

WESTERN AUSTRALIA

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**WORKERS' COMPENSATION AND  
REHABILITATION AMENDMENT  
ACT 1993**

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**No. 48 of 1993**

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

*[Assented to 20 December 1993.]*

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 1993*.

### Commencement

2. (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.

(2) The provisions of Parts 4 and 5 come into operation on such day as is, or days as are respectively, fixed by proclamation.

### Principal Act

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

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

*For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 234 and Acts Nos. 1 and 6 of 1993.]*

## **PART 2 — COMMON LAW DAMAGES ACTIONS**

### ***Division 1 — Workers' Compensation and Rehabilitation Act 1981 amended***

#### **Part IV amended and application provision**

4. (1) Part IV of the principal Act is amended by inserting before section 85 the following heading —

“ ***Division 1 — General*** ”.

(2) Sections 87, 88, 89 and 90 of the principal Act are repealed and the following section is substituted —

“

#### **Costs between solicitor and client in common law actions**

87. (1) This section applies to an action for damages independently of this Act if Division 2 applies to the awarding of damages in the action (whether or not an award of damages is affected).

(2) An agreement is not to be made for a legal practitioner to receive, for appearing for or acting on behalf of a person —

(a) in an action to which this section applies; or

(b) in respect of an application for a declaration under section 11 of the *Workers' Compensation and Rehabilitation Amendment Act 1993*,

any greater reward than is provided for by a determination in force under section 58W of the *Legal Practitioners Act 1893*.

- (3) An agreement is void —
- (a) if it is made contrary to this section; or
  - (b) if it would have been contrary to this section if it had been made after the commencement of section 4 of the *Workers' Compensation and Rehabilitation Amendment Act 1993*.

”

(3) Part IV of the principal Act is amended by inserting after section 93 the following Division —

“

***Division 2 — Constraints on awards of common law damages***

**Definitions for this Division**

**93A.** In this Division —

“**AMA Guides**” means the edition of the Assessment of Disability Guide published by the Western Australian Branch of the Australian Medical Association Incorporated which is prescribed in the regulations;

“**Amount A**” means —

- (a) for the financial year ending on 30 June 1994, the amount of \$200 000; and
- (b) for any subsequent financial year, the nearest multiple of \$1 000 to the amount obtained by varying Amount A for the preceding financial year by

the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences, or if the relevant minimum award rates are not published, the amount obtained by varying Amount A for the preceding financial year in accordance with the regulations (with an amount that is \$500 more than a multiple of \$1 000 being rounded off to the next highest multiple of \$1 000);

**“Amount B”** means —

- (a) for the financial year ending on 30 June 1994, the amount of \$5 000; and
- (b) for any subsequent financial year, the nearest multiple of \$500 to the amount obtained by varying Amount B for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences, or if the relevant minimum award rates are not published, the amount obtained by varying Amount B for the preceding financial year in accordance with the regulations (with an amount that is \$250 more than a multiple of \$500 being rounded off to the next highest multiple of \$500);

**“damages”** does not include —

- (a) any sum required or authorized to be paid under an award or industrial agreement within the meaning of the *Industrial Relations Act 1979*;
- (b) any sum payable under a superannuation scheme or any life or other insurance policy; or
- (c) any amount paid in respect of costs incurred in connection with legal proceedings;

**“future pecuniary loss”** means pecuniary loss other than that which has already been incurred at the time when the amount of that loss is required to be determined by a court;

**“non-pecuniary loss”** means —

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;
- (d) curtailment of expectation of life; and
- (e) bodily or mental harm.

### **Application of this Division**

**93B.** (1) This Division applies to the awarding of damages against a worker's employer independently of this Act in respect of a disability suffered by a worker if —

- (a) the disability was caused by the negligence or other tort of the workers' employer; and

- (b) compensation has been paid or is payable in respect of the disability under this Act, or would have been paid or be payable but for section 22.

(2) This Division applies even if the damages resulting from the negligence or other tort of the workers' employer are sought to be recovered in an action for breach of contract or other action.

(3) This Division does not apply to the awarding of —

- (a) damages to which the *Motor Vehicle (Third Party Insurance) Act 1943* applies;
- (b) exemplary or punitive damages; or
- (c) damages of a class that is excluded by the regulations from the application of this Division.

(4) A reference in this section to the workers' employer includes a reference to a person for whose acts the employer is vicariously liable.

### **Limit on powers of courts**

**93C.** If this Division applies a court is not to award damages to a person contrary to this Division.

### **No damages unless death or serious disability**

**93D.** (1) Damages can only be awarded if the disability results in the death of the worker or it is a serious disability.

(2) A disability is a serious disability if, and only if —

- (a) the degree of disability would, if assessed as prescribed in subsection (3), be 30% or more; or
- (b) the future pecuniary loss resulting from the disability is of an amount that is at least equal to the prescribed amount.

(3) For the purposes of subsection (2) (a), the degree of disability of a worker is to be assessed —

- (a) so far as Schedule 2 provides for such a disability, as a percentage equal to the percentage of the prescribed amount that is provided for by that Schedule 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.

(4) Proceedings in which damages are sought are not to be commenced without the leave of the District Court.

(5) Leave is to be given if —

- (a) the disability results in the death of the worker or the parties agree that the degree of the worker's disability would, if assessed as prescribed in subsection (3), be 30% or more;
- (b) on a reference under subsection (7) or (8) it is determined that the degree of the worker's disability would, if assessed as prescribed in subsection (3), be 30% or more; or
- (c) the court determines that the worker is likely to have future pecuniary loss resulting from the disability of an amount that is at least equal to the prescribed amount.

(6) If there is a dispute as to whether the degree of disability would, if assessed as prescribed in subsection (3), be 30% or more, the question may be referred to the Director.

(7) A question referred to the Director under subsection (6) is to be referred for determination by a medical assessment panel except in a case to which subsection (8) applies.

(8) A question referred to the Director under subsection (6) that relates to a disability mentioned in section 33, 34 or 35 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.

**Restrictions on damages for non-pecuniary loss**

**93E.** (1) The amount of damages to be awarded for non-pecuniary loss is to be a proportion, determined according to the severity of the non-pecuniary loss, of the maximum amount that may be awarded.

(2) The maximum amount of damages that may be awarded for non-pecuniary loss is Amount A, but the maximum amount may be awarded only in a most extreme case.

(3) No entitlement to damages is created by subsection (1) or (2) and those subsections are subject to section 93D and any other law that prevents or limits the awarding of damages.

(4) An issue as to the amount of damages for non-pecuniary loss 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.

**Restrictions on damages for gratuitous provision of home care services**

**93F.** (1) This section limits the damages that may be awarded for the value of gratuitous services of a domestic nature or gratuitous services relating to nursing and attendance that have been or are to be provided to the person in whose favour the award is made by a member of the same household or family as the person.

(2) No damages are to be awarded for the value of the services if the services would have been or would be provided to the person even if the person had not suffered the disability.

(3) If the services are provided or to be provided for not less than 40 hours per week, the amount of damages awarded for their value is not to exceed the amount calculated on a weekly basis at the rate of —

- (a) the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in Western Australia for the relevant quarter; or
- (b) if the Australian Statistician fails or ceases to make the estimate referred to in paragraph (a), the amount fixed by, or determined in accordance with, the regulations.

(4) In paragraph (a) of subsection (3) **“the relevant quarter”** means the quarter in which the services were provided or, if at the date of the award an estimate as referred to in that paragraph is not available to the court for that quarter or the services are yet to be provided, the most recent quarter for which such an estimate is available to the court at the date of the award.

(5) If the services are provided or to be provided for less than 40 hours per week, the amount of damages awarded for their value is not to exceed the amount calculated at an hourly rate of one-fortieth of the weekly rate that would be applicable under subsection (3) if the services were provided or to be provided for not less than 40 hours per week.

(6) If the amount of damages that may be awarded under subsection (3) or (5) is Amount B or less, no damages are to be awarded for the value of the services provided or to be provided.

(7) The issue of whether damages may be awarded for the value of gratuitous services is to be determined by reference to Amount B as in effect on the date on which the determination is made.

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(4) The provisions inserted by subsection (3) have no operation in relation to a cause of action in respect of which legal proceedings have been instituted before 4 p.m. on 30 June 1993 and, regardless of when legal proceedings are instituted, sections 93E and 93F of those provisions have no operation in relation to a cause of action arising wholly before 1 July 1993 but otherwise the provisions inserted by subsection (3) apply to causes of action arising before the commencement of this section in the same way as they apply to causes of action arising after that commencement.

### *Division 2 — Further transitional provisions*

#### **Definitions**

5. (1) In this Division —

**“affected person”** means a person having a notifiable cause;

**“improved statutory benefits”** means the benefits under the principal Act that would be applicable if the amendments made by this Act to Schedule 2 to the principal Act and to the prescribed amount had been made immediately before the date of the accident that caused the injury or the date of the audiometric test that showed that a loss or diminution of the worker’s hearing had been incurred, as the case requires;

**“notifiable cause”** means a cause of action that arose wholly before 1 July 1993 in respect of a disability for which, because of section 93D of the principal Act,

damages are prevented from being awarded other than under this Division;

**“preliminary questions”**, in relation to a notifiable cause, means —

- (a) whether or not a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on that cause; and
- (b) if the relevant employer or insurer would be likely to be found liable for damages, whether or not the damages that a court would be likely to award, but for section 93D of the principal Act, would be significant damages;

**“relevant employer or insurer”**, in relation to a notifiable cause, means the employer against whom the affected person has the cause of action or the person insuring the employer against liability arising out of that cause;

**“significant damages”** means damages of which —

- (a) the amount attributable to non-pecuniary loss; or
- (b) the amount attributable to future pecuniary loss,

is equal to or more than \$25 000.

(2) Unless the contrary intention appears, expressions in this Division that are used in the principal Act have the same respective meanings in this Division as they have in the principal Act.

**Registration of certain causes of action**

6. (1) The Commission is to keep a register containing particulars of notifiable causes registered under this Division and persons who have those causes.

(2) The Commission is to register a notifiable cause if it was notified of the cause before 5 p.m. on 29 July 1993.

(3) The Commission may, not later than 30 June 1994, register a notifiable cause if it is satisfied that there is good reason for notice of the cause not having been given until after 5 p.m. on 29 July 1993.

(4) The functions of this Commission under this section in respect of a notifiable cause are to be performed within 21 days after the day on which it is notified of the cause.

**Appeals for registration**

7. (1) A person seeking to have a notifiable cause registered under section 6 (3) who is dissatisfied with the decision of the Commission may appeal to the Minister against the decision.

(2) The Minister may dismiss or allow the appeal and, if the appeal is allowed, the Commission is to register the cause.

**Certificate of registration**

8. The Commission, upon registering a notifiable cause, is to give to the affected person a certificate to the effect that the cause is registered and within 21 days notify the relevant employer or insurer in writing accordingly.

### **Negotiations with employer or insurer**

9. (1) Within 60 days after the day on which the affected person is given a certificate of registration of a cause of action, the affected person may submit to the relevant employer or insurer details of the claim for damages in respect of the disability from which the cause arose, together with a copy of the certificate.

(2) The employer or insurer may, within 60 days after the day on which details of the claim are submitted in accordance with subsection (1) —

(a) notify the affected person in writing that the employer's liability is accepted and either —

(i) offer to pay to the affected person in settlement of the claim an amount specified in the notice; or

(ii) decline to pay on the grounds that the damages are not significant damages;

or

(b) notify the affected person in writing that the employer's liability is not accepted.

(3) Nothing in a notice under subsection (2) is admissible in court proceedings for the award of damages in respect of the disability.

(4) Without limiting the other matters that may be taken into account by a court but subject to section 12 (3) and (4), in making an order as to costs the court shall have regard to whether or not a person has acted within the time specified in this section.

**Improved statutory benefits available if liability accepted**

10. (1) An affected person who is notified under section 9 that liability is accepted may, whether or not damages are considered to be significant, discontinue proceedings, if any, in respect of the cause and opt for the improved statutory benefits.

(2) An offer made under section 9 (2) (a) (i) to an affected person lapses if the person opts for the improved statutory benefits.

**Consequences of filing certificate in court proceedings**

11. (1) If an affected person —

- (a) has commenced court proceedings in respect of a registered cause (whether the cause was registered before or after the proceedings were commenced); and
- (b) has, within 90 days after the day on which the certificate was given, filed the certificate of registration in the proceedings and given a copy of the certificate to each other party to the proceedings,

the relevant employer or insurer may within 60 days after the day on which the certificate is filed, apply to a District Court Judge for a declaration as to the preliminary questions or either of those questions that is in dispute.

(2) If the relevant employer or insurer does not apply under subsection (1) to a District Court Judge within the time provided by that subsection, the affected person may —

- (a) discontinue the proceedings and opt for the improved statutory benefits; or
- (b) continue the proceedings and enjoy the exemption given by section 13 (1).

(3) If, on an application under subsection (1), the District Court Judge declares that a court would not be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause, this Division has no further application in relation to that cause.

(4) If, on an application under subsection (1), the District Court Judge declares that —

- (a) a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause; and
- (b) the damages that a court would be likely to award but for section 93D of the principal Act would not be significant damages,

this Division has no further application in relation to that cause unless the affected person discontinues the proceedings and opts for the improved statutory benefits.

(5) If, on an application under subsection (1), the District Court Judge declares that —

- (a) a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause; and
- (b) the damages that a court would be likely to award but for section 93D of the principal Act would be significant damages,

the affected person may —

- (c) discontinue the proceedings and opt for the improved statutory benefits; or
- (d) continue the proceedings and enjoy the exemption given by section 13 (1).

### **Offer to settle**

**12.** (1) If the proceedings are continued in the circumstances described in subsection (2) or (5) of section 11, the relevant employer or insurer is to make an offer to settle, or consent to judgment, in the proceedings.

(2) The offer is to be made within 60 days after —

- (a) the last day on which the application under section 11 (1) could have been made; or
- (b) the day on which the declaration under section 11 (5) was made,

as the case requires, unless the proceedings had been commenced less than 120 days before the day by which the offer would otherwise be required to be made in which case the offer is to be made within 120 days after the day on which the proceedings were commenced.

(3) If the offer is not accepted nor withdrawn and the court awards damages in an amount that is not more than 120% of the amount offered, the costs of the proceedings are to be paid by the affected person.

(4) If the court awards damages in an amount that is more than 120% of the amount offered, the costs of the proceedings are to be paid by the relevant employer or insurer.

(5) If an offer is not made as required by this section or an offer is made but withdrawn, a nil amount is taken for the purposes of subsection (4) to have been offered.

### **Exemption from effect of section 93D**

**13.** (1) If proceedings in respect of a cause are continued in the circumstances described in subsection (2) or (5) of section 11,

section 93D of the principal Act has no operation in relation to the cause.

(2) Unless, in the proceedings continued, the court has decided that the disability did not result from the negligence or other tort of the employer, the affected person may, at any time, discontinue the proceedings and opt for the improved statutory benefits.

(3) If the court decides that the relevant employer or insurer is liable for damages but the damages are not significant damages, no damages are to be awarded but the affected person is to be taken to have opted under this Division for the improved statutory benefits.

### **Consequences of opting for improved statutory benefits**

14. (1) An affected person opting for the improved statutory benefits is to do so by notice in writing given to the relevant employer or insurer and, if court proceedings have been commenced, a copy of the notice is to be filed in the proceedings.

(2) If under this Division an affected person opts for the improved statutory benefits, the benefits available to the person under the principal Act are the improved statutory benefits but otherwise this Division has no further application in relation to that cause.

(3) Subsection (2) applies whether or not the full extent of the benefits to which a person would be entitled under the principal Act but for this section had already been received when the person opts for the improved statutory benefits.

### **Time limits for bringing proceedings**

15. (1) If the time limited for bringing proceedings for a notifiable cause would, but for this subsection, expire or have expired at any time after 4 p.m. on 30 June 1993 but before the

day that is 90 days after the day on which a certificate of the registration of that cause under this Division is given, the time for bringing those proceedings is extended to the day that is 90 days after the day on which the certificate is given.

(2) The extension of time given by subsection (1) does not limit any extension given by a court.

#### **Fund to bear cost of declarations**

16. The Commission is to pay from the General Fund to the Consolidated Fund such amount as the Treasurer directs in respect of the cost to the State of dealing with applications for declarations under this Division by a District Court Judge.

#### **Leave not required if certificate filed**

17. Section 93D (4) and (5) of the principal Act do not apply to the commencement of proceedings in respect of a registered cause if the certificate of registration was issued not more than 90 days before the proceedings are commenced and, when the proceedings are commenced, the certificate is filed.

**PART 3 — STATUTORY BENEFITS**

**Section 5 amended**

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

(a) by deleting the definition of “child’s allowance” and substituting the following definition —

“

**“child’s allowance”** in clause 1 (2), (3),  
and (4) means —

- (a) for the financial year ending on 30 June 1982, the amount of \$15.37;
- (b) for any financial year ending after 30 June 1982 but before 1 July 1985, the amount obtained by varying the child’s allowance for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences; and
- (c) for any subsequent financial year, the nearest multiple of 10 cents to the amount obtained by varying the child’s allowance for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year

commences and the last 31 March before the financial year commences, or if the relevant minimum award rates are not published, the amount obtained by varying the child's allowance for the preceding financial year in accordance with the regulations (with an amount that is 5 cents more than a multiple of 10 cents being rounded off to the next highest multiple of 10 cents);

”;

- (b) by inserting after the definition of “mine” the following definition —

“

**“minimum award rate”** means the weighted average minimum award rate for adult males under Western Australian State Awards, as published by the Australian Statistician;

”;

and

- (c) by deleting the definition of “prescribed amount” and substituting the following definition —

“

**“prescribed amount”** means —

- (a) for the financial year ending on 30 June 1994, the amount of \$100 000; and
- (b) for any subsequent financial year, the nearest whole number

of dollars to the amount obtained by varying the prescribed amount for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences, or if the relevant minimum award rates are 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 5 (3) of the principal Act is repealed.

(3) The increase in the prescribed amount effected by subsection (1) has effect on and from 1 July 1993.

### **Schedule 1 amended**

19. (1) Schedule 1 to the principal Act is amended in each of clauses 1 (1) (a), 2 and 5 (1) (a) (i) and (ii) by deleting “85% of”.

(2) The amendments made by subsection (1) have effect on and from 1 July 1993.

(3) Schedule 1 to the principal Act is amended —

(a) in clause 11, by inserting after “Subject to clauses” the following —

“ 11A, ”; and

(b) by inserting after clause 11 the following clause —

“

**Higher rate for first 4 weeks of disability in certain cases**

11A. (1) This clause applies to incapacity for work resulting from a particular disability, and references to the period of incapacity mean, where 2 or more periods of incapacity for work result from the same disability, the total of those periods.

(2) For the purpose of calculating a worker's entitlement to a weekly payment during —

(a) a period of total or partial incapacity for work that is not more than 4 weeks; or

(b) the first 4 weeks of a period of total or partial incapacity for work that is more than 4 weeks,

clause 11 is to be read as if, instead of excluding payment for overtime or for the items referred to in subclause (4) of that clause, it included such payments in the weekly earnings of the worker on the basis specified in subclause (3) of this clause except where or to the extent that their

inclusion is prevented by subclause (5) of this clause.

(3) Subject to subclause (5), the weekly amount to be included as payment for overtime or for the items referred to in clause 11 (4) is the amount per week that the worker was paid for overtime, as referred to in clause 11 (3), and the items referred to in clause 11 (4), averaged over the period of 13 weeks before the period of incapacity commenced.

(4) 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 subclause (3), that part is to be disregarded in calculating the average amount per week that the worker was paid over that period.

(5) An amount is only to be included as payment for overtime or for the items referred to in clause 11 (4) if the amount of the weekly earnings is less than the amount that the Australian Statistician publishes as the full time adult average weekly total earnings in Western Australia for a pay period ending in the month of February preceding the financial year in which the payment is to be made, and if the inclusion of the amount would result in the amount of the weekly earnings exceeding the amount so published, only so much is to be included as would bring the amount of the worker's weekly earnings up to the amount so published.

**Schedule 2 amended**

**20.** (1) Schedule 2 to the principal Act is amended by inserting before the heading "MISCELLANEOUS" the following heading and items are inserted —

"

**BACK, NECK AND PELVIS**

- 36A. Permanent loss of the full efficient use of the back (including thoracic and lumbar spine) . . . . . 60
- 36B. Permanent loss of the full efficient use of the neck (including cervical spine) . . . 40
- 36C. Permanent loss of the full efficient use of the pelvis . . . . . 15

".

(2) The amendments made by subsection (1) have effect on and from 1 July 1993.

**PART 4 — AMENDMENTS CONCERNING DISPUTE  
RESOLUTION AND COMPENSATION  
MAGISTRATE'S COURTS**

**Section 5 amended**

21. Section 5 (1) of the principal Act is amended by inserting in the appropriate alphabetical positions the following definitions —

“

**“compensation magistrate’s court”** means a compensation magistrate’s court established in accordance with Part VI;

**“conciliation officer”** means a conciliation officer appointed in accordance with Division 1A of Part V;

**“Director”** means the Director of Conciliation and Review appointed in accordance with Division 1A of Part V;

**“Directorate”** means the Directorate of Conciliation and Review established in accordance with Division 1A of Part V;

**“dispute resolution body”** means a review officer or compensation magistrate’s court and in sections 84F and 84H includes a conciliation officer;

**“medical assessment panel”** means a medical assessment panel constituted under Part VII;

**“review officer”** means a review officer appointed in accordance with Division 1A of Part V;

”.

**Part IIIA inserted**

**22.** After Part III of the principal Act the following Part is inserted —

“

**PART IIIA — DISPUTE RESOLUTION**

*Division 1 — General*

**Definitions**

**84A.** In this Part, unless the contrary intention appears —

“**conciliation**” means procedures taken by a conciliation officer under Division 2 for the resolution of a dispute;

“**dispute**” means a dispute in connection with a claim for compensation under this Act and includes —

- (a) a dispute as to liability to make or continue to make weekly payments of compensation;
- (b) a dispute between employers as to liability;
- (c) a dispute between insurers as to liability to indemnify an employer;

“**review**” means procedures taken by a review officer under Division 3 for the resolution of a dispute.

### **Exclusive jurisdiction**

**84B.** Proceedings for the resolution of a dispute are not capable of being brought other than under this Part.

### **Dependants**

**84C.** In considering a question as to whether a person who resides outside the State is a dependant of a worker, a dispute resolution body is to require proof by or including documentary evidence that the worker has, wholly or in part as the case may be, supported the person and is not to accept as sufficient proof a statutory declaration or affidavit unsupported by documentary evidence to that effect.

### **Relief or redress not restricted to claim**

**84D.** The granting of relief or redress under this Act is not necessarily to be restricted to the specific claim made nor to the subject matter of the claim.

### **Order as to total liability**

**84E.** (1) Where a dispute resolution body considers that a disability to a worker that is compensable under this Act has resulted in the permanent total incapacity for work of the worker, it may, subject to this section, make such order as to the total liability of the employer for the incapacity as the dispute resolution body thinks proper in the circumstances if —

- (a) an order for redemption of the liability for the incapacity has not already been made under this Act; and

(b) the total weekly payments by way of compensation payable under clause 7 for that disability have reached the prescribed amount.

(2) A dispute resolution body is not to make an order in the exercise of its discretion under subsection (1) unless it considers an order ought to be made, having regard to the social and financial circumstances and the reasonable financial needs of the worker.

(3) The total liability of the employer ordered under this section is not to exceed the lesser of —

(a) the sum of \$50 000; or

(b) weekly payments at the rate to which the worker was entitled at the time when the total weekly payments for the disability of the worker reached the prescribed amount —

(i) for the period of the expectation of life of the worker; or

(ii) if section 56 or Schedule 5 clause 2 applies in respect of the incapacity, up to the date when weekly payments would cease by reason of age,

whichever is the shorter.

(4) In making an order under this section, a dispute resolution body —

(a) is to order weekly payments at such rate as it thinks proper in the circumstances having regard to the matters referred to in subsection (2), but not at a rate that

exceeds the rate to which the worker was entitled at the time when the total weekly payments for the disability of the worker reached the prescribed amount; and

- (b) may order payment of an amount for arrears of such weekly payments from the time when the total weekly payments for the worker's disability reached the prescribed amount to the date of the order.

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

**84F.** (1) A dispute resolution body may order that compensation, which cannot be immediately paid to any person under a legal disability to give an effective discharge for payment, or which is payable to any dependants of a deceased worker, is to be paid to the Commission and the manner in which it is to be applied.

(2) After compensation referred to in subsection (1) is paid application may be made to the dispute resolution body by or on behalf of the person entitled to vary the manner in which it is applied.

**Particular details in order or agreement for a lump sum payment**

**84G.** An order of a dispute resolution body, including a consent order, or an agreement registered under Division 7 of Part III, for a lump sum payment

is to specify the amount of any part of that lump sum that is for one or more of the following —

- (a) weekly payments of compensation, by redemption or otherwise;
- (b) compensation payable under Schedule 2, in which case the percentage loss of use is also to be specified;
- (c) redemption amount under Schedule 5 clause 4;
- (d) supplementary amount under Schedule 5 clause 2, 4 or 8;
- (e) expenses as are provided for in clauses 9, 17, 18, and 19,

as the case requires.

**Dispute resolution body may regard illegal contracts of employment as valid**

**84H.** If in any proceedings for the recovery under this Act of compensation for a disability it appears to a dispute resolution body that the contract under which the disabled worker was engaged at the time when the disability occurred was illegal, the dispute resolution body may, if, having regard to all the circumstances of the case it thinks proper to do so, deal with the matter as if the disabled person had at that time been a worker under a valid contract.

**Requirements for taking proceedings**

**84I.** (1) Proceedings for the recovery under this Act of compensation for a disability are not maintainable unless —

- (a) a notice of the occurrence of the disability has been given in writing in or to the effect of the prescribed form containing substantially the information required as soon as practicable after its happening; and
- (b) the claim for compensation with respect to such disability has been made within 12 months from the occurrence of the disability or, in case of death, within 12 months from the time of death,

but —

- (c) the want of or any defect or inaccuracy in such notice is not a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his or her defence by the want, defect or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the State, or other reasonable cause; and
- (d) the failure to make a claim within the period mentioned in paragraph (b) is not a bar to the maintenance of such proceedings, if it is shown that the employer has not been prejudiced in his or her defence by such failure, or if it is found that the

failure was occasioned by mistake, absence from the State, or other reasonable cause.

(2) Notice in respect of a disability under this Act is to give the name and address of the person disabled, and is to state in ordinary language the cause of the disability and the date and place at which the disability occurred, and is to be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering it at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) When the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering it at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there is more than one office, any one of the offices of such body.

(5) When the employer is —

- (a) the Crown in right of the State, notice in respect of a disability under this Act is to be served on the State Crown Solicitor, at Perth, or the manager of the work on which the worker was employed at the time of the accident;
- (b) the Governor under the *Governor's Establishment Act 1992*, notice in respect of a disability under this Act is to be served on the Official Secretary within the meaning of that Act;

- (c) the President of the Legislative Council, notice in respect of a disability under this Act is to be served —
  - (i) in the case of a worker who is a member of the Department of the Legislative Council, on the Clerk of the Legislative Council; or
  - (ii) in the case of a worker who is an electorate officer, on the Director-General;
  
- (d) the Speaker of the Legislative Assembly, notice in respect of a disability under this Act is to be served —
  - (i) in the case of a worker who is a member of the Department of the Legislative Assembly, on the Clerk of the Legislative Assembly; or
  - (ii) in the case of a worker who is an electorate officer, on the Director-General;
  

or

  
- (e) the President of the Legislative Council and the Speaker of the Legislative Assembly, acting jointly, notice in respect of a disability under this Act is to be served, in the case of a worker who is a member of —
  - (i) the Department of the Parliamentary Reporting Staff, on the Chief Hansard Reporter;

- (ii) the Department of the Parliamentary Library, on the Parliamentary Librarian; or
- (iii) the Joint House Department, on the Executive Officer of the Joint House Department,

as the case requires.

(6) A reference in subsection (5) (c), (d) or (e) to an expression that is defined in the *Parliamentary and Electorate Staff (Employment) Act 1992* is a reference to that expression as so defined.

#### **Worker making statement to employer or insurer**

**84J.** Where a worker, after a disability has occurred, makes a statement in writing, in relation to the disability to the employer of the worker or to an insurer or to any person acting on behalf of the employer or insurer, that statement is not to be admitted in evidence if tendered by the employer or insurer or used by the employer or insurer in proceedings before a dispute resolution body unless the employer or insurer has at least 28 days before the hearing of those proceedings supplied to the worker or to a solicitor or agent acting on behalf of the worker in the proceedings a copy in writing of the statement.

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

**84K.** (1) A worker who has suffered a disability, or such a worker's solicitor or agent, may request the worker's employer at the time the disability occurred,

or that employer's insurer, to provide the person making the request with a copy of such relevant documents as are in the possession of or under the control of the employer and the insurer.

(2) A request under subsection (1) may be made at any time after the occurrence of the disability and before the matter is referred for conciliation.

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

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

- (a) any contract of service or apprenticeship to which the worker is a party;
- (b) any contract for service to which the worker is a party;
- (c) records of wages or other remuneration paid to the worker;
- (d) any report relevant to the disability by a medical practitioner who has treated the worker for the disability;
- (e) any report by a medical practitioner who has conducted tests or investigations on the worker in relation to the disability;
- (f) any report by a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (d) or (e) in connection with treatment of, or tests related to, the disability;
- (g) any report by a vocational rehabilitation provider in relation to the worker;

- (h) any notice of occurrence of the disability given under section 84I (1) (a);
- (i) any claim for compensation with respect to the disability made under section 84I (1) (b).

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

### **Evidence of communication between worker and officer of Commission**

**84L.** Evidence of any communication between a worker and a person employed by the Commission and acting in the capacity of a social worker or rehabilitation counsellor is not admissible in proceedings before a dispute resolution body unless, during the course of the proceedings, the worker consents to the evidence being so admitted.

### **Payment of compensation awarded**

**84M.** Any sum awarded as compensation, unless paid into the custody of the Commission and in the absence of any order, is to be paid on the receipt of the person to whom it is payable under any agreement, award, or order.

## ***Division 2 — Conciliation***

### **Referral for conciliation**

**84N.** Any party to a dispute may, by application, refer the dispute to the Director for conciliation.

### **Allocation of matters**

**84O.** The Director is to make arrangements as to the conciliation officer who is to conciliate in connection with a particular dispute or class of disputes referred for conciliation.

### **When and how conciliation is to take place**

**84P.** (1) Conciliation by a conciliation officer is to commence within 14 days after the day on which a dispute is referred to the Director for conciliation.

(2) The conciliation officer is to act fairly, economically, informally and quickly in making all reasonable efforts to bring the parties to the dispute to agreement.

(3) The conciliation officer is to act according to the substantial merits of the case without regard to technicalities or legal forms or precedent.

### **Powers**

**84Q.** (1) The conciliation officer may require a party to the dispute to —

- (a) attend at a meeting with the conciliation officer;
- (b) answer questions put by the conciliation officer;
- (c) produce documents to the conciliation officer, or consent to another person who has relevant documents producing them to the conciliation officer;

- (d) attend at a conciliation conference at which the conciliation officer and any other party to the dispute is present.

(2) During conciliation a person is not entitled to be represented by a legal practitioner but the conciliation officer and each other party to the dispute may agree to the person being so represented.

### **Medical issues**

**84R.** (1) If required to do so under Part VII, a conciliation officer is to refer a question as to the nature or extent of a disability, or as to whether a disability is permanent or temporary, for determination by a medical assessment panel.

(2) Without limiting subsection (1), that subsection applies to questions as to the loss of, or the permanent loss of the efficient use of, any of the parts or faculties of the body referred to in column 1 of Schedule 2, or to the degree of that loss.

### **Medical and other expenses**

**84S.** A conciliation officer may order an employer or insurer to pay to a worker any sum payable under clause 17 if the amount of the payment does not exceed 2% of the prescribed amount.

### **Interpreters**

**84T.** (1) Where a person who is involved in a conciliation as a party or in any other capacity is not reasonably fluent in English, the person may communicate through an interpreter.

(2) In a conciliation, a person may present any written submission or evidence in a language other than English if it is accompanied by a translation into English and a declaration on oath by the translator to the effect that the translation accurately reproduces in English the contents of the original document.

### **Failure to attend**

**84U.** If a party to a dispute who has been required to attend before a conciliation officer does not do so, the absence of the person does not preclude the making of any order that could be made if the person had attended.

### **Payments under direction etc. not admission of liability**

**84V.** (1) The fact that a person pays or continues to pay compensation in accordance with an order or recommendation under this Division or does not proceed for the review of such an order is not an admission of liability by the person.

(2) Revocation of, or refusal to revoke, an order under this Division is not a finding as to liability in respect of the matter concerned.

### **Offences**

**84W.** (1) A person who, in connection with a conciliation, makes a statement that the person knows to be false or misleading in a material particular commits an offence and is liable to a fine of \$2 000.

(2) A person who fails to comply with a requirement or order of a conciliation officer commits an offence and is liable to a fine of \$2 000.

### **Costs**

**84X.** Each party to a dispute referred for conciliation bears the party's own costs.

### **Review**

**84Y.** (1) A conciliation officer is to refer a dispute for review if any of the parties so requests.

(2) If a conciliation officer refers a dispute for review the conciliation officer may make an order that weekly payments be made by the employer to the worker.

(3) A conciliation officer is not to order that weekly payments be made for a period that exceeds 10 weeks.

(4) A conciliation officer may vary or revoke an order previously made by that officer under this Division.

### ***Division 3 — Review***

#### **Allocation of matters**

**84Z.** The Director is to make arrangements as to the review officer who is to deal with a particular matter or class of matters referred for review.

### **When and how review is to take place**

**84ZA.** (1) Review by a review officer is to commence within 14 days after the day on which a matter is referred for review, or as soon as practicable thereafter.

(2) The review officer is to act fairly, economically, informally and quickly in resolving the dispute whether by bringing the parties to agreement or otherwise.

(3) The review officer is to act according to the substantial merits of the case without regard to technicalities or legal forms or precedent.

(4) Subject to the rules, the review officer may give directions as to the conduct of the proceedings.

### **Powers**

**84ZB.** (1) The review officer may —

- (a) by summons signed by the review officer, require —
  - (i) any person to attend before the review officer;
  - (ii) the production before the review officer of any document;
- (b) inspect any document produced, and retain it for such reasonable period as it is required, and make copies of the document or any of its contents;
- (c) require any person to swear to truly answer all questions relating to a matter

before the review officer that are put to the person by the review officer (and for that purpose the review officer or another officer employed in the Directorate and assisting the review officer may administer any oath or affirmation); and

- (d) require any person attending before the review officer (whether or not the person has been summoned to attend) to answer any relevant question put by the review officer.

(2) A person is not excused from complying with a requirement under subsection (1) to swear, or 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 Part arising out of the false or misleading nature of that answer.

(3) In the course of the review the review officer may —

- (a) receive in evidence any transcript of evidence in proceedings before a court or other person or body acting judicially and draw any conclusion of fact from the transcript; and
- (b) adopt, as the review officer thinks fit, any finding, decision, or judgment of a court or other person or body acting judicially that is relevant to the review.

## **Offences**

**84ZC.** A person who —

- (a) having been served with a summons to attend before the review officer, fails without reasonable excuse (proof of which lies upon that person) to attend in obedience to the summons;
- (b) having been served with a summons to produce before the review officer any document, fails without reasonable excuse (proof of which lies upon that person) to comply with the summons;
- (c) misbehaves before the review officer, wilfully insults the review officer, or interrupts the proceedings;
- (d) fails without reasonable excuse (proof of which lies upon that person) to swear, or to answer any question, when required to do so by the review officer;
- (e) in connection with a review, makes a statement that the person knows to be false or misleading in a material particular; or
- (f) fails to comply with a requirement or order of a review officer,

commits an offence and is liable to a fine of \$2 000.

## **Rules of evidence not to apply**

**84ZD.** (1) The review officer is not bound by rules of evidence, but may inform himself or herself on any matter in such manner as the review officer thinks fit.

(2) The review officer may refer any technical or specialized matter to an expert and accept that expert's report as evidence.

(3) The review officer who obtains an expert's report is to call the expert for examination on the subject matter of the report if a party to the proceedings so requests.

### **Representation permitted**

**84ZE.** A party is entitled to be represented by a legal practitioner at any proceedings before a review officer if —

- (a) all parties to the dispute agree to legal practitioners appearing and being heard at the proceedings; or
- (b) the review officer is of the opinion that a question of law is raised or is likely to be raised or argued at the proceedings and allows legal practitioners to appear and be heard at the proceedings.

### **Orders generally**

**84ZF.** (1) The review officer may make such order as may be appropriate for giving effect to a decision made in the review.

(2) The review officer may confirm, vary or revoke an order made by a conciliation officer.

### **Weekly payments**

**84ZG.** If a review officer determines that a person ordered by a conciliation officer to make weekly payments is not liable to make payments at all or is liable to make payments at a lesser rate —

- (a) the worker who received the payments is not required to make a refund unless the review officer so orders under paragraph (b);
- (b) the review officer may —
  - (i) order the worker concerned to refund the whole or a specified part of the payments if satisfied that the claim for compensation was wholly or partly fraudulent or was made without reasonable cause; or
  - (ii) order any other party to the dispute whom the review officer determines was liable for the whole or any part of the payments to reimburse the person who made the payments.

### **Medical issues**

**84ZH.** (1) If required to do so under Part VII, a review officer is to refer a question as to the nature or extent of a disability, or as to whether a disability is permanent or temporary, for determination by a medical assessment panel.

(2) Without limiting subsection (1), that subsection applies to questions as to the loss of, or the permanent loss of the efficient use of, any of the parts

or faculties of the body referred to in column 1 of Schedule 2, or to the degree of that loss.

### **Reasons for decisions**

**84ZI.** Where, within 14 days after the review officer makes a decision or order in the proceedings, a party to the proceedings requests the review officer to do so, the review officer is to give that party, in writing —

- (a) the officer's findings of fact;
- (b) the reasons for the officer's decision; and
- (c) information as to appeal rights that may be available to the parties under this Act.

### **Interpreters**

**84ZJ.** (1) Where a person who is involved in a review as a party or in any other capacity is not reasonably fluent in English, the person may communicate through an interpreter.

(2) In a review, a person may present any written submission or evidence in a language other than English if it is accompanied by a translation into English and a declaration on oath by the translator to the effect that the translation accurately reproduces in English the contents of the original document.

### **Failure to attend**

**84ZK.** If a party to a dispute who has been required to attend before a review officer does not do so, the absence of the person does not preclude the making of

any order that could be made if the person had attended.

### **Costs**

**84ZL.** (1) Each party to the proceedings bears the party's own costs unless the review officer orders otherwise.

(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 proceedings, 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.

### **Case may be referred to compensation magistrate's court**

**84ZM.** Where a question of law arises in the proceedings or the review officer believes that it is appropriate to do so because of the complexity of issues, the officer may elect not to make an order and, in accordance with the rules of court, refer the matter to a compensation magistrate's court for determination.

## Appeal

**84ZN.** (1) Subject to this section, a decision or order of a review officer is not open to question or review in any court, and proceedings by or before a review officer may not be restrained by injunction, prohibition, or other process or proceedings in any court or by removal by *certiorari* or otherwise in any court.

(2) A party to the proceedings who is dissatisfied with a decision or order of the review officer may, where a question of law is involved, appeal to a compensation magistrate's court against the decision or order.

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

(4) Without limiting any other powers of the court on dealing with the appeal, where under this section an appeal has been made, or an application has been made for leave to appeal, against a decision or order, the review officer or court may —

- (a) suspend the operation or effect of the order or decision until the determination of the appeal;
- (b) revoke any suspension ordered by it under paragraph (a).

***Division 4 — Determination by compensation  
magistrate's court***

**Referred matters**

**84ZO.** On hearing a matter referred to it under section 84ZM, a compensation magistrate's court has jurisdiction to make such orders as it thinks fit with regard to the matter and to the costs of and incidental to the hearing and determination of it.

**Appeal**

**84ZP.** On hearing an appeal made under section 84ZN, a compensation magistrate's court may —

- (a) affirm, vary, or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that should have been made in the first instance;
- (b) make any further or other order, as to costs or otherwise, as it thinks fit.

**Costs as between representative and client**

**84ZQ.** (1) 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 proceedings before a compensation magistrate's court, 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.

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

### **Medical issues**

**84ZR.** (1) If required to do so under Part VII, a compensation magistrate's court is to refer a question as to the nature or extent of a disability, or as to whether a disability is permanent or temporary, to a medical assessment panel.

(2) Without limiting subsection (1), that subsection applies to questions as to the permanent or other loss of the efficient use of any part or faculty of the body referred to in column 1 of the table set out in Schedule 2.

### **Time for application**

**84ZS.** An application under section 84ZT is to be made within 6 years from the time of the alleged contravention or failure to comply.

### **Enforcement of orders etc. upon conciliation or review**

**84ZT.** (1) Where a person fails to comply with an order made by a conciliation officer or review officer —

(a) the Director; or

- (b) a worker, a dependant of a worker, an insurer, an employer or any other person to whom the order applies,

may apply in the prescribed manner to a compensation magistrate's court for the enforcement of the order.

(2) On the hearing of an application under subsection (1) the compensation magistrate's court may, by order —

- (a) if a contravention or failure to comply is proved, issue a caution or impose such penalty as the compensation magistrate's court considers appropriate but not exceeding \$1 000 in the case of a body corporate and \$250 in any other case; or
- (b) dismiss the application,

and, subject to subsection (3), the order may in any case be with or without costs.

(3) In proceedings under this section costs are not to be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the compensation magistrate's court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.

(4) An order as to costs shall specify the name of the person liable to pay the costs and the name of the person to whom the costs are payable.

(5) Where in any proceedings brought under subsection (1) against an employer it appears to the compensation magistrate's court that a worker employed by that employer has not been paid by that

employer the amount which the worker was entitled to be paid under an order of a review officer, the compensation magistrate's court is to, subject to subsection (6), order that employer to pay to that worker the amount by which the worker has been underpaid.

(6) An order may only be made under subsection (5) in respect of any amount relating to a period not being more than 6 years prior to the commencement of the proceedings.

(7) Unless otherwise prescribed the practice and procedure to be observed before a compensation magistrate's court under this section are those observed in civil proceedings.

### *Division 5 — Cases stated and appeals to Supreme Court*

#### **Magistrate may state case**

**84ZU.** (1) When a question of law arises in any proceedings before a compensation magistrate's court under Division 4, the court may state a case for the decision of the Supreme Court on that question.

(2) A case may be stated under this section notwithstanding that an order, direction, or decision has been made or given by the compensation magistrate's court.

#### **Indemnity as to costs**

**84ZV.** (1) Where a compensation magistrate's court has stated a case for the decision of the Supreme Court, the compensation magistrate's court may in its

absolute discretion indemnify any of the parties against the costs or part of the costs of the proceedings resulting from a case being stated.

(2) Any moneys payable to a party by reason of an indemnity under subsection (1) when certified by the magistrate's court as payable are to be paid by the Commission out of the General Fund.

### **Appeal**

**84ZW.** A party to proceedings before a compensation magistrate's court under Division 4 may, by leave of the Supreme Court, appeal to the Supreme Court against a decision of the compensation magistrate's court on a question of law.

### **Full Court**

**84ZX.** If a case is stated or an appeal is made under this Division, it is to be heard and determined by the Full Court of the Supreme Court.

### **Procedure and jurisdiction**

**84ZY.** (1) An appeal under this Division may be made in such manner and within such time as an appeal from a judgment or order of the Supreme Court or a Judge of the Supreme Court may be made to the Full Court and in all respects the jurisdiction, powers and subject to Rules of Court the practice and procedure of the Full Court in the appeal shall be the same as though the appeal were an appeal to the Full Court from a judgment or order of the Supreme Court or a Judge of the Supreme Court.

(2) The Full Court has jurisdiction to hear and determine the appeal accordingly and to make such orders as it thinks fit with regard to the appeal and to the costs of and incidental to the hearing and determination of it.

(3) The Full Court has jurisdiction to consider and determine any case stated and to make such orders as it thinks fit with regard to that case and to the costs of and incidental to the consideration and determination of it.

***Division 6 — Enforcement of compensation  
magistrate's court orders etc.***

**Regulations**

**84ZZ.** Subject to sections 84ZZA and 84ZZB, a judgment, order, direction or other decision of a compensation magistrate's court made under Division 4 may be enforced in accordance with regulations made under section 176 (1).

**Property liable to execution**

**84ZZA.** (1) Subject to this section, all property belonging to any individual or body bound by an order or direction of a compensation magistrate's court, including, in the case of a body, property held by trustees for such a body, is available in or towards the satisfaction of the order or direction.

(2) All goods protected from seizure on an execution under a judgment of a Local Court are protected against seizure under this Act to the extent to which such goods are from time to time protected from such seizure under the *Local Courts Act 1904*.

(3) A compensation magistrate's court may, on the application of the individual or body entitled to claim the enforcement of an order or direction, make such order or give such direction, or both, as are considered necessary, and any such order or direction, or both has effect accordingly.

**Sheriff, bailiffs, and members of Police Force to be officers of court**

**84ZZB.** (1) The Sheriff of Western Australia, the bailiff of the District Court, the bailiffs of Local Courts, and all members of the Police Force are deemed to be officers of a compensation magistrate's court, and are to exercise the powers and perform the duties prescribed under this Act.

(2) For the purpose of carrying out the provisions of this Act, in relation to any proceedings before a compensation magistrate's court and in relation to the making, carrying out and enforcing of any order or direction of a compensation magistrate's court, officers of a compensation magistrate's court are, except where otherwise provided in the regulations, to exercise the same powers and perform the same duties as they may exercise and perform in relation to any judgment, order, conviction, or direction of the Supreme Court or any Local Court or court of summary jurisdiction.

(3) All prison officials are to obey and carry out the writs, warrants, and orders of a compensation magistrate's court so far as they are addressed to them.

(4) Any writ or warrant of execution may, subject to this Act, be declared, by regulations, to have effect against any property (including land under the *Transfer of Land Act 1893*) as a writ of *feri facias*,

and it has effect in respect of such property accordingly.

”

### **Division 1A inserted**

23. Part V of the principal Act is amended by inserting after Division 1 the following Division —

“

### ***Division 1A — Conciliation and Review Directorate***

#### **Establishment**

104A. (1) There is to be established a Conciliation and Review Directorate consisting of the Director of Conciliation and Review, and such conciliation officers, review officers, and other staff as are required for the performance of the functions given by this Act to those officers.

(2) The officers in the Conciliation and Review Directorate are to be officers of the Commission appointed in accordance with section 177.

(3) A person is not to become the Director, a conciliation officer, or a review officer without the approval of the Minister.

#### **Responsibility**

104B. (1) The Director is the principal officer of the Directorate and is responsible to the Executive Director in administrative matters concerning the Directorate but in matters concerning the resolution of

disputes the Director is responsible directly to the Minister.

(2) Neither a conciliation officer nor a review officer is subject to direction as to the decision to be given in a particular matter.

”

### **Part VI repealed and a Part substituted**

24. Part VI of the principal Act is repealed and the following Part is substituted —

“

### **PART VI — COMPENSATION MAGISTRATE'S COURTS**

#### **Establishment of compensation magistrate's courts**

112. (1) The Governor may by proclamation establish a compensation magistrate's court at any place within the State.

(2) A compensation magistrate's court is a court of record and has an official seal.

(3) The Governor may by proclamation disestablish a compensation magistrate's court.

(4) When a compensation magistrate's court is disestablished, all proceedings pending in the court and all records of the court are to be transferred to such other compensation magistrate's court as the Governor directs in the proclamation referred to in subsection (3).

(5) Notwithstanding subsection (1), a compensation magistrate's court may sit and act at any time and place notified in the prescribed manner.

### **Constitution of compensation magistrate's courts**

113. (1) A compensation magistrate's court is to be constituted by a compensation magistrate.

(2) The Governor may, on the recommendation of the Chief Stipendiary Magistrate, appoint a person holding office as a magistrate to be a compensation magistrate.

(3) A compensation magistrate ceases to hold office upon —

- (a) ceasing to hold office as a magistrate; or
- (b) resigning office by written notice addressed to the Governor.

(4) The Governor may, on the recommendation of the Chief Stipendiary Magistrate, appoint a person to act in the office of a compensation magistrate for any period during which that compensation magistrate is, or is expected to be, for any reason unable to perform the functions of a compensation magistrate.

(5) If the compensation magistrate's court has not completed the hearing and determination of any proceeding or application before the magistrate constituting that court ceases to be a compensation magistrate or acting compensation magistrate, that magistrate is deemed notwithstanding that cessation to continue to hold office until that hearing and determination is completed.

(6) In this section “**Chief Stipendiary Magistrate**” has the meaning given by the *Stipendiary Magistrates Act 1957*.

### **Clerks of compensation magistrate's court**

114. (1) Each compensation magistrate's court is to have a clerk who is an officer of the Public Service.

(2) A compensation magistrate may perform any function of a clerk of a compensation magistrate's court constituted by that compensation magistrate.

(3) The clerk of a compensation magistrate's court has in relation to that court like powers to those of a clerk of petty sessions acting under the *Justice Act 1902* in relation to the court of petty sessions to which the clerk is attached.

### **Jurisdiction of compensation magistrate's courts**

115. (1) A compensation magistrate's court is a court of summary jurisdiction with jurisdiction to —

- (a) hear and determine any case referred under section 84ZM;
- (b) hear and determine any appeal under section 84ZN;
- (c) hear and determine any application made to it under and in accordance with this Act; and
- (d) hear and determine complaints under section 188A.

(2) A compensation magistrate's court has in the exercise of its jurisdiction under this Act like powers to those of a magistrate sitting as a court of summary jurisdiction.

(3) In the absence of evidence to the contrary, anything done by a compensation magistrate's court is to be taken to have been done within its jurisdiction.

### **Compensation magistrate's court to determine on substantial merits**

116. In the hearing and determination of matters referred to in section 115 (1) (a), (b) and (c) a compensation magistrate's court is to act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms and is not bound by legal precedent or its own decisions and rulings in any other matter nor by any rules of evidence but may inform its mind on any matter in such a way as it regards as just.

### **Determination final**

117. Subject to this Act, a determination of a compensation magistrate's court is final and conclusive and is not open to question or review in any court, and proceedings by or before a compensation magistrate's court may not be restrained by injunction, prohibition, or other process or proceedings in any court or by removal by *certiorari* or otherwise in any court.

**Compensation magistrate's court may reconsider decision**

118. Nothing in section 117 prevents a compensation magistrate's court from reconsidering any matter which has been dealt with by it or from revoking, altering, or amending any decision or order previously made, all of which a compensation magistrate's court has authority to do.

**Fund to bear cost of compensation magistrate's courts**

119. The Commission is to pay from the General Fund to the Consolidated Fund such amount as the Treasurer directs in respect of the cost to the State of providing compensation magistrate's courts.

”

**Part VII repealed and a Part substituted**

25. Part VII of the principal Act is repealed and the following Part is substituted —

“ **PART VII — MEDICAL ASSESSMENT PANELS**

**Exclusion**

145. A medical assessment panel does not have jurisdiction to deal with a question that is within the jurisdiction of a medical panel established under section 36.

**Questions that have to be referred**

145A. (1) A question is to be referred for determination by a medical assessment panel under

section 84R, 84ZH or 84ZR if and, subject to subsection (2), only if —

- (a) there is a conflict of medical opinion on the question between —
  - (i) a medical practitioner engaged by the worker; and
  - (ii) a medical practitioner provided and paid by the employer, or each medical practitioner so provided and paid if there is more than one of them;

and

- (b) one of the parties wishes the proceedings to continue.

(2) A question as to the degree of permanent loss of the full efficient use of the back, neck or pelvis is to be referred for determination by a medical assessment panel under section 84R, 84ZH or 84ZR if —

- (a) the employer does not agree to pay an amount claimed by the worker by way of an election made for the purposes of section 24; and
- (b) the worker requests that the question be so referred.

### **Register for panel membership**

**145B.** (1) The Director is to keep a register containing the names of medical practitioners approved under subsection (2) who are willing to be selected for a medical assessment panel.

(2) The Minister may, with the consent of the practitioner and after consultation with the Western Australian Branch of the Australian Medical Association Incorporated and other medical profession organisations, approve of the name of a medical practitioner being included in the register.

(3) A practitioner is only eligible to be registered under this section if practising in a clinical capacity.

### **Panel to be constituted**

**145C.** (1) On a question being referred for determination by a medical assessment panel, the Director is to select 2 or 3 medical practitioners who are registered under section 145B to be the panel that is to determine the question.

(2) Of the members of the panel —

(a) at least one is to be a specialist in the particular branch of medicine or surgery that is relevant to the question; and

(b) at least one is to be a general practitioner.

(3) A medical practitioner who has treated or examined the worker concerned in a professional capacity is not eligible to be to be a member of the panel.

(4) The Director is to nominate one of the members of the panel to be its Chairman.

### **Procedures**

**145D.** (1) In determining the question the panel is to act speedily and informally, and in accordance with

good conscience, without regard to technicalities or legal forms and is not bound by rules of practice nor evidence.

(2) The panel may, for the purposes of assisting it in determining the question, require the worker concerned to —

- (a) attend before the panel;
- (b) answer questions put by the panel;
- (c) produce documents to the panel, or consent to another person who has relevant documents producing them to the panel;
- (d) submit to medical examination by the panel,

but the panel is not authorized to treat the worker or require that the worker be treated.

(3) Powers given by subsection (2) to a panel are to be exercised in private unless the worker otherwise consents, and any information or document obtained from, or by the consent of, the worker is not to be disclosed or given to any other person, except the person from whom it was obtained, without the consent of the worker.

(4) A person is not entitled to be represented in proceedings before a medical panel.

(5) If the worker concerned, without reasonable excuse (proof of which is on the worker) —

- (a) refuses to comply with a requirement made by the panel under subsection (2) (a), (b) or (c); or

- (b) on being required to submit to examination by the panel, refuses to do so or in any way obstructs the examination,

the Director may issue a certificate to that effect whereupon the worker's right to compensation or to take or prosecute any proceeding under this Act or, in the case of a worker in receipt of a weekly payment, to that weekly payment, is suspended until the Director certifies that the suspension is removed.

### **Determinations**

**145E.** (1) If the members of the panel are not in unanimous agreement as to a question, the question is to be determined in accordance with the opinion of at least 2 members of the panel.

(2) The determination is to be made as soon as is practicable but in any event within 28 days after the day on which a medical examination of the worker concerned is carried out by the panel.

(3) The determination and the reasons for making it are to be given in writing signed by the chairman in a form approved by the Director, and are to be given to the Director within 7 days after the day on which the determination is made.

(4) The Director is to give the determination and reasons to the person who referred the question to the panel and the worker concerned within 3 days after the day on which the Director receives them.

(5) Unless rescinded under section 145F, the determination, or if the determination is varied under that section the determination as varied, is final and binding on the worker and his employer and on any court or tribunal hearing a matter in which any such

determination is relevant and the written determination given under subsection (3) is, in the absence of evidence that the determination was so rescinded or varied, conclusive evidence as to the matters determined.

### **Review**

**145F.** (1) If at least 60 days after the determination is made a person who is affected by the determination satisfies the Director that there is any new evidence that could not have been submitted to the panel and would be likely to affect the determination of the question if it were to be reconsidered by the panel the Director may again refer the question to the panel.

(2) The panel may refer to anything that was available to it when previously determining the matter as well as doing anything that it could do if the question were referred to it for determination in the first instance.

(3) The panel may vary its previous determination or rescind it and make a new determination.

(4) Sections 145D and 145E and this section also apply in relation to a determination under this section.

### **Remuneration**

**145G.** (1) A member of a medical assessment panel is entitled to such fees and allowances as may be determined by the Minister.

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

”

### **Section 188A inserted**

26. After section 188 of the principal Act the following section is inserted —

“

#### **Exclusive jurisdiction for offences**

**188A.** (1) A compensation magistrate's court has jurisdiction to hear and determine under the *Justices Act 1902* complaints for any offences against this Act; and that jurisdiction is exclusive of any other court except where an appeal lies to that other court.

(2) Part VIII of the *Justices Act 1902* applies to matters referred to in subsection (1).

(3) Unless otherwise prescribed, the practice and procedure of a court of summary jurisdiction apply to and in relation to the exercise of the powers and jurisdiction of a compensation magistrate's court under this section.

(4) An order or other decision of a compensation magistrate's court made in the exercise of its jurisdiction under this section is to be enforced in accordance with the *Justices Act 1902*.

”

**Transitional provision as to proceedings**

**27.** (1) On the commencement of section 24, all proceedings pending before the Board are to be transferred to the Director and dealt with as if they had been referred for conciliation.

(2) In this section —

**“Board”** has the meaning given to that expression by the principal Act as in force immediately before the commencement of section 24;

**“Director”** has the meaning given to that expression by the principal Act as amended by section 21.

**Other transitional, consequential and incidental matters**

**28.** (1) Schedule 1 has effect.

(2) Regulations may be made amending the principal Act (including any provision amended by Schedule 1) to deal with any matter of a transitional nature that arises from the amendments made by this Part or to deal with any matter that is consequential on or incidental to those amendments.

**PART 5 — MISCELLANEOUS AMENDMENTS**

**Section 5 amended**

**29.** (1) Section 5 (1) of the principal Act is amended in the definition of “disability” —

- (a) in paragraphs (c) and (d), by deleting “recognizable” and substituting in each place the following —

“ significant ”; and

- (b) by deleting “applies;” in paragraph (e) and substituting the following —

“  
applies,  
but does not include a disease caused by stress if the stress wholly or predominantly arises from a matter mentioned in subsection (4) unless the matter is mentioned in paragraph (a) or (b) of that subsection and is unreasonable and harsh on the part of the employer;  
”

(2) Section 5 (1) of the principal Act is amended in the definition of “relevant employment”, in paragraphs (c) and (d), by deleting “recognizable” and substituting in each place the following —

“ significant ”.

(3) Section 5 of the principal Act is amended by inserting the following subsections —

“  
(4) For purposes of the definition of “disability”, the matters are as follows —

- (a) the worker’s dismissal, retrenchment, demotion, discipline, transfer or redeployment;

- (b) the worker's not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to the employment; and
- (c) the worker's expectation of —
  - (i) a matter; or
  - (ii) a decision by the employer in relation to a matter,

referred to in paragraph (a) or (b).

(5) In determining whether the employment contributed, or contributed to a significant degree, to the contraction, recurrence, aggravation or acceleration of a disease for purposes of the definitions of "disability" and "relevant employment", the following shall be taken into account —

- (a) the duration of the employment;
- (b) the nature of, and particular tasks involved in, the employment;
- (c) the likelihood of the contraction, recurrence, aggravation or acceleration of the disease occurring despite the employment;
- (d) the existence of any hereditary factors in relation to the contraction, recurrence, aggravation or acceleration of the disease;

- (e) matters affecting the worker's health generally; and
- (f) activities of the worker not related to the employment.

”

**Section 19 repealed and a section substituted**

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

“

**Personal injury by accident arising out of or in course of employment**

**19.** (1) Without limiting the generality of section 18, a worker shall be treated as having suffered personal injury by accident arising out of or in the course of the worker's employment if the injury occurs —

- (a) during the worker's attendance at a place for educational purposes if —
  - (i) the attendance is required by the worker's terms of employment or apprenticeship; or
  - (ii) the attendance is for the purpose of, or in connection with, the worker's employment with the employer and the employer agrees to the attendance;
- (b) during the attendance at a place for treatment or attendance of a kind referred to in clause 17 of Schedule 1; or

- (c) during the attendance at a place for the purpose of receiving payment of compensation to which the worker is entitled under this Act.

(2) A worker shall not be treated as having suffered personal injury by accident arising out of or in the course of the worker's employment if the worker suffers an injury —

- (a) during a journey —

- (i) between a place of residence of the worker and the worker's place of employment;
- (ii) between a place of residence of the worker and a place mentioned in subsection (1); or
- (iii) if the worker has more than one place of residence, between those places;

or

- (b) during a journey arising out of or in the course of the worker's employment if the injury is incurred during, or after, any substantial interruption of, or substantial deviation from, the journey, made for any reason unconnected with the worker's employment or attendance mentioned in subsection (1).

- (3) In subsection (2) —

**“place of residence”** includes a place of temporary residence;

**“substantial interruption”** *prima facie*  
includes any interruption of the journey for  
a period of more than one hour.

”.

### **Section 20 repealed**

**31.** Section 20 of the principal Act is repealed.

### **Section 36 amended**

**32.** Section 36 (1) of the principal Act is amended —

(a) by inserting after “made by”, the following —

“ , or in relation to, ”; and

(b) by deleting the whole of the subsection after “2 or 3”  
and substituting the following —

“

physicians who specialize in diseases of the  
chest or in occupational diseases where at  
least one of the physicians specializes in  
diseases of the chest, all of whom are to be  
nominated by the Executive Director.

”.

### **Section 38 amended**

**33.** Section 38 (1) of the principal Act is amended —

(a) in paragraph (a), by inserting after “is”, the  
following —

“ , or was, ”;

(b) in paragraph (b), by deleting "he", and substituting the following —

" , or was, the worker ";

(c) in paragraph (c), by inserting after "does" the following —

" , or did ";

(d) in paragraph (d), by deleting "contributing to his disablement" and substituting the following —

"  
 , or was, contributing to the worker's  
 disablement or death  
";  
and

(e) in paragraph (e), by inserting after "is", the following —

" , or was, ".

**Section 57A amended**

**34.** (1) Section 57A (3) (b) of the principal Act is amended by inserting after "it is disputed" the following —

"  
 , subject to the insurer not being prejudiced in any  
 subsequent proceedings relating to the claim by the  
 reasons stated in the notice  
".

(2) Section 57A (3a) of the principal Act is amended by deleting "subject to the insurer not being prejudiced in any subsequent proceedings before the Board by the reasons stated in the notice".

**Section 57B amended**

**35.** Section 57B (2) (b) of the principal Act is amended by inserting after "it is disputed" the following —

“  
    , subject to the employer, or the insurer if the insurer subsequently agrees to indemnify the employer, not being prejudiced in any subsequent proceedings relating to the claim by the reasons stated in the notice  
”.

**Section 67 amended**

**36.** (1) Section 67 (1) of the principal Act is repealed.

(2) Section 67 (2) of the principal Act is amended —

(a) by deleting "or permanent partial";

(b) by deleting "on application by or on behalf of the employer or the worker" and substituting the following —

“ subject to subsection (3) ”; and

(c) by deleting "by the Board" in each place where it occurs and substituting in each place the following —

“ under Part IIIA ”.

(3) Section 67 (3) of the principal Act is repealed and the following subsection is substituted —

“  
    (3) A liability for incapacity mentioned in subsection (2) may not be redeemed by payment of a

lump sum, whether by agreement or otherwise, unless —

- (a) the worker has attained the age of 55 years; or
- (b) the worker will use the sum for a purpose prescribed by regulation,

and the worker has special need of the lump sum instead of the continuance of the weekly payments and other benefits or any other circumstances of the case justify the redemption and, where it has been ordered that the total liability of the employer in respect of weekly payments is to exceed the prescribed amount, the employer's consent to the redemption is required, the intention being that liability for incapacity not be redeemed as a matter of course but only when the special circumstances of the case justify the redemption.

”.

(4) Section 67 (4) of the principal Act is amended by deleting “by the Board” in each place where it occurs and substituting in each place the following —

“ under Part IIIA ”.

(5) Section 67 (5) of the principal Act is amended by deleting “the Board orders” and substituting the following —

“ an order is made for ”.

**Section 68 amended**

**37.** (1) Section 68 (1) of the principal Act is amended —

- (a) by deleting “When the Board orders redemption as provided in section 67 (2) and (3) and the Board has not” and substituting the following —

“  
Where the liability for an incapacity may  
be redeemed under section 67 (2) and (3)  
and it has not been  
”;  
and

- (b) in paragraph (b), by deleting “if section 56 or Schedule 5 clause 2 applies in respect of the incapacity, the weekly payments at the rate to which he” and substituting the following —

“  
the weekly payments at the rate to which  
the worker  
”.

(2) Section 68 (2) of the principal Act is amended by deleting “When the Board orders redemption as provided in section 67 (2) and (3) and the Board has” and substituting the following —

“  
Where the liability for an incapacity may be redeemed  
under section 67 (2) and (3) and it has been  
”.

(3) Section 68 (3) of the principal Act is amended by deleting “When the Board orders redemption as provided in” and substituting the following —

“  
Where the liability for an incapacity is to be redeemed  
under  
”.

**Section 76 amended**

**38.** (1) Section 76 (6) of the principal Act is repealed and the following subsection is substituted —

“

(6) A memorandum received for registration shall be examined as to —

- (a) the genuineness of the agreement;
- (b) the adequacy of the amount of any compensation or other moneys payable under the agreement; and
- (c) in the case of an agreement as to the redemption of the liability to pay compensation by a lump sum (“**a redemption agreement**”), whether there is sufficient compliance with section 67,

and if it appears to the Director as the result of such examination or as the result of any information which the Director considers sufficient that a redemption agreement or an agreement as to the amount of compensation payable to the worker or to a person under any legal disability or to dependants, ought not to be registered by reason of the agreement having been obtained by fraud or undue influence or other improper means, or by reason that the amount of compensation payable under the agreement is inadequate or excessive, or in the case of a redemption agreement by reason of there being insufficient compliance with section 67, the Director shall refuse to record the memorandum of the agreement sent for registration, and in that case shall refer the matter to a compensation magistrate's court which shall make such order (including an order as to any sum already paid under the agreement) as the court thinks just.

”

(2) Section 76 (8) of the principal Act is amended by inserting after "excessive", the following —

"

or in the case of a redemption agreement that there is insufficient compliance with section 67,

”

### **Section 84AA inserted**

**39.** The principal Act is amended in Part III by inserting after section 84, the following section —

"

#### **Employer to keep position available during worker's incapacity**

**84AA.** (1) Where a worker who has been incapacitated by disability attains partial or total capacity for work in the 12 months from the day the worker becomes entitled to receive weekly payments of compensation from the employer, the employer shall provide to the worker —

- (a) the position the worker held immediately before that day if it is reasonably practicable to provide that position to the worker; or
- (b) if the position is not available, or if the worker does not have the capacity to work in that position, a position —
  - (i) for which the worker is qualified; and
  - (ii) that the worker is capable of performing,

most comparable in status and pay to the position mentioned in paragraph (a).

Penalty: \$5 000.

(2) The requirement to provide a position mentioned in subsection (1) (a) or (b) does not apply if the employer proves that the worker was dismissed on the ground of serious or wilful misconduct.

(3) Where, immediately before the day mentioned in subsection (1), the worker was acting in, or performing on a temporary basis the duties of, the position mentioned in paragraph (a) of that subsection, that subsection applies only in respect of the position held by the worker before taking the acting or temporary position.

(4) For the purpose of calculating the 12 months mentioned in subsection (1), any period of total incapacity for work is not to be included.

”

### **Section 94 amended**

40. Section 94 of the principal Act is amended by inserting after subsection (2) the following subsections —

“

(3) Notwithstanding subsection (1), the Commission may use and operate under the name “WorkCover Western Australia”, which it may abbreviate as “WorkCover WA” or “WorkCover”.

(4) A person other than the Commission who uses or operates under the name mentioned in subsection (1), or any name that is so similar that it is likely to be misunderstood as referring to the Commission, commits an offence.

”

**Section 174 amended**

41. Section 174 of the principal Act is amended by inserting after subsection (2) the following subsections —

“

(3) Where a worker suffers disability of a kind mentioned in section 32 or 33 and compensation in accordance with this Act is due by an employer to the worker but —

- (a) the identity of the employer's insurer, if any, is not known; or
- (b) the employer's insurer has ceased to operate in Australia,

an order may be made under Part IIIA that the Commission pay to the worker from the General Fund the amount required to satisfy an award obtained by the worker or the worker's representative and any award for costs in respect of the award.

(4) If the identity of the insurer is ascertained after payment has been made under subsection (3), the Commission may sue and recover the amount paid from the insurer, to the extent that its insured may have sued for and recovered that amount under the policy of insurance.

(5) The payment mentioned in subsection (3) shall be made to the worker or the worker's representative within 30 days of the date of the award.

(6) Where an employer is or may be uninsured and —

- (a) is not defending a claim brought by a worker, the Commission has a right to become a party to the proceedings and if it

does so, may exercise the rights of the employer under this Act in those proceedings; or

- (b) is defending a claim brought by a worker, the Commission has a right to intervene in the proceedings and if it does so, shall assist in the determination.

(7) The Commission may sue for and recover from the employer fees, costs and charges incurred by the Commission under subsection (6) (a), whether or not the Commission was successful in the proceedings.

”.

### **Schedule 3 amended**

42. Schedule 3 to the principal Act is amended in column 2 of the item relating to anthrax, by deleting “containing anthrax organisms”.

### **Schedule 7 amended**

43. Clause 5 of Schedule 7 to the principal Act is amended by repealing subclause (1) and substituting the following subclauses —

“

(1) The Commission shall communicate the results of an audiometric test delivered to it under clause 4 (2) —

- (a) to the worker tested and, if the test results indicate that the worker may be entitled to compensation for noise induced hearing loss under section 24A, to the worker’s employer; and

- (b) to the Directorate or a compensation magistrate's court, where required to do so under section 73 (6).

(1a) The Commission may communicate the results mentioned in subclause (1) or information from those results, to any other person if, and only if, the identity of the worker or employer to whom the results or information relates, is not revealed to that person.

”

### ***Limitation Act 1935* amended**

44. The *Limitation Act 1935*\* is amended in section 38A by inserting after subsection (8) the following subsection —

“

(8a) For purposes of this section, an injury —

- (a) that is a disability within the meaning of the *Workers' Compensation and Rehabilitation Act 1981*; and
- (b) in respect of which proceedings in which damages are sought have not been instituted before 4 p.m. on 30 June 1993,

is not to be treated as being significant unless either the parties to proposed proceedings have agreed, or a medical panel as described in section 36 (1) of that Act has determined, that the degree of the disability assessed as prescribed in section 93D (3) of that Act, is 30% or more.

”

[\* *Reprinted as at 5 May 1983.*

*For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 120.]*

**SCHEDULE 1**

[Section 28]

**VARIOUS AMENDMENTS RELATING TO  
DISPUTE RESOLUTION AND COMPENSATION**

**Long title amended**

1. The long title to the principal Act is amended by deleting “, to continue the Workers' Compensation Board” and substituting the following —

“ and dispute resolution bodies ”.

**Section 3 amended**

2. Section 3 (d) of the principal Act is amended by deleting “Workers' Compensation Board” and substituting the following —

“ dispute resolution bodies ”.

**Section 5 amended**

3. Section 5 (1) of the principal Act is amended by deleting the definitions of “Board”, “Deputy Chairman”, “Deputy Registrar”, “Registrar” and “the Chairman of the Board”.

**Section 27 amended**

4. Section 27 of the principal Act is amended by deleting “Board” and substituting the following —

“

Workers' Compensation Board in existence immediately  
before 1 January 1994

”.

**Section 37 amended**

5. Section 37 of the principal Act is amended by deleting "the Workers' Compensation Board to give evidence in a hearing before that Board" and substituting the following —

"  
to give evidence in a hearing in a compensation  
magistrate's court  
".

**Section 57A amended**

6. Section 57A (5) and (6) of the principal Act are amended by deleting "in chambers".

**Section 57B amended**

7. Section 57B (4) and (5) of the principal Act are amended by deleting "in chambers".

**Section 58 amended**

8. (1) Section 58 (2a) of the principal Act is amended by deleting "Monitor".

(2) Section 58 (4) of the principal Act is repealed.

**Section 59 amended**

9. Section 59 (11) of the principal Act is repealed.

**Section 60 amended**

10. Section 60 (3) of the principal Act is repealed.

**Section 61 amended**

11. (1) Section 61 (3a) of the principal Act is repealed.

(2) Section 61 (7) (c) of the principal Act is amended by deleting "70, or 72" and substituting the following —

" 72, or 145D ".

**Section 62 amended**

12. Section 62 (2) of the principal Act is repealed.

**Section 64 amended**

13. Section 64 of the principal Act is amended —

(a) by inserting after the section designation "64." the subsection designation "(1)", and

(b) by inserting the following subsection —

"

(2) Subsection (1) does not apply in relation to an election made by the worker for the purposes of section 24 to receive compensation in accordance with that section for permanent loss of the full efficient use of the back, neck or pelvis.

".

**Section 70 amended**

14. Section 70 of the principal Act is amended —

(a) in subsection (1), by deleting "Chairman of the Board on application being made, in the manner prescribed, by either party, may, on payment by the applicant of such fee as is

prescribed, refer the matter to a medical panel constituted as under section 145" and substituting the following —

“  
matter may be referred by the Director for determination by a medical assessment panel if either party so requests in the manner prescribed and on payment of the prescribed fee  
”;

- (b) in subsection (2), by deleting “panel shall make the application” and substituting the following —

“ assessment panel shall make the request ”; and

- (c) by repealing subsections (3), (5), (6), (7), (8) and (9).

### **Section 72 amended**

15. (1) Section 72 (3) of the principal Act is amended by deleting “but may be reviewed by the Board on the application of any one of the parties”.

(2) Section 72 (4) of the principal Act is amended by deleting “Registrar’s” and substituting the following —

“ Director’s ”.

### **Section 73 amended**

16. Section 73 of the principal Act is amended —

- (a) in subsection (1), by deleting “Board has determined that some other employer is liable or how liability is to be apportioned between employers” and substituting the following —

“  
question of which employer is liable or how liability is to be apportioned between employers has been resolved  
”;

- (b) in subsection (4), by deleting “make an application to the Board, in accordance with the rules, for an order that” and substituting the following —

“  
refer to the Director for conciliation under  
Part IIIA the question of whether  
”  
and

- (c) in subsection (6), by deleting “the Board” and substituting the following —

“  
a conciliation officer, review officer or court  
dealing with the dispute under Part IIIA  
”

### **Part III Division 5A repealed**

17. Part III of the principal Act is amended by repealing Division 5A.

### **Section 100 amended**

18. Section 100 of the principal Act is amended by deleting paragraph (i) and substituting the following paragraph —

“  
(i) to provide support services to any medical panel established under section 36 and to any medical assessment panel;  
”

### **Section 106 amended**

19. Section 106 of the principal Act is amended —

(a) in subsection (2), by deleting paragraph (a); and

(b) in subsection (3) —

(i) in paragraph (a), by deleting “and of the Board and their respective staffs” and substituting the following —

“ and of its staff ”;

(ii) by deleting “and” after paragraph (da); and

(iii) by deleting paragraph (e) and substituting the following paragraphs —

“ (e) all other moneys, except those payable from the Trust Fund, required by the Commission and dispute resolution bodies for carrying out their respective functions under this Act; and

(f) any other moneys so required to be paid under this Act or any other enactment.

”.

### **Section 110 amended**

**20.** Section 110 (2) of the principal Act is repealed and the following subsection is substituted —

“ (2) There shall be paid into the Trust Fund all moneys paid into the custody of the Commission under clause 6.

”.

### **Section 176 amended**

**21.** (1) Section 176 (1) of the principal Act is amended —

(a) by deleting “, and the Chairman of the Board with respect to any of the following purposes that relate to the Board may, subject to the regulations, make rules”; and

(b) by deleting paragraphs (b), (ba) and (h).

(2) Section 176 (3) and (4) of the principal Act are repealed.

(3) Section 176 (5) of the principal Act is amended by deleting “or rules”.

**Section 180 amended**

**22.** Section 180 of the principal Act is amended in paragraph (a) by deleting “the Board” and substituting the following —

“ a compensation magistrate’s court ”.

**Section 184 amended**

**23.** Section 184 of the principal Act is amended by deleting, in each place where it occurs “the Board” and substituting in each place the following —

“ a dispute resolution body ”.

**Various sections repealed**

**24.** Sections 185, 186, 187 and 192 of the principal Act are repealed.

**Schedule 1 amended**

**25.** (1) Clause 6 of Schedule 1 to the principal Act is amended by deleting “section 123” and substituting the following —

“ section 84F ”.

(2) Clause 7 (3) of Schedule 1 to the principal Act is amended by deleting “section 122” and substituting the following —

“ section 84E ”.

(3) Clause 7 (6) of Schedule 1 to the principal Act is amended by deleting “the Commission” and substituting the following —

“ a dispute resolution body ”.

- (4) Clause 18A (3) of Schedule 1 to the principal Act is repealed.

**Schedule 6 repealed**

- 26.** Schedule 6 to the principal Act is repealed.

**Schedule 7 amended**

- 27.** Schedule 7 to the principal Act is amended —

- (a) in clause 6 (1) —

- (i) by deleting “medical panel constituted as provided under section 145” and substituting the following —

“ medical assessment panel ”; and

- (ii) by deleting paragraph (a) and substituting the following paragraph —

“  
(a) a person performing a function under Part IIIA so requests;  
”;

- (b) in clause 6 (2) (a) —

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

“ assessment ”; and

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

“  
before a compensation magistrate’s court under Part IIIA  
”;

- (c) in clause 6 (2), by deleting all of the provision from the comma at the end of paragraph (b) to the end of the provision and substituting a fullstop; and
- (d) in clause 8 (3), by deleting "shall, in default of agreement between the worker and employer, be determined by the Board" and substituting the following —

"

may, in default of agreement between the worker and employer, be referred to the Director for conciliation under Part IIIA

".

### **Various references to "Board" changed to "Directorate"**

**28.** The principal Act is amended by deleting "Board" in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

" Directorate ".

#### **TABLE**

Sections 24B (1) (b), 57A (5), 57A (6), 57A (7) (b), 57B (4), 57B (5), 57B (6), 58 (1), 58 (2), 58 (2a), 58 (3), 58 (5), 58 (6), 59 (10), 60 (1), 60 (2), 61 (1), 61 (3), 61 (4), 61 (4a), 62 (1), 63, 71, 72 (1) (b), 72 (4), 73 (4), 74 (1a), 76 (1), 76 (4), 76 (5), 76 (8), 83 (2), 91, 92 (f) (i), 92 (f) (ii), 93 (3), and 183.

Schedule 5 clause 5 (1) (b).

### **Various references to "Registrar" changed to "Director"**

**29.** The principal Act is amended by deleting "Registrar" in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

" Director ".

TABLE

Sections 24B (2), 24B (3), 57A (3) (c), 57A (3a), 57A (4), 57B (2) (c), 57B (2a), 57B (3), 72 (2), 72 (3), 76 (1), 76 (2), 76 (7), 76 (9), 92 (f) (ii), 92 (f) (iii), 92 (f) (iv) and 92 (g).  
Schedule 5 clauses 5 (2) and 5 (3).

**Various references to “the Board” changed to “a dispute resolution body”**

**30.** The principal Act is amended by deleting “the Board” in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

“ a dispute resolution body ”.

TABLE

Sections 24B (4), 28, 29, 30, 33, 73 (1), 73 (5), 73 (6), 74 (1), 74 (2), 79, 110 (7), 110 (8) and 157 (1).  
Schedule 1 clauses 1 (1) (c), 1 (4), 1 (5), 2, 3, 5 (1) (a), 5 (1) (b), 5 (2) (b), 6, 7 (3), 8, 18 (2), 18A (1), 18A (1a) and 18A (2).  
Schedule 5 clause 2.  
Schedule 7 clauses 6 (1) (a), 6 (2) (a) and 8 (3).

**Various references to “Executive Director” changed to “Director”**

**31.** The principal Act is amended by deleting “Executive Director” in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

“ Director ”.

TABLE

Clause 6 (1) and (2) (a) of Schedule 7.

**Various references to "section 130" changed to "section 84I"**

**32.** The principal Act is amended by deleting "section 130" in each place where it occurs that is mentioned in the Table to this section and in each case substituting the following —

"      section 84I      ".

**TABLE**

Sections 57A (1) (a), 57A (7) (b), 57B (1) (a), 57B (6) (a), 132 (4) (h) and 132 (4) (i).

***Legal Practitioners Act 1893* amended**

**33.** Section 58W (1) (b) of the *Legal Practitioners Act 1893* is amended by deleting subparagraph (v) and substituting the following subparagraph —

"

(v) a review officer or compensation magistrate's court within the meaning of the *Workers' Compensation and Rehabilitation Act 1981*;

".