a fine of \$15 000.

227. Application for licence

- (1) A body corporate authorised under the *Insurance Act 1973* (Commonwealth) section 12 to carry on insurance business in Australia may apply to WorkCover WA for the grant of an insurer licence.

- (2) An application must be —
 - (a) in the approved form; and
 - (b) accompanied by the documents determined by the CEO.

228. Determination of licence application

- (1) WorkCover WA must —
 - (a) consider an application for an insurer licence; and
 - (b) grant an insurer licence to the applicant or refuse the application.
- (2) The regulations may specify criteria that must be satisfied for the grant of an insurer licence.
- (3) The onus is on the applicant to satisfy WorkCover WA as to any matter that is relevant to the grant of an insurer licence.
- (4) WorkCover WA may issue guidelines relating to matters taken into consideration in determining an application for an insurer licence.

229. Conditions of licence

- (1) An insurer licence is subject to —
 - (a) any conditions prescribed by this Act or the regulations; and
 - (b) any conditions (not inconsistent with this Act or the regulations) imposed by WorkCover WA when the licence is granted or at any time during the currency of the licence.
- (2) WorkCover WA may, by notice served on a licensed insurer, impose conditions, or further conditions, on the licence or vary any conditions imposed on the licence by WorkCover WA.
- (3) A licensed insurer must comply with any condition to which the insurer licence is subject.

Penalty for this subsection: a fine of \$10 000.

- (4) A contravention by a licensed insurer of any condition to which the insurer licence is subject does not affect any liability of the insurer under a workers compensation policy issued by the insurer.

230. Duration of licence

- (1) An insurer licence may be granted for a fixed period determined by WorkCover WA or be granted to remain in force indefinitely.
- (2) An insurer licence granted for a fixed period continues in force until the expiration of that period unless the licence is cancelled sooner.
- (3) An insurer licence granted to remain in force indefinitely continues in force indefinitely unless and until it is cancelled or converted to a licence for a fixed period.
- (4) WorkCover WA may, by direction in writing to a licensed insurer, convert the insurer's licence from a licence granted to remain in force indefinitely to a licence granted for a fixed period specified in the direction.

231. Suspension, cancellation or surrender of licence

- (1) WorkCover WA may, by notice served on the licensed insurer, suspend or cancel an insurer licence if of the opinion that the insurer —
 - (a) does not satisfy any of the criteria that must be satisfied for the grant of a licence; or
 - (b) has failed to comply with any provision of this Act or the regulations; or
 - (c) has failed to comply with any condition of the licence.
- (2) A licensed insurer may request that WorkCover WA cancel an insurer licence and WorkCover WA may cancel the licence but only if satisfied that all accrued, continuing, future and

contingent insurer liabilities of the insurer have been discharged or adequately provided for.

- (3) For the purposes of subsection (2) —
insurer liabilities, of an insurer, means liabilities of the insurer under workers compensation policies issued by the insurer.
- (4) The cancellation or suspension of an insurer licence does not affect any liability of the insurer under a workers compensation policy issued by the insurer.
- (5) While an insurer licence is suspended, the insurer cannot issue or renew a workers compensation policy but otherwise has the functions of a licensed insurer.

232. Performance monitoring and review of insurers

- (1) WorkCover WA may monitor and review the workers compensation functions of licensed insurers to determine whether those functions are being carried out effectively, economically and efficiently and in compliance with this Act, the regulations and any conditions of the insurer's licence.
- (2) WorkCover WA may inspect the financial and other records of a licensed insurer for the purposes of the performance of the functions of WorkCover WA under subsection (1).
- (3) A person must not obstruct or hinder a person performing a function of WorkCover WA under this section as a delegate of WorkCover WA.
Penalty for this subsection: a fine of \$10 000.
- (4) A licensed insurer must provide all reasonable assistance to WorkCover WA or a delegate of WorkCover WA for the purpose of facilitating the performance of functions of WorkCover WA under this section.
- (5) WorkCover WA may publish reports and other information concerning a review under this section as it thinks fit.

233. Improvement notice to licensed insurer

If WorkCover WA is satisfied that a licensed insurer has contravened a provision of this Act or the regulations or a condition of its insurer licence, WorkCover WA may (as an alternative to or in addition to any other action that it may take in respect of the contravention) issue an improvement notice to the licensed insurer.

234. Specialised insurers

- (1) WorkCover WA may grant an insurer licence subject to a condition (a *specialised insurer condition*) that limits the insurance business carried on pursuant to the licence to a particular industry or class of business or employer.
- (2) An insurer licence cannot be granted subject to a specialised insurer condition unless WorkCover WA is satisfied —
 - (a) that the insurance business to be carried on pursuant to the licence will be limited to a particular industry or class of business or employer; and
 - (b) that the insurance business to be carried on pursuant to the licence will not have an adverse effect on the efficiency of the workers compensation scheme under this Act generally; and
 - (c) as to any other matters WorkCover WA considers relevant.
- (3) An application for an insurer licence may be made conditional on the licence being granted subject to a specialised insurer condition.
- (4) WorkCover WA may, at any time by notice in writing to a licensed insurer, vary the terms of or cancel a specialised insurer condition to which the licence is subject.

- (5) The cancellation of a specialised insurer condition is grounds for the suspension or cancellation of the relevant insurer licence under this Subdivision.

235. Special arrangements for Insurance Commission and public authorities

- (1) In this section —
public authority has the meaning given in the *Insurance Commission of Western Australia Act 1986* section 3.
- (2) The Insurance Commission is taken to be an insurer that holds an insurer licence and that licence is taken to be subject to a specialised insurer condition that limits the Insurance Commission to the insurance of public authorities under the *Insurance Commission of Western Australia Act 1986*.
- (3) The following provisions apply in respect of a public authority on behalf of which the Insurance Commission manages and administers insurance arrangements in respect of liability to pay compensation or damages in respect of an injury to a worker —
- (a) the public authority is taken to hold a workers compensation policy issued by the Insurance Commission and accordingly is taken to comply with section 202 (which requires an employer to have a current workers compensation policy at all times);
 - (b) the public authority must pay to the Insurance Commission the amounts the Insurance Commission determines and notifies to the public authority from time to time as the premium for a workers compensation policy taken to have been issued to the public authority by the Insurance Commission;
 - (c) the public authority must provide to the Insurance Commission information the Insurance Commission may request from time to time for the purpose of determining the premium for a workers compensation

policy taken to have been issued to the public authority by the Insurance Commission;

- (d) Division 5 does not apply to a premium payable in respect of a workers compensation policy taken to have been issued by the Insurance Commission under this section;
 - (e) section 203 does not require the provision of information by the public authority to the Insurance Commission.
- (4) A public authority that is taken to hold a workers compensation policy issued by the Insurance Commission cannot make a request of the Insurance Commission referred to in section 162(2) or (3).
- (5) The Insurance Commission is not a licensed insurer required to contribute to the General Account or the DI Fund.
- (6) The functions of the Insurance Commission as a licensed insurer in respect of workers compensation policies taken to have been issued under this section (including, without limitation, the function of discharging the liabilities of a public authority under a policy of that kind) are taken to be functions of the Insurance Commission under the *Insurance Commission of Western Australia Act 1986* section 6(c).

Subdivision 2 — Insurance obligations of licensed insurers

236. Obligation of licensed insurers to insure employers

- (1) A licensed insurer must not refuse to —
- (a) issue a workers compensation policy to any employer; or
 - (b) renew a workers compensation policy issued to an employer; or
 - (c) provide a quote of the premium to be demanded for the issue or renewal of a workers compensation policy.

Penalty for this subsection: a fine of \$10 000.

- (2) A licensed insurer is not required to comply with this section in a case where the employer has failed to comply with a request by the insurer to provide information that the insurer reasonably requires for the purposes of the issue or renewal of a workers compensation policy or the provision of a quote of premium.
- (3) The regulations may specify the information that an insurer reasonably requires for the purposes of the issue or renewal of a workers compensation policy or the provision of a quote of premium.
- (4) In the application of this section to a specialised insurer, a reference to an employer is a reference to an employer in the particular industry or class of business or employer to which the insurance business of the specialised insurer is limited.

237. Terms of insurance and form of policies

- (1) The regulations may do any of the following —
 - (a) prescribe any or all of the terms and conditions of a workers compensation policy;
 - (b) limit, modify or exclude any term or condition of a workers compensation policy;
 - (c) prescribe the form of a workers compensation policy;
 - (d) prescribe 1 or more standard forms of a workers compensation policy and the circumstances in which a standard form must be used;
 - (e) limit, modify or exclude any requirement in section 202 to have a workers compensation policy in respect of liabilities arising in specified circumstances or out of specified events;
 - (f) limit the amount for which an employer is required to be insured under a workers compensation policy;
 - (g) otherwise limit, modify or exclude the requirement in section 202 that an employer must at all times have a

current workers compensation policy issued by a licensed insurer.

- (2) If a licensed insurer issues a workers compensation policy that includes a term or condition that is inconsistent with a requirement of this Act or the regulations —
- (a) the term or condition is of no effect to the extent of the inconsistency; and
 - (b) the licensed insurer commits an offence.

Penalty for this subsection: a fine of \$10 000.

238. Adjustable premium policies

- (1) In this section —
- adjustable premium policy*** means a workers compensation policy that provides for the adjustment of the premium for the policy during the period of insurance under the policy (with adjustments determined on the basis of the claims experience of the employer during the period of insurance).
- (2) A licensed insurer must not issue an adjustable premium policy to an employer unless —
- (a) the employer agrees to the issue of an adjustable premium policy; and
 - (b) the policy complies with any requirements prescribed by the regulations.
- (3) The regulations may make provision for or with respect to —
- (a) requiring licensed insurers to provide reports to WorkCover WA in respect of the issue of adjustable premium policies; and
 - (b) modifying the operation of section 203 in respect of adjustable premium policies.

Note for this subsection:

The regulation-making power in section 237(1) also applies to adjustable premium policies.

- (4) Section 255 does not apply in respect of a premium payable under an adjustable premium policy.

239. Insurer to indemnify employer for compensation payments

The insurer of an insured employer must indemnify the employer for payments of compensation by the employer if the insurer has accepted (or is taken to have accepted) or an arbitrator has determined that the employer is liable to make the payments of compensation.

Penalty: a fine of \$10 000.

240. Coverage of insurance policy not limited by employer representations

The indemnity provided by a workers compensation policy issued by a licensed insurer extends to apply in respect of all workers employed by the employer from time to time during the period of insurance under the policy and is not limited by any information provided or representation made to the insurer by the employer as to —

- (a) the nature of the work engaged in by the employer's workers; or
- (b) the industry classification of the employer's business; or
- (c) the remuneration of workers employed by the employer; or
- (d) any other matter relevant to the determination of the premium payable for the policy.

241. Refusal of indemnity

- (1) The regulations may prescribe circumstances (the *permitted circumstances*) in which a licensed insurer is permitted to refuse to indemnify an employer against liability to pay compensation or damages in respect of an injury to a worker for which the employer is liable.

- (2) A licensed insurer who insures an employer under a workers compensation policy against the employer's liability to pay compensation or damages in respect of an injury to a worker for which the employer is liable —
- (a) may in the permitted circumstances refuse to indemnify the employer against that liability; and
 - (b) cannot refuse in any other circumstances to indemnify the employer against that liability despite any term or condition of a workers compensation policy.
- (3) A licensed insurer who refuses to indemnify an employer against liability to pay compensation or damages in respect of an injury to a worker for which the employer is liable must give notice of refusal of indemnity in the approved form to the worker, the employer and WorkCover WA within 5 days after the decision to refuse indemnity is made by the insurer.
Penalty for this subsection: a fine of \$5 000.
- (4) If notice of refusal of indemnity is given to the employer within the period within which the insurer is required under section 28 or 29 to give a liability decision notice for the claim (the *liability decision period*) —
- (a) the insurer's obligations in respect of the claim under Part 2 Division 2 cease to apply; and
 - (b) the employer is required to deal with the claim as if the employer were a self-insurer (as required by section 31 because the employer is uninsured) and as if the claim had been given to the employer on the day that the employer received the notice of refusal of indemnity.

Note for this subsection:

Sections 28 and 29 apply to the employer when dealing with the claim as a self-insurer as if the claim had not been given to the employer until the employer was given the notice of refusal of indemnity.

- (5) If notice of refusal of indemnity is given to the employer (whether or not within the liability decision period) the

following provisions apply to a dispute about the liability of the insurer to indemnify the employer —

- (a) the dispute is not a dispute for the purposes of Part 6 and proceedings for the determination of the dispute cannot be brought under that Part;
 - (b) the dispute must, on application to the District Court by the employer, be determined by the District Court.
- (6) Subsection (5) does not prevent proceedings under Part 6 for the determination of a dispute about whether the employer is liable for compensation with which the notice of refusal of indemnity is concerned.

242. Cancellation of insurance policy

- (1) An insurer must not cancel a workers compensation policy without the permission in writing of WorkCover WA.
- (2) WorkCover WA may determine whether an insurer should be permitted to cancel a workers compensation policy and the terms on which a workers compensation policy may be cancelled.
- (3) WorkCover WA must not permit cancellation of a workers compensation policy for non-payment of a premium unless WorkCover WA is satisfied that —
 - (a) the insurer has given the employer adequate notice of the amount of the premium due; and
 - (b) the premium due has remained unpaid for the period prescribed by the regulations.
- (4) The cancellation of a workers compensation policy with the permission of WorkCover WA is effective as between the parties to the policy irrespective of any term or condition of the policy.

- (5) If WorkCover WA permits an insurer to cancel a workers compensation policy, the insurer must notify the employer of the cancellation within 14 days after the cancellation has effect.
Penalty for this subsection: a fine of \$5 000.

243. Lapsing of insurance policy

- (1) A workers compensation policy is considered to lapse at the end of the period of insurance under the policy if the policy is not renewed within that period or within any period of grace provided for by the policy.
- (2) An insurer must notify the CEO in the approved form of the lapsing of a workers compensation policy issued by the insurer.
- (3) The insurer under a workers compensation policy that has lapsed remains liable to indemnify the employer in respect of a liability incurred after the policy lapsed (as if the liability had been incurred during the period of insurance of the policy) but only if the liability is incurred no later than 7 days after WorkCover WA is notified of the policy lapsing as required by subsection (2).
- (4) The insurer under a workers compensation policy that has lapsed does not remain liable under this section to indemnify the employer in respect of a liability if the employer has insurance for the liability under another workers compensation policy.
- (5) If an insurer refuses to indemnify an employer in respect of a liability in respect of which the insurer remains liable under this section, the insurer commits an offence.
Penalty for this subsection: a fine of \$15 000.
- (6) Conviction of an insurer for an offence under subsection (5) does not affect the insurer's liability under this section.

244. Worker's rights against insurer when employer cannot be proceeded against

- (1) If the employer insured under a workers compensation policy becomes incapable of being proceeded against —
 - (a) the insurer has, to the extent of its liability under the policy, the same liability to a worker of the employer and the same rights and remedies in respect of that liability that the employer otherwise would have had to that worker and in respect of that liability; and
 - (b) a worker of the employer may proceed against and recover from the insurer on the basis of the liability that the insurer has under paragraph (a).
- (2) For the purposes of this section, an employer becomes incapable of being proceeded against if the employer —
 - (a) in the case of a corporation — has commenced to be, or has been, wound up or has ceased to exist; or
 - (b) dies, cannot be found or no longer resides in Australia; or
 - (c) has ceased to carry on the business, or business of the kind, to which the policy related.
- (3) If, 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 —
 - (a) against the employer; or
 - (b) in the bankruptcy or liquidation of the employer; or
 - (c) against the personal representative of the employer.
- (4) The rights and remedies of a worker against an insurer under this section are not limited by any agreement or arrangement between the employer and the insurer before the employer became incapable of being proceeded against.

Division 4 — Self-insurance

Note for this Division:

Self-insurance by an employer is an alternative to the employer obtaining a workers compensation policy from a licensed insurer for the employer's workers compensation and damages liabilities to its workers. To be a self-insurer, an employer must hold a self-insurer licence or be a related entity of the holder of a self-insurer licence that covers the related entity.

Subdivision 1 — Licensing of self-insurers

245. Application for self-insurer licence

- (1) An employer may apply to WorkCover WA for a self-insurer licence.
- (2) An application must be —
 - (a) in the approved form; and
 - (b) accompanied by the documents determined by the CEO.
- (3) WorkCover WA may, before determining an application for a self-insurer licence, require the application to be advertised or other notice to be given of the application.

246. Coverage of related entities by group self-insurer licence

- (1) In this section —

related entity, of the holder of a self-insurer licence, means —

 - (a) a related entity, as defined in the *Corporations Act 2001* (Commonwealth) section 9, of the holder of the licence; or
 - (b) any other entity that WorkCover WA determines must be treated as a related entity of the holder of the licence on the basis of any relationship between the entity and the holder.
- (2) A self-insurer licence may be granted on terms that extend the licence to 1 or more specified related entities of the holder of the licence, in which case the licence is then a group self-insurer

licence with each of the related entities to which the licence extends constituting a group of related self-insurers covered by the licence.

Note for this subsection:

A related entity to which a self-insurer licence is extended becomes a self-insurer but is not the holder of the licence.

- (3) WorkCover WA may, at any time by notice in writing to the holder of a self-insurer licence, amend the terms of the licence to change the related entities to which the licence extends (by adding, removing or changing the name of a related entity).
- (4) An amendment under subsection (3) takes effect from the time specified in the notice, which may be before the time at which the notice is given.
- (5) A group self-insurer licence may be subject to conditions relating to the obligations as a self-insurer of any related entity to which the licence extends, and a contravention of an obligation by a related entity (or by the holder of the licence when acting on behalf of a related entity) is a contravention of a condition of the licence.

247. Liability of holder of group self-insurer licence

- (1) The holder or former holder of a group self-insurer licence is jointly and severally liable for any self-insurer liability of an employer that is a liability in respect of an injury to or the death of a worker that arose while the employer was a self-insurer covered by the group self-insurer licence.
- (2) A reference in this Act to a self-insurer liability of an employer includes, in the case of an employer who is or was the holder of a group self-insurer licence, a self-insurer liability for which the employer is jointly and severally liable under subsection (1).

248. Application of licensed insurer provisions to self-insurers

- (1) The following provisions of Division 3 Subdivision 1 apply to and in respect of a self-insurer licence in the same way as they apply to an insurer licence —
 - (a) section 228;
 - (b) section 229;
 - (c) section 230;
 - (d) section 231;
 - (e) section 232;
 - (f) section 233.
- (2) Section 231 applies in respect of a self-insurer licence as if a reference in that section to insurer liabilities were a reference to self-insurer liabilities.
- (3) In addition to the requirements of section 231 (as applied under this section) in respect of the surrender of a self-insurer licence, WorkCover WA must not approve of the surrender of a self-insurer licence unless satisfied that after the licence is surrendered the employer and each employer to which the licence extends —
 - (a) will not employ any workers; or
 - (b) will hold a workers compensation policy.

Subdivision 2 — Self-insurer securities

249. Terms used

In this Subdivision —

required security amount, for a self-insurer licence, means the amount determined by WorkCover WA to be the amount required to adequately provide for all the accrued, continuing, future and contingent self-insurer liabilities of the employer and each employer to which the licence extends;

self-insurer security has the meaning given in section 250(1).

250. Requirement for security

- (1) A self-insurer licence is subject to the condition that security for the payment of all the self-insurer liabilities of the employer and each employer to which the licence extends (a ***self-insurer security***) must be provided and maintained on terms approved by WorkCover WA from time to time.
- (2) The terms approved for a self-insurer security can require the self-insurer security to provide continuing security for the payment of self-insurer liabilities after the self-insurer licence to which the security relates has expired or been cancelled.
- (3) A self-insurer security must be provided by means of a guarantee by a financial institution approved by WorkCover WA that guarantees payment of the required security amount to WorkCover WA on demand by WorkCover WA.
- (4) WorkCover WA may approve of a self-insurer security being provided by means of a bond, indemnity or undertaking to pay or by other means WorkCover WA considers acceptable.

251. Review and variation of required security amount

- (1) The required security amount for a self-insurer licence may be reviewed by WorkCover WA from time to time and may be varied by notice in writing to the holder of the self-insurer licence.
- (2) A variation of the required security amount for a self-insurer licence takes effect 30 days after notice of the variation is given to the holder of the self-insurer licence or on a later date specified in the notice.

252. Calling on security

- (1) WorkCover WA may demand payment under a self-insurer security to the extent of any payments made or to be made by

WorkCover WA on a claim under Division 8 in respect of a self-insurer liability to which the security relates.

- (2) Any amount paid to WorkCover WA as a result of a demand made under a self-insurer security must be credited to the DI Fund and is taken to have been recovered from the employer in discharge to the extent of the payment of any liability of the employer to WorkCover WA for any payment made by WorkCover WA in satisfaction of a claim in respect of a self-insurer liability to which the security relates.

Division 5 — Insurance premiums

253. Fixing of recommended premium rates

- (1) WorkCover WA must make an order (an *industry classification order*) that provides for —
- (a) the classification of industries for the purpose of distinguishing between industries that have different insurable risks; and
 - (b) the determination of the industry classification on the basis of which the premium payable by an employer for the issue or renewal of a workers compensation policy is to be calculated.
- (2) WorkCover WA must from time to time fix recommended premium rates for workers compensation policies and for that purpose must —
- (a) formulate a basis on which an appropriate recommended premium rate must be fixed for each industry classification under an industry classification order; and
 - (b) on that basis fix a recommended premium rate for each industry classification under an industry classification order.
- (3) An industry classification order 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) Industry classification orders and recommended premium rates must be published by WorkCover WA on the WorkCover WA website and do not have effect until published.

254. Reports as to recommended premium rates

- (1) As soon as practicable after fixing recommended premium rates under section 253(2), WorkCover WA must prepare and publish a report as to —
 - (a) the actuarial basis of any recommended premium rate fixed; and
 - (b) the comparative claims experience of the different industry classifications concerned.
- (2) The report must be published on the WorkCover WA website and may be published in any other manner WorkCover WA considers appropriate.
- (3) A report under subsection (1) must not contain information identifying or enabling the identification of any employer.

255. Review of premium charged

- (1) An employer may apply to WorkCover WA for a review by WorkCover WA of either or both of the following in respect of a premium determined by an insurer for the issue or renewal of a workers compensation policy to the employer —
 - (a) whether the industry classification on the basis of which the premium for the policy is determined is the proper industry classification (an *industry classification review*);
 - (b) whether the premium determined by the insurer is a proper premium for the policy (a *premium review*).

- (2) A premium review is available only if the premium determined by the insurer is at least 75% greater than the premium calculated on the basis of the recommended premium rate fixed by WorkCover WA.
- (3) The following requirements apply to an application for a review under this section —
 - (a) the application must be made within 1 month after the employer is informed of the premium concerned or within a longer period WorkCover WA may allow in a particular case;
 - (b) the application must not be made unless the employer has made reasonable efforts to resolve the issue with the insurer;
 - (c) the application must provide details of the efforts made by the employer to resolve the issue with the insurer;
 - (d) the application must state the grounds of objection and the industry classification or premium that the employer seeks;
 - (e) the employer must give notice in writing of the application to the insurer within the period allowed for making the application.
- (4) Despite an application for a review, the employer must pay the premium as determined by the insurer and the insurer must issue or renew the policy.
- (5) WorkCover WA may determine its own procedures for the review.
- (6) On a review, WorkCover WA must decide the following —
 - (a) for an industry classification review — the proper industry classification for the calculation of the premium;
 - (b) for a premium review — whether or not the premium determined by the insurer exceeds a proper premium for

the policy and (if it is decided that the premium determined exceeds a proper premium) the amount of a proper premium for the policy.

- (7) The insurer must give effect to the decision on the review and if the effect of the decision is that a lesser sum is payable by way of premium than that already paid to the insurer —
- (a) the insurer must repay to the employer the amount of the overpayment; and
 - (b) the employer may sue for and recover from the insurer any amount unpaid.

Division 6 — Default Insurance Fund

Subdivision 1 — Establishment of Default Insurance Fund

256. Establishment of Default Insurance Fund

- (1) An account called the WorkCover WA Default Insurance Fund (the **DI Fund**) is established as an agency special purpose account under the *Financial Management Act 2006* section 16.
- (2) WorkCover WA has the direction, control and management of the DI Fund.
- (3) The records of the DI Fund must account separately for payments from the DI Fund under each separate provision of this Act that authorises or requires a payment to be made from the DI Fund.

257. Payments to and from DI Fund

- (1) The following must be credited to the DI Fund —
 - (a) all contributions received or recovered under Subdivision 2;
 - (b) all money paid to or recovered by WorkCover WA in respect of a claim for compensation or insurable damages charged to the DI Fund;

- (c) any income derived from the investment of money standing to the credit of the DI Fund;
 - (d) any other amount required under this Act to be credited to the DI Fund.
- (2) All amounts required under this Act to be paid from the DI Fund are charged to the DI Fund.
- (3) This section does not limit the *Financial Management Act 2006* section 18.

258. Payments to and from General Account

- (1) If the Treasurer considers that the amount standing to the credit of the DI Fund exceeds the amount that is reasonably required for the purposes of the DI Fund from time to time, the Treasurer may direct WorkCover WA to transfer the whole or any part of that excess to the General Account for use in accordance with this Act.
- (2) If an amount has been transferred from the DI Fund under subsection (1) and the Treasurer considers that the amount standing to the credit of the DI Fund at any time is insufficient for the purposes of the DI Fund, the Treasurer may direct the transfer of an amount from the General Account to the DI Fund (not exceeding the amount transferred from the DI Fund under subsection (1)) to make up or partially make up for that insufficiency.

259. Advances to DI Fund

- (1) If the Treasurer considers that the amount standing to the credit of the DI Fund at any time is insufficient for the purposes of the DI Fund, an amount sufficient for the time being to make up for that insufficiency may be advanced by the Treasurer to WorkCover WA.

- (2) If an amount can be transferred under section 258(2) (a ***General Account transfer***) to make up or partially make up for the insufficiency referred to in subsection (1) —
 - (a) the General Account transfer must be made before an advance under subsection (1) can be made; and
 - (b) the amount that can be advanced under subsection (1) is limited to the balance of the insufficiency after the General Account transfer.
- (3) Any amount advanced to WorkCover WA under subsection (1) must be credited to the DI Fund.
- (4) Interest is payable on an advance made under subsection (1) at the rate and at times the Treasurer determines.
- (5) As and when there is a sufficient amount standing to the credit of the DI Fund to enable money advanced under subsection (1) to be repaid, WorkCover WA must repay to the Treasurer the money advanced together with any interest payable.
- (6) Until it is repaid, any advance under subsection (1) together with any interest payable is a charge on the DI Fund.

Subdivision 2 — Contributions to DI Fund

260. Terms used

- (1) In this Subdivision —

notional premium income of a self-insurer for a financial year means the amount estimated by WorkCover WA as the amount that the self-insurer would have been liable to pay as the premium for a workers compensation policy that would have been required under this Act for the financial year had the self-insurer not been a self-insurer;

premium income of a licensed insurer for a financial year means the total amount of the premium income of the insurer (whether received by or owing to the insurer) in respect of workers compensation policies issued or renewed during the

financial year excluding any part of those premiums paid by way of reinsurance to any other licensed insurer;

total annual DI Fund contribution has the meaning given in section 261(1).

- (2) WorkCover WA's estimate of the notional premium income of a self-insurer for a financial year must be made on the basis of the recommended premium rate applicable to the industry classification appropriate to the self-insurer and the remuneration of workers of the self-insurer for that financial year.
- (3) If an employer is a self-insurer for only part of a financial year, the notional premium income of the self-insurer for the financial year is the amount estimated by WorkCover WA as the amount that the employer would have been liable to pay as the premium for a workers compensation policy that would have been required under this Act for that part of the financial year had the employer not been a self-insurer.

261. Required contributions by insurers and self-insurers to DI Fund

- (1) For each financial year WorkCover WA must determine the amount (if any) that is required to be paid into the DI Fund (the ***total annual DI Fund contribution***) to ensure the sustainable functioning of the DI Fund, having regard to —
 - (a) the amount standing to the credit of the DI Fund; and
 - (b) the amount required to provide for existing and expected liabilities of the DI Fund, determined having regard to independent actuarial advice obtained by WorkCover WA.
- (2) WorkCover WA must make the following calculations and determinations for the purpose of calculating the contributions to be required from licensed insurers and self-insurers to yield

the total annual DI Fund contribution for a financial year (the *current year*) —

- (a) add the total premium income of all licensed insurers to the total notional premium income of all self-insurers for the financial year preceding the current year to arrive at an amount that is the *total premium income* for that preceding financial year;
 - (b) determine the percentage (the *contribution percentage*) of the total premium income for the preceding financial year that yields the total annual DI Fund contribution for the current year;
 - (c) calculate a contribution (the *required DI Fund contribution*) for each licensed insurer and each self-insurer for the current year by applying the contribution percentage to the premium income of the licensed insurer, or the notional premium income of the self-insurer, for the preceding financial year.
- (3) WorkCover WA may set a minimum required DI Fund contribution for a financial year (which may be a different minimum for licensed insurers and self-insurers).
- (4) If a minimum required DI Fund contribution is set for a financial year, the determination of the contribution percentage for that financial year must make due allowance for the effect that the minimum required DI Fund contribution will have on the percentage of total premium income required to yield the total annual DI Fund contribution.
- (5) Each licensed insurer and self-insurer must pay to WorkCover WA for payment into the DI Fund —
 - (a) the required DI Fund contribution for the current year calculated under this section; or
 - (b) if a minimum required DI Fund contribution has been set for the current year and is greater than the calculated contribution referred to in paragraph (a) — the

minimum required DI Fund contribution for the current year.

- (6) In the case of a group of related self-insurers comprised of the holder of a self-insurer licence and each of the related entities of the holder to which the licence extends —
- (a) the required DI Fund contribution for the self-insurers of the group must be calculated as a single contribution for the group; and
 - (b) a minimum required DI Fund contribution set by WorkCover WA applies to the contribution calculated for the group; and
 - (c) each self-insurer of the group is jointly and severally liable for payment of the required DI Fund contribution.
- (7) When an insurer becomes a licensed insurer during the current year (a ***new licensed insurer***) or an employer becomes a self-insurer during the current year (a ***new self-insurer***) —
- (a) no contribution to the DI Fund for the current year is required from the new licensed insurer or new self-insurer; and
 - (b) the calculation under this section of the required DI Fund contribution must not include any amount in respect of a new licensed insurer or new self-insurer.
- (8) To the extent that a contribution payable under this section includes an amount that is a tax, the tax is imposed.

[Section 261 amended: No. 22 of 2023 s. 4.]

262. Arrangements for payment of contributions

- (1) A contribution required to be paid by a licensed insurer or self-insurer under section 261(5) is payable at the times and in accordance with the arrangements (which may include arrangements for payment by instalments) WorkCover WA determines and notifies to the licensed insurer or self-insurer.

- (2) If a licensed insurer or self-insurer fails to pay the full amount of a contribution (or contribution instalment) as and when required under the arrangements notified by WorkCover WA —
- (a) the full amount of the contribution (or the balance of that amount that is unpaid) becomes payable immediately and may be recovered by WorkCover WA as a debt; and
 - (b) the licensed insurer or self-insurer commits an offence.
- Penalty for this subsection: a fine of \$15 000.
- (3) In the case of a contribution required to be paid by a group of related self-insurers, the arrangements for payment of the contribution need only be notified to the holder of the self-insurer licence and, in the case of a failure to pay, only the holder of the self-insurer licence commits the offence under subsection (2)(b).

Note for this subsection:

Each of the related self-insurers of the group remains jointly and severally liable for payment of the required contribution.

263. Additional insurer contribution for unexpected claims

- (1) WorkCover WA may, after determining the total annual DI Fund contribution for a financial year, determine an additional DI Fund contribution for the year if satisfied that the resulting additional contributions to the DI Fund are necessary to enable the DI Fund to meet the cost of unexpected claims in the financial year.
- (2) A claim must satisfy the following requirements to be considered an unexpected claim in a financial year —
- (a) the claim or class of claim concerned was not reasonably foreseeable when the determination of the total annual DI Fund contribution for the financial year was made;
 - (b) the claim is brought during the financial year;

- (c) in the opinion of WorkCover WA the DI Fund will not be able to meet the cost of the claim without the additional DI Fund contribution.
- (3) If an additional DI Fund contribution is determined for a financial year, each licensed insurer and self-insurer must pay additional contributions to WorkCover WA for payment into the DI Fund and for that purpose sections 261 and 262 apply in respect of any additional DI Fund contribution in the same way as they apply in respect of a total annual DI Fund contribution.
- (4) More than 1 additional DI Fund contribution may be determined under subsection (1) for a financial year.
- (5) To the extent that a contribution payable under this section includes an amount that is a tax, the tax is imposed.

[Section 263 amended: No. 22 of 2023 s. 5.]

264. Provision of information by licensed insurers and self-insurers

- (1) WorkCover WA may direct a licensed insurer or self-insurer to provide WorkCover WA with information WorkCover WA may reasonably require to determine the premium income of the licensed insurer or estimate the notional premium income of the self-insurer.
- (2) A direction must specify —
 - (a) the information required to be provided; and
 - (b) the form and manner in which it must be provided; and
 - (c) the period within which it must be provided.
- (3) A licensed insurer or self-insurer commits an offence if the licensed insurer or self-insurer —
 - (a) fails to provide information to WorkCover WA as directed under this section; or

- (b) in purported compliance with a direction under this section provides information that the licensed insurer or self-insurer knows to be false or misleading in a material particular.

Penalty for this subsection: a fine of \$10 000.

Division 7 — Uninsured employers

265. Uninsured employer

- (1) For the purposes of this Division, an employer is an *uninsured employer* in respect of a liability to pay compensation or insurable damages for an injury to a worker if —
 - (a) the employer is not insured against the liability under a workers compensation policy; or
 - (b) the liability of the insurer of the employer under a workers compensation policy is less than the liability of the employer; or
 - (c) the employer's insurer has refused to indemnify the employer against the liability as permitted by section 241.
- (2) An employer is not an uninsured employer in respect of a liability incurred when the employer was a self-insurer.
- (3) An employer is not an uninsured employer in respect of a liability that is a compensation liability in respect of a declared act of terrorism, as defined in section 285.

266. Payment of compensation when employer uninsured

- (1) If an employer is uninsured in respect of a liability to pay compensation and fails to pay the compensation within 30 days after the employer has accepted (or is taken to have accepted), or an arbitrator has determined, that the employer is liable to pay the compensation, WorkCover WA must pay to the worker from the DI Fund the amount required to satisfy the liability and any award for costs in respect of it.

- (2) If WorkCover WA is required by this section to pay to a worker an amount in respect of an injury —
 - (a) the amount of that payment is reduced by the amount of any compensation payable to the worker by any other employer in respect of the injury; and
 - (b) the employer paying that compensation has no right under Part 7 Division 3 to recovery of, or indemnity for, the compensation from the worker.

267. Payment of damages when employer uninsured

- (1) If insurable damages are awarded by judgment against an employer who is uninsured in respect of the liability to pay the damages and the employer does not pay the damages awarded within 30 days after the due date for payment, WorkCover WA must pay the appropriate amount to the worker from the DI Fund.
- (2) The appropriate amount for payment is the amount required to satisfy the judgment (to the extent that it provides for the payment of insurable damages) and any order against the employer for costs in respect of the action.
- (3) If the insurable damages awarded to a worker are for mesothelioma or the worker's death is imminent, WorkCover WA may pay the appropriate amount to the worker from the DI Fund after the due date for payment of the damages without regard to the requirement that the employer has not paid the damages awarded within 30 days after the due date for payment.
- (4) For the purposes of this section —
 - (a) a reference to judgment includes a reference to the acceptance of an offer to consent to judgment and to settlement by agreement made with WorkCover WA in the exercise by WorkCover WA of the rights of an uninsured employer under section 272; and

- (b) a reference to damages awarded includes a reference to damages so agreed; and
 - (c) a reference to the due date for payment of damages is a reference to the date payment is due under the judgment.
- (5) If WorkCover WA is required by this section to pay to a worker an amount in respect of an injury —
 - (a) the amount of that payment is reduced by the amount of any compensation payable to the worker by any employer in respect of the injury (except to the extent that the damages awarded have already been reduced on account of compensation payable); and
 - (b) the employer paying that compensation has no right under Part 7 Division 3 to recovery of, or indemnity for, the compensation from the worker.

268. Payment of compensation for dust disease or prescribed disease when insurer unknown or has ceased operation

- (1) In this section —
prescribed disease means a disease that is a prescribed disease under section 10(1).
- (2) If a worker is entitled to compensation from an employer in respect of an injury by disease that is a dust disease or prescribed disease but the identity of the employer's insurer, if any, is not known or the employer's insurer has ceased to operate in Australia, an arbitrator may order WorkCover WA to pay compensation to the worker from the DI Fund.
- (3) The amount of compensation payable to the worker must be paid within 30 days after the employer has accepted (or is taken to have accepted) or an arbitrator has determined that the employer is liable to pay the compensation.
- (4) If the identity of the insurer is ascertained after payment has been made under this section, WorkCover WA may sue for and recover the amount paid from the insurer as a debt to the extent

that the insured employer could have sued for and recovered that amount under the insurance policy.

- (5) This section does not apply to an entitlement to compensation from an employer in respect of an injury that is a liability in respect of employment when the employer was a self-insurer.

269. Recovery of compensation or damages paid for uninsured employer

- (1) WorkCover WA may certify the amount of any payment from the DI Fund under section 266 or 267 in respect of a liability of an employer and may file the certificate in a court of competent jurisdiction.
- (2) The certificate when filed is taken to be a judgment of the court for a debt payable by the employer to WorkCover WA of the amount stated in the certificate, and may be enforced accordingly.
- (3) If the payment from the DI Fund is in respect of the liability of more than 1 person as an employer, a reference in this section to the employer is a reference to each person so liable, and the judgment may be enforced against those persons jointly and severally.
- (4) No charge is payable for filing a certificate under this section.

270. Setting aside certain judgments and agreements

- (1) WorkCover WA may apply to the Supreme Court for an order setting aside a judgment or agreement that is the basis for a claim against the DI Fund under section 267 for the payment of insurable damages by an employer who is uninsured in respect of the liability to pay the damages.
- (2) The Supreme Court may set aside the judgment or agreement if satisfied that there are reasonable grounds for believing that the employer has not taken all reasonable steps to protect the employer's own interests.

- (3) If the Supreme Court sets aside the judgment or agreement the costs of the respondent in relation to the application are to be paid from the DI Fund unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make an order about those costs only if satisfied that it is appropriate to make the order because of the special circumstances surrounding the giving of the judgment or the making of the agreement.
- (5) If a judgment or agreement is set aside under this section —
 - (a) the judgment or agreement is taken never to have had effect for the purpose of any proceeding in any court; and
 - (b) evidence of a statement or communication, or a part of a statement or communication, tending to establish the existence of the agreement is not admissible in any proceeding in a court unless the Supreme Court orders otherwise on the basis that the admission of the evidence is necessary to avoid injustice to a party to the proceeding.

271. Recovery of uninsured employer payment from officer of body corporate

- (1) If a body corporate was uninsured in respect of a liability to which a payment from the DI Fund under section 266 or 267 relates and WorkCover WA has judgment for the recovery from the body corporate of the amount paid, WorkCover WA may sue for and recover from a responsible officer of the body corporate any amount of the judgment that is not recoverable from the body corporate.
- (2) A person is a *responsible officer* of the body corporate if the person was a director or other officer concerned in the management of the body corporate at the time the body corporate was uninsured.

- (3) A person is not a responsible officer of the body corporate if the person proves that —
- (a) the body corporate was uninsured in respect of the liability because of a failure by the body corporate to obtain a workers compensation policy and that failure occurred without the person's consent or connivance; and
 - (b) the person exercised all due diligence to prevent that failure as ought to have been exercised having regard to the nature of the person's functions and to all the circumstances.
- (4) An amount is considered to be not recoverable from a body corporate if WorkCover WA certifies that it will be unable or unlikely to recover the amount from the body corporate by reasonable efforts at recovery, whether because the body corporate is being wound up and is unable to pay its debts, or otherwise.
- (5) This section applies even if the body corporate has ceased to exist.

272. Exercise by WorkCover WA of rights of uninsured employer

- (1) If an employer is uninsured in respect of a liability to pay compensation or insurable damages and a claim or action for the compensation or damages is brought against the employer, WorkCover WA has all of the rights of the employer as the party against whom the claim or action is brought in place of the employer, including the right to —
- (a) become a party to proceedings in relation to the claim or action; and
 - (b) consent to an award or order being made in a proceeding before a dispute resolution authority; and

- (c) consent to a judgment being given in a proceeding before a court; and
 - (d) enter into an agreement as to settlement of the claim or compromise of the action; and
 - (e) exercise the rights of the employer in relation to injury management and return to work; and
 - (f) require the worker to undergo an examination under section 180.
- (2) WorkCover WA may sue for and recover from the employer as a debt any fees, costs and charges incurred by WorkCover WA under this section, whether or not WorkCover WA was successful in any proceedings.
- (3) Without limiting subsection (1), until an amount paid to a worker under section 266 or 267 is recovered under this Division, WorkCover WA may exercise any rights of the employer in relation to the payment of that amount.

273. WorkCover WA's rights of indemnity and subrogation

If WorkCover WA has paid, or is liable to pay, from the DI Fund an amount as compensation or damages for which an employer is liable, WorkCover WA is subrogated to —

- (a) any right of the employer to indemnity from an insurer in respect of that payment; and
- (b) any right the employer or an insurer of the employer would have had, if the employer or insurer had made the payment, to recover any amount from any other person in respect of that payment, whether the right arises by way of liability for contribution, apportionment of liability or otherwise.

274. Employer's duty to assist WorkCover WA

- (1) If under a provision of this Division WorkCover WA has, or is subrogated to, any right of an employer, WorkCover WA may by notice in writing require the employer to —
- (a) give WorkCover WA any information and assistance that WorkCover WA considers necessary or desirable in relation to the exercise or possible exercise of the right; and
 - (b) provide to WorkCover WA any documents in the employer's possession or control that WorkCover WA considers necessary or desirable in relation to the exercise or possible exercise of the right; and
 - (c) execute any documents or instruments that may be necessary or desirable to enable WorkCover WA to exercise the right, or to ratify or confirm any exercise or purported exercise of the right by WorkCover WA.
- (2) An employer must comply with any requirement made under subsection (1).

Penalty for this subsection: a fine of \$15 000.

275. Liability of employer if employment believed to be not connected with this State

If WorkCover WA is satisfied that the reason for an employer being uninsured in respect of a liability to pay compensation or insurable damages for an injury to a worker is that the employer believed on reasonable grounds that the worker's employment was not connected with this State, the employer is not liable to WorkCover WA for any amount paid under this Division in respect of the liability.

Note for this section:

Section 529 provides for the State with which a worker's employment is connected.

276. Payment to employer not required

Nothing in this Division requires WorkCover WA to make any payment to the employer of a worker or to any person who is taken to be the employer of a worker.

Note for this section:

For example, WorkCover WA is not required to make a payment to a principal who under section 215 is taken to be the employer of a worker employed by a contractor. See also section 217(2)(c).

Division 8 — Insurer and self-insurer insolvency

277. Terms used

(1) In this Division —

insolvent insurer means a licensed insurer that —

- (a) is an insolvent body corporate; or
- (b) is believed by WorkCover WA on reasonable grounds to be or to be likely to be unable to discharge in full any liability arising under a workers compensation policy issued by the insurer;

insolvent self-insurer means an employer who is or was a self-insurer and who —

- (a) is an insolvent body corporate; or
- (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (c) has left the State and whose whereabouts are unknown; or
- (d) is believed by WorkCover WA on reasonable grounds to be or to be likely to be unable to discharge in full any self-insurer liability of the employer;

liquidator includes an official manager, receiver or receiver and manager.

- (2) For the purposes of this Division —
- (a) a body corporate is *insolvent* if —
 - (i) the body corporate is being or has been wound up; or
 - (ii) a receiver or manager of the property of the body corporate has been appointed, or the body corporate has been placed under administration, under the provisions of the *Corporations Act 2001* (Commonwealth) or any corresponding previous enactment;
 - and
 - (b) a reference to a *self-insurer* includes an employer who was a self-insurer.

278. Claims against WorkCover WA for insolvent insurer and self-insurer liabilities

- (1) If the insurer under an insurance policy that covers an employer for liability for compensation or insurable damages is an insolvent insurer, a claim for the compensation or damages may be made against WorkCover WA.
- (2) If an employer is an insolvent self-insurer, a claim for compensation or insurable damages payable in respect of a self-insurer liability of the employer may be made against WorkCover WA.
- (3) A claim against WorkCover WA under this section is for —
 - (a) the amount of a claim that a person has against the employer for the compensation or damages if there has been no judgment given against the employer for the compensation or damages; or
 - (b) if judgment has been given against the employer for the compensation or damages — the amount of the judgment.

- (4) If the claim against WorkCover WA is in respect of a judgment, the claim may be made by —
 - (a) the person in whose favour the judgment was given (in which case the claim is for payment of the amount of the judgment); or
 - (b) the employer if the employer has paid the amount of the judgment (in which case the claim is for reimbursement of the amount paid by the employer).
- (5) If the claim against WorkCover WA is in respect of a claim for compensation or damages where there has been no judgment given against the employer for the compensation or damages, the claim against WorkCover WA may be made by —
 - (a) the person entitled to claim the compensation or damages (in which case the claim against WorkCover WA is for payment of the amount of the compensation or damages); or
 - (b) the employer if the employer has paid the amount of the compensation or damages claimed (in which case the claim against WorkCover WA is for reimbursement of the amount paid by the employer).
- (6) A reference in this section to judgment given for compensation or damages is a reference to final judgment and includes a reference to an order or award for compensation or damages.
- (7) This section applies in respect of a claim for compensation or damages where there has been no judgment given against the employer for the compensation or damages as if a reference to compensation or damages included an amount in settlement of a claim for compensation or damages.
- (8) A claim against WorkCover WA under this section must be made in writing lodged with WorkCover WA and must be accompanied by —
 - (a) a copy of any judgment, order or award to which the claim relates; and

- (b) any other information relevant to the claim WorkCover WA may require.

279. Payment of claims

- (1) WorkCover WA must pay a claimant under this Division the amount necessary to satisfy the claim, and that payment discharges the liability of WorkCover WA in respect of the claim.
- (2) Amounts payable by WorkCover WA in satisfaction of a claim are charged to the DI Fund.

280. Recovery by WorkCover WA of payment made in satisfaction of claims

- (1) An amount paid by WorkCover WA in satisfaction of a claim under this Division may be recovered by WorkCover WA as a debt due to WorkCover WA from —
 - (a) the insolvent insurer or insolvent self-insurer in respect of which the claim was made; or
 - (b) any person against whom the insolvent insurer or insolvent self-insurer has, or had at any time, a right of indemnity or contribution in respect of the injury to or death of the worker to which the claim relates.
- (2) The amount recoverable from an insolvent insurer or insolvent self-insurer under subsection (1) in respect of a claim is reduced by the amount of any payment to WorkCover WA in respect of the claim by the liquidator of the insolvent insurer or insolvent self-insurer under section 282.

Note for this subsection:

The amount recoverable from an insolvent self-insurer is also reduced by any amount paid to WorkCover WA as a result of a demand made under a self-insurer security — see section 252(2).

- (3) Any amount recovered by WorkCover WA under subsection (1) must be credited to the DI Fund.

281. Control of powers of liquidator of insurer or self-insurer

- (1) This section applies to the exercise by the liquidator of an insurer or self-insurer of the liquidator's powers under the *Corporations Act 2001* (Commonwealth) section 477 with respect to any claim, judgment, order or award arising out of or in relation to a workers compensation policy issued by the insurer or a self-insurer liability of the self-insurer.
- (2) The liquidator is not entitled to exercise the liquidator's powers under section 477(1) of that Act without the authority of WorkCover WA.
- (3) Section 477(1)(b) of that Act is not subject to the provisions of section 556 of that Act.
- (4) Section 477(2A) and (2B) of that Act apply as if the references in those provisions to the approval of the Court, of the committee of inspection or of a resolution of the creditors were references to the approval of WorkCover WA.
- (5) Subsections (2) to (4) are declared to be Corporations legislation displacement provisions for the purposes of the *Corporations Act 2001* (Commonwealth) section 5G in relation to section 477 of that Act.

282. Payment into DI Fund of money recovered by liquidator

- (1) In this section —
reinsurance payment means an amount paid by a reinsurer under a contract of reinsurance that insures a defaulting insurer against liability in respect of a workers compensation policy issued by the defaulting insurer.
- (2) For the purposes of this section, an insurer or self-insurer is a ***defaulting insurer*** if any liability of the insurer under a workers compensation policy or any self-insurer liability of the self-insurer has been met by a payment (a ***defaulting insurer***

payment) by WorkCover WA pursuant to a claim under this Division.

- (3) The liquidator of a defaulting insurer must pay to WorkCover WA for payment into the DI Fund —
 - (a) any reinsurance payment received by the liquidator in respect of a liability of the defaulting insurer that has been met by a defaulting insurer payment; and
 - (b) any amount recovered by the liquidator that is due to the defaulting insurer as a consequence of a liability of the defaulting insurer under a workers compensation policy or any self-insurer liability of the defaulting insurer having been met by a defaulting insurer payment.
- (4) The reinsurance payment or amount that a liquidator is required to pay to WorkCover WA under subsection (3) is reduced by the amount of any expenses of or incidental to the recovery of the reinsurance payment or amount.
- (5) A payment required by subsection (3) is in priority to all payments in respect of the debts referred to in the *Corporations Act 2001* (Commonwealth) section 556.
- (6) The payment of an amount required by subsection (3) is declared to be an excluded matter for the purposes of the *Corporations Act 2001* (Commonwealth) section 5F in relation to that Act to the extent to which the payment of the amount is governed by this section.
- (7) This section has effect despite any agreement to the contrary other than an agreement under section 284.

283. Liquidator to notify WorkCover WA of dissolution of insurer or self-insurer

If the liquidator of a licensed insurer or self-insurer applies to a court under a law of the State, another State or the

Commonwealth for an order that the insurer or self-insurer be dissolved, the liquidator must —

- (a) notify WorkCover WA in writing of the making of that application; and
- (b) serve on WorkCover WA a copy of any order made by the court on that application.

284. WorkCover WA may accept final payment from liquidator

- (1) WorkCover WA may accept from the liquidator of an insurer or self-insurer an amount, as agreed between WorkCover WA and the liquidator, for payment into the DI Fund in full and final satisfaction of all rights, whether actual, contingent or prospective, that WorkCover WA has or may have against the liquidator, insurer or self-insurer under this Act.
- (2) Without limiting the operation of subsection (1), if WorkCover WA accepts an amount from the liquidator of an insurer or self-insurer under that subsection the acceptance discharges any liability the liquidator might otherwise have to make any payment under section 282.

Division 9 — Acts of terrorism

285. Terms used

In this Division —

act of terrorism has the meaning given in section 287;

compensation liability means a liability of an employer for compensation;

compensation liability in respect of a declared act of terrorism means a compensation liability in respect of an injury to or the death of a worker that is attributable to a declared act of terrorism;

declared act of terrorism means an action or threat of an action declared by the Minister under section 288 to be a declared act of terrorism.

286. Division does not apply to public authority covered by Insurance Commission

This Division does not apply to an employer who is a public authority on behalf of which the Insurance Commission manages and administers insurance arrangements in relation to compensation liability in respect of a declared act of terrorism.

287. Term used: act of terrorism**(1) In this Division —**

act of terrorism means a dangerous action or threat of a dangerous action, if the dangerous action is done or the threat is made with the intention of advancing a political, religious or ideological cause and with the intention of —

- (a) coercing, or influencing by intimidation, the government of a State, the Commonwealth or a foreign country or of part of a State or foreign country; or
- (b) intimidating the public or a section of the public.

(2) A *dangerous action* is an action that has 1 or more of the following results (each a *dangerous result*) —

- (a) causes serious harm that is physical or psychological harm to a person;
- (b) causes serious damage to property;
- (c) causes a person's death;
- (d) endangers a person's life, other than the life of the person taking the action;
- (e) creates a serious risk to the health or safety of the public or a section of the public.

(3) Advocacy, protest, dissent or industrial action is not a dangerous action if it is not intended to have any dangerous result.

288. Declaration of act of terrorism

- (1) The Minister may by order published in the *Gazette* declare an action or threat of an action that the Minister is satisfied is an act of terrorism to be a declared act of terrorism for the purposes of this Act.
- (2) The declaration must identify the declared act of terrorism with sufficient particularity to enable a person to know whether a claim for compensation by the person might be affected by the declaration.
- (3) The declaration must specify the day on which the declared act of terrorism must be treated, for the purposes of this Act, as having occurred.
- (4) This Division extends to a compensation liability in respect of a declared act of terrorism that was incurred before the declaration of the declared act of terrorism.
- (5) An order under subsection (1) is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

289. Exclusion of declared act of terrorism from insurance

A workers compensation policy does not insure, and is not required to insure, an employer for any compensation liability in respect of a declared act of terrorism.

290. Claims for compensation in respect of declared act of terrorism

- (1) An employer who has a compensation liability in respect of a declared act of terrorism may make a claim against WorkCover WA for payment or reimbursement of payment of any claim arising from that liability.
- (2) WorkCover WA must pay a claimant under this Division the amount necessary to satisfy the claim, and that payment discharges the liability of WorkCover WA.

- (3) Amounts payable by WorkCover WA in satisfaction of a claim under this Division are payable from the DI Fund.

291. Limits on claims for declared acts of terrorism

- (1) The regulations may impose a limit (a *claims limit*) on the total amount of the compensation liability of all employers under this Division in respect of a declared act of terrorism.
- (2) Either or both of the following claims limits may be imposed —
- (a) a limit on the total amount of the compensation liability for claims payable under this Division during a specified period;
 - (b) a limit on the total amount of the claims that are payable under this Division in respect of a particular declared act of terrorism.
- (3) If a claims limit is imposed, WorkCover WA must —
- (a) make an estimate, based on actuarial advice, of the total amount of the compensation liability of all employers in respect of all the claims to which the claims limit is applicable (the *total claims amount*); and
 - (b) determine for that claims limit the amount (the *reduction factor*) by which the total claims amount would have to be multiplied to reduce the total claims amount to the amount of the claims limit applicable to those claims.
- (4) The compensation liability of an employer in respect of a claim to which a claims limit is applicable is limited to the amount arrived at by multiplying that compensation liability by the reduction factor determined for that claims limit.

Note for this subsection:

The liability of WorkCover WA for a claim to which a claims limit is applicable is also limited by the claims limit because the liability of WorkCover WA is limited to the liability of the employer.

292. WorkCover WA's rights of indemnity and subrogation

- (1) If WorkCover WA has paid, or is liable to pay, under this Division an amount as compensation for which an employer is liable, WorkCover WA is subrogated to any right the employer would have had, if the employer had made the payment, to recover any amount from any other person in respect of that payment, whether the right arises by way of liability for contribution, apportionment of liability or otherwise.
- (2) An amount recovered by WorkCover WA in the exercise of any right to which WorkCover WA is subrogated under subsection (1) must be credited to the DI Fund.

Division 10 — Special provisions for waterfront worker dust diseases if employer unknown

293. Terms used

In this Division —

last relevant employer, in relation to a worker who suffers an injury from employment that is by dust disease, means the employer who last employed the worker in the employment;

waterfront worker means a worker employed in or about a harbour or port area at a time when asbestos was being loaded or unloaded from a vessel or otherwise handled in that harbour or port area.

294. Claim for compensation if last relevant employer unknown

- (1) A claim for compensation payable by an employer in respect of an injury by dust disease suffered by a waterfront worker or the death of a waterfront worker resulting from an injury by dust disease may be made against WorkCover WA if the identity of the last relevant employer of the waterfront worker is not known.

- (2) A claimant under subsection (1) has the same rights and remedies against WorkCover WA, and WorkCover WA has the same liability to the claimant and the same rights and remedies in respect of that liability, as the claimant and WorkCover WA would have had if WorkCover WA were the last relevant employer of the waterfront worker.

295. Payment of claim

- (1) WorkCover WA must pay a claimant under section 294(1) the amount necessary to satisfy the claim, and that payment discharges the liability of WorkCover WA in respect of the claim.
- (2) An amount payable by WorkCover WA in satisfaction of a claim under section 294(1) is payable from the DI Fund.

296. Recovery of money paid in satisfaction of claim

- (1) WorkCover WA may apply to an arbitrator for an order under this section if WorkCover WA has evidence of —
- (a) the identity of the employer who was liable to pay the compensation paid by WorkCover WA in satisfaction of a claim under this Division; or
 - (b) the identity of that employer and the identity of the insurer who is liable to indemnify the employer against the liability to pay that compensation.
- (2) An arbitrator may make the following orders —
- (a) an order that the employer was liable to pay compensation paid by WorkCover WA in satisfaction of a claim under this Division;
 - (b) an order that the insurer is liable to indemnify the employer against the employer's liability to pay that compensation;

- (c) an order that the amount of the compensation be refunded to WorkCover WA by the employer or the insurer.
- (3) An amount refunded to WorkCover pursuant to an order under this section must be paid into the DI Fund.

Division 11 — Contributions to Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund

297. Terms used

In this Division —

CIF means the Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund administered by the Insurance Commission under the *Insurance Commission of Western Australia Act 1986* section 16;

required CIF contribution has the meaning given in section 299(1);

total annual CIF contribution has the meaning given in section 298(1);

workplace injury liabilities means the liabilities of the CIF under the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016* in respect of workplace injuries to which that Act applies.

298. Insurance Commission to determine required contributions to CIF

- (1) For each financial year the Insurance Commission must determine the amount (the **total annual CIF contribution**) that is required to be credited to the CIF to ensure the sustainable functioning of the CIF in respect of workplace injury liabilities, having regard to —
 - (a) the amount standing to the credit of the CIF in respect of workplace injury liabilities; and

- (b) the amount, if any, that WorkCover WA has arranged to remit to the Insurance Commission under section 301 in the financial year for crediting to the CIF; and
 - (c) the amount required to provide for existing and expected workplace injury liabilities of the CIF, determined having regard to independent actuarial advice obtained by the Insurance Commission.
- (2) The Insurance Commission must notify WorkCover WA of the total annual CIF contribution for a financial year.

299. Calculation of required insurer contributions to CIF

- (1) WorkCover WA must calculate the contributions (*required CIF contributions*) to be required from licensed insurers and self-insurers to yield the total annual CIF contribution for a financial year.
- (2) Section 261(2) to (7) apply to the calculation of required CIF contributions and to the setting of a minimum contribution as if a reference in that section —
 - (a) to the total annual DI Fund contribution were a reference to the total annual CIF contribution; and
 - (b) to a required DI Fund contribution were a reference to a required CIF contribution.

300. Requirement for payment of CIF contributions by insurers and self-insurers

- (1) Each licensed insurer and self-insurer must pay to WorkCover WA for crediting to the CIF —
 - (a) the required CIF contribution for a financial year calculated under this Division; or
 - (b) if a minimum required CIF contribution has been set for the financial year that is greater than the calculated contribution referred to in paragraph (a) — the minimum required CIF contribution for that year.

- (2) In the case of a group of related self-insurers comprised of the holder of a self-insurer licence and each of the related entities of the holder to which the licence extends —
 - (a) the required CIF contribution for the self-insurers of the group must be calculated as a single contribution for the group; and
 - (b) a minimum required CIF contribution set by WorkCover WA applies to the contribution calculated for the group; and
 - (c) each self-insurer of the group is jointly and severally liable for payment of the required contribution.
- (3) Section 262 applies to a CIF contribution in the same way as it applies to DI Fund contribution.
- (4) Contributions paid to or recovered by WorkCover WA under this Division must be remitted to the Insurance Commission in accordance with arrangements agreed to by WorkCover WA and the Insurance Commission.
- (5) To the extent that a contribution payable under this section includes an amount that is a tax, the tax is imposed.

[Section 300 amended: No. 22 of 2023 s. 6.]

301. Transfer from DI Fund to CIF

- (1) In this section —

surplus means an amount standing to the credit of the DI Fund which, in the opinion of WorkCover WA, is in excess of that required as adequate provision for actual and expected liabilities and the operating and other expenses of the DI Fund.
- (2) If there is a surplus in the DI Fund, WorkCover WA may remit the amount, or a portion of the amount, of that surplus to the Insurance Commission in accordance with arrangements agreed to by WorkCover WA and the Insurance Commission.

- (3) Any amount remitted to the Insurance Commission under subsection (2) must be credited to the CIF.

302. Additional insurer contribution for unexpected liabilities

- (1) WorkCover WA may, on advice from the Insurance Commission and after determining the total annual CIF contribution for a financial year, determine an additional CIF contribution for the year if satisfied that the resulting additional contributions to the CIF are necessary to enable the CIF to meet unexpected workplace injury liabilities in the financial year.
- (2) A workplace injury liability must satisfy the following requirements to be considered an unexpected workplace injury liability in a financial year —
- (a) the liability was not reasonably foreseeable when the determination of the total annual CIF contribution for the financial year was made;
 - (b) the liability will be incurred during the financial year;
 - (c) in the opinion of the Insurance Commission the amount standing to the credit of the CIF in respect of workplace injury liabilities will not be sufficient to meet the liability without the additional CIF contribution.
- (3) If an additional CIF contribution is determined for a financial year, each licensed insurer and self-insurer must pay additional contributions to WorkCover WA for crediting to the CIF and for that purpose sections 261 and 262 apply in respect of an additional CIF contribution in the same way as they apply in respect of a total annual CIF contribution.
- (4) More than 1 additional CIF contribution may be determined under subsection (1) for a financial year.
- (5) To the extent that a contribution payable under this section includes an amount that is a tax, the tax is imposed.

[Section 302 amended: No. 22 of 2023 s. 7.]

Part 6 — Dispute resolution

Division 1 — General

303. Terms used

In this Part —

agent service means any service performed by a person —

- (a) in the person's capacity as an agent acting for a person in connection with a dispute under this Act; and
- (b) in or for the purposes of a proceeding before a dispute resolution authority;

authorised agent means —

- (a) a registered independent agent; or
- (b) a person who is a member of a class of persons who are authorised by the regulations to provide agent services;

Note for this definition:

A registered independent agent is a person registered as an independent agent under the regulations (as provided for by section 578(2)). Registration of independent agents is only for 2 years after the day on which section 615 comes into operation.

decision includes an order, award, direction or determination;

dispute means —

- (a) a dispute in connection with a claim for compensation, or the liability to pay compensation, under this Act; or
- (b) a dispute in connection with an obligation imposed under Part 3; or
- (c) any matter for which provision is made under this Act for a determination by an arbitrator; or
- (d) any other matter of a kind prescribed by the regulations;

interim compensation direction has the meaning given in section 320(1);

party, to a dispute, means the worker, the employer or the insurer of the employer.

304. Exclusive jurisdiction of arbitrators

- (1) A proceeding for the determination of a dispute cannot be brought other than under this Part.
- (2) Subject to this Act, arbitrators have exclusive jurisdiction to examine, hear and determine all disputes.

Note for this subsection:

This Part provides for an appeal to the District Court against a decision of an arbitrator in certain circumstances.

305. Object of this Part

The object of this Part is to provide a fair and cost effective system for the resolution of disputes under this Act that —

- (a) is timely; and
- (b) is accessible, approachable and professional; and
- (c) minimises costs to parties to disputes; and
- (d) in the case of conciliation — leads to final and appropriate agreements between parties in relation to disputes; and
- (e) in the case of arbitration — enables disputes not resolved by conciliation to be determined according to their substantial merits with as little formality and technicality as practicable.

306. Relevant documents

- (1) In this section —
injury includes alleged injury;

relevant document, in relation to a worker who has suffered an injury, 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 health professional who has treated the worker for the injury;
 - (e) a report by a health professional who has conducted tests or investigations on the worker in relation to the injury;
 - (f) a report by a health professional who has been consulted by a health professional referred to in paragraph (d) or (e) in connection with treatment of, or tests or investigations in relation to, the injury;
 - (g) a report under section 192(1) on the results of an assessment of the worker's degree of permanent impairment;
 - (h) a report by an approved workplace rehabilitation provider in relation to the worker;
 - (i) a claim for compensation with respect to the injury made in accordance with this Act;
 - (j) a document of a kind prescribed by the regulations.
- (2) A worker who has suffered an injury from employment may request the worker's employer at the time of the employment, or that employer's insurer, to provide the worker with a copy of relevant documents that are in the possession of or under the control of the employer or insurer.
- (3) If a worker has made a claim for compensation with respect to noise-induced hearing loss in accordance with this Act, the worker's employer or that employer's insurer may request WorkCover WA to provide the person making the request with

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) must be made in accordance with the conciliation rules or arbitration rules and must be complied with within the period prescribed by the relevant rules.
- (5) A request under subsection (2) may be made by a legal practitioner or authorised agent acting for the worker if the request is accompanied by a written authority from the worker that authorises copies of relevant documents to be provided to the legal practitioner or authorised agent.
- (6) An employer or insurer requested to provide a copy of a relevant document under subsection (2) who fails to comply with the request within the period referred to in subsection (4) commits an offence.
Penalty for this subsection: a fine of \$5 000.
- (7) An arbitrator may make an order requiring the production of documents that can be requested under this section.

Division 2 — Conciliation Service and Arbitration Service

307. Establishment of Conciliation Service and Arbitration Service

- (1) The following services are established —
- (a) the Workers Compensation Conciliation Service;
 - (b) the Workers Compensation Arbitration Service.
- (2) The Conciliation Service consists of —
- (a) the Director; and

- (b) the staff of the Conciliation Service, being the conciliators and the WorkCover WA officers assisting in the administration of the arrangements under this Act for the conciliation of disputes.
- (3) The Arbitration Service consists of —
 - (a) the Registrar; and
 - (b) the staff of the Arbitration Service, being the arbitrators and the WorkCover WA officers assisting in the administration of the arrangements under this Act for the arbitration of disputes.

308. Designation and functions of Director and Registrar

- (1) The CEO must designate from among the WorkCover WA officers a person to be the Director and a person to be the Registrar.
- (2) The Director —
 - (a) is responsible for the administration of the arrangements under this Act for the conciliation of disputes; and
 - (b) allocates work to conciliators; and
 - (c) without limiting the functions of the CEO, manages and directs the staff of the Conciliation Service; and
 - (d) has, and may perform, all the functions of a conciliator; and
 - (e) has any other functions conferred on the Director by this Act or any other written law.
- (3) The Registrar —
 - (a) is responsible for the administration of the arrangements under this Act for the arbitration of disputes; and
 - (b) allocates work to arbitrators; and
 - (c) without limiting the functions of the CEO, manages and directs the staff of the Arbitration Service; and

- (d) has, and may perform, all the functions of an arbitrator; and
 - (e) has any other functions conferred on the Registrar by this Act or any other written law.
- (4) The Director and the Registrar are not subject to the management or direction of the CEO as to any decision to be made, or discretion to be exercised, in relation to a particular dispute.
- (5) The designation of a person as the Director or the Registrar must be in writing and the *Interpretation Act 1984* section 52 applies to the designation in the same way as that section applies to an appointment.

309. Designation of conciliators and arbitrators

- (1) The CEO designates conciliators and arbitrators.
- (2) A person is not eligible to be designated as a conciliator or arbitrator unless the person is —
 - (a) a WorkCover WA officer; or
 - (b) a person engaged by the CEO under the *Public Sector Management Act 1994* section 100 on a sessional basis.
- (3) A person is also not eligible to be designated as an arbitrator unless the person is a legal practitioner.
- (4) The number of persons designated as conciliators and arbitrators is as determined by the CEO, having regard to the object of this Part.
- (5) Conciliators and arbitrators are not subject to the management or direction of the CEO, the Director or the Registrar as to any decision to be made, or discretion to be exercised, in relation to a particular dispute.
- (6) The designation of a person as a conciliator or arbitrator must be in writing and the *Interpretation Act 1984* section 52 applies to

the designation in the same way as that section applies to an appointment.

310. Delegation by Director or Registrar

- (1) The Director may delegate a power or duty given to the Director under another provision of this Act to a WorkCover WA officer or a conciliator.
- (2) The Registrar may delegate a power or duty given to the Registrar under another provision of this Act to a WorkCover WA officer or an arbitrator.
- (3) A delegation must be in writing signed by the delegator.
- (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) A person 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.
- (6) Nothing in this section limits the ability of the Director or the Registrar to perform a function through a staff member or agent.

Division 3 — Conciliation

Subdivision 1 — Process for conciliation

311. Application for conciliation

A party to a dispute may apply to the Director in accordance with this Act and the conciliation rules for resolution of the dispute by conciliation.

312. Requirements for acceptance of application for conciliation

- (1) An application for conciliation cannot be accepted by the Director unless the Director is satisfied that it relates to a dispute.

- (2) The conciliation rules may —
 - (a) impose requirements that must be satisfied before an application for conciliation can be accepted; and
 - (b) specify grounds on which, or circumstances in which, an application for conciliation must or may be rejected.
- (3) The onus is on the applicant to satisfy the Director as to any matter that is relevant to the acceptance or rejection of an application for conciliation.
- (4) Conciliation commences when an application for conciliation is accepted by the Director.

313. Director may certify dispute not suitable for conciliation

The Director may, without allocating the dispute to a conciliator, determine that a dispute is not suitable for conciliation and issue a certificate to that effect.

314. Allocation of dispute

- (1) When an application for conciliation is accepted, the Director must allocate the dispute to a conciliator unless the Director has determined that the dispute is not suitable for conciliation.
- (2) The Director may reallocate the dispute to another conciliator at any time.

315. Duties of conciliators

- (1) A conciliator must make all reasonable efforts to bring the parties to the dispute to an agreement acceptable to all of them.
- (2) A conciliator must act —
 - (a) fairly, economically, informally and quickly; and
 - (b) according to the substantial merits of the case without regard to technicalities and legal forms.

- (3) A conciliator is not bound by the rules of evidence and may use any means the conciliator thinks fit in order to be informed about any matter.

316. Scope of conciliation

- (1) The matters that may be discussed and agreed at conciliation, or the subject of a direction requiring, suspending or reducing the payment of compensation, are not limited by the extent of the dispute as detailed in the application for conciliation.
- (2) This section does not prevent a conciliator from determining that a matter is beyond the scope of the application for conciliation and should be the subject of a separate application for conciliation.

317. Powers of conciliators

A conciliator may —

- (a) require a party to the dispute to attend at a conciliation conference at which the conciliator and any other party to the dispute is present; and
- (b) require a party to the dispute, or a legal practitioner or authorised agent representing a party, to answer questions put by the conciliator; and
- (c) require a party to the dispute, or a legal practitioner or authorised agent representing a party, to produce documents to the conciliator, or consent to another person who has relevant documents producing them to the conciliator.

318. Finalising orders

- (1) A conciliator may, with the consent of the parties to the dispute, make an order of the kind that an arbitrator could make setting out matters that have been agreed during conciliation.

- (2) An order must not be made under this section unless —
- (a) the parties have lodged with the Director a memorandum of consent that sets out the terms of the order consented to by the parties; and
 - (b) the conciliator is satisfied that —
 - (i) the parties have given their consent by free exercise of their will and without being induced by fraud or misrepresentation; and
 - (ii) the parties understand the effect of giving their consent; and
 - (iii) the terms of the order consented to by the parties are terms to which effect can be given under this Act.

319. Conclusion of conciliation and certificate of outcome

- (1) Conciliation of the dispute ends when —
- (a) agreement is reached by the parties on all matters in dispute; or
 - (b) the conciliator believes that there is minimal chance of agreement or further agreement, as the case may be, being reached; or
 - (c) the time limit for conciliation, as provided or extended under the conciliation rules, has expired; or
 - (d) the applicant for conciliation discontinues conciliation in accordance with the conciliation rules.
- (2) At the end of conciliation of the dispute the conciliator must issue a certificate in accordance with the conciliation rules setting out —
- (a) the outcome of conciliation; and
 - (b) the terms of any direction currently in force under Subdivision 2 requiring, suspending or reducing the payment of compensation.

- (3) The terms of an agreement reached by the parties must not be included in the conciliator's certificate unless they are terms —
 - (a) that are of a kind that an arbitrator could determine; and
 - (b) to which effect can be given under this Act.

Subdivision 2 — Directions for payment of compensation

320. Interim compensation directions

- (1) A conciliator may give a direction (an *interim compensation direction*) requiring the payment of compensation by the employer if the conciliator considers that it would be reasonable to expect that the resolution or determination of a dispute would result in the compensation becoming payable.
- (2) An interim compensation direction may require the payment of any or all of the following —
 - (a) income compensation;
 - (b) medical and health expenses compensation;
 - (c) miscellaneous expenses compensation;
 - (d) workplace rehabilitation expenses compensation.
- (3) A conciliator must not give an interim compensation direction for the payment of income compensation —
 - (a) for a period that exceeds 12 weeks; or
 - (b) if 2 or more directions are given — for periods the aggregate of which exceeds 12 weeks.
- (4) A conciliator must not give an interim compensation direction for the payment of medical and health expenses compensation, miscellaneous expenses compensation, workplace rehabilitation expenses compensation or any combination of those payments —
 - (a) of an amount that exceeds 5% of the general maximum amount applying when the direction is given; or

- (b) if 2 or more directions are given — of amounts the aggregate of which exceeds 5% of the general maximum amount applying when the last direction is given.
- (5) A payment of compensation made in accordance with an interim compensation direction —
 - (a) is not an admission of liability; and
 - (b) does not prevent a question of liability from being heard and determined under this Act as if the payment had not been made.

321. Amendment, suspension or revocation of interim compensation directions

- (1) A conciliator may give a direction to amend, suspend or revoke an interim compensation direction.
- (2) The amendment, suspension or revocation of an interim compensation direction (the *change*) operates as follows unless the conciliator directs otherwise —
 - (a) in the case of income compensation — the change applies only to compensation for a period after the change takes effect, and compensation for a period before the change takes effect remains payable as if the change had not occurred;
 - (b) in the case of medical and health expenses compensation, miscellaneous expenses compensation or workplace rehabilitation expenses compensation — the change applies only to compensation for expenses incurred after the change takes effect, and compensation for expenses incurred before the change takes effect remains payable as if the change had not occurred;
 - (c) in the case of suspension — the change has the effect provided for by paragraph (a) or (b) only during the period of the suspension.

- (3) Subsection (2) applies to the revocation of an interim compensation direction by an arbitrator under section 348(2) as if a reference to the conciliator were a reference to the arbitrator.

322. Payment by insurer if employer fails to comply with interim compensation direction

- (1) If an insured employer fails to make a payment required by an interim compensation direction, the Director may by order made on the application of the worker —
 - (a) require the employer's insurer to make the payment on behalf of the employer within 7 days after the order is made; and
 - (b) if the Director considers it necessary — require the employer's insurer to make on behalf of the employer any remaining payments required under the interim compensation direction.
- (2) An insurer who makes a payment of compensation on behalf of an employer pursuant to an order under subsection (1) is entitled to recover from the employer any payment received by the employer from the insurer in respect of the employer's liability to make the payment that the employer failed to make to the worker.
- (3) Subdivision 3 applies to an order of the Director under subsection (1) as if —
 - (a) the order were a conciliation decision, as defined in section 324; and
 - (b) a reference to a conciliator were a reference to the Director.

323. Suspending and reducing income compensation payments

- (1) This section applies if payments of income compensation are being made otherwise than by direction of a conciliator.

- (2) A conciliator may direct that payments of income compensation be suspended or reduced if the conciliator considers that it would be reasonable to expect that the resolution or determination of a dispute would result in the payments being suspended, reduced or discontinued.
- (3) A conciliator must not direct the suspension or reduction of income compensation payments —
 - (a) for a period that exceeds 12 weeks; or
 - (b) if 2 or more directions are given — for periods the aggregate of which exceeds 12 weeks.
- (4) The suspension or reduction of income compensation payments by direction under this section (the *change*) operates as follows unless the conciliator directs otherwise —
 - (a) the change applies only to compensation for a period after the change takes effect, and compensation for a period before the change takes effect remains payable as if the change had not occurred;
 - (b) in the case of suspension — the change has the effect provided for by paragraph (a) only during the period of the suspension.
- (5) A conciliator may, by further direction, amend, suspend or revoke a direction given under this section.
- (6) When a direction suspending income compensation payments is revoked —
 - (a) the obligation to make income compensation payments recommences from the day on which the suspension is revoked; and
 - (b) the worker must be paid the amount of income compensation for the period of suspension unless the conciliator directs otherwise.

- (7) When a direction reducing income compensation payments is revoked —
- (a) the obligation to make income compensation payments as if the direction had not been made recommences from the day on which the direction is revoked; and
 - (b) the worker must be paid the amount of income compensation to which the worker would have been entitled if the direction had not been made unless the conciliator directs otherwise.
- (8) Subsections (6) and (7) apply to the revocation by an arbitrator under section 348(2) of a direction of a conciliator under subsection (2) suspending or reducing income compensation payments as if a reference to the conciliator were a reference to the arbitrator.

Subdivision 3 — General provisions about conciliation directions, orders and agreements

324. Terms used

In this Subdivision —

certificate of outcome means the certificate issued by a conciliator under section 319(2) at the end of conciliation of a dispute;

conciliation agreement means an agreement reached by the parties to a dispute during conciliation and recorded in the certificate of outcome;

conciliation decision means —

- (a) a direction of a conciliator under Subdivision 2; or
- (b) an order of a conciliator under section 318 setting out matters that have been agreed during conciliation.

325. General provisions about conciliation decisions

- (1) A conciliator is not required to give reasons for a conciliation decision.
- (2) A conciliation decision can be given or made subject to conditions.
- (3) A decision to give or make, or not to give or make, a conciliation decision is not a determination of liability.
- (4) The conciliation rules may regulate the giving or making of conciliation decisions.

326 When conciliation decision or agreement has effect

A conciliation decision or conciliation agreement comes into effect immediately after the conciliation decision or conciliation agreement is given or made, or at a later time specified in the conciliation decision or conciliation agreement.

327. Correcting mistakes

A conciliator may correct a conciliation decision or a certificate of outcome to the extent necessary to rectify —

- (a) a clerical mistake; or
- (b) an error arising from an accidental slip or omission; or
- (c) a miscalculation of figures or a mistake in the description of any person, thing or matter referred to in the decision or certificate; or
- (d) a defect of form.

328. Enforcing conciliation decisions and agreements

- (1) A person to whom money is payable under a conciliation decision or conciliation agreement may enforce the conciliation

decision or conciliation agreement by filing in a court of competent jurisdiction (the *court*) —

- (a) a copy of the conciliation decision or certificate of outcome that the Director has certified to be a true copy; and
 - (b) an affidavit as to the amount not paid under the conciliation decision or conciliation agreement.
- (2) No charge is payable for filing documents under subsection (1).
- (3) On the filing of the required documents under subsection (1), the conciliation decision or conciliation agreement is taken to be an order of the court and may be enforced accordingly.
- (4) A conciliation agreement cannot be enforced under this section before the expiration of the period of 21 days beginning on the day on which the certificate of outcome is issued.

329. Conciliation decisions not reviewable

A conciliation decision is not subject to an appeal and is not amenable to judicial review.

330. Recovery of compensation paid under conciliator direction

If an arbitrator determines that a person was not liable to pay compensation paid in accordance with a direction of a conciliator, the following provisions apply —

- (a) the worker or other person who received the 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 —
 - (i) order the worker or other person who received the compensation to refund the whole or a specified part of the compensation; or

- (ii) order any other person determined by the arbitrator to be liable for the whole or any part of the compensation to reimburse the person who paid the compensation;
- (c) the arbitrator's determination does not affect any liability of an insurer to indemnify the employer for payment of the compensation.

Division 4 — Arbitration

Subdivision 1 — Determination of disputes by arbitration

331. Application for arbitration

If a dispute has not been resolved by conciliation, a party to the dispute may apply to the Registrar in accordance with this Act and the arbitration rules for determination of the dispute by arbitration.

332. Requirements for acceptance of application for arbitration

- (1) An application for determination of a dispute by arbitration cannot be accepted by the Registrar unless it is accompanied by —
 - (a) a certificate issued by the Director under section 313 to the effect that the dispute is not suitable for conciliation; or
 - (b) a certificate issued by a conciliator under section 319(2) at the end of conciliation of the dispute identifying the matter or matters in dispute that have not been resolved by conciliation.
- (2) Subsection (1) has effect despite any provision of this Act that —
 - (a) enables or requires a party to make application for a dispute to be heard and determined by an arbitrator; or
 - (b) authorises an arbitrator to determine a dispute.

Note for this subsection:

A dispute must go to conciliation before going to arbitration even when a provision refers to determination of the dispute by an arbitrator without mention of conciliation.

- (3) The arbitration rules may —
 - (a) impose requirements that must be satisfied before an application for arbitration can be accepted; and
 - (b) specify grounds on which, or circumstances in which, an application for arbitration must or may be rejected.
- (4) The onus is on the applicant to satisfy the Registrar as to any matter that is relevant to the acceptance or rejection of an application for arbitration.
- (5) Arbitration commences when an application for arbitration is accepted by the Registrar.

333. Registrar to allocate dispute

- (1) When an application for arbitration is accepted, the Registrar must allocate the dispute to which the application relates to an arbitrator for determination.
- (2) The Registrar may reallocate a dispute to another arbitrator at any time.

334. Information exchange by parties

- (1) If an application for arbitration is accepted, each party to the dispute must comply with the provisions (the ***information exchange requirements***) of the arbitration rules as to —
 - (a) the documents, other things and information that the party must provide to other parties and the Registrar; and
 - (b) the time or times at which, and manner in which, the documents, other things and information must be provided.

- (2) A party to a dispute who fails to comply with the information exchange requirements of the arbitration rules commits an offence unless the failure is excused under section 374(1).
Penalty for this subsection: a fine of \$5 000.
- (3) A statement in writing made by a worker cannot be tendered in evidence or used by the employer or insurer in a proceeding before an arbitrator unless a copy of the statement has been provided to the worker.
- (4) Any document, other thing or information that a party to a dispute has failed to provide in contravention of the information exchange requirements of the arbitration rules 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 provide a statement from that witness in contravention of the information exchange requirements of the arbitration rules.
- (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 authorised agent acting for the worker in connection with the dispute at the relevant time.
- (7) The arbitration rules may provide for and may authorise an arbitrator to permit —
 - (a) the admission in a proceeding before the arbitrator of any document, other thing or information that would otherwise be inadmissible under this section; and
 - (b) the appearance in a proceeding before the arbitrator in specified circumstances of a witness who would otherwise not be permitted to appear under this section.

- (8) If an arbitrator is satisfied that a party has failed without reasonable excuse to comply with a requirement under this section, the arbitrator may do any 1 or more of the following —
- (a) refer the matter to the CEO;
 - (b) note the matter in a certificate issued by the arbitrator in respect of the dispute (together with details of the documents, other things 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 a proceeding on the dispute before an arbitrator is not recoverable.

335. Duties of arbitrators

- (1) An arbitrator to whom a dispute is allocated must determine the matter or matters in dispute in accordance with this Act and the arbitration rules.
- (2) The arbitrator must not attempt to resolve by conciliation any matter in dispute.
- (3) Subsection (2) applies even if there was no conciliation of any matter in dispute because the Director issued a certificate under section 313 to the effect the dispute is not suitable for conciliation.

Subdivision 2 — Arbitration practice and procedure

336. General practice and procedure

- (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) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
 - (b) is not bound by the rules of evidence or any practice or procedure applicable to courts of record, except to the extent that the arbitration rules make them apply.
- (3) An arbitrator may inform themselves 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.

337. Relief or redress granted need not be restricted to claim

- (1) 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.
- (2) Subsection (1) does not prevent an arbitrator from determining that a matter is beyond the scope of the application for conciliation that preceded the application for arbitration and should be the subject of another application for conciliation.

338. Directions by arbitrator

- (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 to the proceeding.
- (3) A directions hearing conducted by an arbitrator may be held for the purposes of this section before the hearing of the proceeding.

339. Dismissal of proceeding

- (1) At any stage of a proceeding an arbitrator may dismiss the proceeding, whether generally or in relation to any particular matter in dispute, on any of the following grounds —
 - (a) the proceeding is an abuse of process;
 - (b) the proceeding ought to be dismissed for want of prosecution;
 - (c) any other ground for dismissal specified in the arbitration rules.
- (2) A proceeding may be dismissed under subsection (1) on application by a party to the proceeding or on the arbitrator's own initiative.
- (3) An arbitrator must not dismiss a proceeding under subsection (1) without first affording each of the parties to the proceeding a reasonable opportunity to be heard.

340. Illegal contracts of employment may be treated as valid

If, in any proceeding for the recovery under this Act of compensation for an injury from employment, it appears to an arbitrator that the contract for that employment was illegal, the arbitrator may, if the arbitrator considers it proper to do so having regard to all the circumstances of the case, deal with the

matter as if the injured person had at that time been working under a valid contract.

341. Arbitrator's powers to obtain 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 other things specified in the order; or
 - (b) to provide specified information within a period specified in the order.
- (2) The order may require the documents or other things to be produced or the information to be provided —
 - (a) in the case of an order given to a party to a dispute before the arbitrator — to the arbitrator or to another party to the dispute; or
 - (b) in the case of an order given to a person who is not a party to a dispute before the arbitrator — to the arbitrator.
- (3) If a person fails without reasonable excuse to produce a document or other thing or provide information in compliance with an order given to the person under this section, the person cannot as a party to a proceeding before the Registrar or an arbitrator have the document, other thing 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 on the arbitrator's own initiative.
- (5) The regulations or arbitration rules may make provision for or with respect to any of the following —
 - (a) exempting specified kinds of documents, other things or information from the operation of this section;

- (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 cannot exercise the arbitrator's powers under this section.
- (6) An arbitrator may order a person to produce a document, other thing or information despite any rule of law relating to privilege or the public interest in relation to the production of documents.

342. Use of experts by arbitrators

- (1) An arbitrator may refer any medical, technical or specialised matter to an expert and accept that expert's report as evidence.
- (2) An arbitrator who obtains an expert's report must call the expert for examination on the subject matter of the report if a party to the proceeding so requests.

343. Summoning witnesses

The Registrar or an arbitrator may issue a summons requiring the attendance of a person before an arbitrator.

344. Arbitrator's powers as to witnesses

- (1) In any proceeding before an arbitrator, the arbitrator may —
 - (a) call any person to give evidence; and
 - (b) examine any witness on oath or affirmation, or by use of a statutory declaration; and
 - (c) examine or cross-examine any witness to the extent the arbitrator thinks proper; and
 - (d) require any witness to answer questions put to the witness.

- (2) This section does not enable an arbitrator to require a witness to answer a question if the witness —
- (a) is excused from answering the question by section 374(1); or
 - (b) has a reasonable excuse for refusing to answer the question other than an excuse that would not excuse the person because of section 372 or 373.

345. Communication between worker and WorkCover WA employee not admissible

Evidence of any communication between a worker and a person employed by WorkCover WA and acting in the course of that employment is not admissible in a proceeding before an arbitrator unless, during the course of the proceeding, the worker consents to the evidence being admitted.

346. Oaths and affirmations

The Registrar or an arbitrator may administer an oath or take an affirmation for the purposes of this Act.

347. Arbitrator may authorise another 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.
- (2) The arbitrator may authorise evidence to be taken under this section outside the State.
- (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 must be regarded as having been given to the arbitrator.

Subdivision 3 — Arbitrator decisions

348. Decisions generally

- (1) Subject to this Act, an arbitrator may make decisions the arbitrator thinks fit.
- (2) An arbitrator may confirm, amend or revoke any direction of a conciliator —
 - (a) requiring the payment of compensation (an interim compensation direction under section 320(1)); or
 - (b) that income compensation payments are to be suspended or reduced (a direction under section 323).

Note for this subsection:

Sections 321(2) and 323(8) provide for the effect of the revocation by an arbitrator of an interim compensation direction or a direction of a conciliator suspending or reducing income compensation payments.

349. 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.

350. Form and content of decision and reasons

- (1) A decision of an arbitrator must be given in writing to a party to a proceeding if —
 - (a) the arbitration rules require that the decision must 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 must 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 must be given in writing to a party to a proceeding if —
 - (a) the arbitration rules require that the reasons must 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; and
 - (b) need only identify the law that the arbitrator has applied in coming to the decision and give the reasons for doing so; and
 - (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.

351. Validity of decision not affected by contravention of this Subdivision

A failure of an arbitrator to comply with a requirement under this Subdivision does not affect the validity of a decision of the arbitrator.

352. When decision has effect

- (1) A decision of an arbitrator comes into effect immediately after the decision is made, or at a later time specified in it.
- (2) Subsection (1) does not prevent a stay of the operation of the decision from being given by the District Court under section 392 pending the determination of an application for leave to appeal from the decision and of any appeal.

353. Correcting mistakes

An arbitrator may correct a decision an arbitrator makes or a statement of the reasons an arbitrator has given for the decision to the extent necessary to rectify —

- (a) a clerical mistake; or
- (b) an error arising from an accidental slip or omission; or
- (c) a miscalculation of figures or a mistake in the description of any person, thing or matter referred to in the decision; or
- (d) a defect of form.

354. Reconsideration of decision on basis of new information

- (1) In this section —
new information means information relevant to an arbitrator's decision that was not available to the arbitrator at the time the decision was made, whether or not the information was available to, or could have been obtained by, a party at that time.

- (2) A party to a dispute may apply to the Registrar for the reconsideration by an arbitrator of the arbitrator's decision in the dispute on the basis of new information.
- (3) The arbitrator must reconsider the decision on the basis of the new information if of the opinion that the new information justifies reconsideration of the decision.
- (4) When considering whether new information justifies reconsideration of a decision, an arbitrator may have regard to —
 - (a) the probative value of the new information; and
 - (b) the length of time between the making of the decision and when the new information was obtained by the party applying for reconsideration; and
 - (c) the length of time between the party obtaining the new information and the party making the application for reconsideration; and
 - (d) any other matters the arbitration rules specify.
- (5) When an arbitrator reconsiders a decision on the basis of new information, the arbitrator must affirm, amend or revoke the decision, or make any further decision, as the arbitrator considers appropriate having regard to the new information.

355. Arbitration decision not reviewable

- (1) Except as otherwise provided by this Act, a decision of an arbitrator is final and binding on the parties and is not subject to an appeal.
- (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.

356. Enforcing decision

- (1) A person to whom money is payable 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 Registrar has certified to be a true copy; and
 - (b) an affidavit as to the amount not paid under the decision.
- (2) No charge is payable for filing a copy of a decision or affidavit under this section.
- (3) On filing, the decision is taken to be an order of that court, and may be enforced accordingly.

357. Publication of decision and reasons

- (1) The Registrar may cause any decision of an arbitrator and the reasons for the decision to be published in a manner the Registrar considers appropriate.
- (2) The Registrar may limit publication under this section in a manner the Registrar considers appropriate.

Subdivision 4 — Interest

358. Interest on sums to be paid

- (1) In any proceeding before an arbitrator, the arbitrator may order that there must 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 must be calculated at a rate prescribed by or determined under the regulations.
- (3) This section does not —
 - (a) authorise the payment of interest on 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.

359. Interest on unpaid sums

- (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 in respect of any sum ordered to be paid —
 - (a) must be calculated as from the day on which the order was made or from a later day, if any, fixed by an arbitrator in any particular case; and
 - (b) must 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.
- (3) If 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.

360. Interest on unpaid amount of agreed sum

- (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) must be calculated as from the day provided by the agreement as the day on which the sum is due to be paid or, if the agreement does not so provide, the day that is 21 days after the day on which the agreement was made; and

- (b) must 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.

361. Regulations may exclude interest

The regulations may prescribe circumstances in which interest is not payable under section 358, 359 or 360.

Division 5 — General provisions about conciliation and arbitration procedures

362. Term used: relevant rules

In this Division —

relevant rules means —

- (a) for matters relating to conciliation — the conciliation rules; or
- (b) for matters relating to arbitration — the arbitration rules.

363. Functions conferred by this Division

- (1) A provision of this Division that confers a function on both a conciliator and an arbitrator must be read as conferring the function on a conciliator only in respect of conciliation and on an arbitrator only in respect of arbitration.
- (2) A provision of this Division that authorises the conciliation rules and the arbitration rules to provide for a matter must be read as authorising the conciliation rules to provide for that matter only in respect of conciliation and authorising the arbitration rules to provide for that matter only in respect of arbitration.

364. Provision of information to another party or medical practitioner

- (1) In this section —
information includes a document or other thing.
- (2) When information is provided to a conciliator or arbitrator by a party to a dispute or another person (whether or not as required by a conciliator or arbitrator), the conciliator or arbitrator may provide the information to —
 - (a) any other party to the dispute or to a legal practitioner or authorised agent acting for the party; or
 - (b) a health professional.
- (3) A conciliator or arbitrator may, when providing information to another person, prohibit or restrict disclosure of the information by the person.

365. Representation

- (1) In this section —
prohibited person has the meaning given in section 366.
- (2) At any conciliation conference or arbitration hearing, a party to the dispute may appear in person or may be represented by —
 - (a) a legal practitioner; or
 - (b) an authorised agent; or
 - (c) a person or a member of a class of persons authorised by the relevant rules to represent the party.
- (3) A conciliator or arbitrator may refuse to permit an employer or an insurer to be represented by a legal practitioner or authorised agent if a party who is a worker is not represented by a legal practitioner or authorised agent.
- (4) A prohibited person cannot represent a party.

- (5) A conciliator or arbitrator may refuse to permit a party to be represented by a person if of the opinion that the person does not have sufficient authority to make binding decisions on behalf of the party.
- (6) The relevant rules may prevent specified persons, or persons of a specified class, from representing a party.

366. Meaning of prohibited person: s. 365(4)

- (1) In this section —

Australian practising certificate —

- (a) has the meaning given in the *Legal Profession Uniform Law (WA)* section 6(1); and
- (b) includes a local practising certificate granted under the repealed *Legal Profession Act 2008* before 1 July 2022;

corresponding law has the meaning given in the *Legal Profession Uniform Law (WA)* section 6(1);

Supreme Court roll has the meaning given in the *Legal Profession Uniform Law (WA)* section 6(1).

- (2) A person is a prohibited person —

- (a) if —

- (i) the person's name has been removed from a Supreme Court roll; and
- (ii) the person's name was not removed from a Supreme Court roll at the person's own request; and
- (iii) the person has not subsequently been admitted or re-admitted to the legal profession under the *Legal Profession Uniform Law (WA)* or a corresponding law;

or

- (b) if the person's Australian practising certificate is suspended; or

- (c) if the person is not a legal practitioner because the person's Australian practising certificate has been cancelled under —
 - (i) the repealed *Legal Profession Act 2008*; or
 - (ii) the *Legal Profession Uniform Law (WA)*; or
 - (iii) a corresponding law.

367. Litigation guardians

- (1) If a child is or is to be a party to a dispute, the conciliator or arbitrator may appoint a litigation guardian to act on the child's behalf.
- (2) If a party to a dispute is under a legal disability otherwise than because of being a child, the conciliator or arbitrator may defer taking action in respect of the dispute until a litigation guardian is appointed to act on the party's behalf, whether under the *Guardianship and Administration Act 1990* or otherwise.
- (3) The relevant rules may provide for the appointment of litigation guardians under this section.
- (4) The deferral of action in respect of a dispute under subsection (2) does not prevent a conciliator from forming a belief that there is minimal chance of an agreement, or further agreement, being reached in relation to the dispute.

368. Interpreters and assistants

- (1) Unless the conciliator or arbitrator directs otherwise, a party to a dispute or a person representing the party may be assisted in the course of a conciliation conference or arbitration hearing by an interpreter or another person necessary or desirable for the purpose of making the conference or hearing intelligible to the party and enabling the party to communicate adequately.
- (2) A person may present a written submission 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.

369. Ways of conducting proceedings

- (1) In this section —

representative means a person representing a party at a conciliation conference or arbitration hearing.

- (2) If a conciliator or arbitrator thinks it appropriate, the conciliator or arbitrator may allow the parties, their representatives and any witnesses (or 1 or more of them) to participate in a conciliation conference or arbitration hearing by means of telephone, video link or any other system or method of communication.
- (3) If a conciliator or arbitrator thinks it appropriate, the conciliator or arbitrator may conduct all or part of a conciliation or arbitration proceeding entirely on the basis of documents without the parties, their representatives or any witnesses attending or otherwise participating in the conference or hearing.
- (4) A conciliator or arbitrator may take into account a written submission prepared and submitted by a person on behalf of a party whether or not the party is represented at a conciliation conference or arbitration hearing by the person.
- (5) If all or part of a proceeding is conducted entirely on the basis of documents without the parties, their representatives and any witnesses attending or participating in a conference or hearing —
- (a) the conciliator or arbitrator must 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 it had been heard before the conciliator or arbitrator with the attendance in person of all persons involved in the proceeding; and

- (b) provisions of this Act applying to conferences or hearings apply with any necessary modifications in relation to the proceeding.

370. Proceedings to be in private

A conciliation conference or arbitration hearing must be conducted in private unless —

- (a) the conciliator or arbitrator decides that it should be conducted in public; or
- (b) the relevant rules otherwise provide.

371. Notice of proceedings and failure to attend

- (1) Notice of the time and place for a conciliation conference or arbitration hearing must be given in accordance with the relevant rules to —
 - (a) each party to the dispute; and
 - (b) any other person that the conciliator or arbitrator considers should be given notice.
- (2) If a party or other person given notice of a conciliation conference or arbitration hearing in accordance with the relevant rules fails to attend the conference or hearing, the conference or hearing may be held in the absence of the party or other person.
- (3) The failure of a party or other person to attend a conciliation conference or arbitration hearing does not affect the validity of a decision made in relation to the conference or hearing.

372. Abrogation of privilege against self-incrimination

- (1) An individual is not excused from complying with a requirement under this Part to answer a question, provide information or produce a document or other thing on the ground that the answer to the question or the information, document or

other thing may tend to incriminate the individual or render the individual liable to a penalty.

- (2) However, neither of the following is admissible in evidence in any criminal proceedings against the individual —
 - (a) an answer given or information provided by the individual in compliance with a requirement under this Part;
 - (b) the fact that a document or other thing produced by the individual in compliance with a requirement under this Part was produced.
- (3) Subsection (2) does not apply in respect of criminal proceedings arising out of the false or misleading nature of the answer, information, document or other thing.

373. 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 their capacity as a legal practitioner.
- (2) Subsection (1) applies only in respect of a question or report that relates directly to the treatment, nature or extent of impairment, or assessment of degree of impairment, of a worker.
- (3) A legal practitioner required under this Part to produce a medical report complies sufficiently with the requirement by producing the report 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 their capacity as a legal practitioner.

374. Other claims of privilege

- (1) A person is excused from answering a question, providing information or producing a document or other thing in a proceeding if the person could not be compelled to answer the question, provide the information or produce the document or other thing in proceedings in the Supreme Court, unless it would be contrary to —
 - (a) section 372; or
 - (b) section 373; or
 - (c) an order under section 341(1).
- (2) A conciliator or arbitrator may require a person to produce a document or other thing for the purpose of determining whether or not it is a document or thing that the conciliator or arbitrator has power to require the person to produce in the proceeding.

375. Powers in relation to documents produced

- (1) A conciliator or arbitrator may —
 - (a) inspect any document or other thing produced before the conciliator or arbitrator; and
 - (b) retain the document or thing for as long as the conciliator or arbitrator reasonably thinks fit; and
 - (c) make copies of the document or any of its contents.
- (2) This section does not apply to a document or thing produced only for the purpose of determining whether or not it is a document or thing that the conciliator or arbitrator has power to require a person to produce.

376. To whom compensation must be paid

A sum awarded, directed or agreed to be paid as compensation must, in the absence of any order or direction to the contrary, be paid to the person to whom it is payable under the award, direction or agreement unless it is required to be paid to WorkCover WA.

377. Payment of compensation to worker under legal disability

- (1) A question as to the payment of compensation that is payable to a worker under a legal disability to give an effective discharge for payment may be determined by an arbitrator on application under this Part as a dispute.
- (2) An arbitrator may order that compensation that is payable to a worker under a legal disability to give an effective discharge for payment must be paid to WorkCover WA and applied in the manner specified in the order.
- (3) If an arbitrator has ordered that compensation be paid to WorkCover WA under subsection (2), a question as to whether the compensation should be applied differently may be determined by an arbitrator on application under this Part as a dispute.
- (4) An arbitrator may make orders in the determination of a question arising under this section as the arbitrator thinks fit.

378. Admissibility of statements made to conciliator

- (1) In this section —
subsequent proceeding means an arbitration hearing or an action brought by a worker for damages independently of this Act.
- (2) Evidence of a statement made to a conciliator or in a conciliation conference is not admissible in a subsequent proceeding unless the person who made the statement agrees to the evidence being admitted.
- (3) A conciliator cannot be called as a witness in a subsequent proceeding.

379. Statements to arbitrators not admissible in common law proceedings

Evidence of a statement made in an arbitration hearing 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.

Division 6 — Regulations, rules and practice notes

380. Regulations

The regulations may make provision for or with respect to —

- (a) regulating the operations of the Conciliation Service and the Arbitration Service; and
- (b) the allowances to be paid to witnesses at a conciliation conference or arbitration hearing, and the circumstances in which, and the extent to which, they are to be paid from money standing to the credit of the General Account.

381. Conciliation rules

- (1) The Director may make rules (*conciliation rules*) prescribing all matters that are required or permitted by this Act to be prescribed by conciliation rules, or are necessary or convenient to be prescribed by conciliation rules for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), conciliation rules may make provision for or with respect to the following —
 - (a) the practice and procedure governing applications for conciliation;
 - (b) the lodgment of documents in connection with conciliation proceedings;
 - (c) the disclosure and exchange of information and documents in connection with conciliation proceedings;

- (d) the practice and procedure governing the jurisdiction, functions and proceedings of conciliators;
- (e) the assessment of, and orders as to, costs, as defined in section 394.

Note for this section:

Section 497 provides for rules as to service and facilitation of electronic processes.

382. Arbitration rules

- (1) The Registrar may make rules (*arbitration rules*) prescribing all matters that are required or permitted by this Act to be prescribed by arbitration rules, or are necessary or convenient to be prescribed by arbitration rules for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), arbitration rules may make provision for or with respect to the following —
 - (a) the practice and procedure governing applications for arbitration;
 - (b) the lodgment and service of documents in connection with arbitration proceedings;
 - (c) the disclosure and exchange of information and documents in connection with arbitration proceedings;
 - (d) the parties to arbitration proceedings, including the joinder, misjoinder and non-joinder of parties;
 - (e) requiring the attendance by the parties at a pre-arbitration conference to establish readiness for arbitration;
 - (f) the practice and procedure governing the jurisdiction, functions and proceedings of arbitrators;
 - (g) the assessment of, and orders as to, costs, as defined in section 394;
 - (h) limiting the number of medical reports that may be admitted in evidence in an arbitration hearing;

- (i) limiting the number of expert witnesses that may be called by any party in an arbitration hearing and otherwise restricting the calling of expert witnesses by a party.

Note for this section:

Section 497 provides for rules as to service and facilitation of electronic processes.

383. General provisions about rules

- (1) In this section —
rule means a conciliation rule or an arbitration rule.
- (2) A rule may require any matter or thing to be verified by statutory declaration.
- (3) Rules —
 - (a) are rules of court under the *Interpretation Act 1984*; and
 - (b) come into operation on the day of publication in accordance with the *Interpretation Act 1984* section 41 or on a later day or days specified in the rules.

384. Practice notes

- (1) The Director may issue conciliation practice notes about the practice and procedure of the Conciliation Service.
- (2) A conciliation practice note is not a conciliation rule and does not form part of the conciliation rules.
- (3) The Registrar may issue arbitration practice notes about the practice and procedure of the Arbitration Service.
- (4) An arbitration practice note is not an arbitration rule and does not form part of the arbitration rules.

Division 7 — Offences

385. Failure to comply with decision of dispute resolution authority

- (1) A person who fails to comply with a decision of a dispute resolution authority commits an offence.
Penalty for this subsection: a fine of \$15 000.
- (2) A reference in subsection (1) to a decision of a dispute resolution authority includes a reference to —
 - (a) a requirement made by a conciliator under section 317 (which provides for the general powers of conciliators) other than a requirement to which section 386 applies; and
 - (b) a direction given by a conciliator under section 320 or 323 (which provide for directions requiring the payment of compensation to a worker or the suspension or reduction of income compensation payments); and
 - (c) an order issued by a conciliator under section 318 (which provides for the issue of an order of the kind that an arbitrator could issue setting out matters that have been agreed during conciliation).
- (3) Subsection (1) does not apply if, or to the extent that —
 - (a) the person is excused by section 374 (which allows certain claims of privilege) from complying with the decision; or
 - (b) the person has a reasonable excuse for failing to comply with the decision, other than an excuse mentioned in section 372, 373 or 374 (which limit claims of privilege against self-incrimination and legal professional privilege in relation to medical reports).

- (4) 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 as otherwise specified under subsection (5) —
- (a) a copy of the decision that the Director or Registrar has certified to be a true copy; and
 - (b) a copy of this section.
- (5) 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 (4), the dispute resolution authority may specify another method for service of the documents on the person under that subsection.

386. Failure to comply with summons or requirement to attend

A person must not, without reasonable excuse, fail to comply with —

- (a) a summons issued by the Registrar or an arbitrator; or
- (b) a requirement made by a conciliator under section 317(a) to attend at a conciliation conference.

Penalty: a fine of \$5 000.

387. Failure to give evidence as required

A person appearing before the Registrar or an arbitrator commits an offence if the person —

- (a) refuses to swear an oath or make an affirmation or statutory declaration when required by the Registrar or an arbitrator to do so; or
- (b) when required by the Registrar or an arbitrator to give evidence that the person is competent and compellable to give, does not do so.

Penalty: a fine of \$5 000.

388. Giving false or misleading information

A person who gives a dispute resolution authority information that the person knows to be false or misleading in a material particular commits an offence.

Penalty: a fine of \$15 000.

389. Misbehaviour and other conduct

A person commits an offence if the person —

- (a) insults, or obstructs or hinders the performance of the functions of, a dispute resolution authority; or
- (b) insults, obstructs or hinders a person attending a conciliation conference or arbitration hearing; or
- (c) misbehaves at a conciliation conference or arbitration hearing; or
- (d) interrupts a conciliation conference or arbitration hearing; or
- (e) obstructs or hinders a person from complying with an order or direction of a dispute resolution authority or a summons or requirement to attend before a dispute resolution authority.

Penalty: a fine of \$15 000.

390. Referral of offence to CEO

If a dispute resolution authority is of the opinion that a person may have committed an offence under this Division, the dispute resolution authority may refer the matter to the CEO.

Division 8 — Appeals to District Court

391. Appeal against arbitrator's decision

- (1) If written reasons for an arbitrator's decision under this Act in respect of a dispute are given to a party to the dispute, the party

may, with the leave of the District Court, appeal to the District Court against the decision.

- (2) The District Court must not grant leave to appeal unless a question of law is involved.
- (3) In addition to the requirement that a question of law is involved, the District Court must not grant leave to appeal when an amount of compensation is at issue unless —
 - (a) the amount at issue in the appeal is —
 - (i) at least \$5 000 (or a greater amount, if any, prescribed by the regulations); and
 - (ii) at least 20% of the amount awarded in the decision appealed against;
 - or
 - (b) the District Court is of the opinion that the matter is of such importance that, in the public interest, an appeal should lie.
- (4) An application for leave to appeal cannot be made later than 28 days after the day on which the written reasons for the decision appealed against were given to the party making the application.
- (5) An appeal under this section is by way of review of the decision appealed against and, except as provided by this Part, must be conducted in accordance with the rules of court of the District Court.
- (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 District Court except with the leave of the District Court.

- (7) On hearing an appeal made under this section, the District Court may —
- (a) affirm, amend or quash the decision appealed against, or substitute, or make in addition, any decision that should have been made in the first instance; and
 - (b) subject to the limitations on an award of costs imposed by section 400, make any further or other decision, as to costs or otherwise, as the District Court thinks fit.

392. Effect of appeal on decision under appeal

- (1) The District Court 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 District Court, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement the decision.
- (3) This section does not limit the powers of the District Court under other written laws.

393. Appeal from District Court to Court of Appeal

An appeal to the Court of Appeal under the *District Court of Western Australia Act 1969* section 79 in respect of a judgment, order or determination in proceedings in the District Court under this Part is available only if —

- (a) the appeal relates to a question of law; and
- (b) the Court of Appeal grants leave to appeal.

Division 9 — Costs

Subdivision 1 — General

394. Terms used

In this Division —

approved costs determination means a costs determination approved and published under section 407;

costs means —

- (a) costs of a party (including fees, charges and disbursements); and
- (b) costs of a proceeding; and
- (c) other costs, if any, prescribed by the regulations;

Costs Committee means the committee established under section 402(2);

costs determination has the meaning given in section 405(1);

costs of a proceeding means costs of, or incidental to, a proceeding of a dispute resolution authority other than costs of a party;

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.

395. Costs to which Division applies

- (1) This Division 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 Division or the regulations otherwise provide.
- (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 Division.

396. Division prevails over *Legal Profession Uniform Law* (WA)

This Division and any regulations under this Division prevail to the extent of any inconsistency with the *Legal Profession Uniform Law* (WA), and in particular Part 4.3 of the Law.

Subdivision 2 — Determination, assessment and limitations as to costs

397. Costs to be determined by dispute resolution authority

- (1) Subject to this Division, costs are at 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 Uniform Law* (WA) Part 4.3 Division 7 (or in relevant regulations under section 401) or on an indemnity basis.
- (4) Any party to a proceeding may apply to a dispute resolution authority for an order as to costs.
- (5) A dispute resolution authority must not 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 398, the regulations may make provision for or with respect to the making of orders for the payment by a party of the costs of another party so as to —

- (a) promote the early resolution of issues and disputes by agreement; and
- (b) discourage unnecessary delay, excessive attendances and excessive preparation of documentation.

398. Costs unreasonably incurred by representative

- (1) If in any proceeding before a dispute resolution authority or in any matter under this Act that is resolved by agreement, a legal practitioner or authorised agent (the *representative*) representing a party (the *client*) incurs costs improperly or without reasonable cause or costs are wasted by undue delay or any other misconduct or default of the representative, a dispute resolution authority may make an order —
 - (a) disallowing the costs, as between the representative and the client; and
 - (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
 - (c) directing the representative personally to indemnify any person other than the client against costs payable by the person indemnified.
- (2) A dispute resolution authority must not make an order as to costs under this section if of the opinion that it would be unjust to make the order 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.

399. Agent's costs

A person is not entitled to be paid or recover any amount for an agent service performed by the person unless the person is an authorised agent.

400. Appeal costs

- (1) The District Court must not make an order for costs against a worker on the ground that an appeal under this Part to the District Court was successful.
- (2) If the appellant in an appeal under this Part to the District Court is a worker and is unsuccessful on the appeal, the District Court must not make an order for the payment of the appellant's costs on the appeal by any other party to the appeal.

401. 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 must be assessed or settled in accordance with the regulations.
- (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 Uniform Law (WA)* Part 4.3 Division 7; and
 - (b) adopt, with or without modification, any of the provisions of the *Legal Profession Uniform Law (WA)* Part 4.3 Division 7; and
 - (c) make provision for or with respect to the assessment of costs by a conciliator or an arbitrator.
- (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 Uniform Law (WA)*.

Subdivision 3 — Maximum costs

402. Costs Committee established

- (1) In this section —

Legal Costs Committee means the Legal Costs Committee established under the *Legal Profession Uniform Law Application Act 2022* section 83.

- (2) A committee called the Costs Committee is established.

- (3) The Costs Committee is constituted by the following members —

- (a) the CEO;
- (b) 1 or more other members of the Board nominated by the Board;
- (c) 2 members of the Legal Costs Committee nominated by the chairperson of that Committee.

- (4) If the chairperson of the Legal Costs Committee fails to nominate a member of the Costs Committee under subsection (3)(c) within 30 days after receiving a written request from the CEO, the CEO may appoint a person as a member for the purposes of subsection (3)(c) in place of a member of the Legal Costs Committee.

403. Remuneration and allowances of Costs Committee members

A member of the Costs Committee is entitled to be paid from the General Account any remuneration and allowances that the Minister may determine on the recommendation of the Public Sector Commissioner.

404. Constitution and procedure of Costs Committee

- (1) Except to the extent that section 402 provides for the membership of the Costs Committee, the constitution and

procedure of, and other matters relating to, the Costs Committee —

- (a) may be prescribed by the regulations; or
 - (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 procedure is as the Costs Committee determines.

405. Determinations as to maximum costs

- (1) The Costs Committee may make a determination (a *costs determination*) fixing maximum costs that may be charged for —
- (a) legal services and agent services; and
 - (b) 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 costs determination may —
- (a) authorise any matter or thing to be determined, applied or regulated by a specified person or body; and
 - (b) fix a cost or amount by reference to a cost or amount fixed by a costs determination made under the *Legal Profession Uniform Law Application Act 2022* section 133.
- (3) The power under this section to make a costs determination for services or matters includes power to make a determination that no amount may be charged for a particular service or matter or class of services or matters, with the result that a legal practitioner or authorised agent is not entitled to be paid or recover any amount for the service or matter concerned.

406. Making a costs determination

- (1) Before making a costs determination the Costs Committee may —
 - (a) publish notice of a proposed determination and consider any submissions made to it in respect of the proposed determination; and
 - (b) make other inquiries it considers necessary to facilitate the making of the determination.
- (2) In making a costs 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.

407. Approval and publication of costs determinations

- (1) The Costs Committee must report to the Minister —
 - (a) a costs determination of the Costs Committee; and
 - (b) the reasons for its decisions in respect of the costs determination.
- (2) If the Minister approves a costs determination, the determination must be published in the *Gazette*.
- (3) An approved 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 must be taken of —
 - (a) an approved costs determination published in the *Gazette*; and
 - (b) the day of publication of the determination.

- (5) An approved costs determination may be amended or revoked by a subsequent approved costs determination.

408. Effect of approved 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 amount fixed by an approved costs determination as the maximum costs that may be charged for the service or matter.
- (2) An authorised agent is not entitled to be paid or recover for an agent service or other matter an amount that exceeds any amount fixed by an approved costs determination as the maximum costs that may be charged for the service or matter.
- (3) This section does not entitle a legal practitioner or authorised agent to recover costs for a legal service or matter in contravention of an order of a dispute resolution authority under section 398.

409. Limit on agreement as to costs

- (1) An agreement must not be made for a legal practitioner or authorised agent to receive, for any legal service or agent service, any greater amount than is provided for in an approved costs determination as the maximum costs that may be charged for the service.
- (2) An agreement made contrary to this section is void.

410. Costs in relation to actions for damages

Nothing in this Division affects the operation of section 428 (which deals with agreements as to solicitor-client costs in actions for damages independently of this Act).

Part 7 — Common law

Division 1 — General

411. Terms used

(1) In this Part —

damages —

- (a) means damages due or payable to, or claimed by, a worker for an injury caused to that worker by the tort of another person; but
- (b) does not include —
 - (i) any sum required or authorised to be paid under an award or industrial agreement as those terms are defined in the *Industrial Relations Act 1979* section 7(1); or
 - (ii) any sum payable under a superannuation scheme or any life or other insurance policy; or
 - (iii) any amount paid in respect of costs incurred in connection with legal proceedings;

third party means a person other than the employer;

tort means negligence or other tort or breach of statutory duty.

- (2) This Part applies to damages for a tort even if the damages are sought to be recovered in an action for breach of contract or other action.

412. References to employer include person for whom employer vicariously liable

A reference in this Part to a worker's employer includes a reference to a person for whose acts the employer is vicariously liable.

413. Liability independent of this Act not affected

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

414. Requirements for motor vehicle claims not affected

This Part does not affect the operation of the *Motor Vehicle (Third Party Insurance) Act 1943* sections 29 and 29A, and this Part must be read subject to those sections.

Division 2 — Constraints on common law proceedings and damages: actions against employer

415. Application of Division

This Division applies to an award of damages against a worker's employer independently of this Act in respect of an injury suffered by the worker if —

- (a) the injury was caused by the tort of the employer; and
- (b) compensation for the injury has been paid or is payable, or would have been paid or be payable but for section 20.

Note for this section:

Section 412 extends references in this Division to an employer to a person for whose acts the employer is vicariously liable.

416. Damages to which this Division does not apply

This Division does not apply to —

- (a) an award of damages in respect of an injury that results in the death of the worker; or
- (b) an award of damages to which the *Motor Vehicle (Third Party Insurance) Act 1943* applies; or
- (c) an award of exemplary or punitive damages; or

- (d) an award of damages against a person who is a worker's employer (a *deemed employer*) only because of section 215 or 225; or
- (e) an award of damages against a person for whose actions a deemed employer is vicariously liable; or
- (f) an award of damages of a class that is excluded by the regulations from the application of this Division.

417. Application of Division depends on when cause of action accrues

This Division applies in respect of a cause of action that accrued before, on or after the day on which this section comes into operation but does not apply in respect of a cause of action that accrued before 14 November 2005.

Note for this section:

14 November 2005 is the day on which the *Workers' Compensation Reform Act 2004* section 79 came into operation.

418. Limit on powers of courts to award damages against employer

A court must not award damages against a worker's employer contrary to this Division.

419. No damages for noise-induced hearing loss

Damages must not be awarded against a worker's employer in respect of noise-induced hearing loss.

420. No damages if compensation settlement agreement registered

- (1) Damages must not be awarded against a worker's employer in respect of an injury if a settlement agreement has been registered under Part 2 Division 12 in respect of the injury.
- (2) This section does not apply if the settlement agreement applies only in respect of dust disease impairment compensation.

421. Threshold requirements for commencement of proceedings and award of damages

- (1) Except as provided in section 422(2), court proceedings for an award of damages in respect of an injury must not be commenced against the worker's employer unless the following requirements have been complied with —
- (a) the worker's degree of permanent whole of person impairment resulting from the injury has been assessed to be at least 15% and that assessment has been recorded by the Director as the supporting assessment for the worker's election referred to in paragraph (b);
 - (b) the worker has elected in accordance with the regulations to retain the right to seek the damages and the Director has —
 - (i) registered the election in accordance with the regulations; and
 - (ii) notified the worker in writing that the election has been registered.

Note for this subsection:

For the purposes of paragraph (a), an assessment of the worker's degree of permanent whole of person impairment must be made as required by Part 4 Division 3.

- (2) The worker is not required to identify in an election all employers who are potentially liable to contribute to damages.
- (3) The Director may refuse to register an election if not satisfied that the worker has been properly advised as to the consequences of the election.
- (4) A court must not award damages against a worker's employer in respect of an injury unless —
 - (a) proceedings in the court —
 - (i) have been commenced in compliance with subsection (1); or

- (ii) if the proceedings were commenced under section 422(2), the requirements referred to in subsection (1)(a) and (b) of this section have been complied with after the commencement of the proceedings;
 - and
 - (b) the court is satisfied that the worker's degree of permanent whole of person impairment resulting from the injury is at least 15%.
- (5) In determining the worker's degree of permanent whole of person impairment, the court is not bound by the supporting assessment recorded for the worker's election but may admit the assessment as evidence relevant to the worker's degree of permanent whole of person impairment.
 - (6) An election that the Director has registered under this section cannot be withdrawn and, after the election has been registered, another election in respect of the same injury cannot be registered.
 - (7) Subsection (6) does not prevent another assessment as to the worker's degree of permanent whole of person impairment from being made (before or after the commencement of court proceedings) after the Director has registered the election and does not prevent another assessment from being used in court proceedings.
 - (8) The Director may at any time rectify an error that was made in registering an election.
 - (9) This section extends to an award of damages by way of consent judgment or settlement of an action.
 - (10) An election lodged for registration by the Director and evidence of a supporting assessment to be recorded by the Director must be in the approved form.

422. Commencement of court proceedings against employer of worker with terminal disease

- (1) For the purposes of this section, a worker is taken to have a terminal disease if —
- (a) the worker is diagnosed, by a medical practitioner who is a specialist in respiratory medicine, with 1 or more of the following diseases or conditions —
 - (i) diffuse pleural fibrosis;
 - (ii) lung cancer;
 - (iii) mesothelioma;
 - (iv) pneumoconiosis;
 - (v) silicosis;and
 - (b) the medical practitioner certifies that the disease or condition is likely to cause the death of the worker within a period of 2 years beginning on the day on which the certificate is given.
- (2) Court proceedings for an award of damages in respect of an injury may be commenced against the employer of a worker who has a terminal disease before compliance with the requirements referred to in section 421(1)(a) and (b).

423. Effect of election to retain right to seek damages on entitlement to compensation

- (1) If a worker's election to retain the right to seek damages has been registered by the Director as referred to in section 421(1)(b)(i) and the worker's degree of permanent whole of person impairment as assessed by an approved permanent impairment assessor is less than 25% —
- (a) the amount of any income compensation payments to which the worker is entitled under this Act in respect of the injury for any time during the first 6 months after the

day on which the election is registered (the **registration day**) is the reduced amount provided for by subsection (2); and

- (b) the worker is not entitled to any income compensation payment in respect of the injury to the extent that the payment would be for any time that is more than 6 months after the registration day; and
- (c) the worker is not entitled to any permanent impairment compensation in respect of the injury; and
- (d) the worker is not entitled to any medical and health expenses compensation, miscellaneous expenses compensation or workplace rehabilitation expenses compensation in respect of the injury for expenses incurred after the registration day.

(2) The **reduced amount** is —

- (a) to the extent that it is for any time during the first 3 months after the registration day — 70% of the amount 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 registration day — 50% of the amount to which the worker would have been entitled if this section had not applied.

424. Maximum damages award for less than 25% impairment

(1) In this section —

maximum damages amount for less than 25% impairment

means the amount prescribed by the regulations as the maximum damages amount for less than 25% impairment.

(2) Unless the court is satisfied that the worker's degree of permanent whole of person impairment is at least 25% —

- (a) the maximum amount of damages that may be awarded against the worker's employer in respect of the injury is

- the amount that is the maximum damages amount for less than 25% impairment; and
- (b) the maximum amount may be awarded only in a most extreme case; and
 - (c) in any other case the amount of damages to be awarded must be a proportion, determined according to the severity of the injury or injuries, of the maximum amount that may be awarded.
- (3) A determination of the amount of damages that may be awarded must be made on the basis of the maximum damages amount for less than 25% impairment at the time the award is made.
 - (4) This section has effect in respect of the amount of a judgment before any reduction required by operation of section 432.
 - (5) This section imposes no maximum amount for an award of damages against a worker's employer if the court is satisfied that the worker's degree of permanent whole of person impairment is at least 25%.
 - (6) This section does not create an entitlement to damages and is subject to any other law that prevents or limits the awarding of damages.
 - (7) This section extends to an award of damages by way of consent judgment or settlement of an action.

425. Special provisions for HIV and AIDS

- (1) Damages must not be awarded against a worker's employer in respect of the infection of a worker with HIV but damages may be awarded in respect of the worker's contraction of AIDS.
- (2) A worker who has contracted AIDS has, for the purposes of this Division, 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 must be recorded by the Director, and otherwise treated for the purposes of this Division, as if it were an assessment by an approved permanent impairment assessor that the worker's degree of permanent whole of person impairment resulting from the disease was at least 25%.
- (4) The regulations may make provision for or with respect to the methods for determining for the purposes of this section whether a worker has contracted AIDS.
- (5) Part 4 Division 3 does not apply to the degree of permanent impairment of a worker resulting from the contraction of AIDS.
- (6) The cause of action of a worker who has contracted AIDS is taken to have accrued, for the purposes of this Division and any limitation on the period within which proceedings may be commenced to recover damages for that cause, when a certificate is first given in writing by a medical practitioner to the effect that the worker has contracted AIDS.

426. Special provisions for dust disease damages claims

- (1) For the purposes of this Division, a worker's degree of permanent whole of person impairment resulting from a dust disease is —
 - (a) as assessed by a Dust Disease Medical Panel; or
 - (b) as agreed by the worker and the employer under this section.
- (2) If the worker has made a claim for compensation for the dust disease, the Panel to which the worker's claim was referred under section 123 is the Panel that assesses the worker's degree of permanent whole of person impairment for the purposes of this Division.

- (3) If the worker has not made a claim for compensation for the dust disease, the CEO must constitute a Dust Disease Medical Panel to determine the following questions and Part 2 Division 9 Subdivision 3 applies accordingly —
- (a) Is or was the worker suffering from diffuse pleural fibrosis, lung cancer, mesothelioma, pneumoconiosis or silicosis?
 - (b) What is assessed to be the degree of permanent whole of person impairment resulting from the disease?
- (4) The Panel determining a question for the purposes of this section is not bound by a previous assessment of a Dust Disease Medical Panel if the previous assessment has not been recorded by the Director as the supporting assessment for the worker's election to retain the right to seek damages as referred to in section 421(1)(b).
- (5) As an alternative to an assessment by a Dust Disease Medical Panel of a worker's degree of permanent whole of person impairment resulting from a dust disease, the worker and the employer can agree —
- (a) that the worker's degree of permanent whole of person impairment resulting from a dust disease is at least 15%; and
 - (b) as to whether or not the worker's degree of permanent whole of person impairment resulting from a dust disease is at least 25%.
- (6) An agreement under subsection (5) must be accepted by the Director, and otherwise treated for the purposes of this Division, as if it were an assessment by a Dust Disease Medical Panel as to the worker's degree of permanent whole of person impairment resulting from the dust disease.

- (7) A worker is, for the purposes of this Division, taken to have a degree of permanent whole of person impairment resulting from that disease of at least 25% if —
 - (a) a Dust Disease Medical Panel determines that the worker is or was suffering from mesothelioma; or
 - (b) subsection (8) applies to the worker.
- (8) This subsection applies to a worker if —
 - (a) a Dust Disease Medical Panel determines that the worker is or was suffering from diffuse pleural fibrosis, lung cancer, pneumoconiosis or silicosis; and
 - (b) the Dust Disease Medical Panel indicates in the determination, or a medical practitioner who is a specialist in respiratory medicine certifies, that the disease or condition is likely to cause the death of the worker within a period of 2 years beginning on the date of the determination or certificate, as the case requires.

427. Effect of this Division on contribution required from employer

- (1) An 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 a third party in relation to an injury if —
 - (a) section 421 prevents an award of damages against the employer in respect of the injury; or
 - (b) damages in respect of the injury have been awarded against the employer in accordance with section 424.
- (2) If section 424 limits the damages that could have been awarded against an employer in respect of an injury —
 - (a) the contributions that the employer may be liable to make under the Contribution Act in respect of damages awarded against third parties in relation to the injury are

not to exceed the damages that could have been awarded against the employer in accordance with section 424; and

- (b) if the employer has made or been directed to make a contribution under the Contribution Act in respect of damages awarded against a third party in relation to the injury, the amount of damages that may be awarded against the employer in accordance with section 424 is reduced by the amount of that contribution.
- (3) This section applies regardless of whether the damages are awarded against 1 or several employers.

428. Limits on agreements as to solicitor-client costs

- (1) This section applies to an action for damages independently of this Act if this Division applies to the awarding of damages in the action (whether or not an award of damages is actually affected by this Division).
- (2) An agreement must not be made for a legal practitioner to receive, for appearing for or acting on behalf of a person in an action to which this section applies, any greater reward than is provided for by any legal costs determination made under the *Legal Profession Uniform Law Application Act 2022* section 133.
- (3) An agreement that is made contrary to this section is void.

429. Regulations

The regulations may provide for notification to be given to workers and employers —

- (a) of the effect of provisions of this Division; and
- (b) of things done under this Division.

Division 3 — Prevention of double recovery

430. Application of Division

This Division applies to an action for damages brought by a worker against —

- (a) the worker's employer; or
- (b) a third party; or
- (c) both the worker's employer and a third party.

431. Worker to be given opportunity to discontinue action for damages

- (1) If the court decides that an action for damages should succeed, the worker must be given a reasonable opportunity after damages have been ascertained but before judgment is entered to elect whether to have judgment or to discontinue.
- (2) If the action is discontinued, the worker must pay the costs of the employer or any third party or of each of them or the part of those costs the court thinks fit.

432. Deduction or repayment of compensation if action for damages proceeds to judgment

- (1) If an action for damages in respect of an injury proceeds to judgment (including the acceptance of an offer to consent to judgment) against the employer alone or against the employer and a third party —
 - (a) the amount of the damages payable to the worker under the judgment is reduced by the amount of any compensation paid under Part 2 for the injury (including the amount of any liability for the compensation discharged by a settlement agreement registered under Part 2 Division 12); and

- (b) any apportionment of the damages between the employer and the third party must be on the basis of the amount of the damages as so reduced.
- (2) If an action for damages in respect of an injury proceeds to judgment (including the acceptance of an offer to consent to judgment) against a third party alone —
 - (a) the amount of any compensation for the injury recovered by the worker must be a first charge on the judgment; and
 - (b) the third party is required to pay that amount to the employer; and
 - (c) the judgment is, to the extent of the payment, discharged by the payment.
- (3) If the damages recoverable by a worker are reduced by reason of the contributory negligence of the worker, the amount of the compensation paid under Part 2 (including the amount of any liability for the compensation discharged by a settlement agreement registered under Part 2 Division 12) for the injury is notionally reduced by the proportion by which the worker's damages were reduced, and that notionally reduced amount is the amount of the reduction in damages under subsection (1) or of the first charge on the judgment under subsection (2).
- (4) There is no reduction under subsection (1) in the amount of the damages payable to the extent that the employer has recovered from the worker any amount of the compensation concerned under section 22.

433. Compensation proceedings not permitted if action for damages succeeds

- (1) If an action for damages brought by a worker in respect of an injury is successful, the worker must not commence or continue proceedings for or in relation to compensation for the injury.

- (2) For the purposes of this section, an action for damages is successful if —
 - (a) the action proceeds to judgment (including the acceptance of an offer to consent to judgment); or
 - (b) the action is settled by agreement or acceptance of an offer of compromise.
- (3) If an action for damages is settled by agreement otherwise than by acceptance of an offer to consent to judgment or an offer of compromise, the employer or third party with whom the agreement is made must file a memorandum of the terms of the settlement with the Director in the approved form within 3 months after the date of execution of the agreement by the worker.
- (4) A failure to comply with subsection (3) does not affect the validity of the settlement.

Division 4 — Remedies against third parties

434. Worker entitled to proceed against third party for damages

- (1) When a third party is liable to pay damages in respect of an injury for which compensation is payable, the worker may take proceedings both against the third party to recover damages and against any person liable to pay compensation to recover that compensation.
- (2) In the proceedings, the worker is not entitled to recover both damages and compensation and must bring to account in reduction of the worker's entitlement to compensation any amount recovered by way of damages.
- (3) In a case to which section 432 applies, the requirement under subsection (2) to bring to account in reduction of the worker's entitlement to compensation any amount recovered by way of damages is satisfied by the operation of that section.

435. Employer's right to be indemnified by third party

- (1) An employer is entitled to be indemnified by a third party whose tort caused an injury to a worker to the full extent of the employer's liability to pay compensation for the injury, whether or not the third party has discharged their liability to pay damages to the worker by judgment, settlement or otherwise.
- (2) For the purposes of subsection (1) a reference to liability to pay compensation includes a reference to a liability that is discharged by a settlement agreement registered under Part 2 Division 12.
- (3) If negligence of the employer caused or contributed to the worker's injury, the extent of the indemnity of the employer by the third party is reduced by the degree of the employer's negligence.
- (4) If negligence of the worker caused or contributed to the worker's injury, the extent of the indemnity of the employer by the third party is reduced by the degree of the worker's negligence.
- (5) The extent of the indemnity of the employer by the third party is reduced to the extent of any payment to the employer by the third party under section 432 or to the extent that under that section damages payable by the employer have been reduced by an amount of compensation paid by the employer.
- (6) All questions as to the right to or amount of any indemnity under this section may, in default of agreement between the employer and the third party, be determined by a court of competent jurisdiction.

436. Recovery of third party indemnity payment from worker

- (1) If a third party has paid the whole or any part of the damages payable to a worker in respect of an injury caused or contributed to by the third party and the third party has also indemnified the employer for the payment of any compensation for the injury,

the third party may recover from the worker the amount so paid to the employer.

- (2) For the purposes of subsection (1) a reference to compensation includes a reference to a liability for compensation that is discharged by a settlement agreement under Part 2 Division 12.
- (3) The amount that may be recovered by the third party cannot exceed the amount of damages paid to the worker by the third party.

437. Employer's right to recover unpaid damages from third party

- (1) A reference in this section to compensation includes a reference to a liability for compensation that is discharged by a settlement agreement registered under Part 2 Division 12.
- (2) If some of the damages payable to a worker by a third party for an injury have not been paid to the worker (the *unpaid damages*), the employer can recover the unpaid damages from the third party as a debt due to the employer if some of the compensation paid by the employer for the injury has not been refunded to the employer.
- (3) The amount of compensation refunded to the employer includes the amount of any reduction in damages paid by the employer resulting from the operation of section 432 on account of compensation paid by the employer.
- (4) Proceedings to recover the unpaid damages are to be taken by the employer in the name of the worker and at the expense of the employer.
- (5) Any damages recovered by the employer from the third party in excess of the amount of compensation not refunded to the employer must be paid to the worker.

- (6) The employer must indemnify the worker against all costs and expenses incurred in respect of proceedings taken in the name of the worker.

Division 5 — Choice of law

438. Terms used

In this Division —

State's legislation about damages for an injury from employment means —

- (a) for this State — Division 2;
- (b) for another State — any provision of a law of that State that is declared by the regulations to be the State's legislation about damages for an injury from employment;

substantive law does not include a law prescribing rules for choice of law but includes the following —

- (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 period within which an action must be brought (including a law providing for the extension or abridgment of that period);
- (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding 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;

- (g) a provision of a State's legislation about damages for an injury from employment, whether or not it would be otherwise regarded as procedural in nature.

439. Extended meaning: injury, employer and worker

For the purposes of this Division —

- (a) a reference to *injury*, *employer* and *worker* includes anything that is within the scope of a corresponding term in the statutory workers compensation scheme of another State; and
- (b) the determination of what constitutes employment or whether or not a person is a worker or a worker's employer must 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.

440. 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 to which this Division applies 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 there is an entitlement to compensation in respect of the injury under the statutory workers compensation scheme of more than 1 State.
- (3) For the purposes of this section, there is considered to be an entitlement to compensation under a statutory workers

compensation scheme of a State in respect of an injury if compensation in respect of the injury —

- (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; or
 - (c) would have been payable if the worker had not been a participant in a scheme for the benefit of catastrophically injured workers.
- (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.

441. 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) a tort 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 that was caused by a tort or breach of contract of the person if the tort or breach of contract on which the claim is founded occurred in this State.
- (3) This section applies even if the damages or recovery of contribution in respect of an injury that was caused by a tort are claimed in an action for breach of contract or other action.

442. Claim in respect of death included

For the purposes of this Division, a claim for damages in respect of death resulting from an injury must be considered as a claim for damages in respect of the injury.

443. Availability of action in another State not relevant

- (1) For the purposes of this Division it makes no difference 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.

Part 8 — Administration

Division 1 — General

444. Terms used

In this Part —

appointed member means a member of the Board appointed under section 453(1)(a) or (c);

chairperson means the person appointed under section 453(1)(a) as chairperson of the Board;

committee means a committee established under section 468(1);

workers compensation scheme means the scheme for workers compensation and injury management established under this Act.

Division 2 — WorkCover WA

445. WorkCover WA established

- (1) WorkCover WA is established.
- (2) WorkCover WA is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against WorkCover WA in its corporate name.
- (4) WorkCover WA may use, and operate under, the name WorkCover.
- (5) WorkCover WA is an SES organisation under the *Public Sector Management Act 1994*.

Note for this section:

It is an offence under section 524 for a person other than WorkCover WA to use or operate under the name WorkCover WA or a similar name.

446. Status

WorkCover WA is an agent of the Crown and has the status, immunities and privileges of the Crown.

447. Objective

The objective of WorkCover WA is to ensure the efficient and effective operation of the workers compensation scheme.

448. Functions

(1) In this section —

service provider means an insurer, self-insurer or other person who participates in or provides services in connection with the workers compensation scheme.

(2) WorkCover WA has the following functions —

- (a) to promote understanding of the workers compensation scheme through education and information;
- (b) to promote and support the return to work of injured workers;
- (c) to license, approve and regulate service providers that perform functions under this Act;
- (d) to monitor compliance by workers, employers and service providers affected by the workers compensation scheme;
- (e) to issue guidelines to assist service providers to perform their obligations under this Act;
- (f) to provide for the resolution of disputes in a manner that is fair, just, economical, informal and quick;
- (g) to fix recommended premium rates for workers compensation policies;
- (h) to control and administer the General Account, the Trust Account and the DI Fund;

- (i) to collect data from service providers and compile and publish information and reports as WorkCover WA considers necessary and desirable;
- (j) to undertake and participate in research to advance or support the purposes of the workers compensation scheme and this Act;
- (k) to promote the prevention of injuries from employment;
- (l) to advise the Minister on the operation and effectiveness of the workers compensation scheme and any matter the Minister refers to WorkCover WA;
- (m) any other function given to WorkCover WA under this or another Act.

449. Powers generally

- (1) In this section —
acquire includes taking on lease or licence or in any other manner in which an interest in property may be acquired;
dispose of includes disposing of by way of lease or licence or in any other manner in which an interest in property may be disposed of.
- (2) WorkCover WA has all the powers it needs to perform its functions.
- (3) WorkCover WA may, for the purposes of performing any of its functions —
 - (a) determine and charge fees for the provision of any services related to the performance of its functions; and
 - (b) effect contracts of insurance providing indemnity against liability to make payments out of moneys standing to the credit of the General Account or the DI Fund; and
 - (c) acquire, dispose of or otherwise deal in real or personal property; and

- (d) alter, improve, maintain, manage or develop real or personal property; and
 - (e) enter into any contract or arrangement, including a contract or arrangement for the provision of services to WorkCover WA.
- (4) Subsection (3) does not limit subsection (2) or any of WorkCover WA's other powers.

450. Delegation

- (1) WorkCover WA may delegate any power or duty of WorkCover WA under another provision of this Act to —
 - (a) a Board member; or
 - (b) the CEO or another WorkCover WA officer.
- (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 the power or duty.
- (4) A person 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 WorkCover WA to perform a function through a staff member or agent.
- (6) This section does not apply to the execution of documents, but authority to execute documents on behalf of WorkCover WA can be given under section 451(5).

451. Execution of documents

- (1) WorkCover WA must have a common seal.
- (2) A document is duly executed by WorkCover WA if —
 - (a) the common seal of WorkCover WA is applied to it in accordance with subsections (3) and (4); or

- (b) it is signed on behalf of WorkCover WA by a person or persons authorised to do so under subsection (5).
- (3) The common seal of WorkCover WA must not be applied to any document except as authorised by WorkCover WA.
- (4) The common seal of WorkCover WA must be applied to a document in the presence of any 2 Board members, each of whom must sign the document to attest that the common seal was so applied.
- (5) WorkCover WA may, by writing under its common seal, authorise any of the following persons to sign documents on behalf of WorkCover WA, either generally or subject to the conditions that are specified in the authorisation —
 - (a) a Board member or Board members;
 - (b) a staff member or staff members.
- (6) A document purporting to be executed in accordance with this section must be presumed to be duly executed unless the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of WorkCover WA, it must be presumed that the seal is the common seal of WorkCover WA unless the contrary is shown.

Division 3 — Administration of WorkCover WA

Subdivision 1 — The Board

452. Board is governing body

- (1) WorkCover WA must have a board.
- (2) The Board is the governing body of WorkCover WA and, in the name of WorkCover WA, performs WorkCover WA's functions under this Act or any other written law.

453. Board membership

- (1) The Board consists of the following members —
 - (a) 1 person appointed by the Minister as a member and chairperson of the Board;
 - (b) the CEO;
 - (c) 5 persons appointed by the Minister of whom —
 - (i) 1 is the WorkSafe Commissioner or a public service officer employed in the department principally assisting in the administration of the *Work Health and Safety Act 2020*;
 - (ii) 1 is a person experienced in employers' interests; and
 - (iii) 1 is a person experienced in workers' interests; and
 - (iv) 1 is a person experienced in insurance matters; and
 - (v) 1 is a person experienced in accounting and financial management.
- (2) The person appointed as chairperson must not be a public service officer.
- (3) Before making an appointment under subsection (1)(c)(ii), the Minister must, in writing, request the Chamber of Commerce and Industry of Western Australia (Inc.) to submit the name of a person, or the names of the number of persons 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 an appointment under subsection (1)(c)(iii), the Minister must, in writing, request UnionsWA to submit the name of a person, or the names of the number of persons 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)(iii).

454. Term of office of appointed members

- (1) An appointed member holds office for the period, not exceeding 3 years, that is specified in the member's instrument of appointment.
- (2) An appointed member is eligible for reappointment.

455. Casual vacancies, resignation and removal from office

- (1) In this section —
misconduct includes conduct that —
 - (a) brings WorkCover WA into disrepute; or
 - (b) otherwise renders the person unfit to hold office even though the conduct does not relate to a duty of the office.
- (2) The office of an appointed member becomes vacant if the appointed member —
 - (a) dies, resigns or is removed from office under this section; or
 - (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (c) is convicted of an offence punishable by imprisonment for more than 12 months; or
 - (d) is convicted of an offence under section 472(1) or (2) or 504(1).
- (3) An appointed member may at any time resign from office by written notice given to the Minister.
- (4) Subject to subsection (5), the resignation takes effect on the day on which the notice of resignation is received by the Minister.
- (5) If the notice of resignation specifies a day on which it is to take effect that is later than the day on which the notice of

resignation is received by the Minister, the resignation takes effect on the day specified in the notice of resignation.

- (6) The Minister may remove an appointed member from office —
- (a) on the grounds of neglect of duty; or
 - (b) on the grounds of misconduct or incompetence; or
 - (c) on the grounds of mental or physical incapacity, other than temporary illness, impairing the performance of the member's duties; or
 - (d) on the grounds of absence without leave from 3 consecutive meetings of the Board of which the member has had notice; or
 - (e) for any other reasonable cause, regardless of when the events or circumstances giving rise to that cause occurred.

456. Extension of term of office during vacancy

- (1) If the office of an appointed member becomes vacant because the member's term of office expires by effluxion of time, the appointed member continues to be an appointed member during that vacancy until the day on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).
- (2) Subsection (1) ceases to apply if the member resigns or is removed from office under section 455(6).
- (3) The maximum period for which an appointed member continues to be an appointed member under this section after the member's term expires is 3 months.

457. Leave of absence

The Minister may grant leave of absence to an appointed member on any terms and conditions the Minister thinks fit.

458. Alternate appointed members

- (1) If an appointed member is unable to act because of illness, absence or other cause the Minister may appoint another person as an alternate appointed member to act temporarily in the appointed member's place.
- (2) Section 453(3) and (4) apply to the appointment of an alternate appointed member as if the appointment of the alternate appointed member were the appointment of the appointed member.
- (3) While acting in accordance with the appointment, the alternate appointed member is taken to be, and to have any entitlement of, an appointed member.
- (4) An act or omission of an alternate appointed member cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

459. Remuneration and allowances of appointed members

An appointed member is entitled to be paid from the General Account any remuneration and allowances that the Minister may determine on the recommendation of the Public Sector Commissioner.

Subdivision 2 — Meetings

460. Meetings

- (1) Meetings of the Board must be held at times and places determined by the Board.
- (2) The Minister may at any time require the chairperson to convene a meeting of the Board to consider a matter specified by the Minister.
- (3) A special meeting of the Board may at any time be convened by the chairperson.

461. Quorum

A quorum for a meeting of the Board is 4 members of the Board.

462. Presiding member

- (1) The chairperson, if present, must preside at a meeting of the Board.
- (2) If neither the chairperson nor an alternate appointed member for the chairperson is present at a meeting of the Board, the Board members present must elect 1 of their number to preside.

463. Procedure at meetings

To the extent that the meeting procedures of the Board are not fixed under this Act, they are to be as the Board determines.

464. Voting

- (1) At a meeting of the Board each member present has a deliberative vote unless section 473 prevents the member from voting.
- (2) In the case of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.
- (3) A question is resolved by a majority of the votes cast.

465. Holding meetings remotely

The presence of a member at a meeting of the Board need not be by attendance in person but may be by that member and each other member at the meeting being simultaneously in contact by telephone or audio-visual or other means of instantaneous communication.

466. Decision without meeting

- (1) The purpose of this section is to enable the Board to make a decision on a matter (the *matter*) without a meeting of the Board being held.
- (2) A notice setting out the matter at issue and a draft decision on the matter may be sent by the chairperson to each other Board member for consideration.
- (3) A Board member may, by notice sent to each other Board member, cast a vote on whether or not the decision should be made.
- (4) If at least 4 Board members cast a vote under subsection (3) and a majority of the votes are in favour of the decision being made, the decision is taken to have been made and is as effectual as if it had been made at a meeting of the Board.
- (5) The Board must cause a record to be kept of each decision under subsection (4).

467. Minutes

The Board must cause accurate minutes to be kept of the proceedings at each of its meetings.

Subdivision 3 — Committees

468. Committees

- (1) The Board may establish committees to assist WorkCover WA in the performance of its functions.
- (2) The Board may discharge, alter or reconstitute a committee.
- (3) A committee may include persons who are not Board members but must include at least 1 Board member.

- (4) In appointing members of committees the Board must, as far as practicable, appoint —
- (a) persons experienced in employers' interests; and
 - (b) persons experienced in workers' interests; and
 - (c) persons with experience relevant to the kinds of matters to be considered by the committee concerned; and
 - (d) other persons the Board considers appropriate.

469. Directions to committee

- (1) The Board may give directions to a committee with respect to its functions and procedures.
- (2) A committee must comply with a direction given to it by the Board.

470. Committee procedures

- (1) The member of a committee who is a Board member or, if there are 2 or more of them, whichever of them is specified in their appointment as the person who is to preside, presides at meetings of the committee.
- (2) Subject to subsection (1) and any directions of the Board, a committee may determine its own procedures.

471. Remuneration and allowances of committee members

A member of a committee is entitled to be paid from the General Account any remuneration and allowances that the Minister may determine on the recommendation of the Public Sector Commissioner.

Subdivision 4 — Disclosure of interests

472. Disclosure of material personal interest

- (1) A Board member who has a material personal interest in a matter being considered or about to be considered by the Board

must, as soon as possible after the relevant facts have come to the Board member's knowledge, disclose the nature of the interest at a meeting of the Board.

Penalty for this subsection: a fine of \$10 000.

- (2) A member of a committee who has a material personal interest in a matter being considered or about to be considered by the committee 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 committee.

Penalty for this subsection: a fine of \$10 000.

- (3) Subsection (2) applies to a person who is a member of a committee and also a Board member even though the person has already disclosed the nature of the interest at a meeting of the Board.
- (4) A disclosure under subsection (1) or (2) must be recorded in the minutes of the meeting.

473. Interested member cannot participate

- (1) A Board member or a member of a committee who has a material personal interest in a matter being considered or about to be considered by the Board or the committee —
- (a) must not vote, whether at a meeting or otherwise, on the matter; and
 - (b) must not be present while the matter is being considered at a meeting.
- (2) A reference in subsection (1)(a) or (b) to a matter includes a reference to a proposed resolution under section 474 in respect of the matter, whether relating to that member or a different member.

474. Board may resolve s. 473 is inapplicable

Section 473 does not apply if —

- (a) a member has disclosed under section 472 an interest in a matter; and
- (b) the Board has at any time passed a resolution that —
 - (i) specifies the member, the interest and the matter; and
 - (ii) states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

475. Quorum if s. 473 applies

- (1) Despite section 461, if a member is disqualified under section 473(1) in relation to a matter, a quorum is present during the consideration of the matter if at least 3 members of the Board who are entitled to vote on any motion that may be moved at the meeting in relation to the matter are present.
- (2) The Minister may deal with a matter to the extent that the Board cannot deal with it because of subsection (1).

476. Minister may declare s. 473 and 475 inapplicable

- (1) The Minister may in writing declare that section 473 or 475 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must cause a copy of a declaration made under subsection (1) to be laid before each House of Parliament within 14 sitting days of the House after the declaration is made.

Division 4 — Staff of WorkCover WA

477. Chief executive officer

- (1) The CEO is appointed under the *Public Sector Management Act 1994* Part 3.
- (2) The CEO administers the day-to-day operations of WorkCover WA subject to the control of the Board.

478. Delegation by CEO

- (1) The CEO may delegate to another WorkCover WA officer any power or duty of the CEO under another provision of this Act, other than a power or duty delegated to the CEO under section 450(1).
- (2) The delegation must be in writing signed by the CEO.
- (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 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 CEO to perform a function through a staff member or agent.

479. Other staff

- (1) Public service officers may be appointed under the *Public Sector Management Act 1994* Part 3 to enable WorkCover WA to perform its functions.
- (2) This section does not detract from the power that the *Public Sector Management Act 1994* section 100 gives WorkCover WA to engage a person under a contract for services or appoint a person on a casual employment basis.

480. Use of other government staff

- (1) WorkCover WA may, by arrangement with the relevant employing authority, make use, either full-time or part-time, of the services of any officer or employee —
 - (a) in the Public Service; or
 - (b) in a State agency; or
 - (c) otherwise in the service of the State.
- (2) WorkCover WA may, by arrangement with a department of the Public Service or a State agency or instrumentality, make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) must be made on terms agreed to by the parties.

Division 5 — Ministerial directions

481. Minister may give directions

- (1) The Minister may give written directions to WorkCover WA with respect to the performance of its functions, either generally or in relation to a particular matter, and WorkCover WA must give effect to the directions.
- (2) However, the Minister cannot give a direction under subsection (1) about the performance of a function under section 253.
- (3) The text of a direction under this section must be included in the annual report submitted by the accountable authority of WorkCover WA under the *Financial Management Act 2006* Part 5.

482. Protection for disclosure or compliance with directions

WorkCover WA or another person performing a function under this Act is not liable —

- (a) in respect of any claim arising as a consequence of the disclosure of information or documents under section 481 or 498 or a duty imposed under the *Financial Management Act 2006* or the *Auditor General Act 2006*; or
- (b) for the fact of having done or omitted a thing that is required to be done or omitted by a direction given under this Act.

Part 9 — Financial provisions

Division 1 — General provisions

483. 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.

484. Borrowing powers

WorkCover WA may, with the Treasurer's prior approval —

- (a) borrow or re-borrow money; or
- (b) otherwise arrange for financial accommodation to be extended to WorkCover WA.

485. Guarantee by Treasurer

- (1) The Treasurer, on the Minister's recommendation, may, in the name and on behalf of the State, guarantee the payment of any money payable by WorkCover WA in respect of money borrowed by it under section 484.
- (2) A guarantee must be in a form, and contain terms and conditions, determined by the Treasurer.
- (3) Before a guarantee is given, WorkCover WA must —
 - (a) give the Treasurer any security the Treasurer requires; and
 - (b) execute all instruments that are necessary for the purpose.
- (4) The Treasurer may fix charges to be paid by WorkCover WA to the credit of the Consolidated Account in respect of a guarantee given under subsection (1).

486. Effect of guarantee

- (1) The due payment of money under a guarantee given under section 485(1) must be —
 - (a) made by the Treasurer; and
 - (b) charged to, and paid out of, the Consolidated Account, which this subsection appropriates accordingly.
- (2) The Treasurer must cause to be credited to the Consolidated Account any amounts received or recovered from WorkCover WA or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 485(1).

Division 2 — General Account

487. Terms used

- (1) In this Division —

notional premium income, of a self-insurer for a financial year, means the amount estimated by WorkCover WA as the amount that the self-insurer would have been liable to pay as the premium for a workers compensation policy that would have been required under this Act for the financial year had the self-insurer not been a self-insurer;

premium income, of a licensed insurer for a financial year, means the total amount of the premium income of the insurer (whether received by or owing to the insurer) in respect of workers compensation policies issued or renewed during the financial year excluding any part of those premiums paid by way of reinsurance to any other licensed insurer;

total annual contribution, for a financial year, means an amount equal to the estimate approved under section 489 for the financial year.
- (2) WorkCover WA's estimate of the notional premium income of a self-insurer for a period must be made on the basis of the recommended premium rate applicable to the industry

classification appropriate to the self-insurer and the remuneration of workers of the self-insurer for that period.

- (3) If an employer is a self-insurer for only part of a financial year, the notional premium income of the self-insurer for the financial year is the amount estimated by WorkCover WA as the amount that the employer would have been liable to pay as the premium for a workers compensation policy that would have been required under this Act for that part of the financial year had the employer not been a self-insurer.

488. WorkCover WA General Account established

- (1) An account called the WorkCover WA General Account is established as an agency special purpose account under the *Financial Management Act 2006* section 16.
- (2) The following must be credited to the General Account —
- (a) all contributions received or recovered under this Division;
 - (b) money received by or for WorkCover WA, other than money required to be credited to the Trust Account or the DI Fund;
 - (c) money required to be transferred to the General Account under section 142(8) or 258(1);
 - (d) any income derived from the investment of money standing to the credit of the General Account;
 - (e) any other amount required under this or any other Act to be paid or credited to the General Account.
- (3) The following must be charged to the General Account —
- (a) money paid by WorkCover WA and any other money required for the administration of this Act and the carrying out of WorkCover WA's functions, other than money required to be charged to the Trust Account or the DI Fund;

- (b) money required to be transferred to the DI Fund under section 258(1);
 - (c) the costs and expenses incurred in the operation and administration of the District Court in dealing with appeals under Part 6 Division 8;
 - (d) any other money required under this or any other Act to be paid from or charged to the General Account;
 - (e) any other money paid by WorkCover WA, other than money required to be charged to the Trust Account or the DI Fund.
- (4) In subsection (3)(a) the reference to money required for the administration of this Act includes —
 - (a) money required for the remuneration and allowances of members of the Board, members of committees and staff members; and
 - (b) the costs of and incidental to the administration of the General Account, the Trust Account and the DI Fund.
- (5) The amount of the costs and expenses referred to in subsection (3)(c) must be —
 - (a) determined in the manner approved by the Treasurer after consultation with the CEO and the chief executive officer of the department principally assisting in the administration of the *District Court of Western Australia Act 1969*; and
 - (b) credited to the Consolidated Account.
- (6) All amounts required under this or any other Act to be paid to or from the General Account are credited or charged to the General Account.

489. Estimate of funds needed for General Account

- (1) WorkCover WA must, before the commencement of each financial year —
 - (a) prepare an estimate of the total annual contribution necessary to be credited to the General Account for the purposes of this Act for that financial year; and
 - (b) as soon as practicable after the estimate is prepared, submit it to the Minister for approval.
- (2) The estimate does not have any force or effect unless and until it is approved by the Minister.
- (3) This section applies despite the provisions of the *Financial Management Act 2006*.

490. Calculation of estimate

- (1) In this section —

estimate means an estimate prepared under section 489(1)(a) for a financial year;

preceding financial year means the financial year immediately before the financial year for which an estimate is prepared.
- (2) If the General Account is in surplus at the commencement of the preceding financial year, the estimate must be calculated by deducting from the estimated expenditure the sum of —
 - (a) the estimated receipts of the General Account arising from all sources other than contributions under this Division; and
 - (b) the balance of the General Account at the commencement of the preceding financial year.
- (3) If the General Account is in deficit at the commencement of the preceding financial year, the estimate must be calculated by deducting the estimated receipts of the General Account arising

from all sources other than contributions under this Division,
from the sum of —

- (a) the estimated expenditure; and
 - (b) the balance of the General Account at the commencement of the preceding financial year.
- (4) In calculating the estimate for a financial year, both the estimated increase required in reserves over the financial year and depreciation may be included in the estimated expenditure of the General Account.

491. Required contributions by insurers and self-insurers to General Account

- (1) WorkCover WA must make the following calculations and determinations for the purpose of calculating the contributions to the General Account to be required from licensed insurers and self-insurers to yield an amount equal to the total annual contribution for a financial year (the *current year*) —
- (a) add the total premium income of all licensed insurers to the total notional premium income of all self-insurers for the financial year preceding the current year to arrive at an amount that is the *total premium income* for that preceding financial year;
 - (b) determine the percentage (the *contribution percentage*) of the total premium income for the preceding financial year that yields the total annual contribution for the current year;
 - (c) calculate a contribution (the *required contribution*) for each licensed insurer and each self-insurer for the current year by applying the contribution percentage to the premium income of the licensed insurer, or the notional premium income of the self-insurer, for the preceding financial year.

- (2) WorkCover WA may set a minimum required contribution for a financial year (which may be a different minimum for licensed insurers and self-insurers).
- (3) If a minimum required contribution is set for a financial year, the determination of the contribution percentage for that financial year must make due allowance for the effect that the minimum required contribution will have on the percentage of total premium income required to yield an amount equal to the total annual contribution for the current year.
- (4) Each licensed insurer and self-insurer must pay to WorkCover WA, to be credited to the General Account —
 - (a) the required contribution for the current year calculated under this section; or
 - (b) if a minimum required contribution has been set that is greater than the calculated contribution referred to in paragraph (a) — the minimum required contribution for that year.
- (5) In the case of a group of related self-insurers comprised of the holder of a self-insurer licence and each of the related entities of the holder to which the licence extends —
 - (a) the required contribution for the self-insurers of the group must be calculated as a single contribution for the group; and
 - (b) a minimum required contribution set by WorkCover WA applies to the contribution calculated for the group; and
 - (c) each self-insurer of the group is jointly and severally liable for payment of the required contribution.

- (6) When an insurer becomes a licensed insurer during the current year (a *new licensed insurer*) or an employer becomes a self-insurer during the current year (a *new self-insurer*) —
- (a) no contribution to the General Account for the current year is required from the new licensed insurer or new self-insurer; and
 - (b) the calculation under this section of the required contribution must not include any amount in respect of a new licensed insurer or new self-insurer.
- (7) To the extent that a contribution payable under this section includes an amount that is a tax, the tax is imposed.

[Section 491 amended: No. 22 of 2023 s. 8.]

492. Arrangements for payment of contributions

Section 262 applies to and in relation to the payment of contributions to the General Account under this Division as if the contributions were DI Fund contributions.

493. Provision of information by licensed insurers and self-insurers

WorkCover WA may give a direction under section 264(1) for the purposes of this Division and section 264(2) and (3) apply to and in relation to the direction accordingly.

Division 3 — Trust account

494. WorkCover WA Trust Account established

- (1) An account called the WorkCover WA Trust Account is established —
- (a) as an agency special purpose account under the *Financial Management Act 2006* section 16; or
 - (b) with the approval of the Treasurer, at a bank, as defined in section 3 of that Act.

- (2) The following must be credited to the Trust Account —
 - (a) money paid to WorkCover WA under section 141(1)(a);
 - (b) money paid to WorkCover WA under section 142(2) or (6);
 - (c) money paid to WorkCover WA under section 377;
 - (d) any income derived from the investment of money standing to the credit of the Trust Account.
- (3) There must be paid from money standing to the credit of the Trust Account 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.
- (4) WorkCover WA must, with the approval of the Treasurer, fix the rate of interest payable to a person entitled to money standing to the credit of the Trust Account in accordance with an order of a dispute resolution authority.

495. Investment of money standing to credit of Trust Account

- (1) Money standing to the credit of the Trust Account becomes 1 common fund to be invested by WorkCover WA.
- (2) Investments made from money standing to the credit of the Trust Account must not be made on account of or belong to any particular person.
- (3) Interest or income earned by the investments must be credited to the Trust Account.
- (4) WorkCover WA may invest any money standing to the credit of the Trust Account in a manner approved by the Treasurer.

Part 10 — Management and disclosure of information

Division 1 — Approved forms and electronic processes

496. Approved forms

- (1) The CEO may approve forms for use under this Act.
- (2) For any document or information that this Act requires to be in an approved form, the power of the CEO to approve the form extends to —
 - (a) the form in which the document or information must be created or recorded and provided or exchanged (which may include an electronic, paper or other form or use of an electronic database or document system); and
 - (b) the manner in which it must be conveyed or transmitted to a recipient.
- (3) Subsection (2) does not limit the other matters that may be dealt with in approving the form, such as layout, content and accompanying documents and information.
- (4) An approved form may require a matter stated in the form to be verified by statutory declaration.
- (5) Regulations and rules made for the purposes of section 497(3) apply to an approved form unless the CEO specifies otherwise.

497. Service, documents and information, including facilitation of electronic processes

- (1) In this section —

give includes serve, send, transmit, notify, provide, make available or any other similar word or expression;

lodge includes file or register.
- (2) In this section a reference to **document** includes —
 - (a) a copy of an original, certified or sealed document; and

- (b) any information, statement or other matter required to be endorsed on or attached to a document.
- (3) The arbitration rules, conciliation rules and regulations may provide for the following —
 - (a) the means by which documents and information given under this Act may or must be created, recorded, given, exchanged, accessed or obtained;
 - (b) the creation, recording, giving, lodging and exchange of documents and information by electronic means for, or related to, the purposes of this Act, including the use of an electronic database or document system;
 - (c) when the giving, lodgment or exchange of documents and information as mentioned in paragraph (b) is taken to have been effected;
 - (d) the authentication of documents and information given, lodged or exchanged as mentioned in paragraph (b);
 - (e) the production of documents and information kept electronically;
 - (f) the status and effect of things done electronically under the rules or regulations.

Division 2 — Disclosure of information

498. Minister to have access to information

- (1) In this section —

information means information specified, or of a description specified, by the Minister that relates to WorkCover WA's functions.
- (2) The Minister is entitled —
 - (a) to have information in the possession of WorkCover WA; and
 - (b) if the information is in or on a document — to have, and make and retain copies of, that document.

- (3) For the purposes of subsection (2), the Minister may —
 - (a) request WorkCover WA to give information to the Minister; and
 - (b) request WorkCover WA to give the Minister access to information; and
 - (c) for the purposes of paragraph (b), make use of the staff and facilities of WorkCover WA to obtain the information and give it to the Minister.
- (4) WorkCover WA must comply with a request given under subsection (3) and make staff and facilities available to the Minister for the purposes of subsection (3)(c).

499. Information held by Conciliation Service or Arbitration Service

Any document or information held by the Conciliation Service or the Arbitration Service is available, on the request of the CEO, to WorkCover WA to enable it to perform its functions and compile and record statistics, records and reports for the purposes of this Act.

500. Licensed insurers and self-insurers must provide information to WorkCover WA

- (1) A licensed insurer or self-insurer must provide to WorkCover WA the following information in accordance with directions published under subsection (2) and the approved form —
 - (a) information about claims for compensation made by workers, including —
 - (i) the status of any liability decisions in respect of the claims; and
 - (ii) forms of compensation claimed; and
 - (iii) estimated and actual payments of compensation made;

- (b) information about injury management, including implementation and progression of any return to work program or workplace rehabilitation;
 - (c) information about common law claims for damages resulting from an injury;
 - (d) information about workers compensation policies —
 - (i) issued, renewed or cancelled by the insurer; or
 - (ii) that have lapsed;
 - (e) information that WorkCover WA requires to fix recommended premium rates;
 - (f) any other information that WorkCover WA specifies by directions published under subsection (2)(b).
- (2) WorkCover WA may publish on the WorkCover WA website directions as to —
- (a) details of the information required under subsection (1); and
 - (b) any information, in addition to the information required under subsection (1)(a) to (e), that the licensed insurer or self-insurer must provide to WorkCover WA; and
 - (c) the period within which, or frequency with which, information must be provided or updated under subsection (1).
- (3) A licensed insurer or self-insurer who fails to comply with subsection (1) commits an offence.
- Penalty for this subsection: a fine of \$10 000.

501. Direction to provide WorkCover WA with information

- (1) In this section —
- relevant person*** means any of the following —
- (a) a licensed insurer, former licensed insurer, self-insurer or former self-insurer;

- (b) an employer;
 - (c) a health professional;
 - (d) a workplace rehabilitation provider.
- (2) The CEO may direct a relevant person to provide WorkCover WA with any information that the CEO thinks necessary to enable WorkCover WA to perform its functions and compile and record statistics, records and reports for the purposes of this Act.
- (3) The direction must be in writing and specify the time within which the information must be provided.
- (4) A relevant person given a direction under subsection (2) must provide the information to WorkCover WA in the approved form.
- (5) A relevant person given a direction under subsection (2) who fails to comply with that direction commits an offence.
Penalty for this subsection: a fine of \$10 000.

502. Disclosure of information to work health and safety officers

- (1) If the chief executive officer of the department principally assisting in the administration of the *Work Health and Safety Act 2020* or the WorkSafe Commissioner makes a written request to WorkCover WA to disclose information or data (including information and data about accidents, injuries and diseases) relevant to work health and safety that is in the possession of WorkCover WA, WorkCover WA must comply with the request.
- (2) This section has effect despite any other provision of this Act.

503. WorkCover WA may disclose information

- (1) In this section —
relevant information means information required for the purposes of ascertaining potential liability on a claim for

compensation or damages, or any potential contribution or recovery in relation to a claim for compensation or damages.

- (2) WorkCover WA may, on application in the approved form, disclose to the applicant relevant information held in its records relating to the following —
- (a) the identity of a worker's employer at a specified time or during a specified period;
 - (b) whether an employer was insured at a specified time or during a specified period, and the identity of the insurer, if any;
 - (c) any other matter prescribed by the regulations.
- (3) In any proceedings, a document provided by WorkCover WA under subsection (2) is, in the absence of proof to the contrary, proof of the relevant information in the document.

504. Confidentiality

- (1) A person must not, directly or indirectly, use or disclose any information obtained by the person because of —
- (a) the person's office, position, employment or engagement under or for the purposes of this Act; or
 - (b) any disclosure made to the person under or for the purposes of this Act.

Penalty for this subsection: a fine of \$10 000.

- (2) Subsection (1) does not apply in relation to the use or disclosure of information that is —
- (a) already in the public domain; or
 - (b) statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) A person does not commit an offence under subsection (1) if the use or disclosure of the information is authorised under section 505(1).

505. Authorised use or disclosure of information

- (1) For the purposes of this Act, the use or disclosure of information is authorised if the information is used or disclosed in good faith —
 - (a) for the purposes of, or in connection with, performing a function under this Act or another law; or
 - (b) as required or authorised under this Act or another law; or
 - (c) for the purposes of any legal proceedings arising under this Act or another law; or
 - (d) under an order of a court or other person or body acting judicially; or
 - (e) with the consent of the person to whom the information relates; or
 - (f) in other circumstances prescribed by the regulations.
- (2) If the use or disclosure of information is authorised under subsection (1) —
 - (a) no civil or criminal liability is incurred in respect of the use or disclosure; and
 - (b) the use or disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
 - (c) the use or disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

506. Disclosure of claim information for pre-employment screening

- (1) A person must not disclose information about a worker's claim for compensation to another person for the purpose of providing

information to that person about the worker's suitability for employment with a prospective employer.

Penalty for this subsection: a fine of \$10 000.

- (2) Subsection (1) does not apply if the information is disclosed in relation to a return to work program or for the purpose of providing information about the worker in relation to the obligation under section 166(2)(b).
- (3) A person cannot, for the purpose of selection for employment, be required to disclose information about any claim for compensation by the person.

Part 11 — Regulation and enforcement

Division 1 — General

507. Term used: compliance purposes

In this Part —

compliance purposes has the meaning given in section 510(1).

Division 2 — Inspectors

508. Inspectors

- (1) The CEO may, in writing, designate a staff member as an inspector.
- (2) A person may be designated as an inspector for a fixed or indefinite period.
- (3) The CEO may, in writing, revoke a designation at any time.

509. Identification of inspectors

- (1) The CEO must give each inspector an identity card.
- (2) The identity card must —
 - (a) identify the person as an inspector; and
 - (b) include any other matter prescribed by the regulations.
- (3) An inspector must —
 - (a) carry the inspector's identity card when exercising a power under this Act; and
 - (b) if it is practicable to do so — produce the identity card before exercising a power under this Act.
- (4) However, if for any reason it is not practicable to comply with subsection (3)(b) before exercising the power, the inspector may exercise the power and then produce the identity card at the first reasonable opportunity.

- (5) In any proceedings, the production of an identity card is evidence of the designation of the inspector to whom the identity card relates.
- (6) A person must not, without reasonable excuse, fail to return their identity card to the CEO within 14 days after ceasing to be an inspector.

Penalty for this subsection: a fine of \$5 000.

Division 3 — Inspections and investigations

510. Compliance inspections

- (1) An inspector may carry out an inspection for any of the following purposes (*compliance purposes*) —
 - (a) monitoring whether this Act has been, or is being, complied with;
 - (b) without limiting paragraph (a), monitoring whether a person is complying with the conditions, if any, of that person's licence, registration or approval under this Act;
 - (c) monitoring whether a person who is licensed, registered or approved under this Act continues to meet the criteria for the grant of that licence, registration or approval;
 - (d) investigating a suspected contravention of this Act;
 - (e) assisting in the determination of an application or other matter before WorkCover WA.
- (2) Nothing in subsection (1) limits the functions of other staff members under this Act.

511. Entry powers

- (1) An inspector may, for compliance purposes, at any time enter a place where, or where the inspector reasonably suspects —
 - (a) workers are employed; or

- (b) records that are relevant to the compliance purposes are kept.
- (2) An inspector may enter a place under subsection (1) with or without the consent of the person with management or control of the place and without prior notice to any person.
- (3) An inspector must, as soon as practicable after entering a place under subsection (1), take all reasonable steps to notify the person with management or control of the place of the entry and the purpose of the entry.
- (4) However, an inspector is not required to notify any person if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.

512. General powers on entry

- (1) An inspector who enters a place under section 511(1) may do any of the following —
 - (a) inspect, examine and make enquiries at the place;
 - (b) inspect and examine any thing (including a document) at the place;
 - (c) bring to the place and use any equipment or other thing that may be required;
 - (d) take recordings (including photographs, films, audio, video, digital or other recordings);
 - (e) require a person who is at the place to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (d);
 - (f) require a person who is at the place to state the person's full name, date of birth, the address of where the person is living and the address of where the person usually lives;
 - (g) seize any thing at the place that is or may afford evidence of a contravention of this Act;

- (h) exercise any other power of an inspector that is reasonably necessary.
- (2) If an inspector takes any thing away from the place, the inspector must give the person with management or control of the place a receipt for the thing.
- (3) A person must not refuse or fail to comply with a requirement made by an inspector under subsection (1)(e) or (f).
Penalty for this subsection: a fine of \$15 000.

513. Persons assisting inspectors

- (1) A person (the *assistant*) may accompany an inspector entering a place under section 511(1) to assist the inspector if the inspector considers the assistance is necessary.
- (2) The reference to a person in subsection (1) includes an interpreter.
- (3) The assistant —
 - (a) may do the things at the place and in the manner that the inspector reasonably requires to assist the inspector to exercise the inspector's powers; but
 - (b) must not do anything that the inspector does not have power to do.
- (4) Anything done lawfully by the assistant is taken to have been done by the inspector.

Division 4 — Powers relating to documents and information

514. Power to require auditor's certificate

- (1) An inspector may, by written notice given to an employer, require the employer to provide to the inspector a certificate from an auditor containing a statement as to —
 - (a) the number of workers employed by the employer during a specified period; and

- (b) the amount of remuneration paid by the employer to each worker during that period.
- (2) In subsection (1) —
auditor means a person registered as an auditor under the *Corporations Act 2001* (Commonwealth) Part 9.2.
- (3) The certificate must be provided within the period (being not less than 28 days) specified in the notice.
- (4) An employer must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).
Penalty for this subsection: a fine of \$15 000.
- (5) If a court convicts a person, or finds a person guilty, of an offence against subsection (4), the court may order the person to give to WorkCover WA the certificate required under subsection (1) within 14 days after the order is made.
- (6) An order may be made under subsection (5) in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

515. Power to require documents and answers to questions

- (1) An inspector may, for compliance purposes, do the following (after entering a place under section 511(1) or at any other time) —
 - (a) require a person to tell an inspector who has custody of, or access to, a document;
 - (b) require a person who has custody of, or access to, a document to provide that document, or a copy or reproduction of that document, to an inspector —
 - (i) while the inspector is at a place entered under section 511(1); or
 - (ii) within a specified period;

- (c) require a person —
 - (i) to submit to an interview with an inspector at a reasonable time and place, and in the way, determined by that inspector; and
 - (ii) to answer any questions put by that inspector during the interview; and
 - (iii) if and as directed by that inspector — to verify any answers given by statutory declaration;
 - (d) require a person —
 - (i) to answer, within a specified period and in a specified way, any questions put by an inspector otherwise than by way of an interview; and
 - (ii) if and as directed by that inspector — to verify any answers given by statutory declaration;
 - (e) require a person to state the person's name and address.
- (2) An interview conducted under subsection (1)(c)(i) —
- (a) may be conducted in private or otherwise, as the inspector considers appropriate; and
 - (b) may be recorded in any way the inspector considers appropriate.
- (3) Subsection (2)(a) does not prevent a person, including an interpreter, being present at the interview to assist the inspector conducting the interview if the inspector considers the assistance is necessary.
- (4) If an interview is to be recorded under subsection (2)(b), the inspector conducting the interview must, before the interview, inform the person being interviewed —
- (a) that the interview will be recorded; and
 - (b) of the way in which the interview will be recorded.

- (5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty for this subsection: a fine of \$15 000.

516. Abrogation of privilege against self-incrimination

- (1) An individual is not excused from complying with a requirement under this Act to answer a question on the ground that the answer to the question may tend to incriminate the individual or render the individual liable to a penalty.
- (2) However, the answer to a question given by an individual in compliance with a requirement under this Act is not admissible as evidence against the individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer.
- (3) This section does not apply to a requirement under Part 6.

Note for this section:

Section 372 applies to the privilege against self-incrimination in respect of a requirement under Part 6.

517. Power to copy and retain documents

- (1) An inspector may —
- (a) make copies or reproductions of, or take extracts from, a document (an *original document*) provided to, or otherwise obtained, accessed or recovered by, an inspector under this Act; and
 - (b) keep the original document for the period that the inspector considers necessary.
- (2) While an inspector retains custody of an original document, the inspector must permit the following persons to inspect, or make copies of, the original document at all reasonable times —
- (a) the person who provided the original document or from whom it was obtained;

- (b) the owner of the original document;
- (c) a person authorised in writing by a person referred to in paragraph (a) or (b) on the production of the written authorisation to WorkCover WA.

Division 5 — Contravention of Act

518. Who can prosecute offences

- (1) Proceedings for an offence against this Act may be taken in the name of WorkCover WA by a person authorised by the CEO 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 CEO to take proceedings for offences of that kind, it must be presumed, in the absence of proof to the contrary, that the prosecution notice was made or sworn by the person.

519. Time limit for prosecutions

A prosecution for an offence against this Act must be commenced within 2 years after the day on which the offence was allegedly committed.

520. Application of fines

A penalty imposed for an offence against this Act must be credited to the General Account for use by WorkCover WA.

521. Offences under Acts about work health and safety not affected

Nothing in this Act affects any proceedings for a fine or penalty under an enactment relating to work health and safety or the application of the fine or penalty.

522. Infringement notices and the *Criminal Procedure Act 2004*

- (1) If this Act is a prescribed Act for the purposes of the *Criminal Procedure Act 2004* Part 2, this section applies in relation to the service of an infringement notice under that Part by an authorised officer in relation to an alleged offence under this Act.
- (2) The infringement notice must be served within —
 - (a) 21 days after the authorised officer forms the opinion that there is sufficient evidence to support the allegation of the offence; and
 - (b) 12 months after the alleged offence is believed to have been committed.
- (3) The *Criminal Procedure Act 2004* Part 2 is modified to the extent necessary to give effect to this section.

Division 6 — Offences

523. Hindering or obstructing inspector

A person must not hinder or obstruct an inspector in exercising the inspector's powers, or induce or attempt to induce any other person to do so.

Penalty: a fine of \$15 000.

524. Using name WorkCover WA

A person other than WorkCover WA who uses or operates under the name WorkCover WA, or any name that is so similar that it is likely to be misunderstood as referring to WorkCover WA, commits an offence.

Penalty: a fine of \$10 000.

525. False or misleading information

- (1) A person must not provide false or misleading information —
- (a) in, or in connection with, an application made or a notice or other document given under this Act; or
 - (b) in compliance, or purported compliance, with a requirement under this Act; or
 - (c) for any other purpose under this Act.

Penalty for this subsection: a fine of \$15 000.

- (2) For the purposes of subsection (1), a person provides false or misleading information if the person —
- (a) makes a statement that the person knows is false or misleading in a material particular; or
 - (b) omits from a statement made by the person anything without which the statement is, to the person's knowledge, misleading in a material particular; or
 - (c) gives information that —
 - (i) the person knows is false or misleading in a material particular; or
 - (ii) omits anything without which the information, to the person's knowledge, is misleading in a material particular.

526. Fraud

A person who fraudulently obtains or fraudulently attempts to obtain any benefit under this Act by malingering or by making a false claim or statement commits an offence.

Penalty: a fine of \$15 000.

527. Preventing another person from complying with Act

A person must not directly or indirectly prevent another person from complying with a requirement under this Act.

Penalty: a fine of \$15 000.

Part 12 — State with which employment connected

528. Terms used

In this Part —

court includes a tribunal constituted by a judicial officer;

determination, in relation to a court proceeding, includes a determination made by the court with the consent of the parties to the proceeding;

State, in a geographical sense, includes any area or space prescribed by the regulations as a State's adjacent area.

529. Connection of employment with a State

- (1) A worker's employment is connected with —
 - (a) the State in which the worker usually works in that employment; or
 - (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.
- (2) In the case of a worker working on a ship, if no State or no one State is identified by subsection (1), 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.
- (3) If no State is identified by subsection (1) or (if applicable) (2), a worker's employment is connected with this State if —
 - (a) the 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.
- (4) In deciding whether a worker usually works in a State —
 - (a) regard must be had to the worker's work history with the employer over the preceding period of 12 months and the intentions of the worker and employer; and
 - (b) regard must not be had to any temporary arrangement under which the worker works in a State for a period not longer than 6 months.
- (5) Without limiting subsection (4), 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.

Note for this section:

Section 19(3) provides that there is no liability for compensation in respect of an injury suffered by a worker outside Australia if the worker —

- (a) has never resided in Australia; or
- (b) has been continuously resident outside Australia for more than 24 months when the injury occurs.

530. Determining if employment is connected with this State

- (1) This section applies to proceedings before a court in relation to a claim for compensation.
- (2) If in the proceedings the question of whether a worker's employment is connected with this State arises, the court must determine, in accordance with section 529, the State with which the worker's employment is connected unless section 532 requires a previous determination of the question to be recognised.

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- (3) The court must cause a determination under subsection (2) to be entered in the records of the court.

531. Applying to District Court to determine connection

- (1) A party to a claim for compensation made under this Act may apply to the District Court for the court to determine the State with which the worker's employment is connected unless section 532 requires a previous determination of the question to be recognised.
- (2) The District Court must determine an application under subsection (1) in accordance with section 529 and cause the determination to be entered in the records of the court.

532. Recognition of previous determination by court

- (1) When the question of the State with which a worker's employment is connected arises, a previous determination of the question must be recognised if it was made —
 - (a) by a court of this State under section 530(2) or 531(2); or
 - (b) by a court of another State under a provision of a law that corresponds with section 530(2) or 531(2); or
 - (c) by a court of this State or another State in the course of proceedings on a claim for damages to which the provisions of Part 7 Division 5 or corresponding provisions of the law of another State apply.
- (2) This section does not prevent an appeal relating to the determination.
- (3) If the determination is altered on appeal, the altered determination must be recognised under subsection (1).

Part 13 — Miscellaneous

533. Judicial notice

- (1) All courts and persons acting judicially must take judicial notice of —
 - (a) the signature of a person who is, or was, the Director, the Registrar, a conciliator or an arbitrator; and
 - (b) the fact that a person referred to in paragraph (a) is or was the Director, the Registrar, a conciliator or an arbitrator, as the case requires; and
 - (c) the common seal of WorkCover WA affixed to a document.
- (2) If the common seal of WorkCover WA is affixed to a document, a court or person acting judicially must presume that it was properly affixed unless the contrary is proved.

534. Protection from liability for performance of functions

- (1) An action in tort does not lie against a person for anything that the person has done in good faith in the performance or purported performance of a function under this Act.
- (2) The Minister and the State are also relieved of any liability that either of them might otherwise have had for a person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

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535. Protection and immunity of conciliators, arbitrators and persons involved in proceedings

- (1) A dispute resolution authority has, in the performance of their functions of a dispute resolution authority, the same protection and immunity as a judge of the Supreme Court has in the performance of the functions of a judge.
- (2) 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 Supreme Court.
- (3) A party to a proceeding before a dispute resolution authority has the same protection and immunity as a party to proceedings in the Supreme Court.
- (4) A person appearing as a witness in a proceeding before a dispute resolution authority has the same protection and immunity as a witness has in proceedings in the Supreme Court.
- (5) To the extent that this section is inconsistent with anything expressly stated in another provision of this Act, this section does not apply.

536. 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 produces a document or other thing as required under this Act, no civil liability attaches to the person for producing the document or thing, whether the liability would arise under a contract or otherwise.
- (3) This section is in addition to section 505.

537. Protection from liability for publishing decision

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.

538. General maximum and other adjustable amounts

- (1) For the purposes of this Act, the *general maximum amount* is \$243 991.

Note for this subsection:

\$243 991 is the prescribed amount under the *Workers' Compensation and Injury Management Act 1981* on the date of introduction into Parliament of the Bill for this Act. The amount may be updated under section 566.

- (2) For the purposes of this section, each of the following amounts is an *adjustable amount* —
- (a) the general maximum amount;
 - (b) the maximum weekly rate of income compensation prescribed for the purposes of section 53;
 - (c) the maximum board and lodging daily amount prescribed for the purposes of section 58;
 - (d) the maximum amount for provision of a wheelchair or similar appliance prescribed for the purposes of section 86;
 - (e) a rate specified by the regulations under section 90(4) for an expense referred to in section 90;
 - (f) the eligible dependent child allowance prescribed for the purposes of section 134;
 - (g) the funeral expenses maximum amount prescribed for the purposes of section 135;

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- (h) the maximum damages amount for less than 25% impairment prescribed for the purposes of section 424.
- (3) The regulations may vary an adjustable amount, including by providing for the periodic variation of an adjustable amount in accordance with a specified methodology (an *adjustment methodology*).
- (4) The regulations may provide for different adjustment methodologies for different adjustable amounts.
- (5) If, for a particular period, variation under the regulations of an adjustable amount would reduce the amount, the amount must not be varied for the period.

539. Regulations

- (1) The Governor may make regulations prescribing matters —
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may provide for the following —
 - (a) 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;
 - (b) the imposition, payment and recovery of fees and charges.
- (3) The regulations may provide —
 - (a) that contravention of a regulation is an offence; and
 - (b) for the offence to be punishable on conviction by a penalty not exceeding a fine of \$5 000.
- (4) A regulation may require any matter or thing to be verified by statutory declaration.

540. Regulations may adopt codes or legislation

- (1) In this section —

code means a code, standard, rule, specification or other document, published in or outside Australia, that does not by itself have legislative effect in this State;

subsidiary legislation includes rules, regulations, instructions, local laws and by-laws.

- (2) The regulations may adopt, either wholly or in part or with modifications —

- (a) any code; or
- (b) any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth or a State.

- (3) The adoption may be by —

- (a) incorporating the code or subsidiary legislation in the regulations; or
- (b) incorporating the code or subsidiary legislation by reference.

- (4) If the regulations adopt a code or subsidiary legislation by reference, then, unless the regulations specify that a particular text is adopted, the code or subsidiary legislation is adopted as amended from time to time.

- (5) If the regulations adopt a code or subsidiary legislation by reference, the CEO must ensure that a copy of the code or subsidiary legislation, including any amendments made to it from time to time that have been adopted, is —

- (a) published on the WorkCover WA website; or
- (b) made available for inspection free of charge by members of the public during normal office hours at the office of WorkCover WA.

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541. Review of Act

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review —
 - (a) as soon as practicable after the 5th anniversary of the day on which this section comes into operation; and
 - (b) after that, at intervals of not more than 5 years.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary or the expiry of the period of 5 years, as the case may be.

Part 14 — Savings and transitional provisions

Division 1 — General

542. Terms used

In this Part —

commencement day means the day on which section 615 comes into operation;

former Act means the *Workers' Compensation and Injury Management Act 1981*;

pending matter means a claim, assessment, proceeding, dispute or other matter commenced or arising under the former Act before commencement day that is pending, current or continuing under the former Act immediately before commencement day.

543. Expressions used in former Act

An expression used in this Part, to the extent that the expression is referable to a liability for compensation or damages that arose before commencement day, has the meaning that the expression had in the former Act.

544. Transitional regulations

(1) In this section —

publication day, for regulations made under subsection (2), means the day on which those regulations are published in accordance with the *Interpretation Act 1984* section 41;

specified means specified or described in regulations made under subsection (2);

transitional matter —

- (a) means a matter that needs to be dealt with for the purpose of effecting the transition required because of the enactment of this Act; and

- (b) includes a saving or application matter.
- (2) If there is no sufficient provision in this Part for dealing with a transitional matter, the Governor may make regulations prescribing matters —
 - (a) required to be prescribed for the purpose of dealing with the transitional matter; or
 - (b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.
- (3) Regulations made under subsection (2) may provide that specified provisions of this Act —
 - (a) do not apply to or in relation to a specified matter; or
 - (b) apply with specified modifications to or in relation to a specified matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than publication day for those regulations but not earlier than the day on which the relevant provision of this Act came into operation, the regulations have effect according to their terms.
- (5) If regulations made under subsection (2) contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before publication day for those regulations; or
 - (b) to impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day for those regulations.

545. Interpretation Act 1984 not affected

This Part is in addition to the provisions of the *Interpretation Act 1984* and, unless the contrary intention appears, does not limit or otherwise affect the operation of those provisions.

546. Act operates as continuation of former Act

- (1) This Act operates as a continuation of the former Act and a pending matter continues and must be dealt with under this Act as if it arose under this Act.
- (2) Anything commenced under a provision of the former Act for the purposes of or in connection with a pending matter is taken to have been commenced, and is to continue, under the corresponding provision of this Act.
- (3) Any act, matter or thing done or omitted to be done under or for the purposes of a provision of the former Act before commencement day, to the extent that it has any current or continuing force, significance or effect in connection with a pending matter, is taken to have been done or omitted to be done under or for the purposes of the corresponding provision of this Act.
- (4) A reference in this Act to something done or omitted to be done under or for the purposes of a provision of this Act includes a reference to something done or omitted to be done under or for the purposes of the corresponding provision of the former Act.

547. References to former Act

- (1) Unless the context otherwise requires, a reference in a document or instrument to the former Act includes a reference to this Act.
- (2) Unless the context otherwise requires, a reference in a document or instrument to a provision of the former Act (the *old provision*) includes, if there is a provision of this Act (the *new provision*) that corresponds to the old provision, a reference to the new provision.

548. Directions about corresponding provisions and pending matters

- (1) The CEO may give directions that —
 - (a) determine any question as to which provision of an Act corresponds to a provision of another Act for the purposes of this Part;
 - (b) determine that a reference in this Part to the corresponding provision of an Act is to be read as a reference to a specified provision of the Act;
 - (c) modify the operation of a provision of this Act in respect of a pending matter to make appropriate provision for differences between this Act and the former Act;
 - (d) modify the effect of anything done or commenced under the former Act in respect of a pending matter to ensure that it has an appropriate effect under this Act.
- (2) Directions under subsection (1) have effect according to their terms.

549. Effect of Act on validity of past acts

This Act does not affect the validity of anything done or omitted to be done under the former Act and in particular does not —

- (a) affect the validity of any reduction, suspension or cessation of compensation payments under the former Act; or
- (b) operate to revive any liability for or entitlement to the payment of compensation reduced, suspended, ceased, redeemed or extinguished under the former Act.

550. Application of Act to existing injuries and other matters

Subject to this Part, this Act extends to —

- (a) an injury suffered by a worker before commencement day; and

- (b) an employer's liability to pay compensation or damages to a worker who suffers an injury where that liability arises before commencement day; and
- (c) the death of a worker before commencement day; and
- (d) an insurance policy issued before commencement day.

551. Pending claims under former Act

- (1) A claim for weekly payments of compensation made under the former Act (a ***former Act claim***) that was not decided under the former Act before commencement day must be dealt with as a claim for income compensation under this Act as if made under this Act.
- (2) A former Act claim is considered to have been decided under the former Act when —
 - (a) liability for the weekly payments claimed was accepted under the former Act by the insurer or employer; or
 - (b) an arbitrator determined under the former Act that the worker is entitled to the weekly payments claimed; or
 - (c) the worker became entitled under section 57A(5) or 57B(4) of the former Act to the weekly payments claimed (as a result of a failure by the insurer to comply with section 57A(3) or 57B(2) of the former Act).
- (3) If a former Act claim was decided under the former Act in the circumstances described in subsection (2)(c), liability for the weekly payments claimed is taken to have been accepted under the former Act by the insurer or employer and any application for a determination under section 57A(6) or 57B(5) of the former Act in respect of the claim that is pending immediately before commencement day is terminated.
- (4) If liability for a former Act claim that must be dealt with under this Act was disputed by the insurer or employer in respect of all or any of the weekly payments claimed (other than a dispute the subject of a determination to which subsection (3) applies)

and the dispute was not determined under the former Act before commencement day, the dispute must be dealt with under this Act.

- (5) If a liability decision on a former Act claim that must be dealt with under this Act was deferred before commencement day, this Act applies to the claim as if a deferred decision notice for the claim had been given on commencement day.
- (6) For the purposes of subsection (5), a liability decision on a former Act claim is considered to have been deferred before commencement day if notice was given under section 57A(3)(c) or 57B(2)(c) of the former Act before commencement day that a decision as to whether or not liability is to be accepted is not able to be made within the time allowed by the relevant subsection.
- (7) This section does not affect any entitlement to compensation that arises under the former Act before commencement day.

552. Pending matters exclusion of injury: reasonable administrative action

If a pending matter relates to a disease caused by stress that is not an injury under this Act because of the operation of section 7 —

- (a) section 7 does not apply in respect of the pending matter; and
- (b) the definition of *injury* in section 5 of the former Act continues to apply in respect of the pending matter.

553. Firefighters

Section 11 does not apply to an injury by a firefighter disease suffered before 13 November 2013.

Note for this section:

13 November 2013 is the day on which the *Workers' Compensation and Injury Management Amendment Act 2013* section 4 came into operation.

554. Jockeys

For the purposes of section 15, if the injury occurred before 14 December 2012, the employer in the circumstances to which section 15(3)(b) applies is Racing and Wagering Western Australia and not the licensed trainer for whom the person was engaged.

Note for this section:

14 December 2012 is the day on which the *Workers' Compensation and Injury Management Amendment (Jockeys) Act 2012* section 4 came into operation.

Division 2 — Compensation

555. Continuation of entitlement to compensation

- (1) An entitlement to compensation under the former Act (being an entitlement that a person has immediately before commencement day) becomes an entitlement to compensation under this Act.
- (2) Compensation payable on or after commencement day in respect of an injury suffered before commencement day is payable in accordance with this Act and not the former Act.
- (3) Compensation paid under the former Act is taken to have been paid under this Act.

556. Calculation of income compensation commenced as weekly payments under former Act

- (1) If weekly payments to an injured worker had commenced under the former Act before commencement day, the amount of any payments to the worker of income compensation for any period of incapacity on or after commencement day must be calculated in the manner provided by the former Act for the calculation of weekly payments.

- (2) This section applies only if liability to pay weekly payments was accepted by the insurer or employer or determined by an arbitrator before commencement day.

557. Caps on compensation

- (1) In this section —
compensation cap means any limit on the amount of compensation payable or of a particular form of compensation payable.
- (2) If a compensation cap under the former Act was applicable to an entitlement to compensation under the former Act and the entitlement had been exhausted before commencement day —
- (a) the entitlement remains subject to the compensation cap under the former Act; and
 - (b) the entitlement is not subject to a compensation cap under this Act; and
 - (c) this Act does not renew, revive or increase the entitlement to compensation.
- (3) If a compensation cap under the former Act was applicable to an entitlement to compensation under the former Act but the entitlement had not been exhausted before commencement day —
- (a) the entitlement becomes subject to the corresponding compensation cap under this Act with compensation paid under the former Act counted as compensation paid under this Act; and
 - (b) the entitlement is not subject to the compensation cap under the former Act.
- (4) An entitlement to compensation under the former Act to which a compensation cap under the former Act was applicable is considered to have been exhausted when the amount of compensation paid in respect of the entitlement before commencement day equals or exceeds the amount of that

compensation cap under the former Act (without regard to any amount of compensation that may have become payable but that was unpaid immediately before commencement day).

- (5) For the purposes of this section, the compensation cap under the former Act for compensation under clause 17(1) of Schedule 1 to the former Act is the amount that is 30% of the prescribed amount under the former Act and does not include any increase in that amount resulting from an order of an arbitrator or an agreement by the insurer or employer to increase that amount.
- (6) For the purposes of the application of this section to the compensation cap in respect of compensation under clause 17(1) of Schedule 1 to the former Act, compensation paid under the former Act for expenses incurred in respect of first aid and ambulance or other services to carry the worker to hospital or another place for medical treatment must not be counted as compensation paid under this Act.

Note for this subsection:

Compensation under section 85 for first aid and emergency transport expenses (which under the former Act was subject to a compensation cap as part of medical and related expenses) is not subject to a compensation cap under this Act.

- (7) This Act does not renew or revive a liability for compensation under the former Act that was discharged under the former Act and does not renew or revive an entitlement to compensation under the former Act that was extinguished under the former Act.

558. Compensation paid or payable under former Act

A reference in this Act to compensation paid or payable under this Act includes a reference to compensation paid or payable under the former Act.

559. Provisional payments of compensation

An employer is not required to make provisional payments of compensation in respect of a claim for compensation made before commencement day unless the claim is required by section 551 to be dealt with under this Act as if made under this Act.

560. Vocational rehabilitation compensation

A reference in section 95 to workplace rehabilitation expenses compensation paid in respect of a worker's injury includes a reference to compensation paid under the former Act for vocational rehabilitation in respect of the injury.

561. Lump sum compensation for permanent impairment

A reference in section 102 to compensable injury includes a personal injury by accident in respect of which compensation for permanent impairment under Part III Division 2 or 2A of the former Act has been paid or is payable to the worker.

562. Noise-induced hearing loss

- (1) A reference in Part 2 Division 8 to noise-induced hearing loss compensation paid to a worker includes a reference to compensation received by the worker under the former Act or the *Workers' Compensation Act 1912* for noise-induced hearing loss.
- (2) A reference in Part 2 Division 8 to hearing loss and assessed NIHL of a worker includes a reference to hearing loss and noise-induced hearing loss that the worker has suffered as ascertained and measured in accordance with Schedule 7 to the former Act.

563. Compensation for death of worker before 1 July 2018

If the death of a worker occurred before 1 July 2018 —

- (a) Part 2 Division 10 does not apply in respect of the death of the worker; and
- (b) the former provisions, as defined in clause 9 of Schedule 8 to the former Act, apply in respect of the death as if those provisions were still in force; and
- (c) the child's allowance that a person is entitled to receive under the former provisions as applied by paragraph (b) is the eligible dependent child allowance under section 134 of this Act.

Note for this section:

1 July 2018 is the day on which the *Workers' Compensation and Injury Management Amendment Act 2018* section 6 came into operation.

564. When entitlement to income compensation ceases due to age

- (1) This section applies to the entitlement of a worker to income compensation for an injury if —
 - (a) the injury occurred before 1 October 2011; and
 - (b) the worker's entitlement to weekly payments of compensation under the former Act had not ceased under section 56 of the former Act before commencement day.

Note for this subsection:

1 October 2011 is the day on which the *Workers' Compensation and Injury Management Amendment Act 2011* section 88 came into operation.

- (2) The entitlement of the worker to income compensation in respect of the injury ceases on the worker attaining the age of 65 years.

565. Compensation for AIDS

Section 104 does not apply in respect of the contraction of AIDS by a worker if the accident by which the worker became infected with HIV occurred before 14 November 2005.

Note for this section:

14 November 2005 is the day on which the *Workers' Compensation Reform Act 2004* section 21 came into operation.

566. Updating of general maximum amount

If the prescribed amount under the former Act that applies immediately before commencement day (the *prescribed amount before commencement*) is different from the amount of \$243 991 specified as the general maximum amount in section 538, the prescribed amount immediately before commencement day replaces the amount of \$243 991 as the amount specified as the general maximum amount in section 538.

Note for this section:

\$243 991 is the prescribed amount under the former Act on the date of introduction into Parliament of the Bill for this Act. This section provides for that amount to be updated to reflect any change in the prescribed amount under the former Act that occurs between introduction of the Bill for this Act and commencement day. This section does not prevent subsequent variation by regulation of the general maximum amount as provided by section 538.

Division 3 — Injury management

567. Return to work programs established under s. 155C of former Act

A return to work program established in accordance with section 155C of the former Act and in operation immediately before commencement day is taken to have been established in accordance with section 160 of this Act.

568. Employer's obligation to make position or suitable duties available

- (1) Sections 166, 167 and 168 do not apply in respect of an injury occurring before commencement day.
- (2) Sections 84AA and 84AB of the former Act continue to apply in respect of an injury occurring before commencement day as if those sections were still in force.

569. Approved workplace rehabilitation providers

- (1) A person who holds an approval as a vocational rehabilitation provider that is in force under section 156 of the former Act immediately before commencement day is taken to have been granted an approval as a workplace rehabilitation provider under section 173(1) of this Act and is subject to this Act accordingly.
- (2) The approval is taken to have been granted to remain in force indefinitely unless WorkCover WA converts the approval by a direction under section 175(4) to an approval granted for a fixed period specified in the direction.

570. Vocational rehabilitation

A vocational rehabilitation service in respect of an injured worker in operation immediately before commencement day continues in operation under this Act as if it were the corresponding workplace rehabilitation service.

Division 4 — Dispute resolution

571. Terms used

In this Division —

appropriate official means —

- (a) the Director in relation to matters concerning conciliation or any function of the Director under this Act or the former Act; or
- (b) the Registrar in relation to matters concerning arbitration;

dispute proceedings means proceedings before a conciliator, arbitrator or the District Court commenced before commencement day in respect of a dispute under the former Act;

pending dispute decision means an order or direction under the former Act in connection with pending dispute proceedings;

pending dispute proceedings means dispute proceedings that are pending immediately before commencement day;

transitional direction means a direction under section 576.

572. Disputes to which Act applies

This Act applies to a dispute arising before, on or after commencement day, including a dispute arising on or after commencement day about a matter arising under the former Act.

573. Continuity of conciliation and arbitration services

- (1) The Conciliation Service under this Act is a continuation of the Conciliation Service under the former Act.
- (2) The Arbitration Service under this Act is a continuation of the Arbitration Service under the former Act.

- (3) The person holding office as Director under the former Act immediately before commencement day is taken to have been designated as the Director under this Act on commencement day.
- (4) The person holding office as Registrar under the former Act immediately before commencement day is taken to have been designated as the Registrar under this Act on commencement day.
- (5) A person who is a conciliation officer under the former Act immediately before commencement day is taken to have been designated as a conciliator under this Act on commencement day.
- (6) A person who is an arbitrator under the former Act immediately before commencement day is taken to have been designated as an arbitrator under this Act on commencement day.

574. Conciliation rules, arbitration rules and practice notes

- (1) The person holding office as Director under the former Act may, before commencement day and despite section 381 not having commenced, make conciliation rules for the purposes of that section.
- (2) The conciliation rules —
 - (a) come into operation on commencement day; and
 - (b) are taken, for the purposes of this Act, to be made under section 381.
- (3) The person holding office as Registrar under the former Act may, before commencement day and despite section 382 not having commenced, make arbitration rules for the purposes of that section.
- (4) The arbitration rules —
 - (a) come into operation on commencement day; and

- (b) are taken, for the purposes of this Act, to be made under section 382.
- (5) The person holding office as Director under the former Act may, before commencement day and despite section 384 not having commenced, issue conciliation practice notes under that section.
- (6) The conciliation practice notes —
 - (a) come into operation on commencement day; and
 - (b) are taken, for the purposes of this Act, to be made under section 384.
- (7) The person holding office as Registrar under the former Act may, before commencement day and despite section 384 not having commenced, issue arbitration practice notes under that section.
- (8) The arbitration practice notes —
 - (a) come into operation on commencement day; and
 - (b) are taken, for the purposes of this Act, to be made under section 384.
- (9) This Act and the operation of the *Interpretation Act 1984* section 25 are modified so far as is necessary to give effect to this section.

575. Pending dispute proceedings

- (1) Pending dispute proceedings must continue and be dealt with as dispute proceedings under this Act.
- (2) Pending dispute proceedings must be dealt with under this Act in accordance with the conciliation rules, arbitration rules and regulations in force under the former Act immediately before commencement day unless a transitional direction otherwise provides.

576. Transitional directions

- (1) The appropriate official may give directions (*transitional directions*) for or with respect to any of the following —
 - (a) the modification of provisions of this Act in their application to pending dispute proceedings to facilitate the appropriate resolution of the disputes concerned;
 - (b) varying the terms or effect of a pending dispute decision to ensure that the pending dispute decision has appropriate operation and effect for the purposes of this Act;
 - (c) varying the operation of the conciliation rules, arbitration rules and regulations in force under the former Act in their application to pending dispute proceedings dealt with under this Act;
 - (d) quashing a pending dispute decision that has no appropriate operation or effect for the purposes of this Act;
 - (e) terminating a pending dispute proceeding if resolution of the dispute concerned will have no appropriate operation or effect for the purposes of this Act.
- (2) Transitional directions may be given to operate generally or in a particular case.
- (3) Transitional directions have effect according to their terms.

577. Dispute decisions under former Act

An order or direction of an arbitrator or conciliation officer made or given under a provision of the former Act and in force immediately before commencement day is taken to have been made or given by the arbitrator or conciliator under the corresponding provision of this Act.

578. Registration of independent agents

- (1) In this section —
transitioned independent agent means a person who, immediately before commencement day, was registered as an agent as provided by section 277 of the former Act on the sole basis that the person acts or proposes to act as an independent agent.
- (2) Regulations must provide for a scheme for the registration of independent agents that is in force for a period of 2 years beginning on commencement day (the *transition period*).
- (3) On commencement day, a transitioned independent agent becomes registered as an independent agent under the regulations and is subject to this Act accordingly.
- (4) A person is not entitled to registration as an independent agent under the regulations unless the person is a transitioned independent agent.
- (5) At the end of the transition period —
 - (a) the scheme for the registration of independent agents is terminated; and
 - (b) each person who was registered under the regulations as an independent agent immediately before the end of the transition period ceases to be so registered.
- (6) Regulations for the purposes of this section may include provision for or with respect to —
 - (a) regulating the conduct of registered independent agents in the provision of agent services (including by setting standards of conduct and limiting the agent services that are authorised to be provided by registered independent agents); and
 - (b) imposing conditions on the registration of independent agents, either generally or in a particular case; and

- (c) authorising the doing of legal work by registered independent agents in the course of providing agent services subject to any limitations imposed by the regulations; and
- (d) the circumstances in which, and the procedures by which, a person's registration as an independent agent may be suspended or cancelled; and
- (e) applications for review by the State Administrative Tribunal of decisions suspending or cancelling registration or imposing conditions on registration as an independent agent; and
- (f) authorising WorkCover WA to conduct audits and investigations (***compliance audits and investigations***) for the purpose of ensuring compliance by registered independent agents with this Act, the regulations, the conditions of registration, the conciliation rules and the arbitration rules, including standards of conduct set by the regulations; and
- (g) requiring a registered independent agent to provide information or documents to WorkCover WA for the purposes of any compliance audit or investigation by WorkCover WA; and
- (h) requiring a registered independent agent to obtain any release or consent from any client of the agent to authorise the provision of information or documents to WorkCover WA for the purposes of any compliance audit or investigation by WorkCover WA; and
- (i) requiring registered independent agents to have professional indemnity insurance; and
- (j) transitional arrangements for the operation of this Act in respect of the provision by a transitioned independent agent after the end of the transition period of agent services commenced to be provided before the end of the transition period; and

- (k) any other matter necessary or convenient to be prescribed for or in connection with the registration of independent agents for the purposes of this Act.
- (7) The doing of legal work by a registered independent agent in the course of providing agent services and as authorised by the regulations does not constitute engaging in legal practice for the purposes of the *Legal Profession Uniform Law Application Act 2022*.

579. Costs determination

- (1) The Costs Committee established by section 269 of the former Act may, before commencement day, make a costs determination for the purposes of Part 6 Division 9 Subdivision 3.
- (2) The costs determination is taken to be a costs determination made under section 405(1).
- (3) Sections 406 and 407 (except section 407(3)) apply in relation to the making, approval and effect of the costs determination as if —
 - (a) those sections had come into operation on the day after the day on which this Act receives the Royal Assent; and
 - (b) references in those sections to the Costs Committee were references to the Costs Committee established by section 269 of the former Act.
- (4) An approved costs determination published in the *Gazette* under section 407 as applied by subsection (3) of this section before commencement day takes effect on and from commencement day.
- (5) If an approved costs determination is not in effect on commencement day under section 407 as applied by subsections (3) and (4) of this section, the costs determination in effect immediately before commencement day under

section 273 of the former Act is taken to be an approved costs determination for the purposes of Part 6 Division 9 Subdivision 3 on and from commencement day until an approved costs determination takes effect under section 407.

- (6) This Act and the operation of the *Interpretation Act 1984* section 25 are modified so far as is necessary to give effect to this section.

Division 5 — Medical assessment

580. Approved permanent impairment assessors

- (1) A medical practitioner who was an approved medical specialist under the former Act immediately before commencement day is taken to have been approved under section 193(1) of this Act as an approved permanent impairment assessor and is subject to this Act accordingly.
- (2) The approval is taken to have been granted to remain in force indefinitely unless WorkCover WA converts the approval by a direction under section 196(4) to an approval granted for a fixed period specified in the direction.

581. Medical assessments under former Act

- (1) An assessment under a provision of the former Act by an approved medical specialist of a worker's degree of impairment is taken to be an assessment under the corresponding provision of this Act by an approved permanent impairment assessor of the worker's degree of permanent impairment.
- (2) A determination of a question by a medical panel under section 38 or 93R of the former Act is taken to be a determination of that question by a Dust Disease Medical Panel under this Act.

Division 6 — Insurer and self-insurer insolvency and uninsured liabilities

582. Claims for uninsured liabilities

Section 267 does not apply if —

- (a) the action resulting in the award of damages was brought before 1 October 2011; or
- (b) before 1 October 2011 a claim for compensation under the former Act was made in respect of the same injury.

Note for this section:

1 October 2011 is the day on which the *Workers' Compensation and Injury Management Amendment Act 2011* section 113 came into operation.

583. Amounts payable from DI Fund for uninsured liabilities

- (1) Any amount payable from the General Account under section 174 of the former Act that is unpaid immediately before commencement day is payable from the DI Fund under the corresponding provision of this Act.
- (2) Any amount paid from the General Account under Part X of the former Act that is recoverable under a provision of the former Act but not recovered immediately before commencement day is recoverable under the corresponding provision of this Act for crediting to the DI Fund.

584. Insurer and self-insurer insolvency

In Part 5 Division 8 —

- (a) a reference to a workers compensation policy includes a reference to an employer's policy as defined in the *Employers' Indemnity Supplementation Fund Act 1980* section 3; and
- (b) a reference to a self-insurer includes a reference to an employer or a member of a group of employers exempted under section 164 of the former Act; and

- (c) a reference to a licensed insurer includes a reference to an approved insurance office under the former Act; and
- (d) a reference to a requirement to hold a workers compensation policy includes a reference to a requirement to hold a policy of insurance under the former Act.

585. EIS Fund

- (1) In this section —

EIS Fund means the Fund under the *Employers' Indemnity Supplementation Fund Act 1980*;

relevant Act means the *Employers' Indemnity Supplementation Fund Act 1980* or the *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001*.

- (2) On commencement day the EIS Fund is closed and any amount standing to the credit of the EIS Fund immediately before commencement day must be credited to the DI Fund.
- (3) Any amount payable from the EIS Fund under a provision of a relevant Act that is unpaid immediately before commencement day is payable from the DI Fund under the corresponding provision of this Act.
- (4) Any amount paid from the EIS Fund under a relevant Act that is recoverable under a provision of the relevant Act but not recovered immediately before commencement day is recoverable under the corresponding provision of this Act for crediting to the DI Fund.

586. Claims under EISF Act

- (1) In this section —

EISF Act means the *Employers' Indemnity Supplementation Fund Act 1980*.

- (2) A claim under the EISF Act that is pending under that Act immediately before commencement day (a *pending claim*) must continue to be dealt with under that Act as if that Act were still in force.
- (3) Any amount payable on or after commencement day in respect of a pending claim must be paid from the DI Fund.
- (4) Section 280 extends to a payment made by the Insurance Commission in satisfaction of a claim under the EISF Act (including but not limited to a pending claim) as if the payment were a payment by WorkCover WA in satisfaction of a claim under Part 5 Division 8.

Division 7 — Settlement agreements

587. Settlement agreements under former Act

- (1) Part III Division 7 of the former Act continues to apply to and in respect of a memorandum of an agreement received for registration as referred to in section 76 of the former Act but not registered under that section before commencement day.
- (2) An agreement registered under section 76 of the former Act (including an agreement so registered pursuant to subsection (1)) is taken to have been registered under Part 2 Division 12 of this Act.
- (3) Section 149 of this Act extends to an agreement entered into before commencement day.

Division 8 — Common law damages proceedings

588. Terms used

In this Division —

election means an election to retain the right to seek damages;

former common law provisions means Part IV of the former Act;

new common law provisions means Part 7 Divisions 1 to 4;

permanent impairment agreement means an agreement referred to in section 93L(2)(a) of the former Act;

permanent impairment assessment means an assessment referred to in section 93L(2)(b) of the former Act;

registered means registered by the Director.

589. Application of new common law provisions to existing claims

- (1) The new common law provisions —
 - (a) extend to a cause of action that accrued before commencement day; but
 - (b) do not apply to proceedings for damages that were validly commenced before commencement day, except as provided by this section.
- (2) The former common law provisions continue to apply to proceedings for damages that were validly commenced before commencement day, except as provided by this section.
- (3) Part 7 Divisions 3 and 4 extend to proceedings for damages that were validly commenced before commencement day but that had not been finalised (by judgment, settlement or otherwise) before that day.
- (4) Section 421 extends to a cause of action that accrued before commencement day even if the worker had not elected to retain the right to seek damages as referred to in section 93E of the former Act.
- (5) Section 433 extends to an action for damages that was successful, within the meaning of that section, before commencement day.
- (6) The *Civil Liability Act 2002* section 13A, as in force immediately before section 626 of this Act comes into operation, continues to apply in respect of proceedings for

damages to which the former common law provisions continue to apply as provided by this section.

- (7) The *Motor Vehicle (Third Party Insurance) Act 1943* section 3C, as in force immediately before section 680 of this Act comes into operation, continues to apply in respect of proceedings for damages to which the former common law provisions continue to apply as provided by this section.

590. Transitional arrangements for application of new common law provisions to existing claims

- (1) The following provisions apply for the purposes of the application of Part 7 Division 2 in respect of a cause of action accruing before commencement day if proceedings on the cause of action had not been validly commenced before that day —
- (a) an election made under the former common law provisions is taken to have been made under the new common law provisions;
 - (b) an election registered by the Director under the former common law provisions is taken to have been registered by the Director under the new common law provisions;
 - (c) a permanent impairment agreement or permanent impairment assessment as to a worker's degree of permanent impairment that was made under the former common law provisions before commencement day is taken to be an assessment under the new common law provisions by an approved permanent impairment assessor or Dust Disease Medical Panel (whichever is appropriate) of the worker's degree of permanent impairment;
 - (d) a permanent impairment agreement or permanent impairment assessment as to a worker's degree of permanent impairment that was recorded by the Director under the former common law provisions before commencement day is taken to have been recorded by

the Director under the new common law provisions as the supporting assessment for the worker's election to retain the right to seek damages.

- (2) For the purposes of the application of section 423 in respect of an election registered before commencement day, a reference in that section to the registration day is a reference to the day on which the election was registered under the former common law provisions.

591. Continuation of 1993 Scheme

Part IV Division 2 Subdivision 2 (1993 Scheme) of the former Act continues to apply, despite its repeal, to a cause of action to which that Subdivision applied pursuant to section 93CC of the former Act.

592. Dust disease actions accruing before 14 November 2005

Part 7 Division 2 extends to a cause of action that accrued before 14 November 2005 if the worker claims to be suffering a dust disease and on or after that date the worker's degree of permanent impairment resulting from the dust disease was assessed as provided by section 93R of the former Act or settled by agreement.

Division 9 — Insurance

593. Insurance policies under former Act

- (1) In this section —
former Act policy, in relation to an employer, means an insurance policy issued to the employer before commencement day for the purposes of, and in compliance with the requirements of, section 160 of the former Act when the policy was issued.
- (2) A former Act policy is taken to insure the employer for the full amount of the following liabilities of the employer that arise in

respect of employment during the period of insurance of the former Act policy —

- (a) any liability of the employer that arises under this Act or the former Act to pay compensation or make any other payment in respect of an injury to or the death of a worker;
 - (b) any liability of the employer to pay damages in respect of an injury to or the death of a worker if the employer is liable to pay compensation under this Act or the former Act in respect of the injury or death, other than an injury to or the death of a deemed worker, as defined in section 200, of the employer.
- (3) A reference in this Act to a workers compensation policy is, in relation to insurance at a time before commencement day, to be read as a reference to a former Act policy in force at that time.
- (4) The repeal of the former Act does not affect the validity or operation of a former Act policy.
- (5) Section 241 (which limits the circumstances in which an insurer is entitled to refuse indemnity under a workers compensation policy) extends to a refusal of indemnity under a former Act policy on or after commencement day, and for that purpose —
 - (a) a reference in that section to a workers compensation policy is taken to include a reference to a former Act policy; and
 - (b) a reference in that section to a licensed insurer includes a reference to an insurer under a former Act policy.

594. Failure to insure under former Act

Section 170 of the former Act continues to apply to and in respect of a failure referred to in that section that occurs before commencement day.

595. Underpaid premiums

Section 210 extends to the provision of premium information (as defined in that section) before commencement day that is relevant to calculation of the premium payable by an employer for a policy of insurance issued on or after commencement day.

596. Operation of policies issued by Insurance Commission

- (1) A policy of insurance issued or renewed by the Insurance Commission as referred to in section 162 of the former Act and in force immediately before commencement day —
 - (a) continues in force on and from commencement day; but
 - (b) does not apply to a liability arising in respect of employment on or after commencement day.

Note for this subsection:

A policy issued by the Insurance Commission under section 162 of the former Act covered liability for compensation for a disease of a kind referred to in section 151(a)(iii) of the former Act. For employment on or after commencement day liability for compensation for the disease is covered by a workers compensation policy issued by a licensed insurer.

- (2) The operation of subsection (1) does not entitle the holder of a policy of insurance referred to in that subsection to any refund of premium paid in respect of the policy.

597. Licensed insurers

- (1) An insurer who was an approved insurer under the former Act immediately before commencement day is taken to be a licensed insurer under this Act and is subject to this Act accordingly.
- (2) The insurer is taken to have been granted an insurer licence to remain in force indefinitely unless WorkCover WA converts the licence by a direction under section 230(4) to an insurer licence granted for a fixed period specified in the direction.

- (3) Sections 261(7) and 491(6) do not apply to an insurer who becomes a licensed insurer under this Act pursuant to this section.

Note for this subsection:

Sections 261(7) and 491(6) provide that a licensed insurer is not required to pay a contribution to the DI Fund or the General Account for the financial year in which the insurer becomes a licensed insurer. This does not apply to approved insurers under the former Act who become licensed insurers under this section.

598. Self-insurers

- (1) An employer who is an employer or a member of a group of employers exempted under section 164 of the former Act immediately before commencement day is taken to be a self-insurer under this Act and is subject to this Act accordingly.
- (2) The employer is taken to have been granted a self-insurer licence to remain in force indefinitely unless WorkCover WA converts the licence by a direction under section 230(4) to a self-insurer licence granted for a fixed period specified in the direction.
- (3) If an employer was a self-insurer under the former Act because the employer belonged to a group of employers exempted under section 164 of the former Act —
- (a) only 1 of the employers of the group is taken to have been granted a self-insurer licence as provided by this section (being the employer chosen by WorkCover WA); and
 - (b) the self-insurer licence is taken to have been granted on terms that extend the licence to the other employers of the group.
- (4) Sections 261(7) and 491(6) do not apply to an employer who becomes a self-insurer under this Act pursuant to this section.

Note for this subsection:

Sections 261(7) and 491(6) provide that a self-insurer is not required to pay a contribution to the DI Fund or the General Account for the financial year in which the self-insurer became a self-insurer. This does not apply to self-insurers under the former Act who become self-insurers under this section.

- (5) Securities given to the State by a self-insurer for the purposes of section 164 of the former Act and in force immediately before commencement day are taken to be a self-insurer security provided by the self-insurer for the purposes of section 250 of this Act.

599. Recommended premium rates

A recommended premium rate fixed under section 151 of the former Act and in force immediately before commencement day is taken to have been fixed under section 253 of this Act.

600. Appeals by employers

An appeal under section 154 of the former Act that is pending immediately before commencement day must continue and be dealt with as a review under section 255 of this Act.

601. Permission for insurer to exceed 75% premium loading

A request for permission under section 152 of the former Act that was not determined by WorkCover WA before commencement day lapses on commencement day.

602. Acts of terrorism

- (1) If an order under the *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001* section 8 identifying an act of terrorism is in effect on the day on which section 616 comes into operation —
- (a) the order continues to have effect as if it were a declaration under section 288; but

- (b) except as provided in subsection (2) —
 - (i) the *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001* ceases to have effect in relation to injury attributable to the act of terrorism; and
 - (ii) Part 5 Division 9 applies to and in relation to compensation liability in respect of the act of terrorism.
- (2) This section does not affect the operation of the *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001* in relation to any claim made or payment or reimbursement paid or payable under section 9 of that Act before the day on which section 616 comes into operation.

Division 10 — Administration

603. Term used: WorkCover Western Australia Authority

In this Division —

WorkCover Western Australia Authority means the body referred to in section 94 of the former Act.

604. Continuation of WorkCover Western Australia Authority

WorkCover WA established under section 445(1) is the same legal person as, and a continuation of, the WorkCover Western Australia Authority.

605. Board is continuation of governing body

- (1) In this section —

governing body means the governing body established under section 95(1) of the former Act.
- (2) The Board is a continuation of the governing body.
- (3) The person who immediately before commencement day was the Chairman of the governing body continues in office under

and subject to this Act as the chairperson of the Board and for that purpose is taken to have been appointed as chairperson of the Board for a term of office that is the remainder of the term of office for which the person was appointed as Chairman of the governing body.

- (4) A person who immediately before commencement day was a nominee member of the governing body continues in office under and subject to this Act as an appointed member of the Board and for that purpose is taken to have been appointed as a member of the Board for a term of office that is the remainder of the term of office for which the person was appointed as a nominee member of the governing body.

606. Exercise of powers of Board before commencement day

- (1) The governing body established under section 95(1) of the former Act may, before commencement day, exercise any power the Board will have under this Act on commencement day to make an instrument of a legislative or administrative character.
- (2) The power may be exercised to the extent that it is necessary or expedient for the purpose of bringing this Act, or provisions of this Act, into operation, or giving full effect to this Act, or provisions of this Act, on or after commencement day.
- (3) If a power to make an instrument is exercised under subsection (1), the instrument —
- (a) takes effect on commencement day; and
 - (b) is taken for the purposes of this Act to have been made under the relevant power conferred on the Board on commencement day.
- (4) This Act and the operation of the *Interpretation Act 1984* section 25 are modified so far as is necessary to give effect to this section.

607. Continuation of accounts

- (1) The WorkCover WA General Account referred to in section 488 is a continuation of the Workers' Compensation and Injury Management General Account established under the former Act.
- (2) The WorkCover WA Trust Account referred to in section 494 is a continuation of the Workers' Compensation and Injury Management Trust Account established under the former Act.

608. Chief executive officer

- (1) The person who immediately before commencement day was the chief executive officer of the WorkCover Western Australia Authority continues in office, under this Act and the *Public Sector Management Act 1994*, as the CEO.
- (2) Subject to the *Public Sector Management Act 1994*, the person's employment as the CEO continues to be governed by the terms and conditions of employment that applied immediately before commencement day to the person as the chief executive officer of the WorkCover Western Australia Authority.
- (3) Except as otherwise agreed by the person referred to in subsection (1), the operation of that subsection does not —
 - (a) affect the person's remuneration; or
 - (b) affect the person's existing or accruing rights in respect of annual leave, long service leave, personal leave or any other leave; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of the person's service.

609. Exercise of powers of CEO before commencement day

- (1) The chief executive officer of the WorkCover Western Australia Authority may, before commencement day, exercise any power

the CEO will have under this Act on commencement day to make an instrument of a legislative or administrative character.

- (2) The power may be exercised to the extent that it is necessary or expedient for the purpose of bringing this Act, or provisions of this Act, into operation, or giving full effect to this Act, or provisions of this Act, on or after commencement day.
- (3) If a power to make an instrument is exercised under subsection (1), the instrument —
 - (a) takes effect on commencement day; and
 - (b) is taken for the purposes of this Act to have been made under the relevant power conferred on the CEO on commencement day.
- (4) This Act and the operation of the *Interpretation Act 1984* section 25 are modified so far as is necessary to give effect to this section.

610. Other staff

- (1) A person who immediately before commencement day was a public service officer appointed under the *Public Sector Management Act 1994* Part 3 for the purposes of section 295(2) of the former Act is taken to be a public service officer appointed under the *Public Sector Management Act 1994* Part 3 for the purposes of section 479(1) of this Act on the same terms and conditions that applied to the person immediately before commencement day.
- (2) A person who immediately before commencement day was engaged by the WorkCover Western Australia Authority under the *Public Sector Management Act 1994* section 100 is taken to have been engaged by WorkCover WA under that section on the same terms and conditions that applied to the person immediately before commencement day.

- (3) Except as otherwise agreed by a person referred to in this section, the operation of this section does not —
- (a) affect the person's remuneration; or
 - (b) affect the person's existing or accruing rights in respect of annual leave, long service leave, personal leave or any other leave; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of the person's service.

611. Inspectors

- (1) A person who immediately before commencement day was an inspector under the former Act is taken to be an inspector under this Act.
- (2) A certificate issued under section 175A(4) of the former Act and held by an inspector referred to in subsection (1) immediately before commencement day is taken to be an identity card issued to that person under section 509(1).

612. Delegations

A delegation in force immediately before commencement day under a provision of the former Act is taken to be a delegation under the corresponding provision of this Act.

613. Guarantees of borrowings

The repeal of section 101B of the former Act does not affect the validity or continued operation of —

- (a) any guarantee given by the Treasurer pursuant to the authority conferred by that section; and
- (b) any security given by the WorkCover Western Australia Authority in connection with the guarantee.

614. General Account

- (1) Any amount payable to the General Account under the former Act that was unpaid immediately before commencement day is payable to the General Account under this Act.
- (2) Any amount payable from the General Account under the former Act that was unpaid immediately before commencement day is payable from the General Account under this Act.
- (3) Any amount that is recoverable under the former Act for payment into the General Account under the former Act that was not recovered before commencement day is recoverable under this Act for payment into the General Account under this Act.
- (4) There is authorised to be paid from the General Account to the DI Fund the amount WorkCover WA may determine to be the amount representing the total amount of the liabilities of the General Account under the former Act that remain unsatisfied immediately before commencement day in respect of payments that will be required to be made from the DI Fund on or after commencement day.
- (5) This section is subject to section 583.

Part 15 — Repeals and consequential and related amendments

Division 1 — Acts repealed

**615. *Workers' Compensation and Injury Management Act 1981*
repealed**

The *Workers' Compensation and Injury Management Act 1981* is repealed.

616. *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001* repealed

The *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001* is repealed.

**617. *Employers Indemnity Policies (Premium Rates) Act 1990*
repealed**

The *Employers Indemnity Policies (Premium Rates) Act 1990* is repealed.

**618. *Employers' Indemnity Supplementation Fund Act 1980*
repealed**

The *Employers' Indemnity Supplementation Fund Act 1980* is repealed.

619. *Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986* repealed

The *Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986* is repealed.

Division 2 — Subsidiary legislation repealed

620. *Workers' Compensation and Injury Management Regulations 1982 repealed*

The *Workers' Compensation and Injury Management Regulations 1982* are repealed.

621. *Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998 repealed*

The *Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998* are repealed.

622. *Workers' Compensation Code of Practice (Injury Management) 2005 repealed*

The *Workers' Compensation Code of Practice (Injury Management) 2005* is repealed.

623. *Workers' Compensation and Injury Management (Acts of Terrorism) (Final Day) Regulations 2002 repealed*

The *Workers' Compensation and Injury Management (Acts of Terrorism) (Final Day) Regulations 2002* are repealed.

Division 3 — Acts amended

Subdivision 1 — *Civil Liability Act 2002* amended

624. Act amended

This Subdivision amends the *Civil Liability Act 2002*.

625. Section 3A amended

In section 3A in the Table delete item 3 and insert:

- | | | |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| 3. | Damages to which the <i>Workers Compensation and Injury Management Act 2023</i> Part 7 Division 2 applies and the class of damages referred to in section 416(a) of that Act. | Parts 1A, 1B, 1C, 1D, 1E and 2 (other than section 10A and Division 4). |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|

626. Section 13A replaced

Delete section 13A and insert:

13A. Restrictions on damages if payments received under CISS

- (1) In this Act —

CISS means the scheme provided for in the MVWA(CI) Act for the lifetime care and support of certain people catastrophically injured in motor vehicle accidents or workplace accidents;

interim participant means a person who under the MVWA(CI) Act is an interim participant in the CISS;

lifetime participant means a person who under the MVWA(CI) Act is a lifetime participant in the CISS;

MVWA(CI) Act means the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*;

treatment, care and support needs means —

- (a) treatment, care and support needs, as defined in the MVWA(CI) Act section 3(1); and
- (b) excluded treatment, care and support needs, as defined in that section.

- (2) If a term used in this section (other than a term defined in subsection (1)) is given a meaning in the MVWA(CI) Act section 3(1), it has the same meaning in this section.
- (3) Without limiting the definition of ***treatment, care and support needs*** in subsection (1), it includes gratuitous services of a domestic nature or gratuitous services relating to nursing and attendance provided, or to be provided, to a person by a member of the same household or family as the person.
- (4) Subsection (5) applies to the awarding of damages in respect of a motor vehicle injury or workplace injury suffered by a person if the person is a participant in the CISS in respect of the injury.
- (5) No damages can be awarded to the person in respect of any treatment, care and support needs of the person that relate to the motor vehicle injury or workplace injury and that —
 - (a) have arisen during the period in respect of which the person is a participant in the CISS; or
 - (b) will or may arise in future.
- (6) If the person is an interim participant, it must be assumed for the purposes of subsection (5) that the person will become a lifetime participant in respect of the injury.
- (7) Subsection (8) applies to the awarding of damages in respect of a motor vehicle injury or workplace injury suffered by a person if the person —
 - (a) has ceased to be an interim participant in respect of the injury; and
 - (b) has not become a lifetime participant in respect of the injury.

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- (8) No damages can be awarded to the person in respect of any treatment, care and support needs of the person that relate to the motor vehicle injury or workplace injury and that arose during the period in respect of which the person was an interim participant.
- (9) Subsections (5) and (8) apply —
 - (a) whether or not the treatment, care and support needs are assessed treatment, care and support needs, as defined in the MVWA(CI) Act section 3(1); and
 - (b) whether or not the Commission is required to make a payment in respect of the treatment, care and support needs; and
 - (c) whether or not any treatment, care, support or service is provided on a gratuitous basis.
- (10) This section has effect despite section 12.

Subdivision 2 — *Financial Management Act 2006* amended

627. Act amended

This Subdivision amends the *Financial Management Act 2006*.

628. Schedule 1 amended

- (1) In Schedule 1 delete “WorkCover Western Australia Authority”.
- (2) In Schedule 1 insert in alphabetical order:

WorkCover WA

Subdivision 3 — *Fire and Emergency Services Act 1998* amended

629. Act amended

This Subdivision amends the *Fire and Emergency Services Act 1998*.

630. Section 36ZM amended

- (1) In section 36ZM delete the following definitions:

compensable injury

date of injury

specified disease

WC&IM Act

- (2) In section 36ZM insert in alphabetical order:

date of injury has the meaning given in
section 36ZN(4);

firefighter disease has the meaning given in the WCIM
Act section 11(1);

WCIM Act means the *Workers Compensation and
Injury Management Act 2023*.

- (3) In section 36ZM in the definition of *injury* delete “WC&IM Act
section 5(1);” and insert:

WCIM Act section 6;

- (4) In section 36ZM in the definition of *medical practitioner* delete
“WC&IM Act section 5(1);” and insert:

WCIM Act section 5;

631. Section 36ZN replaced

Delete section 36ZN and insert:

36ZN. When firefighter disease taken to be injury caused while engaged in volunteer activities

- (1) In this section —

firefighting employment has the meaning given in the WCIM Act section 11(1);

firefighting service means —

- (a) firefighting employment; or
- (b) volunteer service;

hazardous fire has the meaning given in the WCIM Act section 11(1);

hazardous firefighting employment has the meaning given in the WCIM Act section 11(1);

hazardous firefighting service means —

- (a) hazardous firefighting employment; or
- (b) volunteer service during which the volunteer attends hazardous fires at a rate at least equivalent to the rate of 5 hazardous fires per year;

qualifying period has the meaning given in the WCIM Act section 11(1);

volunteer service means service as a registered volunteer whose duties involve or involved responding to hazardous fires.

- (2) An injury by a firefighter disease suffered by a volunteer is, for the purposes of this Part, taken to be caused to the volunteer while engaged in volunteer activities if all of the requirements for the application of this section to the injury as specified in

subsection (3) are satisfied, unless the responsible agency proves that the injury was not caused to the volunteer while engaged in volunteer activities.

- (3) The requirements for the application of this section to an injury by a firefighter disease suffered by a volunteer are as follows —
- (a) when the injury is suffered the volunteer (whether or not still in firefighting service) has been in firefighting service for at least a period of, or periods in aggregate amounting to, the qualifying period for the disease;
 - (b) the responsible agency is satisfied that when the injury is suffered the volunteer has been in hazardous firefighting service for at least a period of, or periods in aggregate amounting to, the lesser of the following —
 - (i) 5 years;
 - (ii) the qualifying period for the disease;
 - (c) in the case of a cancer prescribed by regulations under the WCIM Act to be a firefighter disease, the conditions, if any, prescribed by the regulations for the cancer are satisfied.
- (4) An injury by a firefighter disease is taken to have been suffered on whichever is the earlier of the following (the *date of injury*) —
- (a) the day on which the injured person becomes totally or partially incapacitated for work by reason of the firefighter disease;
 - (b) the day on which the injured person is first diagnosed by a medical practitioner as having contracted the firefighter disease.

632. Section 36ZR amended

- (1) In section 36ZR(2):
- (a) delete “the WC&IM Act, an” and insert:

the WCIM Act, an
 - (b) delete paragraph (b)(ii) and insert:
 - (ii) in any other case, the volunteer’s pre-injury weekly rate of income calculated in accordance with the WCIM Act section 54.
- (2) Delete section 36ZR(3) and insert:
- (3) The WCIM Act Part 2 Divisions 3, 4 and 5 apply (with the appropriate modifications) to an injury policy as if set out in the policy.

633. Section 36ZS amended

In section 36ZS(1)(a) delete “WC&IM Act if the injured volunteer were a worker and had suffered a compensable injury; and” and insert:

WCIM Act if the injured volunteer were a worker and had suffered an injury compensable under the WCIM Act; and

634. Section 36ZT amended

In section 36ZT(1):

- (a) in paragraph (a) delete “specified disease; and” and insert:

firefighter disease; and

- (b) in paragraph (b) delete “specified disease” and insert:

firefighter disease

635. Section 36ZU amended

- (1) In section 36ZU(1) delete the definition of *prescribed amount*.

- (2) In section 36ZU(1) insert in alphabetical order:

general maximum amount has the meaning given in the WCIM Act section 5;

- (3) In section 36ZU(2) delete “prescribed amount” and insert:

general maximum amount

636. Section 36ZW amended

Delete section 36ZW(1) and insert:

- (1) Subject to subsection (2), an amount payable under an injury policy or under section 36ZT or 36ZU is payable to the person or persons who would be entitled under the WCIM Act to receive it if the injured volunteer were a worker and had suffered an injury compensable

under the WCIM Act, and that Act (with the appropriate modifications) applies accordingly.

637. Section 36ZX replaced

Delete section 36ZX and insert:

36ZX. Firefighter disease disputes

- (1) In this section —
firefighter disease dispute means a dispute in connection with the application or operation of section 36ZN or 36ZT.
- (2) The WCIM Act Part 6 applies (with the appropriate modifications) in relation to a firefighter disease dispute as if the firefighter disease dispute were a dispute, as defined in the WCIM Act section 303.
- (3) Despite the WCIM Act section 355, for the purposes of an action for damages brought independently of this Act, a decision of an arbitrator in relation to a firefighter disease dispute is not final or binding on the parties to the dispute.

638. Other references to WC&IM Act replaced

In the provisions listed in the Table delete “WC&IM Act” (each occurrence) and insert:

WCIM Act

Table

s. 36ZM (def. of <i>appropriate changes</i>)	s. 36ZO
s. 36ZP	s. 36ZQ(2)
s. 36ZR(1)	

Notes:

1. The heading to amended section 36ZO is to read:
Application of provisions of WCIM Act under this Part
2. The heading to amended section 36ZP is to read:
Appropriate changes to WCIM Act

Subdivision 4 — *Health Services Act 2016* amended

639. Act amended

This Subdivision amends the *Health Services Act 2016*.

640. Section 228 amended

- (1) In section 228(1) in the definition of *injury or hearing loss* delete “section 22 of that Act;” and insert:

section 20 of that Act;

- (2) In section 228(1) in the definition of **WCIM Act** delete “*Workers’ Compensation and Injury Management Act 1981.*” and insert:

Workers Compensation and Injury Management Act 2023.

- (3) In section 228(2) delete “WCIM Act Part IV Division 2 —” and insert:

WCIM Act Part 7 Division 2 —

Note: The heading to amended section 228 is to read:

Modifications for purposes of *Workers Compensation and Injury Management Act 2023* Part 7 Division 2

Subdivision 5 — *Insurance Commission of Western Australia Act 1986* amended

641. Act amended

This Subdivision amends the *Insurance Commission of Western Australia Act 1986*.

642. Section 6 amended

In section 6:

- (a) in paragraph (aa) delete “*Motor Vehicle (Catastrophic Injuries) Act 2016*” and insert:

Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016

- (b) delete paragraph (b) and insert:

- (b) to undertake liability under policies of insurance issued by the Commission as required by the *Workers’ Compensation and Injury Management Act 1981* section 163, being liabilities arising in respect of employment before the *Workers Compensation and Injury Management Act 2023* section 615 comes into operation; and

- (c) in paragraph (e)(i) delete “industrial diseases and”;
- (d) in paragraph (e)(ii) delete “industrial diseases,”;
- (e) in paragraph (e) delete “or (b)”.

643. Section 7 amended

Delete section 7(3) and insert:

- (3) For the purposes of section 6(b), the Commission is taken to be a licensed insurer under the *Workers Compensation and Injury Management Act 2023*.

644. Section 15 amended

After section 15(2)(b) insert:

- (ba) contributions credited to the Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund as required under the *Workers Compensation and Injury Management Act 2023* Part 5 Division 11; and
- (bb) any amount credited to the Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund under the *Workers Compensation and Injury Management Act 2023* section 301; and

645. Section 16 amended

- (1) In section 16(1)(b) delete ““Motor Vehicle (Catastrophic Injuries) Fund”; and” and insert:

“Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund”; and

- (2) In section 16(3) delete “Motor Vehicle (Catastrophic Injuries) Fund” and insert:

Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund

646. Section 18 amended

In section 18(2) delete “Motor Vehicle (Catastrophic Injuries) Fund,” and insert:

Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund,

647. Section 44 deleted

Delete section 44.

648. Section 49 inserted

At the end of Part V insert:

49. Transitional

The Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund is a continuation of the Motor Vehicle (Catastrophic Injuries) Fund established and maintained under section 16(1)(b) before the day on which the *Workers Compensation and Injury Management Act 2023* section 648 comes into operation.

Subdivision 6 — *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* amended

649. Act amended

This Subdivision amends the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947*.

650. Section 6 amended

In section 6(2):

- (a) delete “*Workers' Compensation and Injury Management Act 1981*,” and insert:

Workers Compensation and Injury Management Act 2023,

- (b) delete “section 15(3) of the *Workers' Compensation and Injury Management Act 1981* shall be deemed to apply with the necessary adaptations” and insert:

the *Workers Compensation and Injury Management Act 2023* section 22 applies

Subdivision 7 — *Law Reporting Act 1981* amended

651. Act amended

This Subdivision amends the *Law Reporting Act 1981*.

652. Section 2 amended

In section 2 delete the definition of *court*.

**Subdivision 8 — *Legal Profession Uniform Law Application Act 2022*
amended**

653. Act amended

This Subdivision amends the *Legal Profession Uniform Law Application Act 2022*.

654. Section 134 amended

In section 134(2) delete “*Workers’ Compensation and Injury Management Act 1981* section 5(1)” and insert:

Workers Compensation and Injury Management Act 2023
section 5

Subdivision 9 — *Limitation Act 2005* amended

655. Act amended

This Subdivision amends the *Limitation Act 2005*.

656. Section 55 amended

In section 55(2) delete “asbestos.” and insert:

asbestos or silica dust.

657. Section 56 amended

(1) In section 56(1)(a) delete “asbestos; and” and insert:

asbestos or silica dust; and

- (2) Delete section 56(4) and insert:
- (4) For the purposes of this section an injury to which this subsection applies must not be treated as significant unless —
- (a) the parties to the proposed action have so agreed; or
 - (b) a medical panel constituted as described in the *Workers' Compensation and Injury Management Act 1981* section 36(1) —
 - (i) has determined that the degree of the disability assessed in accordance with section 93D(2) of that Act is 30% or more; or
 - (ii) has assessed that the worker's degree of whole of person impairment evaluated as described in sections 146A and 146C of that Act (on or after 14 November 2005) is 25% or more;
- or
- (c) a Dust Disease Medical Panel constituted under the *Workers Compensation and Injury Management Act 2023* section 124 has determined for the purposes of Part 7 Division 2 of that Act that the degree of permanent whole of person impairment resulting from the injury is at least 25%.
- (4A) Subsection (4) applies to an injury that —
- (a) before 14 November 2005, is a disability as defined in the *Workers' Compensation and Injury Management Act 1981*; or

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- (b) on or after 14 November 2005 and before the commencement of the *Workers Compensation and Injury Management Act 2023* Part 7 Division 2, is an injury as defined in the *Workers' Compensation and Injury Management Act 1981*; or
- (c) on or after the commencement of the *Workers Compensation and Injury Management Act 2023* Part 7 Division 2, is an injury from employment for the purposes of that Act.

Note: The heading to amended section 56 is to read:

Asbestos or silica dust related diseases

658. Section 57 amended

In section 57(1) and (2) after “asbestos” insert:

or silica dust

Subdivision 10 — *Local Government Act 1995* amended

659. Act amended

This Subdivision amends the *Local Government Act 1995*.

660. Section 5.49 replaced

Delete section 5.49 and insert:

5.49. Workers compensation insurance

- (1) In this section —
 - eligible body* means —
 - (a) a local government; or

- (b) a regional local government; or
- (c) a regional subsidiary; or
- (d) any other body with functions relating to local government approved in writing by the Minister;

group self-insurer licence has the meaning given in the WCIM Act section 200;

WCIM Act means the *Workers Compensation and Injury Management Act 2023*;

WorkCover WA has the meaning given in the WCIM Act section 5.

- (2) WALGA must hold and manage a group self-insurer licence under the WCIM Act for the benefit of —
 - (a) itself; and
 - (b) any eligible body to which, under the WCIM Act, the group self-insurer licence extends.
- (3) If an eligible body wishes to be added to or removed from the group self-insurer licence, WALGA must apply to WorkCover WA to seek a variation in the group self-insurer licence under the WCIM Act section 246(3).
- (4) Nothing in this section limits the application of the WCIM Act.

Note for this section:

The WCIM Act section 247 provides that each holder or former holder of a group self-insurer licence is jointly and severally liable for any self-insurer liability of an employer that is a liability in respect of an injury to or death of a worker that arose while the employer was a self-insurer covered by the group self-insurer licence.

**Subdivision 11 — *Motor Vehicle (Catastrophic Injuries) Act 2016*
amended**

661. Act amended

This Subdivision amends the *Motor Vehicle (Catastrophic Injuries) Act 2016*.

662. Long title amended

In the long title after “**motor vehicle**” insert:

or workplace

663. Section 1 amended

In section 1 delete “*Motor Vehicle (Catastrophic Injuries) Act 2016.*” and insert:

Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016.

664. Section 3 amended

(1) In section 3(1) insert in alphabetical order:

worker has the meaning given in the *Workers Compensation and Injury Management Act 2023* section 5;

workplace accident means an incident that results in a worker suffering a workplace injury;

workplace injury means an injury to a worker in respect of which compensation under the *Workers*

Compensation and Injury Management Act 2023 is payable.

- (2) In section 3(1) in the definition of *catastrophic injuries support scheme (CISS)* delete “accidents;” and insert:

accidents or workplace accidents;

- (3) In section 3(1) in the definition of *catastrophic injury* after “injury” insert:

or workplace injury

- (4) In section 3(1) in the definition of *treatment, care and support assessment* delete “injury;” and insert:

injury or workplace injury;

- (5) In section 3(1) in the definition of *treatment, care and support needs* delete “section 6.” and insert:

section 6;

665. Section 5A inserted

After section 5 insert:

5A. Workplace injury to which Act applies

- (1) This Act applies to a workplace injury resulting from a workplace accident that occurs on or after the day on

which the *Workers Compensation and Injury Management Act 2023* section 665 comes into operation.

- (2) This Act does not apply to a workplace injury unless there is an established entitlement to compensation in respect of the injury.
- (3) There is an established entitlement to compensation in respect of a workplace injury if, and only if —
 - (a) the injured person has made a claim under the *Workers Compensation and Injury Management Act 2023* for compensation under that Act in respect of the injury; and
 - (b) liability to pay that compensation has been accepted (or is taken to have been accepted) by a licensed insurer or self-insurer under that Act or has been determined by an arbitrator under that Act.
- (4) A workplace injury that is also a motor vehicle injury to which this Act applies must be treated as a motor vehicle injury to which this Act applies and not as a workplace injury to which this Act applies.

Note for this section:

A person is not eligible to apply to become a participant in the CISS in respect of a workplace injury unless the person resides in Australia at the time of the application. The participation of a person in the CISS in respect of a workplace injury is suspended while the person is absent from Australia. See sections 9(1A) and 14(1A).

666. Section 8 amended

- (1) Delete section 8(1) and insert:
- (1) A person is eligible to be a participant in the CISS if the person suffers a catastrophic injury that is —
- (a) a motor vehicle injury to which this Act applies; or
- (b) a workplace injury to which this Act applies.
- (2) In section 8(3) after “motor vehicle injury” insert:
- or workplace injury

667. Section 9 amended

- (1) In section 9(1) delete “injury.” and insert:
- injury or workplace injury.
- (2) After section 9(1) insert:
- (1A) A person is not eligible to apply to become a participant in the CISS in respect of a workplace injury unless the person resides in Australia at the time of the application.
- Note for this subsection:
- Participation in the CISS in respect of a workplace injury is suspended while the person is absent from Australia. See section 14(1A).

668. Section 13 amended

In section 13:

- (a) after “a motor vehicle injury” insert:

or workplace injury

- (b) delete “same motor vehicle injury.” and insert:

same injury.

669. Section 14 amended

- (1) In section 14(1) delete “Australia.” and insert:

Australia, if the person is a participant in respect of a motor vehicle injury.

- (2) After section 14(1) insert:

- (1A) The participation of a person in the CISS is suspended while the person is absent from Australia if the person is a participant in respect of a workplace injury.

670. Section 15 amended

In section 15(2)(b) after “injury” insert:

or workplace injury

671. Section 18 amended

- (1) In section 18(2)(b) after “injury” insert:

or workplace injury

- (2) In section 18(4)(a)(ii) after “injury” insert:

or workplace injury

672. Section 19 amended

In section 19(1) in the definition of *ordinary costs of raising a child* after “injury” insert:

or workplace injury

673. Section 22 deleted

Delete section 22.

674. Section 24 amended

In section 24 in the definition of *eligibility decision*:

- (a) delete paragraph (a)(ii) and insert:
- (ii) whether an injury is a motor vehicle injury or workplace injury to which this Act applies; or

- (b) in paragraph (a)(iv) after “motor vehicle injury” insert:
- or workplace injury

675. Section 27 amended

Delete section 27(2)(b) and insert:

- (b) whether an injury is a motor vehicle injury or workplace injury to which this Act applies.

676. Section 30A inserted

After section 30 insert:

30A. Notification and disclosure of information about injured worker

- (1) In this section —
- relevant information*, about an injured worker, means information about the worker’s injury or about a claim for compensation or damages in respect of the worker’s injury that is relevant to —
- (a) the worker’s eligibility to be a participant in the CISS; or
- (b) the worker’s participation in the CISS.
- (2) Words and expressions used in this section that have a defined meaning in the *Workers Compensation and Injury Management Act 2023* have the same meaning in this section as they have in that Act.
- (3) WorkCover WA, a licensed insurer or self-insurer may disclose relevant information about an injured worker

to the Commission if the worker's injury is or appears likely to be a catastrophic injury.

- (4) An insurer or self-insurer who has received a claim for compensation made by an injured worker in respect of an injury that is or appears likely to be a catastrophic injury must —
- (a) provide to the Commission details of the worker's claim and copies of any medical report or certificate of capacity obtained by or provided to the insurer or self-insurer in connection with the claim; and
 - (b) notify the Commission within 7 days after liability to pay compensation has been accepted (or is taken to have been accepted) by the licensed insurer or self-insurer or has been determined by an arbitrator.
- (5) A worker who has suffered an injury that is a catastrophic injury must notify the Commission within 7 days after —
- (a) an election is made by the worker to retain the right to seek damages in respect of the injury for the purposes of the *Workers Compensation and Injury Management Act 2023* section 421;
 - (b) any payment of damages in respect of the injury is received by the worker, or any claim for damages by the worker in respect of the injury is settled, if the damages include an amount for expenses in relation to future treatment, care and support needs.

677. Section 31 replaced

Delete section 31 and insert:

31. False or misleading information

- (1) A person must not provide false or misleading information —
- (a) in, or in connection with, an application made or a notice or other document given under this Act; or
 - (b) in compliance, or purported compliance, with a requirement under this Act; or
 - (c) for any other purpose under this Act.

Penalty for this subsection: a fine of \$10 000.

- (2) For the purposes of subsection (1), a person provides false or misleading information if the person —
- (a) makes a statement that the person knows is false or misleading in a material particular; or
 - (b) omits from a statement made by the person anything without which the statement is, to the person's knowledge, misleading in a material particular; or
 - (c) gives information that —
 - (i) the person knows is false or misleading in a material particular; or
 - (ii) omits anything without which the information, to the person's knowledge, is misleading in a material particular.

**Subdivision 12 — *Motor Vehicle (Third Party Insurance) Act 1943*
amended**

678. Act amended

This Subdivision amends the *Motor Vehicle (Third Party Insurance) Act 1943*.

679. Section 3 amended

- (1) In section 3(1) delete the definitions of:

CISS

MV(CI) Act

- (2) In section 3(1) insert in alphabetical order:

CISS means the scheme provided for in the
MVWA(CI) Act for the lifetime care and support of
certain people catastrophically injured in motor vehicle
accidents and workplace accidents;

MVWA(CI) Act means the *Motor Vehicle and
Workplace Accidents (Catastrophic Injuries) Act 2016*;

- (3) In section 3(1) in the definitions of ***assessed treatment, care
and support needs*** and ***catastrophic injury*** delete “MV(CI)
Act” and insert:

MVWA(CI) Act

680. Section 3C amended

In section 3C(7) delete “law (other than Division 2 of Part IV of the *Workers’ Compensation and Injury Management Act 1981*)” and insert:

law (other than the *Workers Compensation and Injury Management Act 2023* Part 7 Division 2)

681. Section 3EA amended

- (1) In section 3EA(1) in the definitions of *interim participant* and *lifetime participant*:

- (a) delete “MV(CI) Act” and insert:

MVWA(CI) Act

- (b) delete “CISS;” and insert:

CISS in respect of a motor vehicle injury to which that Act applies;

- (2) In section 3EA(1) in the definition of *treatment, care and support needs* paragraph (a) delete “MV(CI) Act” and insert:

MVWA(CI) Act

682. Section 3FB amended

In section 3FB(1) in the definition of *treatment, care and support needs* delete “MV(CI) Act” and insert:

MVWA(CI) Act

683. Section 3G amended

In section 3G(1) delete “compensation under the *Workers’ Compensation and Injury Management Act 1981* in respect of that death or bodily injury or which would have given rise to liability of that kind but for section 22 of that Act.” and insert:

compensation under the *Workers Compensation and Injury Management Act 2023* in respect of that death or bodily injury or which would have given rise to liability of that kind but for section 20 of that Act.

684. Section 3T amended

(1) In section 3T(1):

(a) delete “MV(CI) Act by” and insert:

MVWA(CI) Act by

(b) delete “MV(CI) Act.” and insert:

MVWA(CI) Act.

Workers Compensation and Injury Management Act 2023

Part 15 Repeals and consequential and related amendments

Division 3 Acts amended

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(2) After section 3T(1) insert:

(1A) The reference in subsection (1) to other income expected to be received under, and to claims, payments, costs and other expenses anticipated to arise or to be incurred under, the MVWA(CI) Act is limited to that income and to those claims, payments, costs and other expenses that relate to motor vehicle injuries to which that Act applies.

(3) In section 3T(2) delete “Motor Vehicle (Catastrophic Injuries) Fund” and insert:

Motor Vehicle and Workplace Accidents (Catastrophic Injuries)
Fund

685. Section 6A amended

(1) In section 6A(1) in the definition of *motor vehicle accident* delete “MV(CI) Act” and insert:

MVWA(CI) Act

(2) In section 6A(2)(a) delete “MV(CI) Act” and insert:

MVWA(CI) Act

Subdivision 13 — *Police Act 1892* amended

686. Act amended

This Subdivision amends the *Police Act 1892*.

687. Section 33ZS amended

- (1) In section 33ZS(1) delete the definitions of:

approved medical specialist

WC&IM Act

WorkCover Guides

- (2) In section 33ZS(1) insert in alphabetical order:

approved permanent impairment assessor means a person appointed under section 33ZW(2);

Permanent Impairment Guidelines means the Permanent Impairment Guidelines issued under section 187 of the WCIM Act;

WCIM Act means the *Workers Compensation and Injury Management Act 2023*.

- (3) Delete section 33ZS(2) and insert:

- (2) For the purposes of this Part, the *prescribed amount*, for a financial year, is the amount specified as the general maximum amount for the financial year in section 538 of the WCIM Act.

688. Section 33ZW amended

- (1) In section 33ZW(1) in the definition of *degree of permanent impairment* paragraph (b) delete “Schedule 2 item 80 or 81 of the WC&IM Act —” and insert:

item 43 or 44 in the Table to section 101 of the WCIM Act —

- (2) Delete section 33ZW(2) and insert:

- (2) The Police Commissioner may appoint a person approved as a permanent impairment assessor under section 193(1) of the WCIM Act to be an approved permanent impairment assessor for the purposes of this section.

- (3) In section 33ZW(3)(a) delete “in Schedule 2 Part 2 of the WC&IM Act; and” and insert:

to section 101 of the WCIM Act; and

- (4) In section 33ZW(5):

- (a) in paragraph (a) delete “approved medical specialist; and” and insert:

approved permanent impairment assessor; and

- (b) in paragraph (b) delete “WorkCover Guides” and insert:

Permanent Impairment Guidelines

- (5) In section 33ZW(7) delete “in Schedule 2 Part 2 of the WC&IM Act.” and insert:

to section 101 of the WCIM Act.

689. Section 33ZX amended

- (1) Delete section 33ZX(1) and insert:

- (1) In this section —

noise induced hearing loss means total or partial loss or diminution of hearing that is noise induced.

- (2) In section 33ZX(3) delete “that section.” and insert:

that section and subject to regulations made for the purpose of section 33ZZI(1)(fa).

- (3) In section 33ZX in the note delete “Schedule 2 item 44 of the WC&IM Act.” and insert:

item 5 of the Table to section 101 of the WCIM Act.

690. Section 33ZY amended

In section 33ZY in the note delete “Schedule 2 item 82 of the WC&IM Act.” and insert:

item 45 of the Table to section 101 of the WCIM Act.

691. Section 33ZZI amended

(1) In section 33ZZI(1):

- (a) in paragraph (f)(i) delete “approved medical specialist” and insert:

approved permanent impairment assessor

- (b) in paragraph (f)(ii) delete “approved medical specialists” and insert:

approved permanent impairment assessors

- (c) after paragraph (f) insert:

- (fa) make provision for, or in relation to, the assessment of noise induced hearing loss for the purposes of section 33ZX;

(2) In section 33ZZI(2):

- (a) delete “WC&IM Act,” and insert:

WCIM Act,

- (b) delete “Part VII of the WC&IM Act.” and insert:

Part 4 of the WCIM Act.

(3) In section 33ZZI(3) delete “WorkCover Guides” and insert:

Permanent Impairment Guidelines

Subdivision 14 — *Police (Medical and Other Expenses for Former Officers) Act 2008* amended

692. Act amended

This Subdivision amends the *Police (Medical and Other Expenses for Former Officers) Act 2008*.

693. Section 3 amended

- (1) In section 3(1) delete the definitions of:

injury

WC&IM Act

- (2) In section 3(1) insert in alphabetical order:

injury has the meaning given in the WCIM Act
section 5;

WCIM Act means the *Workers Compensation and Injury Management Act 2023*.

- (3) In section 3(1) in the definition of *appropriate changes* delete
“WC&IM Act,” and insert

WCIM Act,

- (4) In section 3(2) delete “WC&IM Act” (each occurrence) and
insert

WCIM Act

694. Section 5 amended

In section 5(1) delete “WC&IM Act Schedule 1 clause 17 (other than subclauses (1aa), (1a) and (6)) and clause 19,” and insert:

WCIM Act sections 70(1), 71, 72, 75, 82(1), 83 (other than paragraphs (d) and (g)), 84 to 87, 89 and 90,

695. Section 7 amended

In section 7:

- (a) delete “The WC&IM Act” and insert:

The WCIM Act

- (b) delete “WC&IM Act section 176(1).” and insert:

WCIM Act section 303.

Note: The heading to amended section 7 is to read:

Procedure under WCIM Act applies

696. Section 8 replaced

Delete section 8 and insert:

8. Time limits under WCIM Act do not apply

Despite section 7, the WCIM Act sections 25(1) and 78(6) do not apply in relation to a claim or the recovery of an amount under section 4(1) of this Act.

697. Section 9 amended

In section 9 delete “WC&IM Act section 187,” and insert:

WCIM Act section 355,

698. Section 14 amended

In section 14 delete “WC&IM Act” and insert:

WCIM Act

Note: The heading to amended section 14 is to read:

Appropriate changes to WCIM Act

Subdivision 15 — *Public Sector Management Act 1994* amended

699. Act amended

This Subdivision amends the *Public Sector Management Act 1994*.

700. Schedule 2 amended

In Schedule 2 delete item 65 and insert:

- 65 WorkCover WA established under the *Workers Compensation and Injury Management Act 2023*

Subdivision 16 — *Sentencing Act 1995* amended

701. Act amended

This Subdivision amends the *Sentencing Act 1995*.

Workers Compensation and Injury Management Act 2023

Part 15 Repeals and consequential and related amendments

Division 3 Workers' Compensation and Injury Management Amendment Act 2011 amended

s. 702

702. Schedule 1 amended

In Schedule 1 delete the item relating to the *Workers' Compensation and Injury Management Act 1981* and insert:

Workers Compensation and Injury Management Act 2023 WorkCover WA General Account

Subdivision 17 — *State Superannuation (Transitional and Consequential Provisions) Act 2000* amended

703. Act amended

This Subdivision amends the *State Superannuation (Transitional and Consequential Provisions) Act 2000*.

704. Section 74 deleted

Delete section 74.

[Pt. 15 Div. 3 Subdiv. 18 has not come into operation.]

Subdivision 19 — *Workers' Compensation and Injury Management Amendment Act 2011* amended

707. Act amended

This Subdivision amends the *Workers' Compensation and Injury Management Amendment Act 2011*.

708. Section 123 amended

Delete section 123(2) to (7).

Subdivision 20 — Other Acts amended

709. References to *Workers' Compensation and Injury Management Act 1981* amended

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “*Workers' Compensation and Injury Management Act 1981*” and insert:

Workers Compensation and Injury Management Act 2023

Table

<i>Blood Donation (Limitation of Liability) Act 1985</i>	s. 3A(1) and (2)
<i>Credit Act 1984</i>	s. 9
<i>Duties Act 2008</i>	s. 209(2)(b)
<i>Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947</i>	s. 3 def. of <i>workers' compensation</i> s. 6(1)
<i>Magistrates Court (Civil Proceedings) Act 2004</i>	s. 7(1) def. of <i>services</i> par. (a)
<i>Owner-Drivers (Contracts and Disputes) Act 2007</i>	s. 27(4)(b)
<i>Police Assistance Compensation Act 1964</i>	s. 4(2) s. 5(2)(b) s. 6

Workers Compensation and Injury Management Act 2023

Part 15 Repeals and consequential and related amendments

Division 3 Other Acts amended

s. 709

<i>Protective Custody Act 2000</i>	s. 27(9)
<i>Public Trustee Act 1941</i>	s. 37(3A)
<i>Sentence Administration Act 2003</i>	s. 81(1) and (2) s. 100(a)
<i>Stamp Act 1921</i>	s. 92A(2)(b)
<i>Young Offenders Act 1994</i>	s. 17D(a) s. 62

Note: The heading to amended section 3A of the *Blood Donation (Limitation of Liability) Act 1985* is to read:

This Act not to apply to or in relation to liability under *Workers Compensation and Injury Management Act 2023*

Part 16 — Validation

[Heading inserted: No. 40 of 2024 s. 4.]

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

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- (b) the Director did not do so before the election was purportedly made.

[Section 710 inserted: No. 40 of 2024 s. 4.]

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
 - (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.

[Section 711 inserted: No. 40 of 2024 s. 4.]

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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.

[Section 712 inserted: No. 40 of 2024 s. 4.]

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.

[Section 713 inserted: No. 40 of 2024 s. 4.]

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.
- (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

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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.

[Section 714 inserted: No. 40 of 2024 s. 4.]

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).

[Section 715 inserted: No. 40 of 2024 s. 4.]

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

[Section 716 inserted: No. 40 of 2024 s. 4.]

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Notes

This is a compilation of the *Workers Compensation and Injury Management Act 2023* and includes amendments made by other written laws ¹. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Workers Compensation and Injury Management Act 2023</i>	21 of 2023	24 Oct 2023	Pt 1 Div. 1: 24 Oct 2023 (see s. 2(a)); Pt. 14 (but only Div. 1, 4 and 10 and only s. 542, 543, 545, 574, 579, 603, 606 and 609): 25 Oct 2023 (see s. 2(b)); Act other than Pt. 1 Div. 1, Pt. 14 Div. 1 s. 542, 543 & 545, Pt. 14 Div. 4 s. 574 & 579, Pt. 14 Div. 10 s. 603, 606 & 609 & Pt. 15 Div. 3 Subdiv. 18: 1 Jul 2024 (see s. 2(d) and SL 2024/34 cl. 2); Pt. 15 Div. 3 Subdiv. 18: 1 Sep 2024 (see s. 2(c)(ii) and SL 2024/175 cl. 2)
<i>Workers Compensation and Injury Management Amendment Act 2023</i>	22 of 2023	24 Oct 2023	s. 1-3: 24 Oct 2023 (see s. 2(a)); s. 4-8: 1 Jul 2024 (see s. 2(b)-(f) and SL 2024/34 cl. 2)
<i>Workers Compensation and Injury Management Amendment (Common Law Election Validation) Act 2024</i>	40 of 2024	29 Oct 2024	s. 1 and 2: 29 Oct 2024 (see s. 2(a)); Act other than s. 1 and 2: 30 Oct 2024 (see s. 2(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Civil Liability Amendment (Provisional Damages for Dust Diseases) Act 2024</i> s. 11	32 of 2024	26 Sep 2024	To be proclaimed (see s. 2(1)(b)(i))

Other notes

- ¹ The *Civil Liability Amendment (Provisional Damages for Dust Diseases) Act 2024* s. 12 will not come into operation (see s. 2(2)).

Defined terms

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

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