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**WORKERS' COMPENSATION AND REHABILITATION
ACT 1981**

**WORKERS' COMPENSATION
AND REHABILITATION
AMENDMENT REGULATIONS
(NO. 2) 2004**

Workers' Compensation and Rehabilitation Act 1981

Workers' Compensation and Rehabilitation Amendment Regulations (No. 2) 2004

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Workers' Compensation and Rehabilitation Amendment Regulations (No. 2) 2004*.

2. Commencement

These regulations come into operation on the day on which the *Workers' Compensation (Common Law Proceedings) Act 2004* comes into operation, or the day of their publication in the *Gazette*, whichever is the later.

3. The regulations amended

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

[* Reprinted as at 17 April 2003.

For amendments to 20 October 2004 see Western Australian Legislation Information Tables for 2003, Table 4, p. 450, and Gazette 8 April 2004.]

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4. Regulation 13 inserted

Before regulation 14 the following regulation is inserted —

“

**13. Ascertaining amount for reimbursement
(section 154AC(1))**

- (1) The Commission may approve an application by an employer for reimbursement under section 154AC(1) of the Act.
- (2) The amount that the Commission is to reimburse to an approved applicant under section 154AC(1) of the Act is to be calculated by subtracting the estimated total cost from the actual total cost.

- (3) In this regulation —

“**actual total cost**”, in relation to an award of damages, means the total amount paid on a claim (including all compensation paid in accordance with the Act, any award of damages, legal expenses and miscellaneous expenses associated with the claim, to the extent that these apply) by the insurer or self-insurer, as calculated in accordance with the Insurer/Self-Insurer Electronic Data Specification (Edition Q1), following an award of damages, as submitted to, and approved and recorded by, the Commission;

“**estimated total cost**”, in relation to an award of damages, means the insurer, or self-insurer's, estimate of the total cost of the claim (including the estimated compensation to be paid in accordance with the Act, any award of damages, legal expenses and miscellaneous expenses associated with the claim to the extent that these apply or are likely to apply), estimated in

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accordance with the Insurer/Self-Insurer Electronic Data Specification (Edition Q1), as at the date of creation of the May 2004 return file recorded by the Commission;

“Insurer/Self-Insurer Electronic Data Specification (Edition Q1)” means Edition Q1, Version 1.4.6 of the Insurer/Self-Insurer Electronic Data Specification, published by the Commission on 29 July 2003 to standardise the information or return requested under section 103A of the Act.

”.

5. Regulation 19J amended

- (1) Regulation 19J(1) is amended by deleting “A” and inserting instead —

“ Subject to regulations 19JA and 19JB, a ”.
- (2) Regulation 19J(3) is amended by deleting “A” and inserting instead —

“ Subject to regulations 19JA and 19JB, a ”.

6. Regulations 19JA and 19JB inserted

After regulation 19J the following regulations are inserted —

“

19JA. Method of referral and notification when section 93EA(3) of the Act applies

- (1) A referral under section 93D(5) of the Act in combination with section 93EA(3) of the Act (due to the application of section 93EA(3) of the Act) is to be made in the form of Appendix I Form 22A.
- (2) When completing Form 22A, the worker is to nominate one, and only one, relevant level of disability in respect

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of which the referral is made, and provide details of the medical evidence relied upon to support the referral.

- (3) If section 93EA(3) of the Act applies because of a referral that was made before 14 December 1999 and, in that earlier referral —
- (a) the worker nominated both levels of disability on the same form; and
 - (b) the worker is still seeking to nominate both levels of disability in the present referral,

the worker is to complete a separate Form 22A for each of the previously nominated levels of disability.

- (4) A notification under section 93EA(5)(a) and (b)(i) of the Act is to be given in the form of Appendix I Form 23A.
- (5) The Director is to include a copy of any medical evidence that was produced and that complies with section 93D(6) of the Act, when giving notification under subregulation (4).
- (6) A notification under section 93D(8) of the Act that relates to a referral under section 93D(5) of the Act, due to the application of section 93EA(3) of the Act, is to be made in the form of Appendix I Form 23A.
- (7) A notification under section 93EA(5)(b)(ii) of the Act is to be given in writing.

19JB. Method of referral and notification when section 93EB(3) of the Act applies

- (1) A referral under section 93D(5) of the Act in combination with section 93EB(3) of the Act (due to the application of section 93EB(3) of the Act) is to be made in the form of Appendix I Form 22B.

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- (2) When completing Form 22B, the worker is to nominate one, and only one, relevant level of disability in respect of which the referral is made, and provide details of the medical evidence relied upon to support the referral.
- (3) If section 93EB(3) of the Act applies because of a referral that was made before 14 December 1999 and, in that earlier referral —
 - (a) the worker nominated both levels of disability on the same form; and
 - (b) the worker is still seeking to nominate both levels of disability in the present referral,the worker is to complete a separate Form 22B for each of the previously nominated levels of disability.
- (4) A notification under section 93EB(5)(a) and (b)(i) of the Act is to be given in the form of Appendix I Form 23B.
- (5) The Director is to include a copy of any medical evidence that was produced and that complies with section 93D(6) of the Act, when giving notification under subregulation (4).
- (6) A notification under section 93D(8) of the Act that relates to a referral under section 93D(5) of the Act, due to the application of section 93EB(3) of the Act, is to be made in the form of Appendix I Form 23B.
- (7) A notification under section 93EB(5)(b)(ii) of the Act is to be given in writing.

”

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7. Appendix I amended

- (1) Appendix I is amended after Form 22 by inserting the following forms —

“

Form 22A

[r. 19JA]

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REFERRAL OF QUESTION OF DEGREE OF DISABILITY

**[Made by the worker under sections 93D(5) and 93EA(3) of the Act,
due to the application of section 93EA(3)]**

Worker's details

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

Employer's details

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

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Insurer's details

Name

Address

Postcode

Date weekly payments commenced (if applicable)

Claim no. (if known)

Contact person

Telephone no.

Disability details

Description of disability

Note: This must be the same disability and only that disability that was the subject of a referral in the circumstances set out in section 93EA(1) of the Act.

Date disability occurred

Date weekly payments commenced

Degree of disability as assessed by medical practitioner

Relevant level of disability (see s. 93E(3) of the Act)

Nominate **only one** relevant level of disability

not less than 30%

not less than 16%

Note: The nominated level of disability must relate to the same level of disability as was nominated in the original referral. If the original referral was pre 14 December 1999 and both levels were nominated, the nominated level should be one of those levels, and a further Form 22A may be used for the other level, if required.

Tick if the worker and the employer cannot agree on whether the degree of disability is not less than the relevant level

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The action taken by or on behalf of the worker to obtain the employer's agreement

The following information should be included with this referral —	
If, on or before 30 September 2001, you sought to refer a question to the Director under section 93D(5) of the Act, and in order to satisfy section 93D(6) of the Act you produced to the Director anything that, even though it may not have constituted evidence of the kind required by that subsection, was accepted by the Director as evidence of that kind, then a copy of the Form 22 that was referred to and accepted by the Director should be attached.	<input type="checkbox"/>
If, based on a failure to satisfy the requirements of section 93D(6), a review officer did not deal with the substance of the question referred to above, a copy of the review officer's decision should be attached;	<input type="checkbox"/>
or	
If, based on a failure to satisfy the requirements of section 93D(6), a court set aside or quashed a decision of a review officer that dealt with the substance of the question referred to in the first paragraph above, a copy of the court decision should be attached.	<input type="checkbox"/>

The following details must be completed regarding the medical evidence relied upon in support of this referral —	
Name of Medical Practitioner/s	Date of medical report/s
Note: Under section 93EA(4)(c) of the Act, this form is to be accompanied by a copy of the medical evidence that complies with section 93D(6) of the Act, unless the worker satisfies the Director that the complying evidence has already been produced.	

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Signature of worker _____	Date	<div style="border: 1px solid black; width: 80px; height: 30px; margin: 0 auto;"> / / </div>
----------------------------------	------	--

Lodging this form This form should be lodged with — <div style="text-align: center; padding: 5px;"> Director, Conciliation and Review Directorate WorkCover WA Perth, Western Australia </div>

Form 22B

[r. 19JB]

Workers' Compensation and Rehabilitation Act 1981

REFERRAL OF QUESTION OF DEGREE OF DISABILITY

**[Made by the worker under sections 93D(5) and 93EB(3) of the Act,
due to the application of section 93EB(3)]**

Worker's details

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

Employer's details

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

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Title Telephone no.

Insurer's details

Name

Address Postcode

Date weekly payments commenced (if applicable) Claim no. (if known)

Contact person

Telephone no.

Disability details

Description of disability

Note: This must be the same disability and only that disability that was the subject of a referral in the circumstances set out in section 93EB(1) of the Act.

Date disability occurred

Date weekly payments commenced

Degree of disability as assessed by medical practitioner

Relevant level of disability (see s. 93E(3) of the Act)
Nominate **only one** relevant level of disability
 not less than 30%
 not less than 16%

Note: The nominated level of disability must relate to the same level of disability as was nominated in the original referral. If the original referral was pre 14 December 1999 and both levels were nominated, the nominated level should be one of those levels, and a further Form 22B may be used for the other level, if required.

Tick if the worker and the employer cannot agree on whether the degree of disability is not less than the relevant level

The action taken by or on behalf of the worker to obtain the employer's agreement

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<p>The following information should be included with this referral —</p>	
<p>If, before the commencement of section 10 of the <i>Workers' Compensation (Common Law Proceedings) Act 2004</i>, you sought to refer a question to the Director under section 93D(5) of the Act, then a copy of the Form 22 that was referred to and accepted by the Director should be attached.</p>	<input type="checkbox"/>
<p>If, on or after 4 December 2003, on the basis that Part IV Division 2 as in force before it was amended by section 32 of the <i>Workers' Compensation and Rehabilitation Amendment Act 1999</i> applied to proceedings for the awarding of damages concerned, a review officer did not deal with the substance of the question referred to above, a copy of the review officer's decision should be attached;</p>	<input type="checkbox"/>
<p>or</p>	
<p>If, on or after 4 December 2003, on the basis that Part IV Division 2 as in force before it was amended by section 32 of the <i>Workers' Compensation and Rehabilitation Amendment Act 1999</i> applied to proceedings for the awarding of damages concerned, a court set aside or quashed a decision of a review officer that dealt with the substance of the question referred to in the first paragraph above, a copy of the court decision should be attached.</p>	<input type="checkbox"/>

<p>The following details must be completed regarding the medical evidence relied upon in support of this referral —</p>	
Name of Medical Practitioner/s	Date of medical report/s
<p>Note: Under section 93EB(4)(c) of the Act, this form is to be accompanied by a copy of the medical evidence that complies with section 93D(6) of the Act, unless the worker satisfies the Director that the complying evidence has already been produced.</p>	

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Signature of worker _____	Date	<input style="width: 80%; height: 20px;" type="text"/>
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<p>Lodging this form This form should be lodged with —</p> <p style="text-align: center;">Director, Conciliation and Review Directorate WorkCover WA Perth, Western Australia</p>
--

- (2) Appendix I is amended after Form 23 by inserting the following forms —

“

Form 23A

[r. 19JA]

Workers' Compensation and Rehabilitation Act 1981

NOTICE OF REFERRAL OF QUESTION OF DEGREE OF DISABILITY

**[Notice given under section 93EA(5)(a) and (b)(i) of the Act,
where section 93EA(3) applied]**

Worker's details

Surname	Other names
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>
Address	
<input style="width: 95%; height: 25px;" type="text"/>	
Postcode	
Telephone no.	Occupation
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

Employer's details

Name	
<input style="width: 95%;" type="text"/>	
Address	
<input style="width: 95%; height: 25px;" type="text"/>	
Postcode	
Telephone no.	WorkCover no. (if known)
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

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Disability details

Description of disability

--

Date disability occurred

--

Degree of disability as assessed
by medical practitioner

--

Relevant level of disability

- | | |
|--------------------------|-------------------|
| <input type="checkbox"/> | not less than 30% |
| <input type="checkbox"/> | not less than 16% |

Question referred

The question of whether the worker's degree of disability is or is not less than the relevant level has been referred to the Director, Conciliation and Review Directorate, for consideration under section 93D(5), due to the application of section 93EA(3).

Medical evidence

Accompanying this notice is a copy of the medical evidence produced by the worker that complies with section 93D(6) of the Act.

Director's opinion

In accordance with section 93EA(5)(a) and (b)(i) of the Act, it is my opinion that —

- | | |
|---|--------------------------|
| (a) evidence complying with section 93D(6) has been produced and in all other respects the referral is properly made; and | <input type="checkbox"/> |
| (b) the referral is accepted. | <input type="checkbox"/> |

In accordance with section 93EA(5)(b)(i) of the Act, notification is also given that the following provisions may apply —

Section 93E(6a)

Note: Section 93E(6a) provides that, despite section 93E(5), and even though section 93E(6) does not apply if the Director gives the worker notice under section 93EA(5)(b)(i) that this subsection applies, an election can be made within 14 days after the Director subsequently gives the worker notice in writing that an agreement or determination of the question has been recorded. This only applies if the worker is required to make an election under section 93E(3)(b) of the Act (i.e. the worker has an agreed or determined degree of disability of not less than 16% but less than 30%).

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Section 93EC

Note: *If —*

- (a) *under section 93EA(5)(b)(i), the Director notifies a worker that the referral of a question relating to disability is accepted and that this section applies; and*
- (b) *the time limited by any written law for the commencement of an action seeking damages in respect of the disability —*
- (i) *has elapsed before the day on which the Director notifies the worker (the "notification day"); or*
- (ii) *is due to elapse on the notification day or before the expiry of a period of 2 years after the notification day,*
- an action seeking damages in respect of the disability may, despite that written law, be commenced at any time before the expiry of a period of 2 years after the notification day.*

Objection

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

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

**Signature
of Director** _____

Date

/ /

Employer's objection

Employer's assessment of degree of disability

**Signature of
employer** _____

Date

/ /

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Form 23B

[r. 19JB]

Workers' Compensation and Rehabilitation Act 1981

NOTICE OF REFERRAL OF QUESTION OF DEGREE OF DISABILITY

**[Notice given under section 93EB(5)(a) and (b)(i) of the Act,
where section 93EB(3) applied]**

Worker's details

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

Employer's details

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

Disability details

Description of disability	
<input type="text"/>	
Date disability occurred	
<input type="text"/>	
Degree of disability as assessed by medical practitioner	Relevant level of disability
<input type="text"/>	<input type="checkbox"/> not less than 30% <input type="checkbox"/> not less than 16%

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Question referred

The question of whether the worker's degree of disability is or is not less than the relevant level has been referred to the Director, Conciliation and Review Directorate, for consideration under section 93D(5), due to the application of section 93EB(3).

Medical evidence

Accompanying this notice is a copy of the medical evidence produced by the worker that complies with section 93D(6) of the Act.

Director's opinion

In accordance with section 93EB(5)(a) and (b)(i) of the Act, it is my opinion that —

- (a) evidence complying with section 93D(6) has been produced and in all other respects the referral is properly made; and
- (b) the referral is accepted.

In accordance with section 93EB(5)(b)(i) of the Act, notification is also given that the following provisions may apply —

Section 93E(6a)

Note: *Section 93E(6a) provides that, despite section 93E(5), and even though section 93E(6) does not apply if the Director gives the worker notice under section 93EB(5)(b)(i) that this subsection applies, an election can be made within 14 days after the Director subsequently gives the worker notice in writing that an agreement or determination of the question has been recorded. This only applies if the worker is required to make an election under section 93E(3)(b) of the Act (i.e. the worker has an agreed or determined degree of disability of not less than 16% but less than 30%).*

Section 93EC

Note: *If —*

- (a) *under section 93EB(5)(b)(i), the Director notifies a worker that the referral of a question relating to disability is accepted and that this section applies; and*
- (b) *the time limited by any written law for the commencement of an action seeking damages in respect of the disability —*
- (i) *has elapsed before the day on which the Director notifies the worker (the "notification day"); or*
- (ii) *is due to elapse on the notification day or before the expiry of a period of 2 years after the notification day,*

an action seeking damages in respect of the disability may, despite that written law, be commenced at any time before the expiry of a period of 2 years after the notification day.

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<p>Objection</p> <p>If you (the employer) consider the worker's degree of disability is less than the relevant level, you should complete the bottom section of this form and return it to the Director within 21 days of receiving this notice.</p> <p>If you do not notify the Director within 21 days you will be taken to have agreed that the worker's degree of disability is not less than the relevant level.</p>

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

Employer's objection

Employer's assessment of degree of disability

<p>Signature of employer _____ Date <input type="text" value="/ /"/></p>

By Command of the Governor,

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

