



Workers Compensation and Injury Management Bill 2021 (Consultation Draft)

Comparison with Current Act by Key Provisions

August 2021

2021 CONSULTATION ONLY



Part	Consultation Draft Bill	Current Act
Part 1 - Preliminary		
Part 1	<p>Definition of worker (cl. 12, 13)</p> <p>Definition of ‘worker’ is based on ‘employee’ for Pay-As-You-Go (PAYG) withholding under Commonwealth taxation law.</p> <p>Flexibility for regulations to include or exclude specific work arrangements.</p>	<p>Definition of ‘worker’ is based on contract of service, contract for service and certain other inclusions and exclusions.</p>
Part 1	<p>Injury and injury from employment (cl. 6)</p> <p>‘Injury’ encompasses personal injury by accident and disease.</p> <p>‘injury from employment’ is the legislative construct for work related injury (arising out of or in the course of employment etc).</p>	<p>‘Injury’ encompasses personal injury by accident and disease and is the legislative construct for work related injury.</p>
Part 1	<p>Prescribed (presumptive) diseases (cl. 10, 11, 113)</p> <p>Flexibility to prescribe presumptive (work related) diseases in regulations.</p> <p>Specific provisions for firefighter cancers and dust diseases in the Bill.</p>	<p>Presumptive diseases are listed in the Act and regulations.</p>
Part 1	<p>Reasonable administrative action exclusion (cl. 7)</p> <p>A psychological or psychiatric disorder is not an injury from employment if it results from reasonable administrative action – including performance management.</p>	<p>A disease caused by stress not an injury if it arises from worker’s dismissal, retrenchment, demotion, discipline, transfer or redeployment, the worker not being promoted, reclassified, transferred or granted leave of absence, or any other benefit in relation to the employment.</p>

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Part 2 - Compensation for injury		
Part 2	<p>Claim procedure (cl. 26 – 29, 35, 36)</p> <p>All claims treated the same procedurally whether for medical and health expenses compensation or income compensation.</p> <p>Simplified process and procedure for making and determining claims.</p> <p>An insurer or self-insurer must give the worker a liability decision notice or a deferred decision notice within 14 days.</p> <p>The same liability decision timeframes apply to insurers and self-insurers once a claim is made on them.</p>	<p>Act recognises claim for weekly payments for incapacity for work only. No legislative recognition of a claim for medical expenses compensation without incapacity.</p> <p>Different liability decision timeframes apply to insurers and self-insurers.</p>
Part 2	<p>If liability decision not given or given late (cl. 29, 30)</p> <p>A liability decision notice is required to be given within 14 days, or before the deemed liability acceptance day where a deferred decision notice was previously given indicating an insurer or self-insurer requires more time to make a claim decision.</p> <p>Liability is deemed to be accepted (and compensation is payable) if a liability decision notice is not given or given late.</p>	<p>If a liability decision notice is not given or given late a worker is entitled to weekly payments claimed but the employer or insurer may apply for a determination of the entitlement.</p> <p>There is no timeframe to ensure a claim is decided in a timely manner, if a claim is pended (the insurer or self-insurer requires more time to decide liability).</p>

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Part 2	<p>Provisional payments (cl. 37 – 45)</p> <p>Provisional payments to be made to a worker if a liability decision notice is not given to the worker by the prescribed day – the provisional payments day.</p> <p>Provisional payments are for income compensation and medical and health expenses compensation up to prescribed limits.</p>	<p>No requirement for provisional payments.</p>
Part 2	<p>Consent authority (cl. 34)</p> <p>Legislative authority for the collection and disclosure of relevant information about a worker when a worker makes a claim.</p> <p>Authority cannot be revoked.</p> <p>Regulations may provide for the form and manner of collection and disclosure and any limitations on relevant information about a worker permitted to be collected and disclosed.</p>	<p>Consent authorities in the claim form authorise the collection and disclosure of a worker’s personal information.</p> <p>Consent can be refused, qualified or withdrawn.</p>
Part 2	<p>Medical and health expenses (cl. 70 - 93)</p> <p>Medical and health expenses compensation cap increased to 60% of the general maximum amount – 2021 election commitment.</p> <p>New category of ‘miscellaneous expenses’ includes first aid and emergency transportation costs (which do not count towards any capped entitlement).</p>	<p>Medical and health expenses compensation capped at 30% of the prescribed amount.</p> <p>First aid and emergency transportation costs count towards the capped entitlement for medical and related expenses.</p>

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Part 2	<p>Medical and health services & fees (cl. 72 – 75)</p> <p>Compensable health services prescribed in regulations.</p> <p>Fees for medical and health expenses fixed by Ministerial Order and may adopt in full, or part, fees, service descriptors and billing rules from other publications.</p>	<p>Medical and health treatment defined in the Act with additional approved treatment approved by the Minister.</p> <p>Scales of fees for medical and health services set out in regulations. Limited capacity to adopt fee schedules and billing requirements from other publications.</p>
Part 2	<p>Income compensation (cl. 54 – 60)</p> <p>Income compensation payments calculated on pre-injury earnings over a 12-month period.</p> <p>An extension to the period, from 13 to 26 weeks, before income (weekly) compensation payments step down – 2021 election commitment.</p> <p>85% step down applicable after 26 weeks of payments for all workers.</p> <p>Base award rate of pay as a minimum protection for award workers.</p>	<p>Weekly payments based on pre-injury earnings calculated differently for Award and non-Award workers.</p> <p>85% step down after 13 weeks does not apply to Award workers.</p> <p>After 13 weeks, weekly payments for Award workers are based on award rate of pay plus any over award, service payment or allowance paid on a regular basis.</p>

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Part 2	<p>Reducing, discontinuing, suspending income compensation (cl. 63 – 69)</p> <p>Clear provisions and processes for discontinuing, reducing or suspending income compensation payments, based on return to work, medical evidence, not residing in WA or worker being in custody.</p> <p>Suspension based on a worker being in custody can be made by the insurer upon confirmation from the relevant government authority.</p>	<p>Basis and process for discontinuing or reducing payments based on return to work is cumbersome, due to meaning given to ‘return to work’ and 21-day notice requirement.</p> <p>Suspension based on the worker being in custody requires an order of an arbitrator.</p>
Part 2	<p>Settlements (cl. 146 – 156)</p> <p>Registration of a settlement agreement is the only pathway to settle a workers compensation claim via a lump sum and discharge an employer’s liability.</p> <p>Settlement able to be made 6 months from injury date – not linked to incapacity or entitlement to income compensation.</p> <p>Settlement before 6 months permitted in prescribed circumstances.</p> <p>No provision for use of common law settlement pathway to settle statutory workers compensation claims.</p>	<p>Registration of memorandum of agreement is one pathway to settle a workers compensation claim via a lump sum and discharge an employer’s liability.</p> <p>Redemption settlements can be made for permanent total or partial incapacity where a worker has received weekly payments for at least 6 months.</p> <p>In practice common law settlement pathway used to settle many workers compensation claims without registration of election/ WPI of >15% due to technical loophole in legislation.</p> <p>Payments sometimes made with no admission of liability as alternative to paying entitlements under the statutory scheme (quasi lump sum settlement but does not discharge employer’s liability).</p>

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Part 2	<p>Permanent impairment (cl. 94 – 103)</p> <p>Permanent impairment compensation is payable when the employer’s liability to compensate the worker for the injury is commuted by a registered settlement agreement.</p> <p>A notification process (PI Notice) and timeframe applies to how a worker and employer reach agreement on the worker’s degree of impairment. If the process fails to reach agreement an arbitrator will determine the matter.</p> <p>The PI Notice is registered with the settlement agreement (not as a separate election or registration process).</p>	<p>Permanent impairment compensation is payable through an election process and then reflected in a memorandum of agreement that settles the claim.</p> <p>The Act prevents an election unless there is agreement between worker and employer (or an order of an arbitrator) about the worker’s degree of whole of person impairment. The Act is silent on the process and timeframes for how a worker and employer reach agreement on the degree of whole of person impairment before the election is registered.</p>
Part 2	<p>Noise induced hearing loss (cl. 104 – 111)</p> <p>A new process for noise induced hearing loss is established and includes provision for apportionment and disputes. The assessment for noise induced hearing loss has been moved to regulations.</p> <p>The compensation available and noise induced hearing loss thresholds remain the same as in the current Act.</p>	<p>Currently, the process for noise induced hearing loss is contained in a mix of legislation, regulations, and approved procedures.</p>
Part 2	<p>Dust diseases (cl. 112 – 127)</p> <p>A clear and streamlined claim process for dust disease compensation from claim lodgement to dust disease panel determination.</p> <p>The panel will make a determination on questions directly related to compensation (diagnosis of disease, level of incapacity and impairment) and common law (% WPI) contemporaneously.</p> <p>No change to special lump sum payment for workers suffering impairment from a dust disease, or common law thresholds.</p>	<p>The claims process, panel procedures and assessment undertaken by the panel varies depending on whether the working is seeking compensation or pursuing common law, which causes confusion and sometimes requires separate determinations.</p> <p>The questions the panel is required to determine refer to outdated terminology. For example, the current Act refers to whether the worker is less able to earn full wages, which should be incapacity for work; it also refers to the extent to which the condition adversely affects the worker’s ability to undertake physical effort, which should be level of impairment.</p>

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Part 3 – Injury Management		
Part 3	<p>Injury management rights and obligations (cl. 158 – 163)</p> <p>Injury management rights and obligations of both workers and employers/ insurers consolidated in one Part of the Act.</p>	<p>The current Act deals with employer and insurer obligations with respect to return to work and an Arbitrator’s power with respect to worker non-compliance in different parts.</p>
Part 3	<p>Return to work case conferences (cl. 164)</p> <p>New provisions relating to a worker’s attendance at, and the conduct of, return to work case conferences to facilitate return to work.</p>	<p>Whilst utilised as a part of the worker’ compensation scheme, case conferences have no legislative authority, and a worker cannot be compelled to attend.</p>
Part 3	<p>Treating medical practitioners and certificates of capacity (cl. 169 – 171)</p> <p>Role of the worker’s treating medical practitioner clarified along with the issuing of certificates of capacity.</p> <p>Provision for health professionals, other than the worker’s treating medical practitioner, to issue certificates in prescribed circumstances - likely to be limited to minor or short duration lost time claims or in remote or regional areas where workers may not have access to their treating medical practitioner.</p>	<p>Current Act is silent on the coordinating role of a worker’s treating medical practitioner in the certification and return to work process.</p> <p>Only medical practitioners can issue certificates of capacity.</p>

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Part 3	<p>Worker choice of medical practitioner (cl. 170)</p> <p>The Bill reinforces worker choice of treating medical practitioner.</p>	<p>By convention an injured worker may attend a medical practitioner of his or her choice but the Act does not expressly provide for this.</p>
Part 3	<p>Prohibition on employer attendance at medical examination (cl. 171)</p> <p>An employer is prohibited from being present at medical examinations (a 2021 election commitment).</p>	<p>The current Act does not expressly prohibit employer attendance at a worker's medical examination.</p>
Part 3	<p>Return to work and suitable employment (cl. 5, 165)</p> <p>Key terms 'return to work' and 'suitable employment' are defined and clarified.</p> <p>Return to work means:</p> <ul style="list-style-type: none"> - the worker's return to work in the position in which the worker was employed immediately before becoming incapacitated; or - the worker's return to work in suitable employment. <p>If the pre-incapacity position is not available an employer is obliged to return a worker to 'suitable employment'. What is considered suitable employment is determined according to a range of factors including, the nature of the worker's incapacity, the work the worker was employed in prior to the injury and the worker's age, education, skills and work experience.</p>	<p>The Act currently defines 'return to work' as returned to the worker's original position, or work for which the worker is qualified and capable of performing.</p> <p>The return to work provisions of the current Act are silent on the suitability of employment offered and do not expressly recognise paid alternative positions created for a worker to accommodate their restrictions.</p>

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	<p>Suitable employment includes returning to work in a position that has been modified or created to accommodate a worker's incapacity. It also includes the position the worker was employed in before becoming incapacitated but with a modified range of duties, working days or hours.</p> <p>When providing suitable employment an employer cannot provide duties that are of a merely token nature or do not involve useful work, having regard to the nature of the employer's trade or business.</p>	
Part 3	<p>Dismissal of worker (cl. 168)</p> <p>Specific provision prohibiting a worker's dismissal due to injury.</p> <p>A worker cannot be dismissed solely or mainly due to the worker's incapacity for work and cannot be dismissed for any reason unless the employer has given the worker notice in the approved form at least 28 days before the dismissal takes effect. These employment protection obligations do not affect rights or obligations under other laws.</p>	<p>The current provision requiring notice of dismissal is intertwined with the employer's obligation to make the worker's pre injury position or alternative position available for 12 months.</p> <p>The current Act requires notice to be sent to WorkCover WA before dismissal takes effect. The process is unnecessary as WorkCover WA has no powers over dismissal or reinstatement.</p>
Part 3	<p>Labour hire & host organisations (cl. 14, 167)</p> <p>The obligation of labour hire employers to cover workers who are hired to host organisations is maintained.</p> <p>A new obligation for host organisations to cooperate with the labour hire employer to assist them comply with their injury management obligations if a labour hire worker is incapacitated for work.</p>	<p>No specific requirement for host organisation to assist labour hire employers with injury management</p>

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	<p>In many labour hire arrangements workers have been working exclusively for a single host or client organisation for an extended period when suffering an incapacity for work while working for the host. Labour hirers have legislative obligations in relation to maintaining employment of the worker and implementing return to work programs. Ideally the objective is to return the worker to the position they were doing before being incapacitated for work, and that requires cooperation and involvement of the host. The obligation applies to the extent it is reasonable to do so.</p>	
Part 3	<p>Workplace rehabilitation (cl. 172 – 181)</p> <p>Change in the characterisation of workplace rehabilitation as an injury management expense.</p> <p>WorkCover WA to continue to approve workplace rehabilitation providers.</p> <p>Regulations will address when workplace rehabilitation services should be provided, services that can be provided, the process for selecting providers and the maximum amount payable for workplace rehabilitation services in relation to a worker’s injury.</p> <p>A scale of fees for workplace rehabilitation providers will be set by Ministerial order with flexibility to set fees by outcome, service provided, time spent providing the service, or other criteria (or some combination of these).</p>	<p>Workplace rehabilitation services are categorised as a form of compensation.</p> <p>The current Act sets out requirements for approval of providers by WorkCover WA, along with the provision of a code of practice.</p> <p>Workplace rehabilitation services and fees are set out in two different regulations and administrative instruments.</p>

Part	Consultation Draft Bill	Current Act
Part 5 – Insurance		
Part 5	<p>Employer insurance obligations (cl. 205, 206)</p> <p>Employers applying for the issue or renewal of a workers compensation policy required to provide to the licensed insurer a declaration with supporting information required by the regulations.</p> <p>This is to enable the insurer to have sufficient information about the risk profile of the employer in order to issue or renew the policy or provide a quote of the premium payable.</p> <p>Employers required to keep records for seven years relating to each period of insurance for which the employer is insured.</p> <p>Offences (cl. 207)</p> <p>Employer penalty increased from \$5,000 to \$10,000 in respect of each of the employer’s workers to whom the offence relates. This will apply to a failure to effect or renew a workers compensation policy, or for failure to provide a remuneration declaration (or one that is provided but is known to be false and misleading).</p>	<p>No requirement to provide any information other than the declaration of remuneration. Without additional information it can be difficult for insurers to price the risk or provide a quote of the premium.</p> <p>The Act is silent about the requirement to keep records.</p> <p>Current penalty is \$5,000 - a maximum penalty seldomly awarded in the courts. An increase in the maximum penalty is required to ensure it can be applied when necessary and is commensurate with high risk, recidivous offenders.</p>
	Part 5	<p>Insurance brokers (cl. 216)</p> <p>Self-regulation is the preferred method for insurance brokers operating in the scheme.</p> <p>The Bill provides for the registration of workers compensation insurance brokers should a registration scheme be required in the future.</p>

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Part 5	<p>Licensed insurers (cl. 229 – 238)</p> <p>A modernised licensing framework for the approval and regulation of workers compensation insurers.</p> <p>WorkCover WA to issue a license to an insurer and specify criteria to grant a licence, subject an insurer to conditions and grant fixed or indefinite licenses.</p> <p>Regulatory activity will be carried out through monitoring and review of insurers to determine compliance with the Act, regulations, and conditions. WorkCover WA has the power to suspend or cancel an insurer’s licence.</p> <p>New provisions for specialised insurers - limits the insurance business carried out under the licence to a particular industry or class of business or employer.</p>	<p>Currently, insurer approval is granted by the Minister who must be satisfied that an insurer meets the requirements in the Act.</p> <p>No express legislative recognition of insurers who underwrite and manage claims for particular industry classes or employers.</p>
Part 5	<p>Workers compensation policy defined & standardised (cl. 205, 240, 291)</p> <p>Workers compensation (employer indemnity) policy defined to clarify what is being indemnified.</p> <p>As an injury from employment is compensable, a workers compensation policy responds to an employer’s liability to pay compensation or damages for injury in respect of employment during the period of insurance.</p>	<p>Workers compensation policies currently issued by insurers provide indemnity to insured employers for payments arising if a worker <i>suffers an injury during the policy period</i>.</p> <p>It is not the suffering of the injury during the policy period that matters: it is the employer’s liability to pay compensation or damages for injury in respect of employment during the period of insurance. For example, the workers compensation policy that responds to a worker employed and exposed to asbestos in 1973 who suffers mesothelioma in 2021 is the 1973 policy that covered the employer’s workers over that period even though the injury is suffered in 2021.</p>

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	<p>The form, content, terms and conditions of a workers compensation policy will be standardised and prescribed in regulations.</p> <p>Regulations may limit, modify or exclude any requirement for employers to have a workers compensation policy in respect of certain liabilities (e.g. to pay damages in respect of a claim brought in respect of an injury occurring outside of Australia), or to limit the amount insured (e.g. aggregate amount of damages arising out of all claims in respect of a single event).</p> <p>Regulations may address the status of policy extensions, endorsements and contractual indemnities – subject to industry consultation.</p>	<p>The standard wording forming the basis of employer indemnity policies has been developed by industry (part of the insurance contract) and is not always applied consistently.</p> <p>Some limits and exclusions are statutorily provided for (such as the policy limit of \$50,000,000 per event for common law liabilities and exclusions for common law liabilities arising outside of Australia). Most are in the standard wording employer indemnity policy.</p> <p>Act does not provide for or regulate policy endorsements, contractual indemnities, or waivers.</p>
Part 5	<p>Refusal of indemnity (cl. 244)</p> <p>Regulations to prescribe circumstances in which a licensed insurer is permitted to refuse indemnity to an employer against its liability to pay compensation or damages for an injury to a worker.</p> <p>Likely to be very limited (or none at all) circumstances permitting indemnity refusal prescribed but issue will be canvassed further in the development of regulations along with the development of a standard form policy.</p> <p>In the event indemnity refusal is permitted, notification to be given to WorkCover WA, the employer and worker within 5 days after the decision to refuse indemnity.</p>	<p>Act places some constraints on indemnity refusal relating to acts or omissions of the employer that did not contribute to the injury, but indemnity refusal is largely left to the policy of insurance terms and conditions (a matter of contract).</p> <p>Under policy terms insurers can refuse indemnity to an employer if an employer breaches a condition, or the subject matter is excluded, under the workers compensation policy. For example, indemnity for common law damages is subject to employer taking reasonable precautions to prevent injury. Some terms and conditions of employer indemnity policies undermine the purpose of insurance.</p>

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Part 5	<p>Licensed self-insurers (cl. 248 – 255)</p> <p>A new approach for the licensing and regulation of self-insurers, which mirrors the approach for insurers including licences issued by WorkCover WA, licensing criteria and conditions, and monitoring.</p> <p>Status of self-insurers that cover related entities clarified by allowing a group self-insurer licence to be issued.</p> <p>Provides for securities other than a bank guarantee to be provided to cover potential self-insurer liabilities if approved by WorkCover WA.</p> <p>Clarifies WorkCover WA may demand payment under a self-insurer security to the extent of any payments to be made by WorkCover WA (this will arise when a self-insurer is insolvent).</p>	<p>Governor exempts an employer or group of employers from the obligation to insure.</p> <p>Status of subsidiaries/related entities of self-insurers is unclear.</p> <p>Act is unclear as to the use of the bank guarantee to meet claim liabilities of the self-insurer when the self-insurer is insolvent.</p>
Part 5	<p>Default insurance fund (cl. 259 – 287)</p> <p>Default Insurance Fund (DIF) established as funding source for various scheme and system risks.</p> <p>Streamlines and consolidates into the DIF the administrative and funding arrangements for liabilities associated with uninsured employers, insolvent insurers and self-insurers, and acts of terrorism.</p> <p>Liability cost met by levy on insurers and self-insurers.</p> <p>Surplus funds of the Employers Indemnity Supplementation Fund transferred to the DIF on commencement of the new Act.</p>	<p>Safety net arrangements to address scheme and system risks have evolved over time and are currently provided for in four separate Acts which contain distinct and overlapping governance arrangements and funding sources.</p>

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Part 5	<p>Acts of Terrorism (cl. 288 – 294)</p> <p>The <i>Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001</i> will be repealed. Bill integrates acts of terrorism provisions.</p> <p>Clarifies the trigger for activating acts of terrorism claims, provides for an increase in the total amount payable on claims and for claim payments to be met by the Default Insurance Fund.</p> <p>Increase in the cap on acts of terrorism liabilities from \$25 million to an indicative amount of \$100 million per event or period (to be in regulations). Provides a balance between increased protection for injured workers and providing a greater degree of certainty for insurers regarding maximum liability and capital requirements in any given insurance period.</p>	<p>No definition of 'Act of Terrorism' to inform application of the scheme.</p> <p>Claim process involves double handling by WorkCover WA and Insurance Commission of Western Australia.</p> <p>Cap of \$25 million which is inadequate.</p>
	<p>ICWA Industrial diseases policy</p> <p>Discontinuation of the special insurance policy mining employers are required to hold with the Insurance Commission of Western Australia for coverage of pneumoconiosis, mesothelioma, lung cancer and diffuse pleural fibrosis arising from exposure in any mine or mining operation. (ID Policy)</p> <p>ID policies will lapse on commencement in respect of liabilities arising from employment on or after commencement. Coverage that a ID policy would have provided to a mining employer for employment on or after commencement will instead be provided by the standard workers compensation policy that the employer is required to hold with a licensed insurer.</p>	<p>Current Act requires mining employers to hold a special insurance policy covering industrial disease compensation claims relating to pneumoconiosis, mesothelioma, lung cancer and diffuse pleural fibrosis arising from exposure in any mine or mining operation. (ID Policy)</p> <p>ID policies are issued by the Insurance Commission of Western Australia with premium payable by mining employers and payments made by a special Compensation Industrial Diseases Fund (CIDF).</p> <p>The current insurance arrangement will continue to respond only to liabilities arising out of employment before commencement of the new Act.</p>

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Part 6 – Dispute Resolution		
Part 6	<p>Dispute resolution provisions of the current Act replicated with some minor amendments.</p> <p>Structure of Part (cl. 308 – 311, 363 – 379)</p> <p>Provisions for the establishment of the Conciliation Service and Arbitration Service have been consolidated into one Division.</p> <p>Provisions common to conciliation and arbitration proceedings that are duplicated in separate divisions in the current Act are also consolidated in one Division.</p>	
Part 6	<p>Reconsideration of decision on basis of new information (cl. 355)</p> <p>Provisions for reconsidering a decision on the basis of new information clarified.</p>	<p>Process of applying for a reconsideration of a decision on the basis of new information and the determination by an arbitrator is not clear, particularly around what constitutes new information.</p>
Part 6	<p>Dismissal of proceedings (cl. 340)</p> <p>An arbitrator may dismiss a proceeding whether by on application of a party to the proceeding or on the arbitrator’s initiative where there is an abuse of process, want of prosecution or any ground set out in arbitration rules.</p>	<p>The arrangements for dismissing proceedings are unclear.</p>

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Part 6	<p>Referral to medical expert (cl. 343)</p> <p>Provision for referral to a medical expert in place of medical panels which are discontinued.</p> <p>An arbitrator may refer any medical, technical or specialised matter to an expert and have that expert's report tendered as evidence. The expert may be called by parties to proceedings for examining on request.</p>	<p>An arbitrator may refer a question of the nature or extent of an injury, whether an injury is permanent, or a worker's capacity for work with respect to an injury for determination by a medical assessment panel.</p> <p>Medical assessment panels exist but are rarely used in disputes.</p>
Part 6	<p>Publication of decisions (cl. 358)</p> <p>A new provision authorises the Registrar to publish any decision of an arbitrator and to limit the publication in any manner the Registrar considers appropriate.</p>	<p>The Act prevents publication of arbitrator decisions.</p>
Part 6	<p>Making of rules (cl. 381 – 384)</p> <p>The Bill provides for the Director to make Conciliation Rules and the Registrar to make Arbitration Rules.</p>	<p>The Minister makes the Conciliation Rules and Arbitration Rules.</p>

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Part 6	<p>Registered independent agents (cl. 573)</p> <p>The regime for approving and regulating registered agents is discontinued and registered independent agents will be transitioned out of the scheme over a two-year period from when the new Act commences.</p> <p>Regulations will set out the types of authorised agents who can represent parties in WorkCover WA’s Conciliation and Arbitration Services.</p> <p>The very small number of ‘independent’ (self-employed) agents currently registered will be permitted to continue to operate for a two-year transitional period.</p> <p>Regulations will provide for the scheme of registration of independent agents over the two-year transitional period.</p> <p>Regulations may provide for a range of circumstances relating to conduct, registration conditions, audits and investigations, suspension and cancellation.</p> <p>At the conclusion of the two-year period, the registered independent agents scheme will end and persons acting as registered independent agents will cease to be registered.</p> <p>These changes will not impact upon the ability of parties to be represented in the Conciliation and Arbitration Services by authorised agents recognised in the regulations (such as agents of an insurer, a union or employer association, or Asbestos Diseases Society).</p>	<p>The current Act provides a scheme of registration where a person who is not a legal practitioner may apply for registration as an agent to represent a party to a dispute in WorkCover WA’s Conciliation and Arbitration Services.</p> <p>Independent Registered Agents may represent a party in CAS and are approved and regulated by WorkCover WA. They have requirements under the Act, regulations, the code of conduct and scale of costs.</p>

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Part 7 – Common Law		
Part 7	<p>Structure (Division 2 – 5)</p> <p>Various provisions relating to common law claims restructured and reordered:</p> <ul style="list-style-type: none"> ▪ constraints on common law proceedings and damages; ▪ prevention of double recovery; ▪ remedies against third parties; ▪ choice of law. 	<p>The structure of the common law part of the current Act is confusing.</p>
Part 7	<p>Threshold requirements for commencement of proceedings (cl. 421)</p> <p>Threshold requirements for the awarding of damages same as the current Act:</p> <ul style="list-style-type: none"> - the worker’s degree of permanent whole of person impairment must be at least 15% - the worker must elect to retain the right to seek damages. <p>Bill clarifies the threshold requirements apply to both the commencement of proceedings and the awarding of damages.</p> <p>Means a writ cannot be issued, or settlement of the common law claim effected, without the impairment assessment and election being registered.</p>	<p>Technicality in current Act means threshold common law requirements apply only to awarding of damages, not commencement of common law proceedings.</p>
Part 7	<p>Registration of common law agreement (deed) (cl. 421)</p> <p>Settlement of a common law claim by deed will to continue to be registered with the Director. The Director will no longer have any role in scrutinising the deed for fraud or misrepresentation.</p>	<p>When a common law claim is settled by agreement, the deed of the agreement must be registered with the Director. The Director may disapprove the deed if the agreement has been induced by fraud or misrepresentation.</p>

Part	Consultation Draft Bill	Current Act
Part 10 – Management and disclosure of information		
Part 10	<p>Approved forms and facilitation of electronic processes (cl. 495, 496)</p> <p>Flexibility for many forms to be approved administratively by the WorkCover WA CEO and also for electronic creation, transmission, service and registration of documents in the future.</p> <p>A staged approach is envisaged to facilitate electronic transmission. Some forms may not be digitalised for legal, technical, or practical reasons.</p>	<p>Whilst some conciliation, arbitration, settlement and common law forms may be lodged electronically, the majority of documents must be given, lodged, exchanged or verified in ‘hard copy’ as determined by the Act.</p>
Part 10	<p>Confidentiality and disclosure (cl. 502 – 504)</p> <p>There is a default position of confidentiality with respect to information obtained or disclosed by a person for the purposes of the Act. Exceptions to this rule include disclosure:</p> <ul style="list-style-type: none"> • for performing functions under the Act or another law; • as required or authorised under the Act; • for legal proceedings; • under a court order; • with consent of the person to whom the information relates; • as prescribed by regulations; • if the information is already in the public domain or is statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates. <p>The exceptions provide flexibility to release information in a number of circumstances.</p>	<p>Information provided by insurers to WorkCover WA must be treated as strictly confidential and cannot be disclosed unless permitted by the Act.</p> <p>Various sections allow the disclosure of information in certain circumstances, for instance where relevant to occupational safety and health and to provide information to the Minister.</p>

Part	Consultation Draft Bill	Current Act
Part 10	<p>Pre employment screening (cl. 505)</p> <p>The Bill prohibits disclosure of information about a worker’s claim for compensation (or claim history) to another person for the purpose of pre-employment screening. The Bill also provides that a worker cannot be required to disclose information about a compensation claim by the worker for the purpose of selection for employment.</p> <p>This assists to minimise discriminatory practices where claims history is taken into account when considering a worker’s suitability for employment.</p>	<p>Act is silent.</p>

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Part	Consultation Draft Bill	Current Act
Part 11 – Regulation and enforcement		
Part 11	<p>Infringement notices and modified penalties (cl. 521)</p> <p>Infringement notices and modified penalties to be authorised by the <i>Criminal Procedure Act 2004</i> (similar to most other statutes). The specific infringement notices and modified penalties to be contained in Regulations.</p> <p>Regulations will be made under the new Act that specify provisions to which an infringement and modified penalty apply. Regulations will likely replicate the regulations made under the current Act though the modified penalty for some prescribed offences may change due to changes in the penalty amount for the offence in the Bill (e.g. a proportionate increase in the modified penalty for failure of an employer to hold a workers compensation policy).</p>	<p>Provision for the issuing of infringement notices and modified penalties are contained in the Act and regulations.</p>
Part 11	<p>Time for giving infringement notice (cl. 521)</p> <p>Time for giving an infringement notice is 12 months to reflect the complexity of some investigations.</p>	<p>Time for giving an infringement notices is 6 months.</p>
Part 11	<p>Penalties</p> <p>Penalties have been updated throughout the Bill however the monetary amount of each fine is retained in the Bill rather than a penalty unit system as recommended in the Final Report. This is due to drafting conventions in WA legislation.</p>	<p>The monetary amount for penalties has not changed since the provisions were inserted into the Act (in some cases since 1981).</p>

Part	Consultation Draft Bill	Current Act
Lifetime care for catastrophic workplace injuries		
	<p>Lifetime care for catastrophic workplace injuries (cl. 81, 93, 150, 299 – 303, Part 15 Division 2)</p> <p>Catastrophically injured workers to receive lifetime care and support under the Catastrophic Injuries Support Scheme administered by the Insurance Commission of Western Australia.</p> <p>The Catastrophic Injuries Support Scheme (CISS) for motor vehicle accidents to be extended to cover catastrophically injured workers who have a compensable workers compensation claim.</p> <p>CISS covers the following catastrophic injuries: spinal cord injury, traumatic brain injury, amputations, burns and permanent blindness.</p> <p>Lifetime care services are person-focussed and include medical (including pharmaceutical), dental treatment, rehabilitation, ambulance services, respite care, attendant care, domestic assistance, aids and appliances, prosthesis, educational and vocational training, and home and transport modifications.</p> <p>No impact on common law rights. However, damages cannot be awarded for lifetime care costs while the injured person is a CISS participant (to avoid double payments). No limits apply to the awarding of other heads of damage.</p> <p>Cost of injured worker participation in the CISS will be funded by an annual levy contribution by insurers and self-insurers, collected by WorkCover WA and paid to the Insurance Commission. Changes implement a National Disability Insurance Scheme bilateral agreement between the WA and Commonwealth Governments.</p>	<p>The Act does not provide lifetime care and support for catastrophically injured workers.</p>