

WESTERN AUSTRALIA

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**WORKERS' COMPENSATION AND  
REHABILITATION AMENDMENT  
ACT (No. 2) 1992**

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**No. 72 of 1992**

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**AN ACT to amend the *Workers' Compensation and Rehabilitation Act 1981*.**

*[Assented to 15 December 1992.]*

The Parliament of Western Australia enacts as follows:

**Short title**

1. This Act may be cited as the *Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1992*.

### **Commencement**

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

### **Principal Act**

3. In this Act the *Workers' Compensation and Rehabilitation Act 1981\** is referred to as the principal Act.

[\* *Reprinted as at 9 October 1991.*]

### **Section 3 amended**

4. Section 3 of the principal Act is amended by —

(a) deleting “and” after paragraph (b);

(b) deleting the full stop after paragraph (c) and substituting the following —

“ ; and ”; and

(c) inserting after paragraph (c) the following paragraph —

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

**Section 9 repealed and  
a section substituted**

5. Section 9 of the principal Act is repealed and the following section is substituted —

“ **Anglican clergy**

9. In this Act “**worker**” includes a member of the clergy of the Anglican Church of Australia being a bishop, or a member of the clergy licensed by the bishop, of a diocese of the church in the State and, for the purpose of this Act, the Anglican Archbishop of Perth is deemed to be the employer. ”.

**Section 57A amended**

6. (1) Section 57A (3) of the principal Act is amended —

(a) in paragraph (b) by inserting after “claimed” the following —

“ and of the reasons why it is disputed ”;

and

(b) in paragraph (c) by inserting after “subsection” the following —

“ and of the reasons why the decision is not able to be so made ”.

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(2) Section 57A of the principal Act is amended by inserting after subsection (3) the following subsection —

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

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

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

the claim by the worker shall be deemed to be disputed subject to the insurer not being prejudiced in any subsequent proceedings before the Board by the reasons stated in the notice.

(3) Section 57A of the principal Act is amended by inserting after subsection (7) the following subsection —

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

Penalty: \$2 000.

”.

**Section 57B amended**

7. (1) Section 57B (1) of the principal Act is amended by inserting before “or otherwise)” the following —

“ as a result of the insurer declining to indemnify the employer,

”.

(2) Section 57B (2) of the principal Act is amended —

(a) in paragraph (b) by inserting after “effect” the following —

“ and of the reasons why it is disputed ”;

and

(b) in paragraph (c) by inserting after “effect” the following —

“ and of the reasons why the decision is not able to be so made ”.

(3) Section 57B of the principal Act is amended by inserting after subsection (2) the following subsections —

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

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

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

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

(2b) When an insurer declines to indemnify an employer against the employer's liability to pay the compensation claimed, the insurer shall, before the

expiration of 14 days after the claim was made by the employer, notify the Commission to that effect and of the reasons for declining to indemnify. ”.

**Section 58 amended**

8. (1) Section 58 (1) (b) (i) of the principal Act is amended by inserting after “section 57A (3) (b)” the following —

“ or 57A (3a) (b) ”.

(2) Section 58 (2) (b) (i) is amended by inserting after “section 57B (2) (b)” the following —

“ or 57B (2a) (b) ”.

(3) Section 58 is amended by inserting after subsection (2) the following subsection —

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

(4) Section 58 (4) is repealed and the following subsection is substituted —

“ (4) An application under subsection (1), (2), (2a) or (3) shall be heard and determined by the Board —

(a) in chambers; and

(b) on only such evidence as is adduced before it by affidavit,

and both parties shall have the right to make submissions. ”.

(5) Section 58 (5) is amended —

(a) by inserting after “(2)” the following —

“ , (2a) ”;

(b) by inserting after paragraph (a) the following —

“ or ”;

(c) by deleting “; or” after paragraph (b) and substituting a full stop; and

(d) by deleting paragraph (c).

**Section 59 repealed and  
a section substituted**

**9.** Section 59 of the principal Act is repealed and the following section is substituted —

“ **Information as to remunerated work**

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

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

(a) commencing the work; or

(b) receiving notification under subsection (3),

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

Penalty: \$500.

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

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

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

- (a) the date of commencement of the work;
- (b) the title, classification or description of the work;
- (c) the remuneration for the work; and
- (d) the name and address of the person (if any) for whom the work is performed.

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

Penalty: \$500.

(7) If the particulars provided by the worker under subsection (6) establish that the worker has commenced remunerated work, the employer or the



employer's insurer may discontinue or reduce the worker's weekly payments of compensation in accordance with the particulars.

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

Penalty: \$2 000.

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

- (a) a worker has claimed but has not received from the employer, weekly payments of compensation;
- (b) the worker provides particulars under subsection (6);
- (c) the particulars establish that the worker has commenced remunerated work,

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

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

(11) An application under subsection (10) shall be heard and determined by the Board —

- (a) in chambers; and

- (b) on only such evidence as is adduced before it by affidavit,

and both parties shall have the right to make submissions. ”.

**Section 60 amended**

10. Section 60 (3) of the principal Act is repealed and the following subsection is substituted —

“ (3) An application under subsection (1) shall be heard and determined by the Board —

- (a) in chambers; and  
(b) on only such evidence as is adduced before it by affidavit,

and both parties shall have the right to make submissions. ”.

**Section 61 amended**

11. Section 61 of the principal Act is amended —

- (a) in subsection (1) —  
(i) by deleting “subsection (7)” and substituting the following —  
“ subsections (7) and (8) ”; and  
(ii) by deleting “diminished” and “diminish” and substituting respectively the following —  
“ reduced ” and “ reduce ”;

- (b) in subsections (3) and (4) by deleting “diminish” and “diminished” wherever they occur and substituting respectively the following —

“ reduce ” or “ reduced ”;

- (c) in subsection (5) —

- (i) by deleting “subsection (7),” and substituting the following —

“ subsections (7) and (8), ”;

- (ii) by deleting “diminished” and substituting the following —

“ reduced ”; and

- (iii) by deleting “\$500” and substituting the following —

“ \$2 000 ”;

and

- (d) after subsection (7) the following subsection is added —

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

### **Section 61 further amended**

**12.** (1) Section 61 (3) of the principal Act is amended by deleting “and the application shall be heard and determined as an application in chambers with the right of both parties to be heard”.

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(2) Section 61 of the principal Act is amended by inserting after subsection (3) the following subsection —

“ (3a) An application under subsection (3) shall be heard and determined by the Board —

(a) in chambers; and

(b) on only such evidence as is adduced before it by affidavit,

and both parties shall have the right to make submissions. ”.

(3) Section 61 (4) is amended by deleting “may” and substituting the following —

“ shall ”.

**Section 62 amended**

13. Section 62 of the principal Act is amended —

(a) by inserting after the section designation “62.” the subsection designation “(1)”; and

(b) by inserting the following subsection —

“ (2) An application under subsection (1) shall not be heard in chambers. ”.

**Section 111 repealed and  
sections substituted**

14. Section 111 of the principal Act is repealed and the following sections are substituted —

“ **Minister may give directions**

111. (1) The Minister may give directions in writing to the Commission with respect to the performance of its functions, either generally or in relation to a particular matter, and the Commission shall give effect to any such direction.

(2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of the Commission under section 66 of the *Financial Administration and Audit Act 1985*.

**Minister to have access to information**

111A. (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled —

- (a) to have information in the possession of the Commission; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Commission to furnish information to the Minister;

- (b) request the Commission to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff of the Commission to obtain the information and furnish it to the Minister.

(3) The Commission shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

**“document”** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

**“information”** means information specified, or of a description specified, by the Minister that relates to the functions of the Commission;

**“parliamentary purposes”** means the purpose of —

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

**Section 112 amended**

15. Section 112 (5a) of the principal Act is amended by deleting "one year" and substituting the following —

" 5 years ".

**Section 114 amended  
and consequential amendments**

16. (1) Section 114 (1) of the principal Act is repealed and the following subsections are substituted —

" (1) Under the *Public Service Act 1978* there shall be appointed a Registrar, a Board Monitor and such Deputy Registrars and other officers as may be required for the performance of the Board's functions.

(1a) The functions of the Registrar, the Board Monitor, the Deputy Registrars and other officers of the Board shall be as prescribed by this Act and by rules made under section 176. "

(2) Section 114 of the principal Act is amended by inserting after subsection (2) the following subsections —

" (3) The functions of the Registrar include —

(a) hearing and determining —

(i) any application in chambers;

(ii) any claim for compensation in respect of a finite period of incapacity;

(iii) any claim for compensation where the worker is partially incapacitated and receiving earnings from an employer;

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- (iv) any claim for expenses under clause 17 (1) and (1a);
  - (b) making orders as to the amount of compensation payable pursuant to an election under section 24 or 24A where the amount claimed by the worker is \$40 000 or less;
  - (c) conducting pre-trial conferences.
- (4) At a pre-trial conference the Registrar may —
- (a) make an order that weekly payments be made by the employer to the worker from the date of the pre-trial conference;
  - (b) make an order that the employer pay expenses under clause 17 of not more than \$2 000;
  - (c) make an order as to the payment of compensation in respect of any claim for compensation in respect of a finite period of not more than 4 weeks.
- (5) Appeals from decisions of the Registrar shall be only on questions of law and shall be to the Chairman or Deputy Chairman of the Board. ”.

(3) Section 5 (1) of the principal Act is amended in the definitions of “**Deputy Registrar**” and “**Registrar**” by deleting “the Deputy” and substituting the following —

“ a Deputy ”.

(4) Section 112 (30) is repealed.



- (5) Section 177 of the principal Act is amended —
- (a) in subsection (1) by deleting “and the Board” in the 2 places where it occurs;
  - (b) in subsection (2) by deleting “, the Registrar,” and “and the Board”; and
  - (c) by repealing subsection (4).

**Section 132 repealed and  
a section substituted**

17. Section 132 of the principal Act is repealed and the following section is substituted —

“ **Provision of certain documents before  
commencement of proceedings**

**132.** (1) A worker who has suffered a disability, or such a worker's solicitor or agent, may request the worker's employer at the time the disability occurred, or that employer's insurer, to provide the person making the request with a copy of such relevant documents as are in the possession of or under the control of the employer and the insurer.

(2) A request under subsection (1) may be made at any time after the occurrence of the disability and before proceedings before the Board are commenced.

(3) A request under subsection (1) shall be complied with within 7 days after it is received.

(4) In subsection (1), “**relevant document**” means —

- (a) any contract of service or apprenticeship to which the worker is a party;

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- (b) any contract for service to which the worker is a party;
- (c) records of wages or other remuneration paid to the worker;
- (d) any report relevant to the disability by a medical practitioner who has treated the worker for the disability;
- (e) any report by a medical practitioner who has conducted tests or investigations on the worker in relation to the disability;
- (f) any report by a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (d) or (e) in connection with treatment of, or tests related to, the disability;
- (g) any report by a vocational rehabilitation provider in relation to the worker;
- (h) any notice of occurrence of the disability given under section 130 (1) (a);
- (i) any claim for compensation with respect to the disability made under section 130 (1) (b).

(5) In this section, “**disability**” includes alleged disability.

”.

**Section 134 amended  
and consequential amendments**

18. (1) Section 134 (2) of the principal Act is repealed and the following subsections are substituted —

“ (2) The Board or the Registrar may at any time adjourn any proceedings to any time or place.

(3) The Board may summon a medical referee to sit with the Board as an assessor.

(4) The Board or the Registrar may at any time —

(a) refer any matter to a medical advisory panel established under section 72A for a report;

(b) require a worker to attend before such a medical advisory panel and be examined and in such a case the medical advisory panel shall report on such matters as it is asked to.

(5) If a worker who is required under subsection (4) to attend before a medical advisory panel and be examined, refuses to do so, without reasonable excuse, proof of which is on the worker —

(a) the worker's right to compensation or to take or continue any proceedings under this Act; and

(b) the worker's right to receive any weekly payment of compensation,

is suspended until the examination has taken place.

”.

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(2) Section 72D (1) of the principal Act is repealed and the following subsection is substituted —

- “ (1) A medical advisory panel is to —
- (a) consider matters referred to it —
    - (i) under section 134 (4);
    - (ii) with the consent of the employer or the insurer — by the worker; or
    - (iii) with the consent of the worker — by an employer or insurer;
  - (b) examine any worker required to attend before it under section 134 (4);
  - (c) report to the person who referred the matter on such diagnosis or other finding as the medical advisory panel thinks fit; and
  - (d) provide the worker with a copy of the report.
- ”.

**Section 173 amended**

19. Section 173 of the principal Act is amended —

- (a) in subsection (1) —
  - (i) by deleting “other than a company which”;
  - (ii) by inserting after “has commenced to be” the following —

“ , or is, ”; and

(iii) by inserting after "within Australia" the following —

" or has ceased to carry on the business, or business of the kind, to which that contract related ”;

and

(b) in subsection (2), by inserting before "against the personal representative of the employer" the following —

" against the employer, or in the bankruptcy or liquidation of the employer, or ”.

### **Section 174 amended**

**20.** Section 174 (1) of the principal Act is amended in paragraph (b) by inserting after "applies" the following —

" or the employer's insurer declines to indemnify the employer against the worker's claim for compensation ”.

### **Section 174A inserted**

**21.** After section 174 of the principal Act the following section is inserted —

#### **" Insurer may not refuse to indemnify in certain circumstances**

**174A.** (1) If under a policy of insurance the insurer may refuse, but for this section, to indemnify an employer against the employer's liability to pay compensation claimed under this Act on the ground of an act or omission by or on behalf of the employer but the act or omission did not cause or contribute to the disability for which compensation is claimed, the

insurer may not refuse to indemnify the employer but the insurer's liability to indemnify the employer is reduced by the amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of the act or omission.

(2) The onus of proving that the insurer's interests were prejudiced by the act or omission by or on behalf of the employer and the extent of that prejudice is on the insurer.

”.

### **Section 176 amended**

22. Section 176 (1) of the principal Act is amended by inserting after subparagraph (viii) of paragraph (h) the following subparagraph —

“ (ix) the functions of the Registrar, the Board Monitor and other staff of the Board;

”.

### **Schedule 1, clause 18A amended**

23. (1) Clause 18A of Schedule 1 to the principal Act is amended by inserting after subclause (1) the following subclause —

“ (1a) Where the worker is likely to incur reasonable expenses referred to in subclause (1) of clause 17 in excess of the maximum amount provided for by that subclause, the Board may, subject to subclause (2), if it considers that the maximum amount is likely to be inadequate, allow such specific additional sum, but not exceeding \$50 000, as it thinks proper in the circumstances.

”.

(2) Clause 18A (2) of Schedule 1 to the principal Act is repealed and the following subclauses are substituted —

“ (2) The Board shall not allow an additional sum in the exercise of its discretion under subclause (1) or (1a) unless it considers that such a sum ought to be allowed, having regard to the social and financial circumstances and the reasonable financial needs of the worker.

(2a) An application under subclause (1a) may be made at any time after the reasonable expenses referred to in subclause (1) of clause 17 incurred by the worker exceed 75% of the maximum amount provided for by that subclause. ”.

(3) Clause 18A of Schedule 1 to the principal Act is amended by inserting after subclause (3) the following subclause —

“ (4) The insurer of the employer, if the employer is insured in accordance with this Act, or otherwise the employer, shall notify the worker when the reasonable expenses referred to in subclause (1) of clause 17 incurred by the worker exceed 75% of the maximum amount provided for by that subclause. ”.