

Western Australia

**Workers' Compensation and Injury
Management (Acts of Terrorism) Act 2001**

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Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001

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Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001

An Act to make provision about the liability of an employer to pay compensation under the *Workers' Compensation and Injury Management Act 1981* to a worker as a result of an act of terrorism.

[Long title amended by No. 42 of 2004 s. 174.]

1. Short title

This Act may be cited as the *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001*.

[Section 1 amended by No. 42 of 2004 s. 171(2).]

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2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Meanings of expressions used in this Act

(1) In this Act, unless the contrary intention appears —

“actuary” means a Fellow of the Institute of Actuaries of Australia or any other person of whose actuarial knowledge and experience the Governor approves;

“final day” means —

(a) 31 December 2003, unless another day is fixed under paragraph (b); or

(b) a day prescribed by regulation as the final day;

“Insurance Commission” means the body continued as the Insurance Commission of Western Australia under the *Insurance Commission of Western Australia Act 1986*;

“liability” means liability of an employer to pay compensation under the *Workers' Compensation and Injury Management Act 1981* to a worker;

“participating employer” means an employer —

(a) holding a policy of insurance that contains an exclusion of liability as permitted under section 4; or

(b) entitled by an agreement under section 7 to make claims in accordance with section 9.

(2) Any other expression in this Act that is given a particular meaning by the *Workers' Compensation and Injury Management Act 1981* has the same meaning in this Act unless the contrary intention appears.

[Section 3 amended by No. 36 of 2002 s. 4; No. 42 of 2004 s. 174.]

3A. Prescription of “final day”

The Governor may make regulations prescribing a day other than 31 December 2003 to be the “final day”.

[Section 3A inserted by No. 36 of 2002 s. 5.]

4. Permitting exclusion of cover for acts of terrorism

- (1) WorkCover WA may give an approved insurance office permission in writing to exclude certain liability from the liability for which it insures employers but the exclusion of liability attributable to an act occurring after the final day is not permitted.
- (2) Before permitting the exclusion of liability, WorkCover WA has to be satisfied that it would be reasonable to characterise the liability as being attributable to an act of terrorism.
- (3) The *Workers' Compensation and Injury Management Act 1981* does not require the approved insurance office to insure an employer for liability to the extent that it is permitted under this section to be excluded.

[Section 4 amended by No. 42 of 2004 s. 171(4) and 174.]

5. Condition that insurer agrees to contribute

The permission may be given on condition that, before the exclusion of liability is permitted, the approved insurance office enter into an agreement in writing with WorkCover WA as to contributions that the approved insurance office will make to the Employers' Indemnity Supplementation Fund established under the *Employers' Indemnity Supplementation Fund Act 1980* section 5(1) towards the cost of satisfying claims made by employers in accordance with section 9.

[Section 32 amended by No. 42 of 2004 s. 171(4).]

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6. Employer's obligation to insure

The *Workers' Compensation and Injury Management Act 1981* section 160 does not require an employer who holds a policy of insurance that contains an exclusion of liability as permitted under section 4 to insure for liability to the extent that it is excluded as permitted under section 4.

[Section 6 amended by No. 42 of 2004 s. 174.]

7. Self-insurer to agree to contribute

- (1) It is a condition of a self-insurer's exemption under the *Workers' Compensation and Injury Management Act 1981* section 164 that, if requested by WorkCover WA to do so, the self-insurer enter into an agreement in writing with WorkCover WA —
 - (a) entitling the self-insurer to make claims in accordance with section 9; and
 - (b) providing for contributions that the self-insurer will make to the Employers' Indemnity Supplementation Fund established under the *Employers' Indemnity Supplementation Fund Act 1980* section 5(1) towards the cost of satisfying claims made by employers in accordance with section 9.
- (2) Contravention of a condition under this section is to be treated, for the purposes of the *Workers' Compensation and Injury Management Act 1981*, as a contravention of a requirement under that Act.

[Section 7 amended by No. 42 of 2004 s. 171(4) and 174.]

8. Participating employer's liability to worker may be reduced

- (1) If in the circumstances it is appropriate to do so, the Minister may, by order published in the *Gazette* —
 - (a) state that the Minister believes that an act of terrorism has occurred, identifying the act sufficiently to enable a

person to know that the person's claim might be affected by the order;

- (b) specify the day on which the act of terrorism is to be treated, for the purposes of this Act, as having occurred; and
 - (c) state that, despite anything in the *Workers' Compensation and Injury Management Act 1981*, a claim for compensation for an injury attributable to the act identified in paragraph (a) is barred unless it is made within a period of 90 days after the day on which the act of terrorism occurred.
- (2) The day specified under subsection (1)(b) cannot be after the final day.
- (3) As soon as practicable after the period of 90 days under subsection (1)(c) elapses, WorkCover WA is required to determine, on the advice of an actuary —
- (a) the total amount that would, if subsection (4) did not apply, be expected to be payable by all participating employers in respect of their liability for all workers that is attributable to the act specified in the order; and
 - (b) if that amount exceeds \$25 million, the reduction factor by which that amount would need to be multiplied to limit it to \$25 million.
- (4) If WorkCover WA determines a reduction factor, an amount that a participating employer would, if this subsection did not apply, be required to pay in satisfaction of any liability attributable to the act specified in the order is reduced by multiplying the amount by the reduction factor.

[Section 8 amended by No. 42 of 2004 s. 171(3)-(4) and 174.]

9. Indemnity for liability attributable to terrorism

- (1) To the extent that a participating employer's liability to a worker is attributable to an act of terrorism that occurs during

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the period commencing on 1 January 2002 and ending on the final day, the employer may make a claim against the Insurance Commission for payment or reimbursement, as the case requires, of any claim arising from that liability.

- (2) The claim is to be dealt with as a claim under the *Employers' Indemnity Supplementation Fund Act 1980* and, as far as possible, that Act applies accordingly.
- (3) For the purposes of this section —
 - (a) if the participating employer holds a policy of insurance and the employer's liability to the worker is to any extent excluded from the policy by an exclusion permitted under section 4, the extent to which the employer's liability is attributable to an act of terrorism is to be regarded as being the same as the extent to which the employer's liability is excluded as permitted under section 4;
 - (b) if the participating employer is a self-insurer, the extent to which the employer's liability is attributable to an act of terrorism is to be determined by WorkCover WA consistently with the principles it applies when deciding whether or not to give permission under section 4.

[Section 9 amended by No. 42 of 2004 s. 171(4).]

Notes

- ¹ This is a compilation of the *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and Year	Assent	Commencement
<i>Workers' Compensation and Rehabilitation (Acts of Terrorism) Act 2001</i> ³	40 of 2001	31 Dec 2001	31 Dec 2001 (see s. 2)
<i>Workers' Compensation and Rehabilitation (Acts of Terrorism) Amendment Act 2002</i>	36 of 2002	20 Nov 2002	20 Nov 2002 (see s. 2)
<i>Workers' Compensation Reform Act 2004</i> s. 171 and 174	42 of 2004	9 Nov 2004	s. 171(1), (2) and (4) and s.174: 4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131); s. 171(3): 14 Nov 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131 and 17 Jun 2005 p. 2657); Para (b) of proclamation published 31 Dec 2004 p. 7131 revoked (see <i>Gazette</i> 17 Jun 2005 p. 2657)

- ² Footnote no longer applicable.

- ³ Now known as the *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001* short title changed (see note under s. 1)