

WESTERN AUSTRALIA

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**WORKERS' COMPENSATION AND  
REHABILITATION AMENDMENT  
ACT 1999**

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**No. 34 of 1999**

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**AN ACT to amend the *Workers' Compensation and Rehabilitation Act 1981* and the *Workers' Compensation and Rehabilitation Amendment Act 1993*, and for related purposes.**

*[Assented to 5 October 1999]*

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Workers' Compensation and Rehabilitation Amendment Act 1999*.

**Commencement**

2. (1) Sections 5, 14, 15, 32, 48 (a) (iv), 53 (a), 53 (c), and 53 (d) (ii) come into operation on the day on which this Act receives the Royal Assent.

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

**PART 2 — WORKERS' COMPENSATION AND  
REHABILITATION ACT 1981**

**Principal Act**

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

[\* *Reprinted as at 14 March 1994.*  
*For subsequent amendments see 1996 Index to*  
*Legislation of Western Australia, Table 1, p. 253.*]

**Section 5 amended**

4. Section 5 (1) of the principal Act is amended —

(a) by inserting the following definition in its appropriate alphabetical position —

“  
“**inspector**” means a person authorized as an  
inspector under section 175A (1);  
”;

(b) in the definition of “specialist” by deleting paragraph (a) and substituting the following paragraph —

“  
(a) who is resident in the State and who is  
registered as a specialist under section 11A  
of the *Medical Act 1894*;  
”;

and

- (c) in the definition of “worker”, in the first paragraph beginning “the term “**worker**” ”, by deleting “Act, unless the insurer is permitted by the Commission to refuse insurance of that liability in respect of the members of the employer’s family;” and substituting the following —

“ Act; ”.

**Section 5A inserted**

**5.** After section 5 of the principal Act the following section is inserted —

“

**Indexation of certain amounts**

**5A.** (1) An amount that a provision of this Act describes as applying in accordance with this section is —

- (a) before 1 July 1997, the amount that was prescribed for the purposes of that provision; and
- (b) for a financial year commencing on or after 1 July 1997, the nearest whole number of dollars to the amount obtained by varying the amount applying at the commencement of the preceding financial year by the percentage by which the March CPI varies from the March CPI for the preceding financial year, or if the relevant index numbers are not published, the amount obtained by varying the amount applying at the commencement of the preceding financial year in accordance with the regulations (with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars).

(2) In this section “**March CPI**”, for a financial year, means the index number for the quarter ending on the last 31 March before the financial year commences, as shown in the Consumer Price Index Numbers (All Groups Index) for Perth published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth.

”.

**Section 10A repealed and a section substituted**

**6.** Section 10A of the principal Act is repealed and the following section is substituted —

“

**Exclusion of certain working directors**

**10A.** (1) Notwithstanding anything in section 5 a person is not a worker within the meaning of this Act while the person is —

- (a) a director of a company in any share of which the person has a beneficial interest; and
- (b) engaged or employed by or working for that company,

if the employer company has not complied with section 160 on the basis that the person is a worker.

(2) Subsection (1) does not prevent the employer, when complying with section 160, from doing so on the basis that the person referred to in that subsection is a worker.

(3) An employer who has complied with section 160 on the basis that a person referred to in subsection (1) is a worker is not required to continue to comply with that section on that basis and, if the employer does not continue to do so, the person ceases to be a worker within the meaning of this Act.

”.

**Section 11 amended**

7. Section 11 of the principal Act is amended —

- (a) by deleting “or” after paragraph (b);
- (b) by inserting after that paragraph the following —

“  
(ba) engaged in promotional activities in accordance with the contract pursuant to which he so participates; or  
”.

**Section 24B amended**

8. Section 24B (5) of the principal Act is amended —

- (a) by inserting after “this Division” in the first place where it occurs the following —

“ and Part IIIA ”; and

- (b) by inserting after “this Division” in the second place where it occurs the following —

“ or Part IIIA ”.

**Section 27 amended**

9. Section 27 of the principal Act is amended —

- (a) by deleting “117” and substituting the following —

“ 118 ”; and

- (b) by deleting “or made by, or registered with, the Workers’ Compensation Board in existence immediately before 1 January 1994,” and substituting the following —

“ , made, or registered ”.

**Section 36 amended**

**10.** Section 36 of the principal Act is amended by repealing subsection (1) and substituting the following subsection —

“

(1) Whenever a claim is made by, or in relation to, a worker for compensation under section 33 or 34, the employer shall within 14 days of the making of the claim send particulars of the claim to the Commission, and the Executive Director shall refer the question of the worker’s condition and fitness for employment to a medical panel comprising 2 or 3 physicians —

- (a) all of whom are to be nominated by the Executive Director from amongst physicians who specialize in diseases of the chest or in occupational diseases; and
- (b) at least one of whom specializes in diseases of the chest.

”.

**Section 57A amended**

**11.** Section 57A (2) of the principal Act is amended by deleting “and section 192 does not apply in relation to the action”.

**Section 57B amended**

**12.** Section 57B (2) of the principal Act is amended by deleting “14 days” and substituting the following —

“ 17 days ”.

**Section 61 amended**

**13.** Section 61 (1) of the principal Act is amended by deleting “wholly or partially recovered” and substituting the following —

“ total or partial capacity for work ”.

**Section 67 amended**

**14.** Section 67 of the principal Act is amended —

(a) in subsection (2) —

(i) by inserting after “permanent total” the following —

“ or permanent partial ”; and

(ii) by inserting after “subject to subsection” the following —

“ (2a) or ”;

(b) by inserting after subsection (2) the following subsection —

“

(2a) A liability for permanent partial incapacity mentioned in subsection (2) cannot be



redeemed by payment of a lump sum, whether by agreement or otherwise —

- (a) if the rate of weekly payments for the incapacity exceeds such amount as is prescribed by regulation and unless, in the particular case, the worker has special need of the lump sum instead of the continuance of weekly payments and other benefits, or other special circumstances justify the redemption; or
- (b) unless a dispute resolution body determines that —
  - (i) the worker has successfully undergone rehabilitation but, having taken all reasonable steps to obtain employment, has failed to do so; or
  - (ii) it is inappropriate for the worker to undergo, or to continue to undergo, rehabilitation.

”;

and

- (c) in subsection (3), by deleting “incapacity mentioned in subsection (2) may not” and substituting the following —

“

permanent total incapacity mentioned in subsection (2) cannot

”.

**Section 68 amended**

15. Section 68 of the principal Act is amended —

(a) by inserting before subsection (1) the following subsection —

“

(1a) Where the liability for a permanent partial incapacity may be redeemed under section 67 (2) and (2a), the lump sum shall be calculated by taking the amount that is equal to —

(a) the then prescribed amount less the amount of weekly payments made; or

(b) the weekly payments at the rate to which the worker is entitled at the date of the redemption for the period from that date to the date when the weekly payments would cease by reason of age,

whichever is the less, and discounting that amount so taken in accordance with a compound discount table prescribed by regulations.

”;

(b) in subsections (1) and (2), by deleting “an incapacity” and in each case substituting the following —

“ a permanent total incapacity ”; and

(c) in subsection (1) (b), by deleting “order” and substituting the following —

“ redemption ”.

**Section 74 amended**

**16.** Section 74 (1a) of the principal Act is amended by deleting “make an application to the Directorate, in accordance with the rules, to determine” and substituting the following —

“ refer to the Director for conciliation under Part IIIA ”.

**Section 76 amended**

**17.** Section 76 (8) of the principal Act is amended by inserting a comma after “excessive”.

**Section 84A amended**

**18.** Section 84A of the principal Act is amended by deleting the definition of “dispute” and substituting the following definition —

“

**“dispute”** means —

- (a) a dispute in connection with a claim for compensation under this Act and includes —
  - (i) a dispute as to liability to make or continue to make weekly payments of compensation;
  - (ii) a dispute between employers as to liability;
  - (iii) a dispute between insurers as to liability to indemnify an employer;
  - (iv) a dispute between an employer and an insurer as to the insurer’s liability to indemnify the employer;

or

- (b) a matter to be determined by a dispute resolution body under section 67 (2a) (b);

”.

**Section 84F repealed and a section substituted**

**19.** Section 84F of the principal Act is repealed and the following section is substituted —

“

**Orders relating to payment of compensation in respect of persons under legal disability or who are dependants**

**84F.** (1) A question as to the payment of compensation that is payable to —

- (a) a person under a legal disability to give an effective discharge for payment; or
- (b) a dependant or dependants of a deceased worker,

may be referred to the Director for conciliation as a dispute.

(2) A dispute resolution body may order that compensation that is payable to a person under a legal disability to give an effective discharge for payment is to be paid to the Commission and applied in the manner specified in the order.

(3) A dispute resolution body may order that all or any of the compensation that is payable to a dependant or dependants of a deceased worker —

- (a) is to be paid to the Commission and applied in the manner specified in the order; or
- (b) is to be paid to a dependant or dependants of the deceased worker as specified in the order.

(4) After it has been ordered under subsection (2) or (3) (a) that compensation be paid to the Commission, a question as to —

- (a) whether the compensation should be applied differently; or
- (b) if the order was under subsection (3) (a), whether all or any of the compensation should be paid to a dependant or dependants of the deceased worker,

may be referred to the Director for conciliation as a dispute.

(5) A dispute resolution body may determine a question referred under subsection (4) and make such order as it thinks proper.

”.

**Section 84I amended**

**20.** Section 84I of the principal Act is amended —

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

“ (a) a notice of the occurrence of the disability has been given in writing containing substantially the information required by subsection (2) as soon as practicable after its happening;

”;

and

(b) in subsection (2) —

(i) by deleting “and is to state” and substituting the following —

“ is to state ”; and

- (ii) by inserting after “disability occurred,” the following —

“  
is to include such other information, if any,  
as may be prescribed,  
”.

**Section 84K amended**

**21.** Section 84K of the principal Act is amended —

- (a) by inserting after subsection (1) the following subsection —

“  
(1a) If a worker has, under section 84I  
(1) (b), made a claim for compensation with  
respect to noise induced hearing loss, the  
worker’s employer or that employer’s insurer  
may request the Commission to provide the  
person making the request with a copy of any  
documents in the possession of or under the  
control of the Commission that —  
  
(a) are of a kind described in  
subsection (4) (d), (e), or (f); or  
  
(b) relate to the worker’s employment  
history or the worker’s exposure to  
noise.  
”;

and

- (b) in subsections (2) and (3), by inserting after “(1)” the following —

“ or (1a) ”.

**Sections 84R, 84ZH, and 84ZR amended**

**22.** (1) Sections 84R, 84ZH, and 84ZR of the principal Act are each amended in subsection (1) —

(a) by deleting “required to do so under Part VII” and substituting the following —

“ permitted by section 145A to do so ”; and

(b) by deleting “is to” and substituting the following —

“ may ”.

(2) Sections 84R, 84ZH, and 84ZR of the principal Act are each further amended in subsection (1) by deleting “as to the nature” and everything in the subsection that is after those words and substituting the following —

“  
as to —

(a) the nature or extent of a disability;

(b) whether a disability is permanent or temporary;  
or

(c) a worker’s capacity for work,

for determination by a medical assessment panel.

”.

**Section 84X amended**

**23.** Section 84X of the principal Act is amended —

(a) by inserting after the section designation “**84X.**” the subsection designation “(1)”; and

- (b) by inserting at the end of the section the following subsections —

“  
(2) An agreement is not to be made for a legal practitioner or other person to receive, for appearing for or acting on behalf of a person in the conciliation, any greater reward than is provided for —

(a) in the case of a legal practitioner, by a determination in force under section 58W of the *Legal Practitioners Act 1893*; or

(b) in the case of any other person, by the regulations.

(3) An agreement made contrary to this section is void.

”.

#### **Section 84Y amended**

**24.** Section 84Y (1) of the principal Act is amended by inserting after “requests” the following —

“  
unless of the opinion that the party making the request has not made reasonable endeavours to have the dispute resolved through conciliation  
”.

#### **Section 84ZA amended**

**25.** Section 84ZA (4) of the principal Act is amended by deleting “rules” and substituting the following —

“ regulations ”.



**Section 84ZF amended**

**26.** Section 84ZF of the principal Act is amended —

(a) in subsection (1), by deleting “a decision made in the review” and substituting the following —

“ the review officer’s decision ”; and

(b) by inserting after subsection (2) the following subsections —

“

(3) If new information becomes available after the review officer makes a decision, the review officer may reconsider the decision and —

(a) vary or revoke any order previously made by the review officer;

(b) make any further order,

as the review officer considers appropriate having regard to the new information.

(4) For the purposes of subsection (3), “**new information**” is information that was not available to the review officer when the decision was made and, in the opinion of the review officer, justifies reconsideration of the decision.

”.

**Section 84ZG amended**

**27.** Section 84ZG (b) (ii) of the principal Act is amended by deleting “whom” and substituting the following —

“ who ”.

**Section 84ZM amended**

**28.** Section 84ZM of the principal Act is amended by deleting “rules of court” and substituting the following —

“ regulations ”.

**Section 84ZN amended**

**29.** Section 84ZN of the principal Act is amended by repealing subsections (3) and (4) and substituting the following subsections —

“

(3) An appeal under subsection (2) is to be made in accordance with the regulations within one month after the making of the decision or order concerned, but the court may, if satisfied that it is just and reasonable in the circumstances to do so, extend the period within which the appeal may be made.

(4) Without limiting any other powers of the court on dealing with the appeal, the court may, before determining the appeal, make an order that, until the appeal is determined —

- (a) suspends the effect of the decision or order, with or without substituting any decision or order that the review officer could have made in the first instance; or
- (b) varies the effect of the decision or order.

(5) The power given by subsection (4) to suspend or vary the effect of a decision or order includes the power to suspend or vary its effect as previously varied under that subsection.

”.

**Section 84ZP amended**

**30.** Section 84ZP of the principal Act is amended —

- (a) by inserting after the section designation “**84ZP.**” the subsection designation “(1)”; and
- (b) by inserting at the end of the section the following subsection —

“  
    (2) An order for costs on the ground that the appeal was successful is not to be made against a worker.  
”.

**Section 84ZT amended**

**31.** Section 84ZT (2) (a) of the principal Act is amended —

- (a) by deleting “contravention or”;
- (b) by deleting “\$1 000” and substituting the following —  
    “ \$5 000 ”; and
- (c) by deleting “\$250” and substituting the following —  
    “ \$2 000 ”.

**Amendments about awarding of damages and related matters (sections 5, 61, 84ZH, 84ZR and 193, Part IV Division 2 and Schedule 1), and saving and transitional provisions**

**32.** (1) Section 5(1) of the principal Act is amended by deleting the definition of "prescribed amount" and substituting the following definition —

“

**“prescribed amount”** means —

- (a) in relation to the financial year ending on 30 June 2000, \$119 048;

Note: This is the nearest whole number of dollars to the amount obtained by multiplying by 208 the average of the amounts that the Australian Statistician published as the all employees average weekly total earnings in Western Australia for pay periods ending in the months of May, August and November 1998 and February 1999.

- (b) in relation to any subsequent financial year, the nearest whole number of dollars to —
- (i) the amount obtained by varying the prescribed amount for the preceding financial year by the percentage by which the amount that the Australian Statistician published as the Wages Cost Index, ordinary time hourly rates of pay (excluding bonuses) for Western Australia (the “**WCI**”) varied between the second-last December quarter before the financial year commenced and the last December quarter before the financial year commenced; or

- (ii) if the calculation under subparagraph (i) cannot be performed in relation to a financial year because the WCI for a relevant quarter was not published, the amount obtained by varying the prescribed amount for the preceding financial year in accordance with the regulations,

with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars;

”.

- (2) Section 61(7) of the principal Act is amended by inserting after paragraph (b) the following —

“

- (ba) if section 93E(8) applies to the payment of compensation; or

”.

- (3) Section 93A of the principal Act is amended by deleting the definitions of “Amount A”, “Amount B”, “future pecuniary loss” and “non-pecuniary loss”.

- (4) After section 93B(3) of the principal Act the following subsection is inserted —

“

- (3a) This Division does not apply to the awarding of damages if the disability results in the death of the worker.

”.

(5) Sections 93D, 93E and 93F of the principal Act are repealed and the following sections are substituted —

“

**Assessment of disability**

**93D.** (1) In this section —

**“relevant level”**, in relation to a question as to the degree of disability of the worker, means —

- (a) if the question arises for the purposes of section 93E(3)(a), (9) or (12), a degree of disability of 30%; or
- (b) if the question arises for the purposes of section 93E(4), a degree of disability of 16%;

(2) For the purposes of section 93E, the degree of disability of the worker is to be assessed —

- (a) so far as Schedule 2 provides for such a disability, as a percentage equal to —
  - (i) if only one item of that Schedule applies to the disability, the percentage of the prescribed amount provided for by that item, as read with section 25; or
  - (ii) if 2 or more items of that Schedule apply to the disability, the sum of the percentages of the prescribed amount provided for by those items, as read with section 25;
- (b) to the extent, if any, that paragraph (a) does not apply, as the degree of permanent impairment assessed in accordance with the AMA Guides;

- (c) to the extent, if any, that neither paragraph (a) nor (b) applies, in accordance with the regulations,

or if more than one of paragraphs (a), (b) and (c) applies, as the cumulative sum of the percentages assessed in accordance with those paragraphs.

(3) For the purposes of section 93E(4) only, if item 36A of Schedule 2 applies to the disability, subsection (2)(a) applies as if the percentage of the prescribed amount provided for by that item were 100% instead of 60%.

(4) If section 25 applies, the percentage under subsection (2)(a) is calculated in accordance with the formula —

$$\frac{PD}{100} \times TD$$

Where —

*PD* is the percentage of the diminution of full efficient use.

*TD* is the relevant percentage set out in Column 2 of Schedule 2.

Example 1

A worker loses 40% of the full efficient use of one eye. The percentage under subsection (2)(a) is —

$$\frac{40}{100} \times 50 = 20$$

Example 2

A worker loses the little finger of the left hand, 30% of the full efficient use of one eye and 10% of the full efficient use of the right arm below the elbow. The percentage under subsection (2)(a) is —

$$6 + \left[ \frac{30}{100} \times 50 \right] + \left[ \frac{10}{100} \times 80 \right] = 6 + 15 + 8 = 29$$

Example 3

A worker loses 10% of the full efficient use of the back (including thoracic and lumbar spine) and 15% of the full efficient use of the neck (including cervical spine). The percentage under subsection (2) (a) (for the purposes of section 93E(4) only) is —

$$\left[ \frac{10}{100} \times 100 \right] + \left[ \frac{15}{100} \times 40 \right] = 10 + 6 = 16$$

(5) If the worker and the employer cannot agree on whether the degree of disability is not less than the relevant level, the worker may, subject to subsection (6), refer the question to the Director.

(6) A question can only be referred under subsection (5) if the worker produces to the Director medical evidence from a medical practitioner indicating that, in the medical practitioner's opinion, the degree of disability is not less than the relevant level.



(7) As soon as practicable after receiving a referral under subsection (5) the Director is to notify the employer in accordance with the regulations.

(8) If within 21 days after being notified under subsection (7) the employer notifies the Director in accordance with the regulations that the employer considers that the degree of disability is less than the relevant level, a dispute arises for the purposes of Part IIIA.

(9) The Director is to consider the dispute in consultation with the parties.

(10) Except in a case to which subsection (11) applies, if the dispute is not resolved by agreement the Director is to refer the question for resolution under the provisions of Part IIIA (other than Division 2).

(11) If the dispute relates to a disability mentioned in section 33, 34 or 35, the dispute is to be referred to a medical panel for determination as described in section 36 and so far as applicable this Act applies in relation to the reference as if it were a reference under section 36 except that the only question to be considered and determined on the reference is the question that was referred.

(12) Unless notification is given by the employer under subsection (8), the employer is to be regarded as having agreed that the degree of disability is not less than the relevant level.

**Restrictions on awarding of damages and payment of compensation**

**93E.** (1) In this section —

**“agreed”** means agreed between the worker and the employer, whether under section 93D(9) or otherwise;

**“degree of disability”** means the degree of disability of the worker assessed in accordance with section 93D(2);

**“determined”** means determined or decided on a reference under section 93D(10) or (11);

**“termination day”** means the day that is 6 months after the day on which weekly payments commenced.

(2) Weekly payments of compensation ordered by a dispute resolution body to commence are to be regarded for the purposes of this section as commencing or having commenced on —

- (a) the first day of the period in relation to which weekly payments are ordered to be made; or
- (b) the day that is 5 months (or such shorter period as is prescribed) before the day on which the order is made,

whichever is later.

(3) Damages can only be awarded if —

- (a) it is agreed or determined that the degree of disability is not less than 30% and that agreement or determination is recorded in accordance with the regulations; or

(b) the worker has a significant disability and elects, in the prescribed manner, to retain the right to seek damages and the election is registered in accordance with the regulations.

(4) For the purposes of subsection (3)(b) the worker has a significant disability if it is agreed or determined that the degree of disability is not less than 16% and that agreement or determination is recorded in accordance with the regulations.

(5) Subject to subsections (6) and (7), if weekly payments of compensation in respect of the disability have commenced an election cannot be made under subsection (3)(b) after the termination day.

(6) Despite subsection (5), if —

(a) medical evidence complying with section 93D(6) was produced to the Director not less than 21 days before the termination day; and

(b) a dispute arising under section 93D(8) has not been resolved before the termination day,

an election can be made under subsection (3)(b) within 7 days after the dispute is resolved.

(7) Despite subsection (5), the Director may, in such circumstances as are set out in regulations, extend the period within which an election can be made under subsection (3)(b) until a day (not being a day that is more than 6 months after the termination day) to be fixed by the Director by notice in writing to the worker.

(8) Subject to subsections (9) and (11), if an election has been made under subsection (3)(b) compensation under this Act is not payable in respect of the disability, or any recurrence, aggravation or acceleration of it, in relation to any period after the day on which the election

is registered or any expenses incurred during such a period.

(9) Subsection (8) ceases to apply if, after the election is made, it is agreed or determined that the degree of disability is 30% or more and that agreement or determination is recorded in accordance with the regulations.

(10) Subsection (9) relates only to the degree of the original disability, and any recurrence, aggravation or acceleration of it is not to be taken into account.

(11) If an agreement or determination under subsection (9) is recorded, the worker may apply for any compensation which, but for subsection (8), would have been payable under this Act in relation to a relevant period or expenses incurred during a relevant period.

(12) In subsection (11) —

**“relevant period”** means any period —

- (a) which is after the day on which the election is registered and before the agreement or determination under subsection (9) is recorded; and
- (b) during which the degree of disability is agreed or determined to have been not less than 30%.

(13) If the liability for an incapacity resulting from the disability has been redeemed under section 67, damages are not to be awarded in respect of the disability.

**Restrictions on awarding and amount of damages if disability less than 30%**

**93F.** (1) Unless an agreement or determination that the degree of disability of the worker is not less than 30% is recorded for the purposes of section 93E —

- (a) the amount of damages to be awarded is to be a proportion, determined according to the severity of the disability, of the maximum amount that may be awarded; and
- (b) the maximum amount of damages that may be awarded is Amount A, but the maximum amount may be awarded only in a most extreme case of a disability of less than 30% in degree.

(2) Subsection (1) has effect in respect of the amount of a judgment before the operation of section 92(b).

(3) No entitlement to damages is created by subsection (1) and that subsection is subject to any other law that prevents or limits the awarding of damages.

(4) If —

- (a) section 93E(3) does not allow damages to be awarded in respect of the disability; or
- (b) damages in respect of the disability have been awarded in accordance with subsection (1),

the employer is not liable to make any contribution under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (the "**Contribution Act**") in respect of damages awarded against another person in relation to the disability.

(5) If section 93E(3)(b) allows damages to be awarded in respect of the disability —

- (a) the contributions that the employer may be liable to make under the Contribution Act in respect of damages awarded against other persons in relation to the disability are not to exceed the damages that could have been awarded in accordance with subsection (1); and
- (b) if the employer has made or been directed to make a contribution under the Contribution Act in respect of damages awarded against another person in relation to the disability, the amount of damages that may be awarded in accordance with subsection (1) is reduced by the amount of that contribution.

(6) This section applies regardless of whether the damages are awarded against one or several employers.

(7) An issue as to the amount of damages that may be awarded, is to be determined by reference to Amount A as in effect on the date on which the determination is made.

(8) In this section —

**“Amount A”** means —

- (a) in relation to the financial year ending on 30 June 2000, \$250 000;
- (b) in relation to any subsequent financial year, the nearest whole number of dollars to —
  - (i) the amount obtained by varying Amount A for the preceding

financial year by the percentage by which the amount that the Australian Statistician published as the Wages Cost Index, ordinary time hourly rates of pay (excluding bonuses) for Western Australia (the "WCI") varied between the second-last December quarter before the financial year commenced and the last December quarter before the financial year commenced; or

- (ii) if the calculation under subparagraph (i) cannot be performed in relation to a financial year because the WCI for a relevant quarter was not published, the amount obtained by varying Amount A for the preceding financial year in accordance with the regulations,

with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars.

### **Regulations**

**93G.** Regulations may provide for —

- (a) the notification to be given to workers of the effect of the provisions of this Division;

- (b) the form and lodgment of elections under section 93E(3)(b);
- (c) the registration by the Director of elections under section 93E(3)(b) if an agreement or determination for the purposes of section 93E(4) has been recorded, and the power of the Director to refuse to register an election if not satisfied that the worker has been properly advised of the consequences of the election;
- (d) the recording by the Director of an agreement or determination under section 93E as to the degree of disability of a worker;
- (e) the way in which applications under section 93E(11) are to be made and dealt with.

”.

(6) In subsections (7) and (8) —

**“amended provisions”** means Part IV Division 2 of the principal Act as amended by this section;

**“assent day”** means the day on which this Act receives the Royal Assent;

**“former provisions”** means Part IV Division 2 of the principal Act before it was amended by this section.

(7) The amended provisions do not affect the awarding of damages in proceedings —

- (a) commenced before the assent day; or
- (b) for the commencement of which the District Court gave leave under the former provisions before the assent day,



and the former provisions continue to apply in relation to those proceedings.

(8) If weekly payments of compensation in respect of a disability —

- (a) commenced before the assent day; or
- (b) were ordered by a dispute resolution body to commence before the assent day,

and the termination day referred to in section 93E of the amended provisions would be within 3 months after the assent day, the termination day is postponed by this subsection so that it is the day that is 3 months after the assent day.

(9) Section 84ZH(2) of the principal Act is amended by inserting after “that loss” the following —

“  
    , and as to the degree of disability assessed in  
    accordance with section 93D(2)  
”.

(10) Section 84ZR(2) of the principal Act is amended by inserting after “Schedule 2” the following —

“  
    and as to the degree of disability assessed in  
    accordance with section 93D(2)  
”.

(11) Before Part XIII of the principal Act the following section is inserted —

“

**Publication of prescribed amount and average weekly earnings**

**193.** (1) On or before the 1 July on which a financial year begins the Minister is to publish a notice in the *Gazette* setting out, in relation to the financial year —

- (a) the prescribed amount;
- (b) Amount A for the purposes of section 93F; and
- (c) Amount C for the purposes of Schedule 1 clause 11.

(2) Publication under subsection (1) is for public information only and the operation of this Act is not affected by a failure to publish or a delay or error in publication.

”.

(12) Schedule 1 clause 7(2) to the principal Act is amended by deleting “the items referred to in clause 11(3), (4) and (5)” and substituting the following —

“ overtime or any bonus or allowance ”.

(13) Schedule 1 clauses 11 and 11A to the principal Act are deleted and the following clause is substituted —

“

**Weekly earnings**

**11.** (1) Subject to clauses 12 to 16, for the purposes of this Schedule “**weekly earnings**” has the meaning given by this clause.

(2) In this Schedule —

**“Amount A”** means the rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation, plus —

- (a) any over award or service payments paid on a regular basis as part of the worker's earnings;
- (b) overtime; and
- (c) any bonus or allowance;

**“Amount Aa”** means the rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation, plus any over award or service payments paid on a regular basis as part of the worker's earnings;

**“Amount B”** means the worker's average weekly earnings (including overtime and any bonus or allowance) over the period of one year ending on the day before the disability occurs in the employment that the worker is in when the disability occurs or, if the worker is then in more than one employment at the end of that period, the sum of the average weekly earnings (including overtime and any bonus or allowance) in each employment, but if the worker has been in an employment for a period of less than one year, the worker's average weekly earnings in that employment are to be determined over that lesser period;

**“Amount C”** means, during a financial year —

- (a) the amount obtained by multiplying by 1.5 the average of the amounts that the Australian Statistician published as the all employees average weekly total earnings in Western Australia for pay periods ending in the months of May, August, November and February preceding the financial year; or
- (b) if any relevant amount of earnings is not published, the amount obtained by varying Amount C for the preceding financial year in accordance with the regulations;

Note: During the financial year ending on 30 June 2000 Amount C is \$852.52.

**“Amount D”** means the minimum rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation;

**“Amount E”** means the minimum weekly earnings to which the worker would have been entitled, at the time of the incapacity, under the *Minimum Conditions of Employment Act 1993*;

**“bonus or allowance”** means any bonus or incentive, shift allowance, week-end or public holiday penalty allowance, district allowance, industry allowance, meal allowance, living allowance, clothing allowance, travelling allowance, or other allowance;

**“earnings”** includes wages, salary and other remuneration;

**“overtime”** means any payment for the hours in excess of the number of ordinary hours which constitute a week's work.

(3) In the case of a worker whose earnings are prescribed by an industrial award when the disability occurs, weekly earnings are —

- (a) for the 1<sup>st</sup> to the 4<sup>th</sup> weekly payments: Amount A but not more than Amount C or less than Amount D;
- (b) for weekly payments after the 4<sup>th</sup>: Amount Aa, or a lesser amount determined in accordance with the regulations, but not more than Amount C or less than Amount D.

(4) In the case of a worker to whom subsection (3) does not apply, weekly earnings are —

- (a) for the 1<sup>st</sup> to the 4<sup>th</sup> weekly payments: Amount B but not more than Amount C or less than Amount E;
- (b) for weekly payments after the 4<sup>th</sup>: 85% of Amount B, or a lesser amount determined in accordance with the regulations, but not more than Amount C or less than Amount E.

(5) Subject to subsection (6), the references in the definition of Amount A in subsection (2) to overtime and any bonus or allowance are references to those items averaged over the period of 13 weeks ending at the time of the incapacity.

(6) If the worker was totally or partially incapacitated from working or for any other reason did not work during any part of the period of 13 weeks mentioned in subsection (5), that part is to be disregarded in calculating the average amount per week that the worker was paid over that period.

(7) Regulations made for the purposes of subsection (3)(b) or (4)(b) may provide for lesser amounts (but not less than Amount D or E, whichever is applicable) to be determined in respect of weekly payments after the 4<sup>th</sup>, 12<sup>th</sup>, 26<sup>th</sup> or 52<sup>nd</sup>, or after such other numbers of weekly payments as are prescribed.

”.

(14) Schedule 1 clause 12 to the principal Act is amended by deleting “11(1) or (2)” and substituting the following —

“ 11(3) ”.

(15) Schedule 1 clause 13 to the principal Act is amended by deleting “11(1) or (2)” and substituting the following —

“ 11(3) ”.

(16) Schedule 1 clause 13(1) to the principal Act is amended by deleting “or agreement”.

(17) Schedule 1 clause 13(2) to the principal Act is amended by deleting “the exclusions referred to in clause 11(3) and (4)” and substituting the following —

“ overtime or any bonus or allowance ”.

(18) Schedule 1 clause 16(1) to the principal Act is amended by deleting “11(5)” and substituting the following —

“ 11(4) ”.

(19) Schedule 1 clauses 12, 13(2) and 16(1) and (2) to the principal Act are amended by deleting “or industrial agreement”.

(20) In subsection (21) —

“**amended provisions**” means Schedule 1 to the principal Act as amended by this section;

“**former provisions**” means Schedule 1 to the principal Act before it was amended by this section.

(21) If weekly payments commenced before the coming into operation of this section —

- (a) the amended provisions do not apply to the first 4 weekly payments after the coming into operation of this section and the former provisions continue to apply to those weekly payments; and
- (b) for the purposes of the amended provisions the 5<sup>th</sup> weekly payment after the coming into operation of this section is to be regarded as the 5<sup>th</sup> weekly payment and so on.

### **Section 95 amended**

**33.** Section 95 (3) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph —

“

- (a) the body known as the Chamber of Commerce and Industry of Western Australia (Inc);

”.

**Section 101 amended**

**34.** Section 101 of the principal Act is amended by deleting paragraph (e) and substituting the following paragraph —

“

- (e) to determine whether an insurer should be permitted to cancel a policy of insurance and, if so, upon what terms and, in any event, upon the term that the cancellation be effective as between the parties to the policy, irrespective of the terms of the policy and whether or not the policy was effected prior to the coming into operation of this Division;

”.

**Section 103 repealed**

**35.** Section 103 of the principal Act is repealed.

**Section 110 amended**

**36.** Section 110 (2) of the principal Act is amended by deleting “into the custody of the Commission under clause 6.” and substituting the following —

“ to the Commission under section 84F. ”.

**Section 145A amended**

**37.** Section 145A of the principal Act is amended —

(a) in subsection (1) —

- (i) by deleting “A question is to” and substituting the following —

“ Subject to subsection (2), a question may ”;



and

(ii) by deleting “if and, subject to subsection (2),”;

and

(b) in subsection (2), by deleting “is to” and substituting the following —

“ may ”.

**Section 145C amended**

**38.** Section 145C of the principal Act is amended by repealing subsection (2) and substituting the following subsection —

“

(2) Of the members of the panel at least one is to be a specialist in the particular branch of medicine or surgery that is relevant to the question.

”.

**Section 147 amended**

**39.** Section 147 (3) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph —

“

(a) the Chamber of Commerce and Industry of Western Australia (Inc);

”.

**Section 152 repealed and a section substituted**

**40.** Section 152 of the principal Act is repealed and the following section is substituted —

“

**Loading not to exceed 100% unless permitted by Commission**

**152.** Unless permitted by the Commission to do so, an insurer shall not charge a loading on a recommended premium rate of more than 100% of that rate.

”.

**Section 154 amended**

**41.** Section 154 of the principal Act is amended —

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

“

(2) The appeal is made by giving written notice of it —

(a) where it is against classification, to the Commission, the Committee, and the insurer within one month of being informed of the classification or within such further time as the Commission may, in the circumstances of the case, consider it is reasonable to allow; or

(b) where it is against assessment, to the Committee and the insurer within one month of being informed of the assessment or within such further time as the Committee may, in the

circumstances of the case, consider it is reasonable to allow,

stating the grounds of objection and the classification or assessment, as the case may be, the employer seeks.

”;

and

- (b) by repealing subsections (6), (7), (8), (9) and (10).

**Section 160 amended**

**42.** Section 160 of the principal Act is amended by repealing subsections (2a) and (3) and substituting the following subsections —

“

(2a) Where, under section 10A, an employer that is a company applies to an approved insurance office under subsection (2) on the basis that any director of the company is a worker, that employer shall, in relation to each such director, furnish to that office, in addition to the information required to be furnished under subsection (2) —

- (a) the name of the director; and  
(b) in relation to that director in particular, the information, verified as required under subsection (2), that the employer is required under that subsection to furnish in relation to the employer's workers.

(3) An approved insurance office shall insure any employer requesting it for the full amount of the liability of the employer to pay compensation under this Act to all workers employed by him.

Penalty: \$2 000.

”.

**Section 170 amended**

**43.** Section 170 of the principal Act is amended —

(a) by inserting after subsection (2a) the following subsections —

“

(2b) If an order is made under subsection (2) requiring a body corporate convicted of an offence to pay an amount to the General Fund but all or any of the amount required to be paid remains unpaid, the Commission may sue and recover from a responsible officer the unpaid amount, whether or not the responsible officer has been convicted under subsection (5).

(2c) If there are 2 or more responsible officers, they are jointly and severally liable for the payment of the unpaid amount.

(2d) The amount required to be paid under the order is reduced by any amount recovered under subsection (2b).

”;

(b) by repealing subsection (4) and substituting the following subsection —

“

(4) In any prosecution for an offence under this section, proof that the employer, not being a self-insurer —

(a) was required under section 175B (1) (c) to produce for inspection a policy of insurance referred to in section 160 (1) obtained by the employer and in force at a specified date or between specified dates; and

- (b) did not produce that policy as required,

is *prima facie* evidence that at that specified date or between those specified dates, as the case may be, the employer failed to comply with section 160 (1), and the burden of showing that the employer complied with section 160 (1) rests on the employer.

”;

and

- (c) by repealing subsection (5) and substituting the following subsections —

“

(5) Where a body corporate commits an offence mentioned in subsection (1), every responsible officer commits the like offence.

(6) In subsections (2b), (2c), and (5) “**responsible officer**”, in relation to the commission of an offence by a body corporate, means a person who is a director or other officer concerned in the management of the body corporate and who does not prove that —

- (a) the offence was committed without the person’s consent or connivance; and
- (b) the person exercised all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person’s functions and to all the circumstances.

”.

**Sections 172 and 172A repealed**

**44.** Sections 172 and 172A of the principal Act are repealed.

**Section 172 inserted**

**45.** After section 171 of the principal Act the following section is inserted —

“

**Commission may pass on certain information to insurer**

**172.** Whenever as a result of an inspection or otherwise it is shown that an employer has either wilfully or inadvertently understated to the employer's insurer the aggregate amount of wages, salary and other forms of remuneration paid, or the number of employees engaged, and has thereby become liable to pay by way of premium a lesser amount than would otherwise have been payable, then the Commission may —

- (a) 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) sue and recover from the employer —
  - (i) the full amount of the premium that could have been charged; less
  - (ii) any amount already paid to the insurer in respect of such insurance,

and pay any moneys so recovered, less any reasonable costs incurred in the recovery, to the insurer.

”.

**Part X, Division 3, inserted and transitional provisions**

**46.** (1) Part X of the principal Act is amended by inserting after Division 2 the following Division —

“

***Division 3 — Inspectors***

**Authorization**

**175A.** (1) The Commission may authorize persons as inspectors for the purposes of this Act.

(2) Before performing any function of an inspector under this Act, a person authorized as an inspector is required to take and subscribe before a justice of the peace an oath or affirmation to the effect that the person will not, except for the purposes of this Act, and the exercise of the person's duties under this Act, disclose to any person any information acquired as an inspector.

(3) A person who wilfully discloses any information contrary to an oath taken under subsection (2) commits an offence.

Penalty: \$2 000.

(4) The Chairman of the Commission is to issue to each person authorized as an inspector a certificate stating that the person is so authorized.

(5) The inspector is to produce the certificate whenever required to do so by a person in respect of whom the

inspector has exercised, or is about to exercise, a power under this Act.

**Powers**

**175B.** (1) An inspector may, for the purposes of this Act —

- (a) at all reasonable times of the day or night, enter, inspect, and examine any place where it is suspected that workers may be employed or books, accounts, documents or records required to be inspected may be held;
- (b) conduct such examination and inquiry as appears necessary to ascertain whether there has been compliance with this Act;
- (c) require the production of, examine, and take copies or extracts of, any books, accounts, documents or records;
- (d) interview, either in private or otherwise, as the inspector considers appropriate, any person who the inspector has reasonable grounds to believe is able to provide information that may assist the inspector to perform a function under this Act;
- (e) require any person interviewed under paragraph (d) to answer any question and, if the inspector considers it appropriate, to verify any such answer by statutory declaration;



- (f) require an employer to provide within 28 days a certificate from an auditor containing a statement as to —
    - (i) the number of workers employed by the employer during a specified period; and
    - (ii) the amount of wages, salary, and other forms of remuneration paid by the employer to each worker during that period;
  - (g) require any person to state the person's name and address;
  - (h) require an employer or any of the employer's workers to assist the inspector in the performance of a function under this Act, as the inspector considers necessary;
  - (i) exercise such other powers as may be conferred by the regulations or as may be necessary for the performance of any function under this Act.
- (2) In subsection (1) —

**“auditor”** means a person who is registered as an auditor under Part 9.2 of the Corporations Law.

(3) In exercising any power under this Act an inspector may be accompanied by any other person whose assistance the inspector considers necessary, and that person may do such things as are necessary to assist the inspector in the performance of the inspector's functions, and anything so done is deemed to have been done by the inspector.

### **Interpreters**

**175C.** (1) Where an inspector considers it necessary for the effective performance of a function under this Act, the inspector may be accompanied by an interpreter.

(2) Any inquiry or requirement made to any person by an interpreter on behalf of an inspector is deemed to have been made by the inspector and any answer given to the interpreter is deemed to have been given to the inspector.

### **Offences**

**175D.** (1) A person who —

- (a) obstructs or interferes with the performance by an inspector of any of the inspector's functions under this Act;
- (b) contravenes a requirement made by an inspector under this Act;
- (c) provides to an inspector an answer or information that is false or misleading in a material particular;
- (d) gives any information that is false or misleading in a certificate referred to in section 175B (1) (f);  
or
- (e) directly or indirectly prevents another person from complying with a requirement under this Act,

commits an offence.

Penalty: \$5 000.

(2) A person is not excused from complying with a requirement to answer any question on the ground that the answer to the question might be incriminating or render the person liable to a penalty, but an answer given by the person is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this section arising out of the false or misleading nature of that answer.

”.

(2) A person who —

- (a) before the commencement of section 35, was authorized by the Commission under the former section 103 as an inspector; or
- (b) before the commencement of section 44, was authorized by the Minister under the former section 172,

is to be regarded as having been authorized by the Commission as an inspector under section 175A (1) of the principal Act and as having taken the oath required by section 175A (2).

(3) If —

- (a) a requirement made under the former section 103 by a person referred to in subsection (2) (a); or
- (b) a request or requirement made under the former section 172 or 172A by a person referred to in subsection (2) (b),

has not been complied with when this section commences, it is to be regarded as a requirement made under section 175B of the principal Act and for that purpose this section is taken to have commenced before the request or requirement was made.

(4) In subsections (2) and (3) —

**“former section”** means a section of the principal Act as in force before its repeal by this Act.

### **Heading amended**

**47.** The heading to Part XI of the principal Act is amended by deleting “, **RULES, AND PRACTICE NOTES**”.

### **Section 176 amended**

**48.** Section 176 of the principal Act is amended —

(a) in subsection (1) —

(i) by inserting after paragraph (g) the following paragraph —

“

(h) providing for the allowances to be paid to witnesses, and the circumstances in which, and extent to which, they are to be paid from moneys standing to the credit of the General Fund;

”;

(ii) in paragraph (i), by deleting “or rule”;

(iii) in paragraph (j), by deleting “, the Board,”; and

(iv) by deleting paragraphs (m) and (n);

and

(b) in subsection (2), by deleting “or rule”.

**Section 182 amended**

**49.** Section 182 of the principal Act is amended by inserting after subsection (2) the following —

“

(3) A person contravening subsection (1) commits an offence.

Penalty: \$2 000.

”.

**Section 183 amended**

**50.** Section 183 of the principal Act is amended —

- (a) by inserting after the section designation “**183.**” the subsection designation “(1)”; and
- (b) by inserting at the end of the section the following subsection —

“

(2) A person who purports or agrees to do anything the doing of which is prevented by subsection (1) commits an offence and is liable to a fine of \$5 000.

”.

**Section 188 amended**

**51.** Section 188 of the principal Act is amended by inserting at the foot of the section the following —

“ Penalty: \$5 000. ”.

**Section 192 inserted**

52. After section 191 of the principal Act the following section is inserted in Part XII —

“

**Commission may specify alternative form of sending information**

**192.** (1) Notwithstanding any other provision of this Act, a person who is required or permitted under this Act to send or otherwise provide information to the Commission by means of any notice, notification, particulars, return or other document shall, if the Commission so requests, send or otherwise provide the information in any form specified by the Commission in which it is able to be read, whether with the use of a device or otherwise.

(2) In subsection (1) —

“**Commission**” includes the Executive Director.

”.

**Schedule 1 amended**

53. Schedule 1 to the principal Act is amended —

(a) in clauses 4, 17 (2), and 17 (4), by deleting “an amount prescribed” and substituting the following —

“ the amount applying in accordance with section 5A ”;

(b) by repealing clause 6;

(c) in clause 15, by deleting “a sum prescribed for the purposes of this clause” and substituting the following —

“ the amount applying in accordance with section 5A ”;

and

(d) in clause 19 (1) —

(i) by deleting “all” before “reasonable fares” and substituting the following —

“  
the worker’s vehicle running expenses, if any,  
at the prescribed rate and any other  
”;

and

(ii) by deleting “an amount or amounts prescribed” and substituting the following —

“  
the amount or amounts applying in accordance  
with section 5A  
”.

**Schedule 2 amended**

**54.** Schedule 2 to the principal Act is amended by inserting after item 27 the following item —

“  
27A. Total loss of distal phalanx of each  
finger of the same hand (not including  
the thumb) in one accident . . . . . 31  
”.

**Schedule 5 amended**

55. (1) Schedule 5 to the principal Act is amended in clause 1 (1), in paragraph (a) of the definition of "redemption amount", by inserting after "calendar year of the variation" the following —

“  
 , or if the relevant minimum award rates are not published, the accumulative sum (in the form of the nearest whole number of dollars) obtained by varying the accumulative sum applying on the previous 1 July in accordance with the regulations (with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars)  
”.

(2) Schedule 5 to the principal Act is further amended by inserting after clause 1 the following clause —

“  
**Successive lung diseases to be regarded as one**  
  
1A. If a worker, at the same time or successively, suffers more than one of the disabilities of pneumoconiosis, mesothelioma, or lung cancer, they are to be regarded for the purposes of this Schedule as the same disability, being the disability for which the worker has claimed compensation under this Act, or as a progression of that disability.  
”.

**Schedule 7 amended and transitional provisions**

56. (1) Schedule 7 to the principal Act is amended by inserting after clause 5 (2) the following subclause —

“  
(3) Subject to subclause (2), the Commission may store the results of audiometric tests delivered to it under clause 4 (2) in any form that enables the results stored, or information from



those results, to be read, whether with the use of a device or otherwise.

”.

(2) Clause 5 (3) of Schedule 7 to the principal Act, as inserted in the principal Act by subsection (1), applies to and in relation to the results of audiometric tests whether delivered to the Commission before or after the commencement of that subsection.

(3) Schedule 7 to the principal Act is amended in clause 8 (1) by inserting after “stored” the following —

“ in any form ”.

### **Various amendments to increase penalties**

57. The principal Act is amended in each place mentioned in column 1 of the Table to this section by deleting the amount set out in column 2 and substituting the amount set out in column 3.

TABLE

<i>column 1</i>	<i>column 2</i>	<i>column 3</i>
foot of s. 109 (4a)	\$2 000	\$5 000
foot of s. 109 (7)	\$2 000	\$5 000
foot of s. 161A	\$2 000	\$5 000
twice in s. 170 (1)	\$1 000	\$5 000
foot of s. 171 (3)	\$200	\$2 000
s. 176 (1) (i)	\$200	\$1 000
foot of s. 179 (5)	\$2 000	\$5 000
s. 189	\$500	\$2 000

**PART 3 — WORKERS' COMPENSATION AND  
REHABILITATION AMENDMENT ACT 1993**

**Principal Act**

**58.** In this Part the *Workers' Compensation and Rehabilitation Amendment Act 1993*\* is referred to as the principal Act.

[\* *Act No. 48 of 1993.*]

**Section 6 amended**

**59.** Section 6 (4) of the principal Act is amended by deleting “this” before “Commission” and substituting the following —

“ the ”.

**Section 11 amended**

**60.** Section 11 (2) of the principal Act is amended by inserting after “If” the following —

“  
 , in the circumstances mentioned in subsection (1) (a)  
 and (b),  
 ”.

**PART 4 — OTHER ACTS AMENDED**

**Amendments following from Act No. 48 of 1993**

**61.** Schedule 1 has effect.

**SCHEDULE 1 — CONSEQUENTIAL AMENDMENTS TO  
VARIOUS OTHER ACTS**

[Section 61]

***Constitution Acts Amendment Act 1899***

1. The *Constitution Acts Amendment Act 1899* is amended in Schedule V —

- (a) in Part 1 Division 1, by deleting “Chairman, or Deputy Chairman, of the Workers’ Compensation Board constituted under the *Workers’ Compensation and Rehabilitation Act 1981*.”; and
- (b) in Part 2 Division 1, by deleting “Member, or deputy of a member, of the Workers’ Compensation Board constituted under the *Workers’ Compensation and Rehabilitation Act 1981*.”.

***Police Assistance Compensation Act 1964***

2. The *Police Assistance Compensation Act 1964* is amended in section 6 by deleting “the Workers’ Compensation Board constituted under the *Workers’ Compensation Act 1912*, has under the provisions of this Act exclusive jurisdiction to examine into, hear and determine the question and matter as provided in the former Act, as though the question or matter were a question or matter that arose under that Act; and where the Board exercises that jurisdiction such of the provisions of that Act as are applicable to the case apply, with all necessary modifications” and substituting the following —

“  
the matter is to be referred for conciliation under Part IIIA of the *Workers’ Compensation and Rehabilitation Act 1981* and is to be dealt with under that Act as if it were a dispute that arose under that Act; and such of the provisions of that Act as are capable of applying in relation to the matter apply, with such modifications as are necessary  
”.

***Public Trustee Act 1941***

3. The *Public Trustee Act 1941* is amended in section 37 (3) by deleting paragraph (c) and substituting the following —

“  
(c) Any such sum shall be disbursed by the Public Trustee in accordance with the order pursuant to which it is held, but the Public Trustee has sole discretion as to its investment.  
”.

***Suitors' Fund Act 1964***

4. The *Suitors' Fund Act 1964* is amended in section 3 by deleting the definition of "Court" and substituting the following definition —

"  
    "**Court**" includes a Small Claims Tribunal constituted under the  
        *Small Claims Tribunals Act 1974*;  
"

***Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986***

5. The *Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986* is amended —

(a) in section 3 —

(i) by deleting the definition of "Board"; and

(ii) by inserting before the definition of "Fund" the following definition —

"  
    "**compensation magistrate's court**" has the  
        meaning given to that expression in the  
        *Compensation Act*;  
";

(b) in section 9 (1), by deleting "the Board" and substituting the following —

" a compensation magistrate's court ";

(c) in section 9 (3), by deleting "The Board" and substituting the following —

" A compensation magistrate's court ";

(d) in section 9 (4), by deleting "it applies to an order or determination made" and substituting the following —

" if it had been made by the court "; and

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- (e) in section 10 (1), by deleting “by the Board as if the claim arose under the Compensation Act and the Board may exercise any of its functions under that Act for the purposes of this section” and substituting the following —

“  
under Part IIIA of the Compensation Act as if it were  
a dispute arising under that Act  
”.