

# WORKERS' COMPENSATION AND ASSISTANCE AMENDMENT ACT

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No. 96 of 1990

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AN ACT to amend the *Workers' Compensation and Assistance Act 1981* and for connected purposes.

[Assented to 22 December 1990.]

The Parliament of Western Australia enacts as follows:

## Short title

1. This Act may be cited as the *Workers' Compensation and Assistance Amendment Act 1990*.

## Commencement

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

**Principal Act**

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

[\*Reprinted as at 6 February 1987 and amended by Acts Nos. 85 of 1986 and 21 and 65 of 1987.]

**Long title amended**

4. The long title to the principal Act is amended by deleting "Assistance" and substituting the following—

“ Compensation and Rehabilitation ”.

**Section 1 amended**

5. Section 1 of the principal Act is amended by deleting "Assistance" and substituting the following—

“ *Rehabilitation* ”.

**Section 5 amended**

6. Section 5 of the principal Act is amended in subsection (1)—

(a) by deleting the definitions of "hospital treatment", "treatment and attendance" and "treatment by way of rehabilitation"; and

(b) by inserting in the appropriate alphabetical positions the following definitions—

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

“ “approved rehabilitation provider” means a person approved under section 156A as a rehabilitation provider or the Commission; ”;

- “ “approved treatment” means occupational therapy, clinical psychology, speech therapy and any treatment of a kind approved by the Minister for the purposes of this definition by notice published in the *Gazette*; ”;
- “ “contract of insurance” includes a cover note; ”;
- “ “rehabilitation” includes, but is not limited to, vocational rehabilitation; ”;
- “ “vocational rehabilitation” means, in relation to workers who have suffered a disability compensable under this Act, the progressive and co-ordinated use of measures for counselling, occupational and vocational training and retraining, work assessment, and the use of aids, appliances, services or other means to facilitate the restoration of those workers to the fullest capacity for gainful employment of which they are capable; ”.

### **Section 36 amended**

7. Section 36 of the principal Act is amended by inserting after subsection (2) the following subsection—

- “ (3) The Chairman of a medical panel shall be appointed by the Minister on the nomination of the Executive Director. ”.

### **Sections 57A, 57B, 57C and 57D inserted**

8. After section 57 of the principal Act the following sections are inserted—

#### **Claims procedure—insured employer**

- “ **57A.** (1) This section applies where—
- (a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 130 (1) (b); and

- (b) the worker suffering the disability has served on the employer a certificate signed by a medical practitioner—
- (i) in or to the effect of the form prescribed containing substantially the information sought in the form; or
  - (ii) to the effect that the worker is unfit for work because of a recurrence of a disability in respect of which a certificate as referred to in subparagraph (i) has previously been served,

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

(2) Where, in the circumstances mentioned in subsection (1), an employer fails to make a claim under and in accordance with his policy of insurance before the expiration of 3 full working days of his insurer after the day on which the circumstances mentioned in subsection (1) arose or, where the making of a claim within that time would not be reasonably practicable, as soon as reasonably practicable thereafter, the insurer may, in a Local Court, sue and recover from the employer, as a debt due, any amount that, under the policy of insurance, he is liable to pay by way of indemnity in respect of the first 3 working days for which weekly payments are claimed by the worker and section 192 does not apply in relation to the action.

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

- (a) notify the worker to whom the claim relates and the employer that liability is accepted in respect of the weekly payments claimed;
- (b) subject to section 75, notify the employer and the worker that liability is disputed in respect of all or any of the weekly payments claimed; or

- (c) notify the Registrar, the employer and the worker that a decision as to whether or not liability is to be accepted in respect of the weekly payments claimed is not able to be made within the time allowed by this subsection,

and that notification shall be in or to the effect of the form prescribed containing substantially the information required.

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

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

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

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

- (a) he is notified that the insurer accepts the claim or the time prescribed by subsection (3) expires without the employer having received any notification as required by that subsection from the insurer; and
- (b) the worker has complied with the requirements of section 130 or, on an application made under section 58, the Board has ordered the

commencement of weekly payments under this subsection notwithstanding that those requirements have not been complied with,

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

**Claims procedure: self-insurer  
or uninsured employer**

**57B.** (1) This section applies where—

- (a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 130 (1) (b); and
- (b) the worker suffering the disability has served on the employer a certificate signed by a medical practitioner—
  - (i) in or to the effect of the form prescribed containing substantially the information sought in the form; or
  - (ii) to the effect that the worker is unfit for work because of a recurrence of a disability in respect of which a certificate as referred to in subparagraph (i) has previously been served,

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

(2) In the circumstances mentioned in subsection (1), an employer shall, before the expiration of 14 days after those circumstances arose—

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

- (b) if liability to make the weekly payments claimed is disputed, subject to section 75, notify the worker to that effect; or
- (c) if unable to make a decision within the time allowed by this subsection as to whether or not liability to make the weekly payments claimed is to be accepted, notify the Registrar and the worker to that effect,

and any such notification shall be in or to the effect of the form prescribed containing substantially the information required.

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

(4) Where an employer fails to comply with subsection (2) upon a worker claiming compensation by way of weekly payments under this Act, the worker is, by force of this subsection, entitled to the weekly payments claimed and the employer shall, subject to subsection (6), forthwith make the first of those weekly payments, but the employer may apply to the Board in chambers for a determination under subsection (5).

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

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

- (a) the worker has complied with the requirements of section 130; or
- (b) on an application made under section 58, the Board has ordered the commencement of weekly payments under this section notwithstanding that those requirements have not been complied with.

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

#### **Notification to Commission**

**57C.** (1) This section applies in respect of a claim made by a worker for compensation by way of weekly payments that was made after the day fixed by the Minister for the purpose of this section by notice published in the *Gazette*.

(2) Where an employer makes a claim to his insurer as referred to in section 57A (2) and weekly payments to which the worker is entitled are commenced the insurer shall, as soon as practicable but in any event before the expiration of 21 days after the day on which the weekly payments were commenced, send to the Commission notification in accordance with subsection (5) of the matter to which the claim relates.

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

(4) An insurer or employer who has given notification under subsection (2) or (3) in respect of a claim shall send to the Commission notification in accordance with subsection

(5) of the discontinuance of weekly payments as soon as practicable after the weekly payments are discontinued, except that where it appears likely that there will be any further payment of compensation under this Act to the worker arising from the disability to which the claim relates, the notification required under this subsection shall be sent as soon as practicable after it appears that all such payments have been made.

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

Penalty: \$1 000.

### **Confidentiality**

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

Penalty: \$1 000.

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

**Section 58 repealed and a section substituted**

9. Section 58 of the principal Act is repealed and the following section is substituted—

**Board in chambers may determine liability**

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

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

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

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

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

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

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

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

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

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

or

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

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

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

(4) A hearing under subsection (1), (2) or (3) shall be in chambers with the right of the worker and the employer to be heard.

(5) On a hearing under subsection (1), (2) or (3) the Board shall satisfy itself as to all the evidence before it whereupon the Board—

- (a) if it considers that the evidence is satisfactory to establish liability to make weekly payments, may—
  - (i) make an order that weekly payments including arrears to the date of the hearing shall be paid out of the General Fund and that the employer shall forthwith pay to the Commission for the General Fund the amount of such payments together with an additional 10 per cent of that amount; or
  - (ii) make an order as to weekly payments by the employer to the worker on such terms as it sees fit;
- (b) if it considers that the evidence is not satisfactory to establish liability to make weekly payments, may dismiss or adjourn the application on such terms as it sees fit; or

- (c) if it considers that a genuine dispute exists concerning liability to make weekly payments, may order that the matter proceed by way of a substantive application.

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

### **Section 60 amended**

10. Section 60 of the principal Act is amended in subsection (1) by deleting “section 58” and substituting the following—

“ this Division ”.

### **Section 61 amended**

11. Section 61 of the principal Act is amended—

- (a) in subsection (4), by deleting “shall, where the case requires, take into account matters referred to in clause 8, and”; and
- (b) by inserting after subsection (4) the following subsection—

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

- (a) may, where the case requires, take into account whether reasonable steps to facilitate the rehabilitation of the worker have been taken on the part of the employer and of the worker, and for the purposes of determining the application, accordingly treat the worker's incapacity as being of such degree as it sees fit; and
- (b) shall, where the case requires, take into account matters referred to in clause 8. ”.

**Section 62 amended**

12. Section 62 of the principal Act is amended by deleting "ended, diminished" and substituting the following—

" discontinued, reduced ".

**Section 70 amended**

13. Section 70 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting before "condition" in both places where it occurs the following—

" medical "; and

(ii) by deleting "or fitness for employment, the Executive Director" and substituting the following—

" the Chairman of the Board ";

(b) in subsection (3), by deleting "condition of the worker, and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit," and substituting the following—

" medical condition of the worker ";

(c) in subsection (4)—

(i) by inserting before "whether" the following—

" whether the disability is a fresh disability or the recurrence of an old disability or ";

(ii) by inserting before "condition" the following—

" medical ";

and

(d) by repealing subsections (6) and (7) and substituting the following subsections—

“ (6) Where, following such examinations and tests as may be required by the medical panel, the panel recommends that the worker undergo rehabilitation or specialist or other treatment, the worker shall, if required by his employer to do so, undergo rehabilitation or specialist or other treatment as recommended by the medical panel, and the employer shall be liable for the full cost of the rehabilitation or specialist or other treatment and for necessary charges incurred in connection therewith.

(7) A worker required under subsection (6) to undergo rehabilitation or specialist or other treatment may select the person to provide the rehabilitation or the person to provide the specialist or other treatment but—

(a) a person to provide vocational rehabilitation shall be selected from amongst approved rehabilitation providers;

and

(b) a person to provide specialist treatment shall be selected from specialists whose names appear on the Register of Specialists maintained under section 146.

(8) The recommendation of a medical panel and its prognosis shall be made available by the panel to the worker and the employer and shall be made available—

(a) by the worker, to a person providing his rehabilitation or providing him with specialist or other treatment as required under subsection (6);

and

(b) by the employer, if he holds a policy of insurance against his liability to pay compensation under this Act, to his insurer.

(9) If a worker, on being required under subsection (6) to undergo rehabilitation or specialist or other treatment, fails, without reasonable excuse, proof of which is on him, to comply with the requirement, his right to compensation or to take or prosecute any proceedings under this Act shall be suspended until he complies with the requirement. ”.

### **Section 72 amended**

14. Section 72 of the principal Act is amended—

(a) in subsection (1), by deleting paragraph (b) and substituting the following paragraph—

“ (b) during any period that the worker being required by the Board to undergo rehabilitation as specified by the Board—

(i) refuses to do so;

(ii) ceases to do so before so authorized by the person providing the rehabilitation;

or

(iii) does not, in the opinion of a medical practitioner to whom the Commission has, on the recommendation of a rehabilitation provider, referred the matter, reasonably co-operate in, or regularly attend for, such vocational rehabilitation. ”;

(b) in subsections (2) and (3), by deleting “Executive Director” and substituting in each case the following—

“ Registrar ”; and

(c) in subsection (4)—

(i) by deleting “Executive Director’s” and substituting the following—

“ Registrar’s ”; and

- (ii) by deleting “undertake rehabilitation treatment or training” and substitute the following—

“ undergo rehabilitation ”.

### **Part III, Division 5A inserted**

15. Part III of the principal Act is amended by inserting after Division 5 the following Division—

“ *Division 5A—Medical advisory panel*

#### **Establishment**

**72A.** (1) For the purposes of this Act there may be established a medical advisory panel or more than one such panel.

(2) The medical advisory panel established under this section shall consist of 3 medical practitioners registered under the *Medical Act 1894* appointed by the Minister as members of that panel on the recommendation of the Board or the Commission.

#### **Term of appointment**

**72B.** Subject to this Act, a member of a medical advisory panel holds office for such period as is specified in the instrument of his appointment or until he is sooner removed by the Minister or resigns his office by writing addressed to the Minister.

#### **Remuneration**

**72C.** (1) A member of a medical advisory panel is entitled to such fees and allowances as may be determined by the Minister on the recommendation of the Public Service Commissioner.

(2) The fees and allowances mentioned in subsection (1) shall be paid by the Commission out of the General Fund.

**References**

**72D.** (1) A medical advisory panel may, where a question as to the nature or extent of a worker's disability is referred to it—

(a) with the consent of the employer or the insurer, by the worker;

or

(b) with the consent of the worker, by the Board or an employer or insurer,

make such diagnosis or other finding as to the disability as it sees fit.

(2) A finding of a medical advisory panel is not binding, but the Board may, in exercising its powers under this Act, have regard to a finding under subsection (1). ”.

**Section 73 amended**

**16.** Section 73 of the principal Act is amended—

(a) in subsection (1), by inserting at the end of the subsection the following—

“ or how liability is to be apportioned between employers ”;

(b) in subsection (3), by inserting before “liable” the following—

“ wholly or partially ”;

(c) in subsection (4), by inserting before “liable” in the second place where it occurs the following—

“ wholly or partially ”; and

(d) in subsection (5)—

(i) by inserting after “disability” the following—

“ or partly a recurrence and partly a fresh disability ”; and

- (ii) by inserting before “the amount” and before “any further” the following—

“ the whole or a part of ”.

### **Section 74 amended**

17. Section 74 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting “which insurer is liable” and substituting the following—

“ liability ”; and

- (ii) by deleting “determined that some other insurer is liable” and substituting the following—

“ otherwise determined ”; and

(b) in subsection (2)—

- (i) by inserting after “liable” the following—

“ or how liability is to be apportioned ”; and

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

“ another ”.

### **Section 74A inserted**

18. After section 74 of the principal Act the following section is inserted—

#### **Apportionment under sections 73 and 74**

- “ 74A. Liability shall not be so apportioned under section 73 or 74 that part of the liability to pay compensation, or indemnify an employer in respect of compensation, relates to

a disability that occurred before the commencement of section 16 of the *Workers' Compensation and Assistance Amendment Act 1990*. ”.

### **Section 75 repealed and a section substituted**

19. Section 75 of the principal Act is repealed and the following section is substituted—

#### **Obligation to make weekly payments preserved**

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

### **Section 95 amended**

20. Section 95 of the principal Act is amended in subsection (1) (c) by deleting subparagraph (v) and substituting the following subparagraph—

“ (v) one shall be a medical practitioner. ”.

### **Section 100 amended**

21. Section 100 of the principal Act is amended—

(a) by deleting paragraph (d) and substituting the following paragraphs—

“ (d) to make available upon request to employers such services or other assistance as it considers appropriate to facilitate the arranging of rehabilitation and to act as a rehabilitation provider;

- (da) to promote the rehabilitation of workers suffering a disability in respect of which compensation is or may be payable under this Act and to disseminate to workers and others information concerning rehabilitation; ”;
- (b) by inserting after paragraph (f) the following paragraph—
- “ (fa) to keep under review the sufficiency of the information provided to the Commission by insurers and self-insurers, and whether or not criteria developed by the Commission for assessing the performance of insurers and self-insurers are being met; ”;
- (c) in paragraph (i), by inserting after “the Board” the following—
- “ and support services to any medical panel established under section 36 and any medical advisory panel established under section 72A ”; and
- (d) in paragraph (j), by deleting “the Commission shall” and substituting the following—
- “ to ”.

### **Section 100A inserted**

**22.** After section 100 of the principal Act the following section is inserted—

#### **Advisory committees**

- “ **100A.** (1) The Commission may at any time and when so requested by the Minister shall appoint advisory committees to assist it in the performance of its functions and duties.

(2) Subject to this section, an advisory committee shall consist of such number of persons as are appointed by the Commission.

(3) Subject to the direction of the Commission an advisory committee may determine its own procedures.

(4) The members of advisory committees are entitled to be paid such fees and allowances as may be determined by the Minister on the recommendation of the Public Service Commissioner.

(5) The fees and allowances mentioned in subsection (4) shall be paid by the Commission out of the General Fund.

(6) In appointing persons to be members of advisory committees under this section the Commission shall, as far as is practicable, appoint persons experienced in management affairs in commerce or industry (or both), persons experienced in trade union affairs, persons with experience relevant to the kinds of matters to be considered by the committee concerned, and such other persons as the Commission considers appropriate. ”.

### **Section 101 amended**

23. Section 101 of the principal Act is amended—

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

“ (aa) to charge for the provision of any service that it makes available such fees as it determines; ”; and

(b) in paragraph (f), by inserting after “but not” the following—

“ its functions under section 154 nor ”.

### **Section 103 amended**

24. Section 103 of the principal Act is amended—

(a) by repealing subsection (2) and substituting the following subsections—

“ (2) An inspector authorized under this section may make any such inquiries and require production of, and

inspect, any books, accounts, documents and records as is necessary to carry out his duties under this Act.

(2a) An inspector shall, upon being requested to do so by any person in relation to whom he has exercised, or is about to exercise, any of his powers under this section, produce written authority from the Chairman of the Commission before exercising or further exercising any power under this section in relation to that person. ”; and

(b) in subsection (5)—

(i) by inserting after “wages” the following—

“ salary and other forms of remuneration ”; and

(ii) by deleting “Commission” and all of the subsection thereafter and substituting the following—

“ Commission—

(a) may provide to the insurer information as to the wages, salary, and other forms of remuneration paid by, and the number of employees engaged by, the employer and the category for the purpose of premium rates in which those employees are engaged; and

(b) may sue and recover from the employer the full amount of the premium that could have been charged, less any amount already paid to the insurer in respect of such insurance and shall pay any moneys so recovered, less any reasonable costs incurred in the recovery, to the insurer. ”.

### **Section 103A amended**

**25.** Section 103A of the principal Act is amended by deleting “An” and substituting the following—

“ A person being or having been an ”.

**Section 106 amended**

26. Section 106 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

- “ (1) For the purposes of this Act, there shall be established and maintained an account to be called the Workers' Compensation and Rehabilitation General Fund and that account shall be kept—
- (a) at the Treasury; or
  - (b) at a bank approved by the Treasurer under section 21 of the *Financial Administration and Audit Act 1985*. ”.

**Section 107 amended**

27. Section 107 of the principal Act is amended by repealing subsection (4) and substituting the following subsection—

- “ (4) In calculating the estimate, both the estimated increase required in reserves over that year and depreciation may be included in the estimated expenditure of the General Fund. ”.

**Section 110 amended**

28. Section 110 of the principal Act is amended—

- (a) by repealing subsection (1) and substituting the following subsection—

“ (1) For the purposes of this Act, there shall be established and maintained an account to be called the Workers' Compensation and Rehabilitation Trust Fund and that account shall be kept—

  - (a) at the Treasury; or

(b) at a bank approved by the Treasurer under section 21 of the *Financial Administration and Audit Act 1985*. ”; and

(b) in subsection (3), by deleting “to be kept at the Treasury”.

### **Section 130 amended**

29. Section 130 of the principal Act is amended in subsection (1) (a) by inserting after “given” the following—

“ in writing in or to the effect of the prescribed form containing substantially the information required ”.

### **Section 151 amended and consequential provisions**

30. (1) Section 151 of the principal Act is amended—

(a) in paragraph (a) (iii), by deleting “categories” and substituting the following—

“ classes ”;

(b) in paragraph (b), by inserting after “for a category” the following—

“ or group of categories ”; and

(c) by deleting paragraph (c) and substituting the following paragraph—

“ (c) the Committee may specify classes of employers specially fixed by the Minister the employers within which class are liable to pay the industrial disease premium at a rate specified by the Committee for that class. ”.

(2) The specification by the Committee of a category under section 151 (c) of the principal Act as in force before the commencement of this section is of no further effect, and section 30 (2) of the *Workers' Compensation and Assistance Amendment Act 1985* is repealed.

### **Section 151A inserted**

31. After section 151 of the principal Act the following section is inserted—

#### **Report as to rates**

“ 151A. (1) Where under section 151 (a) (ii) the Committee fixes any recommended premium rate it shall, as soon as practicable thereafter, prepare and make available to any person upon request a report as to—

- (a) the actuarial basis of any recommended premium rate fixed; and
- (b) the comparative claims experience of the different businesses or groups of businesses concerned.

(2) A report under subsection (1) shall not contain information identifying or enabling the identification of any employer. ”.

### **Section 154 amended**

32. Section 154 of the principal Act is amended—

(a) in subsection (1), by deleting paragraph (a) and substituting the following paragraph—

“ (a) the type of business or occupation on the basis of which an insurer charges the premium required to insure him under this Act; ”;

(b) in subsections (1), (2) (a), (4), (8) (a) and (9), by deleting “Minister” and substituting the following—

“ Commission ”;

- (c) in subsections (4) and (9), by deleting "his or"; and
- (d) in subsection (7), by deleting "by the Committee".

### **Section 155 repealed and a section substituted**

33. Section 155 of the principal Act is repealed and the following section is substituted—

#### **Notice of certain periods of incapacity**

" 155. (1) For the purposes of this section, "the relevant day" means the day of the commencement of section 33 of the *Workers' Compensation and Assistance Amendment Act 1990*.

(2) An insurer or a self-insurer shall, unless exempted under subsection (6) from the requirement to do so, not later than the expiration of 7 days after he acquires the knowledge referred to in paragraph (a) or (b), give to the Commission notice in writing, containing the prescribed particulars, with respect to—

- (a) a worker whose period of incapacity the insurer or self-insurer knows to have exceeded 4 consecutive weeks; or
- (b) a worker whose periods of incapacity during any period of 12 months or less the insurer or self-insurer knows to have exceeded, in sum, 12 weeks.

(3) Subsection (2) does not apply in relation to a period of incapacity with respect to which notice has already been given under this section or section 155 as in force before the relevant day.

(4) Where subsection (2) (a) would only apply if a part of a period of incapacity that was before the relevant day is taken into account, that provision has effect only to the extent, if any, that it would apply if the reference to 4 weeks were a reference to 12 weeks.

(5) An insurer or a self-insurer failing to comply with subsection (2) commits an offence.

Penalty: \$1 000.

(6) The Commission may, in writing, exempt an insurer or a self-insurer from the requirement to comply with subsection (2), either absolutely or subject to such conditions as it sees fit to impose, and any such exemption has effect according to its tenor until revoked by the Commission.

(7) The Commission may, where a worker suffers a disability compensable under this Act, require the employer of that worker to take reasonable steps to facilitate the rehabilitation of the worker. ”.

### **Section 156A inserted**

**34.** After section 156 of the principal Act the following section is inserted—

#### **Approval of rehabilitation providers**

“ **156A.** (1) The Commission may, in writing, and subject to such conditions, if any, as it sees fit to impose, approve as a rehabilitation provider any person the Commission considers capable of satisfactorily providing vocational rehabilitation, and may revoke any such approval.

(2) In considering whether or not to approve a person as a rehabilitation provider, to impose conditions on any such approval, or to revoke any such approval, the Commission—

- (a) may have regard to performance criteria established by an advisory committee under section 100A, and to the advice of such a committee in a particular case; and

- (b) shall, in the case of the revocation of an approval that is subject to conditions, have regard to whether or not there had been compliance with the conditions. ”.

### **Section 157 repealed and a section substituted**

35. Section 157 of the principal Act is repealed and the following section is substituted—

#### **Rehabilitation of workers**

“ 157. (1) The Board may at any time require a worker who is incapacitated to undergo rehabilitation as specified by the Board and, without limiting the matters that may be specified by the Board under this subsection, the Board may specify that the worker undergo vocational rehabilitation provided by a different rehabilitation provider selected by the worker.

(2) The Commission shall, upon request, provide to workers, employers and other persons information as to the persons who, under section 156A, are approved rehabilitation providers.

(3) Where a person providing vocational rehabilitation—

- (a) is not an approved rehabilitation provider; or
- (b) is an approved rehabilitation provider but contravenes a condition imposed in respect of his approval,

the amount of any fee or other reward paid in respect thereof shall not be regarded as a reasonable expense incurred in respect of vocational rehabilitation for the purposes of clause 17 (1a).

(4) Where a fee or other reward is paid for the provision of vocational rehabilitation mentioned in subsection (3) by a person who—

- (a) not being approved as a rehabilitation provider, held himself out as being so approved;

or

- (b) being approved as a rehabilitation provider subject to any condition, contravenes any such condition,

the person who paid the fee or other reward may recover as a debt due from that person the amount of the fee or other reward paid. ”.

**Section 158 repealed and sections 158,  
158A and 158B substituted**

**36.** Section 158 of the principal Act is repealed and the following sections are substituted—

**Further vocational rehabilitation payments may be authorized**

- “ **158.** Where a worker has no further entitlement under clause 17 to compensation in respect of expenses incurred in undergoing vocational rehabilitation, the Commission may authorize payment from the General Fund of so much of the costs of any further vocational rehabilitation as it thinks fit, but not exceeding in a particular case an amount of \$2 000.

**Rehabilitation services by employers**

**158A.** The Commission may encourage and promote the establishment by an employer or a group of employers of rehabilitation services for workers of that employer, or workers of any employer of that group, as the case requires, and may authorize payment from the General Fund of such amount as it thinks fit in a particular case, on such terms as it thinks fit, on providing support and incentives to the establishment of such services.

**Rehabilitation policy and guidelines**

**158B.** The Commission shall promote the establishment by employers or groups of employers of rehabilitation policies and vocational rehabilitation guidelines. ”.

**Section 160 amended**

37. Section 160 of the principal Act is amended—

- (a) in subsection (1), by deleting “incorporated insurance office approved by the Minister” and substituting the following—

“ approved insurance office ”;

- (b) in subsection (2)—

- (i) by inserting before “including” the following—

“ not including any amount paid by way of compensation under this Act but ”;

and

- (ii) by deleting “, and such employer shall verify the particulars furnished in such statement by a statutory declaration made by the employer under section 106 of the *Evidence Act 1906* ”;

- (c) in subsections (2) and (2a), by deleting “incorporated” and substituting the following—

“ approved ”;

- (d) in subsection (3), by deleting “Any incorporated insurance office which has received the approval of the Minister under section 161—” and substituting the following—

“ An approved insurance office— ”; and

- (e) in subsection (4), by inserting after “policy” in each place where it occurs the following—

“ or contract ”.

**Section 161 amended**

38. Section 161 of the principal Act is amended by repealing subsections (2) to (5) and substituting the following subsections—

“ (2) The requirements for an incorporated insurance office to be approved under this section are that it is able to meet the requirements mentioned in subsection (3).

(3) The requirements for an incorporated insurance office that is approved under this section to remain so approved are that it—

- (a) has material and financial resources available to it that the Minister, on the advice of the Commission, considers sufficient to enable it to discharge its obligations for the purposes of this Act;
- (b) maintains in the State an office having such resources and authority as the Minister considers satisfactory for the expeditious handling of claims;
- (c) provides a standard of service to employers and, on behalf of employers, to workers that the Minister, on the advice of the Commission, considers satisfactory;
- (d) complies with the time limits and other requirements imposed under this Act and the *Employers' Indemnity Supplementation Fund Act 1980*;
- (e) consistently maintains a standard of detail and accuracy in the information required under this Act to be provided by it that is satisfactory to the Minister; and
- (f) otherwise discharges its obligations under or for the purposes of this Act to a standard that the Minister, on the advice of the Commission, considers satisfactory.

(4) Where an incorporated insurance office applies to the Minister for the grant or renewal of approval under this section, the Minister may, if he is satisfied that it meets the requirements for an incorporated insurance office to be or remain approved, as the case may be, grant or renew the approval, as the case requires, and, in granting or renewing the approval, attach such conditions, if any, as he sees fit to the approval.

(5) Subject to subsection (6), an approval under this section ceases to have effect, unless sooner renewed, at the expiration of 5 years after the day on which the approval was granted or, where it has been previously renewed under this section, at the expiration of 5 years after the day on which it was last renewed.

(6) Notwithstanding subsection (5) but subject to subsection (7), an approval granted or deemed to be granted under this section and current immediately before the day of the commencement of section 38 of the *Workers' Compensation and Assistance Amendment Act 1990* continues to have effect for a period of one year after that day and, unless renewed under this section, thereafter is of no effect.

(7) Where an approved insurance office—

- (a) fails in the opinion of the Minister to meet the requirements mentioned in subsection (3) or to comply with any condition attached to its approval;  
or
- (b) so requests,

the Minister may revoke or suspend his approval under this section of that office, but may not do so in any other case. ”.

### **Section 164 amended**

**39.** Section 164 of the principal Act is amended by repealing subsection (1) and substituting the following subsections—

- “ (1) Notwithstanding section 160 if an employer or group of employers has deposited at the Treasury securities approved

by the Commission that are charged with all payments to become due under the employer's or group's liability for which insurance would, if there were no exemption, be required by this Act, the Governor may exempt such employer or group from the obligation to insure pursuant to this Act except for the obligation to insure against liability to pay compensation under this Act for any industrial disease of the kinds referred to in section 151 (a) (iii).

(1a) In deciding whether an exemption should be given under subsection (1), regard may be had to the number of workers employed and the category of the insurable risks of the business or businesses of the employer or group, whether the employer or group has established a fund for insurance against liability for which insurance would, if there were no exemption, be required by this Act, and the material and financial resources available in the State to the employer, or each employer of the group, to comply with the requirements of this Act or the *Employers' Indemnity Supplementation Fund Act 1980*. ”.

### **Section 165 amended**

40. Section 165 of the principal Act is amended in subsection (2) by inserting after paragraph (b) the following paragraphs—

- “ (ba) whether or not the employer or group is maintaining a fund for insurance against liability for which insurance would, but for the exemption, be required by this Act;
  
- (bb) the material and financial resources available in the State to the employer, or each employer of the group, to comply with the requirements of this Act or the *Employers' Indemnity Supplementation Fund Act 1980*; ”.

**Section 168 amended**

41. Section 168 of the principal Act is amended in paragraph (b) by deleting subparagraph (ii) and “and” after that subparagraph and substituting the following—

“ (ii) he or they have obtained from an approved insurance office a policy of insurance in compliance with section 160 (1),

and that— ”.

**Section 169 amended**

42. Section 169 of the principal Act is amended by inserting before “determine” the following—

“ , on the recommendation of the Commission, ”.

**Section 170 amended**

43. Section 170 of the principal Act is amended by repealing subsections (1) and (2) and substituting the following subsections—

“ (1) An employer who—

(a) fails to comply with section 160 (1) or (2); or

(b) gives in an estimate or statement furnished under section 160 (2) any information or particular that he knows to be false in any material particular,

commits an offence and is liable to a penalty of \$1 000 in respect of each worker employed by him to whom the offence relates; and that employer commits a separate and further offence in respect of each week after the day of conviction during which section 160 (1) or (2), as the case may be, is not complied with by him in respect of a worker to whom the original offence related, and is liable in respect of each such separate and further offence to a penalty of \$1 000 for each such worker; and in addition subsection (2) applies.

(2) The court convicting an employer of an offence under subsection (1) shall, in addition to any other penalty imposed in respect of the offence under subsection (1) but subject to subsection (2a), order that the employer pay to the General Fund an amount equal to the total of any insurance premiums payment of which the court is satisfied the employer has, at any time during the period of 5 years before the conviction, avoided by failing to obtain insurance as required by section 160 (1), failing to furnish an estimate or statement as required by section 160 (2), or giving any false information or particular in any such estimate or statement.

(2a) In making an order under subsection (2) requiring the payment of an amount determined by reference to insurance premiums payment of which has been avoided, an amount that has been taken into account in making a previous such order shall not be again taken into account. ”.

### **Section 171 amended**

44. Section 171 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “and” after paragraph (a);

(ii) by deleting the full stop at the end of paragraph (b) and substituting the following—

“ ; and ”; and

(iii) by inserting the following paragraph—

“ (c) where the Commission has requested the insurance office to do so, a means specified by the Commission for conveying to the Commission, in a machine-readable form so specified, the details referred to in paragraphs (a) and (b), together with a statement certifying the accuracy of the details so conveyed. ”;

- (b) in subsection (3), by deleting "A person" and substituting the following—
- “ Subject to subsection (3a), a person ”; and
- (c) by inserting after subsection (3) the following subsection—
- “ (3a) A person who is a principal within the meaning of that term in section 175 may, in writing, request the Commission to disclose information as to the currency of a policy or contract of insurance required by this Act for the liability of a person who is, in relation to the person requesting the information, a contractor within the meaning of that term in that section, and the Commission may, where it is satisfied that the information is not to be used for a purpose unconnected with the objects of this Act, in writing, disclose the information requested (which may include information as to the period for which the policy or contract, if any, remains in force). ”.

### **Section 172 amended**

45. Section 172 of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

- “ (2) A person authorized by the Minister under this section shall, upon being requested to do so, produce his written authority from the Minister before interrogating, or continuing to interrogate, an employer referred to in subsection (1) in the execution of his duties under this Act. ”.

### **Section 174 amended**

46. Section 174 of the principal Act is amended—

- (a) by inserting after the section designation "174." the subsection designation "(1)";
- and
- (b) by inserting the following subsection—

- “ (2) Where by reason of section 175 more than one person is liable as an employer to pay compensation under this Act to a worker, the reference in subsection (1) to the employer shall be read as a reference to each person so liable, and the rights of the Commission against the employer under that subsection are exercisable against those persons jointly and severally and a judgment obtained against one is not a bar to proceedings against the other except to the extent that the judgment has been satisfied. ”.

### **Section 176 amended**

47. Section 176 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting paragraphs (c) to (f); and

(ii) in paragraph (l), by inserting before “brokers” the following—

“ agents and ”;

and

(b) by inserting after subsection (1) the following subsections—

“ (1a) The Governor, on the recommendation of the Commission, may make regulations—

(a) fixing scales of fees to be paid to—

(i) medical specialists and other medical practitioners;

(ii) dentists;

(iii) physiotherapists;

(iv) chiropractors;

(v) occupational therapists;

- (vi) clinical psychologists;
- (vii) speech therapists; and
- (viii) persons providing treatment of a kind approved for the purposes of the definition of "approved treatment" in section 5 (1),

for attendance on, and treatment of, workers suffering disabilities that are compensable under this Act;

- (b) fixing scales of fees to be paid to approved rehabilitation providers.

(1b) The Commission shall not recommend the making of any regulation under subsection (1a) unless it has first negotiated with the relevant body, if any, and, for that purpose, where the regulation is in respect of fees to be paid to—

- (a) medical specialists or other medical practitioners, the relevant body is the Australian Medical Association Western Australian Branch;
- (b) dentists, the relevant body is the Australian Dental Association (W.A. Branch);
- (c) physiotherapists, the relevant body is the Western Australian Branch of the Physiotherapists Association;
- (d) chiropractors, the relevant body is the Chiropractors Registration Board;
- (e) occupational therapists, the relevant body is the Western Australian Association of Occupational Therapists (Inc);
- (f) clinical psychologists, the relevant body is the Australian Psychological Society;
- (g) speech therapists, the relevant body is the Australian Association of Speech and Hearing;
- (h) persons providing treatment of a kind approved for the purposes of the definition of "approved treatment" in section 5 (1), the relevant body is such body, if any, as is prescribed by regulations;
- (i) approved rehabilitation providers, the relevant body is such body, if any, as is prescribed by regulations. "

**Schedule 1 amended**

48. (1) Schedule 1 to the principal Act is amended—

(a) in clause 1 (1) (b), by deleting “mother” in both places where it occurs and in each case substituting the following—

“ parent ”;

(b) in clause 17 (1)—

(i) by deleting “other attendance and treatment by way of rehabilitation;” and substituting the following—

“ attendance and treatment that is approved treatment; ”;

(ii) by inserting before “but not exceeding” the following—

“ in so far as that attendance, treatment, or other item does not include vocational rehabilitation, ”; and

(iii) by deleting “20%” and substituting the following—

“ 30% ”;

(c) by inserting after clause 17 (1), the following subclause—

“ (1a) vocational rehabilitation up to, but not exceeding, in the aggregate, a sum equal to 7% of the prescribed amount, and there shall be no revival of, or increase in, the entitlement under this subclause upon any subsequent increase in the prescribed amount; ”; and

(d) in clause 18A, by inserting the following subclause—

“ (3) The powers conferred on the Board by this clause may be exercised on an application made in chambers. ”.

(2) Clause 17 of Schedule 1 of the principal Act as amended by subsection (1) applies to and in respect of liability and the extent of liability to pay, and entitlement and the extent of entitlement to receive, benefits for such expenses as are provided for in that clause incurred before, on, or after the coming into operation of this section

but nothing in subsection (1) revives or increases the entitlement to such expenses where a worker has received under that clause a sum equal to 20% of the prescribed amount, or such further amount as the Board has allowed under clause 18A of that Schedule, before the coming into operation of this section.

### **Schedule 5 amended**

49. Schedule 5 to the principal Act is amended—

- (a) in the heading to clause 2 by deleting “and Mesothelioma” and substituting the following—

“ , Mesothelioma and Lung Cancer ”;

- (b) in clause 3—

- (i) in the heading by deleting “and Mesothelioma” and substituting the following—

“ , Mesothelioma and Lung Cancer ”;

- (ii) in subclause (1) by deleting “qualification on entitlement in section 34” and substituting the following—

“ qualifications on entitlement in sections 33 and 34 ”;

- (iii) by inserting after subclause (2) the following subclause—

“ (2a) Subclauses (3) to (7) apply only to the disabilities of pneumoconiosis and mesothelioma. ”; and

- (iv) by inserting after subclause (7) the following subclause—

“ (8) Subject to the provisions of this Schedule and Schedule 1 clause 7 (3)—

- (a) where a worker aged 65 or more on the relevant day had suffered the disability of lung cancer before that day and, immediately before then, he was entitled to weekly payments of compensation for any incapacity resulting from that disability, in respect of any incapacity resulting from that disability on or after the relevant day he is entitled to receive weekly payments;

- (b) where a worker who attains or has attained the age of 65 after the relevant day has or had suffered the disability of lung cancer before attaining that age and, immediately before attaining that age, he was entitled to weekly payments for any incapacity resulting from that disability, in respect of any incapacity resulting from that disability on or after the day he attains or attained that age he is entitled to receive weekly payments;
- (c) where a worker who attains or has attained the age of 65 after the relevant day suffers or has suffered the disability of lung cancer on or after attaining that age, in respect of any incapacity arising from that disability he is entitled to receive weekly payments;
- (d) where a worker who was aged 65 or more on the relevant day suffers the disability of lung cancer on or after the relevant day, in respect of any incapacity arising from that disability he is entitled to receive weekly payments; and
- (e) where a worker would be entitled to receive weekly payments under paragraph (a), (b), (c) or (d) if the references in those paragraphs to "relevant day" were references to 28 June 1985, he is entitled to receive—
  - (i) a lump sum payment equivalent to the value of the weekly payments he would have received up until the relevant day but so that such lump sum payment shall not exceed the aggregate of 52 such weekly payments;
  - and
  - (ii) weekly payments, if and to the extent that the total sum of weekly payments received, together with the lump sum payment received pursuant to subparagraph (i), does not exceed the aggregate of 52 such weekly payments,

and for the purposes of this subclause, "the relevant day" means the day of the commencement of section 49 of the *Workers' Compensation and Assistance Amendment Act 1990*. ";

(c) in clause 4—

(i) by deleting paragraph (d) and substituting the following paragraph—

" (d) where he receives weekly payments under clause 3 (6) or paragraph (a), (b), (c) or (d) of clause 3 (8), within the period of one year from the time when he becomes entitled to receive those payments; "; and

(ii) in paragraph (e) by inserting after "clause 3 (7)" in both places where it occurs the following—

" or 3 (8) (e) ";

(d) in clause 8 (2)—

(i) in paragraph (a) by inserting after "clause 3 (7) (a)" the following—

" or 3 (8) (e) (i) "; and

(ii) in paragraph (b) by inserting after "clause 3 (7) (b)" the following—

" or 3 (8) (e) (ii) ";

and

(e) after clause 8 by inserting the following clause—

" 9. *Death of a worker prior to section 49 of Workers' Compensation and Assistance Amendment Act 1990*

(1) Where a worker who died prior to the commencement of section 49 of the *Workers' Compensation and Assistance Amendment Act 1990* would otherwise have been entitled to compensation or other benefits, or both, under clause 3 (8) (e), 4 (e) or 8 (2) in respect of incapacity resulting from the disability of lung cancer is survived by a dependant spouse, that spouse is entitled to receive any compensation or other benefits, and the employer is liable to pay the compensation or to pay for the provision of the other benefits, that the worker would have received or been entitled to receive up until the time of his death.

(2) The payment of a supplementary amount weekly to a dependant spouse instead of to a worker under subclause (1) does not act to stop clause 7 (b) applying to that dependant spouse. "

## **Transitional**

50. (1) The amendments effected by this Act that relate to rehabilitation do not apply in respect of a disability that occurred before the commencement of section 35 of this Act, and the principal Act shall apply in respect of any such disability as if the amendments effected by this Act that relate to rehabilitation had not been enacted.

(2) Without limiting subsection (1), the amendments effected by sections 8, 9 and 19 of this Act do not apply in respect of a claim that was made before the commencement of section 8 of this Act, and the principal Act shall apply in respect of any such claim as if the amendments effected by sections 8, 9 and 19 of this Act had not been enacted.

### **Transitional—Schedule 5**

51. (1) In this section “the amended Schedule” means Schedule 5 to the principal Act as amended by section 49 of this Act.

(2) Where there is under the amended Schedule—

- (a) liability to pay compensation or to pay for the provision of other benefits, or both; and
- (b) entitlement to receive compensation or other benefits, or both,

for or in relation to the disability of lung cancer, in determining that liability and the extent of it and that entitlement and the extent of it moneys already paid or required to be paid under clause 2 of Schedule 5 to the principal Act shall be taken into account and deemed to be moneys paid or required to be paid under the amended Schedule.

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