GOVERNMENT OF WESTERN AUSTRALIA

WorkCoverWA

Modernising WA's Workers Compensation Laws

Workers Compensation & Injury Management Bill 2021 (Consultation Draft)

Information Sheets

2021 CONSULTATION ONLY

August 2021

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2021 State Election Commitments

The Bill includes provisions for implementing the State Government's 2021 election commitments relating to workers compensation announced by the Premier in March 2021.

Key Points

Bill ref: cl. 56, 70, 171

In the lead up to the 2021 State election the McGowan Government reiterated its commitment to introduce a Bill to modernise workers compensation laws following public consultation, and announced some additional election commitments for inclusion in the Bill:

- an increase in the point at which income compensation payments step down from 13 to 26 weeks – see *Information Sheet 13*.
- an increase in the cap on medical and health expenses compensation from 30% to 60% of the general maximum amount (known as the prescribed amount in the current Act) – see *Information Sheet 15*.
- a prohibition on employers attending medical appointments of injured workers – see *Information Sheet 28*.

Questions & Answers

Q. What is the estimated cost of the 2021 election commitments to increase the medical and health expenses compensation cap and extend the income compensation step down period?

A. Preliminary costings estimate a 1.63% increase in the average premium rate would result from increasing the point at which income compensation payments step down from 13 to 26 weeks. An increase of between 0.63% and 1.40% in the average premium rate would result from increasing the capped amount for medical and health expenses compensation from 30% to 60% of the general maximum amount.

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Definition of a Worker

The Bill provides for a new definition of 'worker' based on an 'employee' for Pay-As-You-Go (PAYG) withholding under Commonwealth taxation law. There will be flexibility for regulations to include or exclude specific work arrangements.

Key Points

Bill ref: cl. 12, 13

- All persons who are employees for the purposes of PAYG tax will be covered as workers in the workers compensation scheme.
- This replaces the two-limb definition of 'worker' which defines a worker as a person engaged under a contract of service or contract for service.
- Regulations may bring other work arrangements under the Act by prescribing classes of worker and employer where no PAYG obligation applies.
- Working directors and licensed jockeys will continue as deemed workers in the Act with no material change to the circumstances and conditions under which the legislation applies to them.

Questions & Answers

Q. Will contractors be covered?

A. No. However, some contractual arrangements may fall within the definition of 'employee' under the Commonwealth PAYG taxation law. An online tool is available on the ATO website to assist in finding out whether a person is an employee or contractor for tax purposes.

Q. Will carers working for people with a disability be covered as workers?

A. It is intended that carers will be covered as workers in regulations; however the regulations will need to clarify the circumstances as there are various engagement models in operation.

Q. Will platform or on-demand workers be covered as workers?

A. At this stage there is no decision on whether on-demand workers will be prescribed workers in the regulations. The legal status of on-demand workers is uncertain and WorkCover WA is monitoring developments. The evolving nature of these arrangements is why it is important the legislation provides for regulations to include other classes of worker if appropriate.

Q. Why aren't clergy or religious workers covered in the Bill?

A. The primary definition of worker in the Bill is aligned to the PAYG tax withholding obligation for employees. Regulations will be made under the new Act to provide for coverage of religious workers.

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Working Directors

The Bill clarifies the special arrangements and requirements that apply to the coverage of working directors.

Key Points

Bill ref: cl. 16, 58, 60, 206

- The exclusion that prevented coverage of public company directors will be removed.
- A company director will not be covered by the workers compensation scheme unless the person is a 'working director' (as defined) and the company provides a statement to their insurer when a policy is issued and renewed which names the director and provides a statement of the aggregate remuneration payable to the director during the policy period.
- The Bill clarifies the minimum (safety net) weekly rate of income compensation payable does not apply to a working director – this is because the rate of income compensation is determined by reference to the statement of the working director's remuneration provided to the insurer.

Questions & Answers

Q. What if the company forgets to provide a statement to the insurer naming the working director and the amount of remuneration payable?

A. The director is not covered by the workers compensation policy.

Q. What is the significance of the remuneration declaration?

A. The remuneration statement indicates the working director is being remunerated (and therefore a working director) and the amount declared determines the amount of income compensation payable if the working director suffers an incapacity for work.

2021 CONSULTATION ONLY

Overseas Workers

The laws for determining a worker's 'state of connection' are the same as the current Act. However, the Bill provides for an exclusion of liability for compensation in respect of an injury suffered by a worker outside Australia if the worker has never resided in Australia or has been continuously resident outside Australia for more than 24 months when the injury occurs.

Key Points

Bill ref: cl. 19, Part 12

- The Bill provides for a legislative method for determining which state or territory jurisdiction a worker is connected to for liability and compensation purposes (known as state of connection). The provisions affect workers who may work across state and national borders.
- The state of connection tests in Part 12 remain unchanged from the current Act.
- The status of workers injured overseas is unclear in the current Act. The Bill implements an express period of cover of 24 months for persons working outside Australia. This was the legislative position that existed prior to 2004 when the state of connection legislation was implemented.

Questions & Answers

Q. Do the state of connection tests still apply to persons working overseas?

A. Yes. The worker must be connected to Western Australia based on the state of connection tests in Part 12 of the Bill. The new provision has the effect of excluding liability for a worker whose employment is connected to Western Australia because the person has been continuously resident outside Australia for at least 24 months.

Q. Will there be an insurance policy exclusion for common law liabilities arising in respect of injuries or claims brought outside Australia?

A. Yes. It is intended the exclusion will be in regulations (as under the current Act). Clause 240 enables regulations to limit, modify or exclude any requirement to have a workers compensation policy in respect of liabilities arising in specified circumstances or out of specified events.

2021 CONSULTATION ONLY

Prescribed (Presumptive) Diseases

The Bill provides for regulations to be made which establish a presumption of work-related injury for prescribed diseases contracted by workers in prescribed employment.

Key Points

Bill ref: cl. 10

- A presumption of work-related injury facilitates access to the workers compensation scheme by reversing the onus of proof about the cause of the injury.
- Regulations will set out the diseases and types of employment for which a presumption of work-related injury applies.
- The regulatory mechanism provides the flexibility to add occupational diseases and classes of employment if the circumstances justify it in the future.
- Clause 10 of the Bill replaces, but is consistent with, section 49F of the current Act inserted by the *Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020*. The presumption for health care workers who contract COVID-19 will be remade under the new regulations.
- Schedule 3 of the current Act will be repealed with all required presumptive diseases from Schedule 3 included in regulations made under the new Act.
- The Bill retains standalone provisions for a presumption of work-related injury for workers who contract a dust disease via exposure to asbestos or mineral dust (cl. 113), and for firefighters who contract one of 12 cancers (cl. 11).

Questions & Answers

Q. Why are presumptive diseases to be in regulations and not the Act?

A. The most appropriate method to address presumptive diseases is through regulations. This is to ensure the list of presumptive diseases remains current with the changing nature of work and there is a flexible and quick method to ensure new diseases can be accommodated where there is supporting epidemiological evidence. The COVID-19 pandemic illustrated this point clearly (the Act was amended in 2020 to insert a regulation making power to include COVID-19 as a presumptive disease for health care workers).

Q. What other diseases are likely to be in regulations?

A. The list of presumptive diseases will be subject to consultation as part of the development of regulations. Safe Work Australia's *Deemed Diseases in Australia* report[1] includes a recommended list of diseases and corresponding occupations for use by states and territories when considering presumptive provisions. The Safe Work Australia list is being reviewed in 2021 and may be updated. Any proposal to make regulations will consider Safe Work Australia's *Deemed Diseases in Australia* report and any updates to it.

[1] safeworkaustralia.gov.au

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Reasonable Administrative Action Exclusion for Psychological Injury

The current Act excludes stress related claims which result from various administrative actions (mostly disciplinary) undertaken by a worker's employer, or that are due to the worker not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to the employment.

The Bill extends this exclusion to any psychological or psychiatric disorder arising out of administrative action, as defined.

Key Points

Bill ref: cl. 7

- Any psychological or psychiatric disorder that a worker experiences will not be an injury from employment if it results from administrative action (unless the administration action is unreasonable and harsh on the part of the employer).
- Administrative action includes general performance management, along with the other matters that are specified in the current Act relabelled as: counselling action (formal or informal), suspension action, and disciplinary action (formal or informal).
- Administrative action includes any of the following actions:
  - an appraisal of the worker's performance
  - counselling action (whether formal or informal)
  - suspension action
  - disciplinary action (whether formal or informal)
  - anything done in connection with an action described above
  - anything done in connection with the worker's failure to obtain a promotion, reclassification, transfer or other benefit, or to retain any benefit, in connection with the worker's employment.

Key Points

- The exclusion extends to a worker's expectation of administrative action but does not include administrative action that is unreasonable and harsh on the part of the employer.

Questions & Answers

Q. Can I make a claim if I suffer a psychological injury and I believe my employer's behaviour or conduct caused the injury?

A. Yes. The exclusion only applies to psychological or psychiatric disorders arising out of reasonable administrative action. The exclusion does not extend to psychological claims associated with other conduct of the employer (e.g. bullying), or administrative action that is unreasonable and harsh on the part of the employer.

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Lifetime Care for Catastrophic Workplace Injuries

The Bill provides for catastrophically injured workers to receive lifetime care and support under the Catastrophic Injuries Support Scheme administered by the Insurance Commission of Western Australia.

Key Points

Bill ref: Part 15 Division 2

- The Bill provides for 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.
- The CISS covers the following catastrophic injuries: spinal cord injury, traumatic brain injury, amputations, burns and permanent blindness.
- The 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.
- The 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.
- These changes implement a National Disability Insurance Scheme bilateral agreement between the WA and Commonwealth Governments.

Questions & Answers

Q. What happens to the compensation claim and entitlements if a person participates in the CISS?

A. Participation in the CISS does not affect a worker's claim and right to receive income compensation under the Act, but an employer's obligation to pay medical, health and miscellaneous expenses compensation will cease upon participation in the CISS.

Also, a settlement agreement in the workers compensation scheme cannot include any provision for medical and health, or miscellaneous expenses compensation if a worker is participating in the CISS (because these services are being provided under the CISS).

Q. Does participation in the CISS affect common law rights?

A. No. The 15% impairment threshold and election process for commencing common law proceedings will continue to apply. 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 damages.

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Claiming Compensation

The Bill removes the requirement for workers to give notice of injury in addition to making a claim for compensation, and requires employers to inform workers of the right to claim compensation

Key Points

Bill ref: cl. 20, 26-28, 545

- The Bill provides that a worker who suffers an injury from employment may claim compensation from their employer, generally within 12 months after the injury occurs.
- A worker will no longer be required to serve a notice of injury on their employer in addition to making a claim.
- If an employer becomes aware a worker may have suffered an injury from employment, the Bill provides a new requirement for employers to inform workers, within 14 days, that the worker may have a right to compensation for the injury. The notification will not be required if the worker has made a claim within the 14 day period.
- The Bill clarifies that a claim for compensation is made when the worker has given their employer a completed claim form (in the approved form) and a certificate of capacity. The certificate of capacity provides the relevant information relating to the worker's injury and any incapacity to enable a decision on liability to be made.
- An insured employer will be required to give the worker's claim to their insurer within 7 days of receiving the claim from the worker.
- If an insured employer fails to give a worker's claim to their insurer for any reason the worker may give the claim to the insurer.

Questions & Answers

Q. What happens to a claim made under the current Act when the new Act commences?

A. When the new Act commences it will operate as a continuation of the current Act. A claim made under the current Act will be taken to have been made and continue under the corresponding sections of the new Act.

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Responding to a Worker's Claim for Compensation

The Bill provides for an insurer or self-insurer to respond to a worker's claim for compensation in a timely manner, with new obligations for provisional payments and deemed acceptance of liability, if liability decisions are not made within the prescribed timeframes.

Key Points

Bill ref: cl. 29, 30, 31, 37

- Insurers and self-insurers will be required to respond to a worker's claim for compensation within 14 days of receiving the worker's claim (the same period will apply to insurers and self-insurers).
- In responding to a worker's claim for compensation an insurer or self-insurer must give the worker a liability decision notice or a deferred decision notice.
- A liability decision notice must state if the insurer or self-insurer accepts or does not accept that the employer is liable to compensate the worker for the injury to which the worker's claim relates.
- If the certificate of capacity for a worker's claim for compensation specifies the worker has any incapacity as a result of the injury, the liability decision notice must also state if the insurer or self-insurer accepts or does not accept the employer is liable to pay income compensation for incapacity.
- If an insurer or self-insurer gives a worker a deferred decision notice, the insurer or self-insurer must begin making provisional payments to the worker if a decision on liability is not made by the day prescribed by the regulations as the 'provisional payments day' (the prescribed day is likely to be 28 days after receiving the worker's claim).
- If an insurer or self-insurer does not accept liability for a worker's claim for compensation the worker may apply for the matter to be determined as a dispute.

Questions & Answers

Q. What happens if an insurer or self-insurer does not provide a response to the worker within 14 days of receiving the worker's claim for compensation?

A. The insurer or self-insurer will be deemed to have accepted that the employer is liable to compensate the worker and payments of compensation must be made. This includes income compensation for any incapacity.

Q. If an insurer or self-insurer gives a worker a deferred decision notice, how long do they have to make a decision on liability for the worker's claim for compensation?

A. A decision on liability must be made by the day prescribed by the regulations as the 'deemed liability acceptance day' (the prescribed day is likely to be 90 days from when the claim was given to the insurer or self-insurer). If a decision on liability is not made within this period, then the insurer or self-insurer will be deemed to have accepted that the employer is liable to compensate the worker and payments of compensation must be made. This includes income compensation for any incapacity.

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Consent Authority

The Bill provides for a new consent authority mechanism for the collection and disclosure of information related to a worker's injury to enable the injury, claim and return to work to be managed effectively.

Key Points

Bill ref: cl. 34

- To make liability decisions and manage claims, insurers and self-insurers require access to a worker's medical and personal information relevant to the injury or claim. Treating medical practitioners may also need to discuss a worker's medical condition with the worker's employer, their insurer, or other medical and health providers.
- The Bill provides for a new consent authority mechanism to replace the consent authority found in the current Form 2B and Certificate of Capacity.
- The Bill provides for the collection and disclosure of relevant information between authorised disclosers and recipients (defined by regulations).
- Regulations may allow for the form and manner of collection and disclosure of relevant information, along with limitations on the information that may be collected and disclosed.
- It will be an offence for a person to use or disclose information disclosed to that person for a purpose other than for the purpose in connection with a worker's claim for or entitlement to compensation or injury management for a worker's injury.
- The authority to collect and disclose relevant information cannot be revoked.

Questions & Answers

Q. If I make a workers compensation claim, will my entire medical history be disclosed to the insurer?

A. No. An authorised discloser is only authorised to disclose relevant information. Relevant information is defined as medical and personal information relating to the worker's injury, the worker's claim for compensation or entitlement to compensation or injury management for the workers' injury.

Q. Who are likely to be authorised disclosers and authorised recipients in the regulations?

A. Authorised disclosers are likely to include:

- Medical practitioners, practices and hospitals
- Insurers or self-insurers and the agents of insurers and self-insurers.

Authorised recipients are likely to include:

- Medical practitioners / health professionals / workplace rehabilitation providers
- Insurers or self-insurers and the agents of insurers and self-insurers
- Legal practitioners
- Claims investigators
- WorkCover WA.

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Provisional Payments

The Bill introduces a new obligation on insurers and self-insurers to make provisional payments to a worker if a deferred decision notice was initially given but the insurer or self-insurer has not given a liability decision notice before the prescribed day (the provisional payments day).

Key Points

Bill ref: cl. 30, 37- 45

- If a deferred decision notice is given to a worker (known as a pended notice in the current Act) a liability decision notice must be given as soon as possible.
- An employer will be required to make provisional payments to a worker if a deferred decision notice was initially given but the insurer or self-insurer has not given a liability decision notice before the prescribed day (the provisional payments day).
- The prescribed day is likely to be 28 days after receiving the worker's claim (i.e. an additional 14 days to the initial 14 day period for responding to the claim).
- Provisional payments are based on medical and health expenses compensation and income compensation only with limits on the amounts required to be paid. Provisional payments are to be calculated and paid in the same way as the corresponding compensation payments would be made.
- Provisional payments for medical and health expenses compensation are to be paid for the period beginning on the day the worker's injury occurred.
- Provisional payments for income compensation are to be paid for the period beginning when the worker first has an incapacity for work.
- If liability is accepted or deemed to be accepted, provisional payments are taken into account when calculating the total amount of compensation payable to the worker.

Key Points

- Provisional payments are not recoverable from a worker.
- An insurer or employer who has paid provisional payments may recover those payments from another insurer or employer in certain circumstances.

Questions & Answers

Q. How long is the period an employer is required to make provisional payments to a worker?

A. An employer must continue to make provisional payments to a worker until:

- The insurer or self-insurer gives the worker a liability decision notice by the prescribed deemed liability acceptance day (the prescribed day is likely to be 90 days from when the claim was given to the insurer or self-insurer) or;
- The insurer or self-insurer fails to give a liability decision notice by the prescribed deemed liability acceptance day (payments of compensation must then be paid by the employer) or;
- In the case of provisional payments based on income compensation, a certificate of capacity states the worker no longer has any incapacity for work.

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Indexation of Workers Compensation Entitlements

The Bill provides for compensation caps or limits to be adjusted in accordance with the regulations and protects against any reduction in capped entitlements if the value of the indices used for the adjustment is negative for a specific financial year.

Key Points

Bill ref: cl. 537, 562

- Currently the caps that apply to various worker entitlements are indexed annually using various Australian Bureau of Statistics indices such as Average Weekly Earnings, Wage Price Index and Consumer Price Index. The applicable indexation methodology depends on the type of entitlement.
- Regulations will continue to set out the relevant methodology that applies to annual indexation.
- The Bill protects against any reduction in the capped amount if that would otherwise occur as a result of the indexation method in regulations.
- The Bill delivers on a 2021 election commitment to increase the medical and health expenses general limit from 30% to 60% of the general maximum amount, and extend the point at which income compensation payments step down from 13 to 26 weeks.
- There are no changes to other capped worker entitlements or the general maximum amount (known as the prescribed amount in the current Act).

Questions & Answers

Q. Will the general capped entitlement amount in the Bill align with the 'prescribed amount' referred to in the current Act?

A. Yes. The 'general maximum amount' (the term used in the Bill) is a value that is applied to the maximum amount of the sum of income compensation and permanent impairment compensation that a worker can be paid. It will be aligned to the prescribed amount of $239,179 which is the maximum amount that applies to these entitlements in the current Act for the 2021 financial year.

Q. What if the prescribed amount in the current Act changes before the Bill comes into operation?

A. Savings and transitional provisions automatically update the amount of $239,179 to the prescribed amount immediately before commencement of the new Act changes. The general maximum amount will automatically change to align with the prescribed amount immediately before commencement of the new Act.

2021 CONSULTATION ONLY

Income Compensation Calculation and Step Down

The Bill clarifies and simplifies the method for calculating income compensation and delivers on a 2021 election commitment to extend the point at which income compensation payments step down from 13 to 26 weeks.

Key Points

Bill ref: cl. 54-60, 553

- Income compensation payments will be calculated based on pre-injury average earnings over a 12-month period for award and non-award workers (or period employed if less than 1 year).
- Any period a worker has taken a break from work without pay is excluded from the calculation of the worker's average earnings.
- A step down to 85% of the worker's pre-injury weekly rate of income will apply after 26 weeks of payments (extended from 13 weeks in the current Act). The Bill clarifies what a 'week' means in the context of commencing the 26 week period and when to exclude any intermittent periods of full capacity.
- A safety net minimum weekly rate of income compensation applies if the step down to 85% of a worker's pre-injury weekly rate of income would otherwise result in income compensation falling below:
  - the base award rate under provisions of an industrial instrument to which the worker would be entitled to be paid in a week; or
  - the minimum amount to which the worker would be entitled under the *Minimum Conditions of Employment Act 1993* to be paid in a week - the current safety net for non-award workers.
- The Bill maintains a cap on the weekly rate of income compensation and the cap on total income compensation payments – both will continue to be indexed annually.

Questions & Answers

Q. Will the same calculation method apply regardless of whether a worker is covered by an Award or not?

A. Yes. However, after week 26 when the 85% step down applies there is minimum weekly rate that needs to be considered if the 85% step down results in payments less than the base award rate of pay or the minimum amount in the *Minimum Conditions of Employment Act 1993.*

Q. How will over award and service payments be treated?

A. All over award and service payments are included in the calculation of income compensation. The Bill does not distinguish between over award and service payments paid on a regular (or irregular) basis like the current Act.

Q. Is there a minimum amount for part time workers?

A. Yes. It is the minimum amount (base award rate component) to which the worker would have been entitled (if not injured) to be paid in a week for working.

Q. How are payments calculated if weekly payments commenced under the current Act?

A. If weekly payments commenced under the current Act before commencement day of the new Act, the amount of any payments to the worker for income compensation for any period of incapacity on or after commencement day must continue to be calculated in the manner provided by the current Act for the calculation of weekly payments.

2021 CONSULTATION ONLY

Status of Leave While Entitled to Income Compensation

The Bill clarifies the status of sick leave, annual leave and long service leave (and leave accrual) while a worker is entitled to income compensation.

Key Points

Bill ref: cl. 62

The Bill clarifies that for any period for which a worker is entitled to receive income compensation:

- the worker is entitled to take annual leave, long service leave - or in the case of teachers - a teacher's vacation entitlement
- the worker's entitlement to receive income compensation is not affected by the worker being entitled to, or taking, leave of that kind – these leave entitlements are concurrent to the worker's entitlement to income compensation
- the worker accrues entitlements to annual leave, long service leave and sick leave while receiving income compensation – this clarifies a long-standing issue and is consistent with most other jurisdictions
- the worker is not entitled to take sick leave – this reflects section 130(1) of the *Fair Work Act 2009.*

Questions & Answers

Q. Can a worker still access sick leave while a claim is being processed?

A. Yes. Like the current Act, the Bill requires the sick leave to be reinstated if the worker is subsequently entitled to income compensation for the period of the sick leave. The Bill also clarifies that any amount paid to the worker as sick leave is taken to be paid towards income compensation.

Q. Why is a teacher's vacation entitlement mentioned?

A. Teachers have annual leave, long service and sick leave like other workers covered by industrial awards. However, teachers are also paid during student vacation periods (between school terms). The provision ensures that a teacher's entitlement to income compensation is not affected if it is being paid during a student vacation period, and the teacher's vacation entitlement is also not affected by the worker receiving income compensation. They are concurrent entitlements.

2021 CONSULTATION ONLY

Medical and Health Expenses Compensation

The Bill provides greater flexibility to prescribe medical and health expenses compensation and delivers on a 2021 election commitment to increase the cap on medical and health expenses compensation from 30% to 60% of the general maximum (prescribed) amount.

Key Points

Bill ref: cl. 70-80, 552, 554

- The Bill provides greater flexibility to prescribe compensable health services and any provider eligibility requirements by regulations.
- Fees payable for medical and health expenses will be fixed by Ministerial order, rather than regulations.
- The requirement for medical and health expenses to be reasonable is maintained but clarified with reference to the necessity of the worker to incur the expense and the scales of fees set by Ministerial order.
- A medical and health expenses general limit will apply to a worker's entitlement, which will increase from 30% to 60% of the general maximum amount. This would equate to an increase from $71,754 to $143,507 in 2021/22. The limit will be indexed annually in accordance with the regulations (as it is currently).
- Provisions for a standard increase and special increase in the medical and health expenses general limit, and the criteria that apply to each increase, are substantively the same as the current Act.

Questions & Answers

Q. What health services will be prescribed in regulations?

A. In the first instance, the intention is to prescribe in regulations the health services and providers currently referred to as 'approved treatment' in the current Act. These are physiotherapy, chiropractic, counselling and clinical psychology, occupational therapy, osteopathy, speech pathology, acupuncture, exercise programs. Regulations provide flexibility to recognise new compensable health services, or to modify the description or criteria that applies to existing health services, if there is a sound basis for doing so in the future.

Q. Why are maximum amounts for health services being fixed by Ministerial order and with reference to provisions of other publications?

A. This is a more flexible and contemporary approach to setting fees for medical and health services due to volume and technical terms. It also allows for the order to adopt provisions of other publications as they relate to health services and fees. For example, other jurisdictions adopt in full, or part, fees, service descriptors and billing rules in the *Australian Medical Association List of Medical Services and Fees* or the *Medicare Benefits Schedule List of Medical Services.*

Q. Are medical and health expenses in the Bill payable for injuries and claims made under the current Act?

A. Yes, only if the medical expenses cap was not exhausted before the new Act commences. The Bill converts compensation paid under the current Act to compensation paid under the new Act with amounts paid under the current Act taken to be paid and contributing to any capped amount in the new Act.

2021 CONSULTATION ONLY

Miscellaneous Expenses Compensation

The Bill provides for uncapped miscellaneous expenses compensation which will be extended to include first aid and emergency transport costs (currently part of the capped medical entitlement) and the same small number of expenses provided for in the current Act.

Key Points

Bill ref: Part 2 Division 5

- Miscellaneous expenses compensation is additional to medical and health expenses compensation.
- Miscellaneous expenses is the label given to the following entitlements which are distinguishable from medical and health expenses because there is no aggregate limit on these expenses (as there is for medical and health expenses):
  - first aid and emergency transport
  - a wheelchair or similar appliance
  - a surgical appliance or artificial limb
  - repair or replacement of clothing damaged or destroyed
  - repair or replacement of an artificial aid damaged or destroyed
  - travel
  - assessment of degree of permanent impairment
- The key change from the current Act, as recommended in the Final Report, is to include first aid and emergency transportation as a miscellaneous expense. The result is that any costs incurred for ambulance or air transportation services would not be included in the worker's medical and health expenses general limit.

Key Points

- It must be reasonably necessary for the worker to incur the miscellaneous expense and the amount of the expense must be reasonable.
- Regulations may apply a limit on the amount payable for provision of a wheelchair or similar appliance, and the rate of travel expenses (consistent with the current Act).

Questions & Answers

Q. Is an employer liable to pay for the cost of an assessment of a worker's degree of permanent impairment?

A. Yes. Under the current Act an employer is liable to pay the cost of the first impairment assessment for common law purposes only. This limitation has been removed so that the first assessment for any purpose is payable, which means the cost of an assessment for the worker to access permanent impairment compensation is now also payable.

Q. What is the effect of the change to include first aid and emergency transport as a miscellaneous expense?

A. Emergency transport costs can be very high if a worker is transported via air ambulance, and can comprise a significant portion of the capped medical entitlement under the current Act. In the Bill first aid and emergency transportation costs are payable as a miscellaneous expense and therefore do not count towards a worker's capped medical and health expenses entitlement.

2021 CONSULTATION ONLY

Permanent Impairment Compensation

The Bill clarifies the process and timeframes for accessing permanent impairment compensation via a settlement agreement. The permanent impairment compensation table (Schedule 2 in current Act) and amounts payable for each item will not change.

Key Points

Bill ref: Part 2 Division 6, cl. 149

- There is a new process for agreement (cl. 102) or determination (cl. 103) of the degree of permanent impairment for the purpose of accessing permanent impairment compensation.
- A notification process (PI Notice) and timeframes apply 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.
- The PI Notice is registered with the settlement agreement (not as a separate election or registration process).
- Permanent impairment compensation is payable when the employer's liability to compensate the worker for the injury is commuted by a registered settlement agreement.
- The Director Conciliation will continue to scrutinise the amount paid for any permanent impairment compensation. This is to ensure the amount in the settlement agreement corresponds with the legislated method for calculating permanent impairment compensation: the percentage degree of permanent impairment multiplied by the percentage of the lump sum limit that applies to the relevant impairment item.
- There is no change to the capped amounts payable.

Questions & Answers

Q. Are there any changes to expand, redefine or modify the table of impairments or the amounts payable for permanent impairment?

A. No. The weightings that currently apply to specified impairments relative to the maximum lump sum payment are retained in the Bill. There is also no change to the total amount payable for permanent impairment compensation.

Q. Who pays for the permanent impairment assessment?

A. The worker's employer / insurer is liable to pay for one permanent impairment assessment for the purpose of establishing eligibility for permanent impairment compensation if a worker requests an assessment. This does not include the cost of an assessment that an employer arranges and voluntarily pays for as part of the management of the worker's claim.

2021 CONSULTATION ONLY

Noise Induced Hearing Loss

The Bill provides greater flexibility for regulations to set out matters relating to noise induced hearing loss testing and oversight. The maximum amount payable for noise induced hearing loss compensation, along with the thresholds for accessing entitlements, will not change.

Key Points

Bill ref: Part 2 Division 7

- Compensation will continue to be available for workers who suffer noise induced hearing loss as a result of their employment.
- The testing and assessment of noise induced hearing loss is highly technical. As such, the Bill provides for key aspects of the regime to be set out in regulations:
  - any compulsory testing and monitoring for hearing loss in workers
  - the persons authorised to test and assess hearing loss and make noise induced hearing loss assessments
  - the methods and equipment authorised and required to be used for testing and assessing
  - the claims process
  - the methodology for apportionment
  - the making and keeping of records and access to and communicating results of hearing tests and assessments.
- The regulations for noise induced hearing loss are yet to be finalised and WorkCover WA will consult with industry on any change to the current approach.

Questions & Answers

Q. What are the thresholds for accessing compensation for noise induced hearing loss?

A. The thresholds will not change: initial noise induced hearing loss of at least 10% and further noise induced hearing loss of at least 5%.

Q. Why is so much of the noise induced hearing loss regime to be prescribed by regulations?

A. Noise induced hearing loss is a highly technical area, and the current regime is contained in a complex mix of the Act, regulations and approved procedures. As a result the current regime can be confusing. The Bill sets out the fundamental entitlement and basic structure of the new noise induced hearing loss regime in legislation and leaves the technical and procedural matters to the regulations where they are more appropriately dealt with.

2021 CONSULTATION ONLY

Compensation for Dust Disease

The Bill clarifies the presumption of work injury for dust disease and streamlines provisions for how dust disease claims are made and determined.

Key Points

Bill ref: cl. 29, 36, 116-127, 425

- Pneumoconiosis (or silicosis), mesothelioma, lung cancer and diffuse pleural fibrosis – each referred to as a dust disease in the Bill – will be covered under a presumption of work injury.
- The presumption will apply if a worker has been exposed to asbestos at work (or in the case of pneumoconiosis or silicosis, exposed to mineral dusts harmful to the lungs) and has suffered a dust disease. The presumption is consistent with the current Act.
- All claims will continue to be given to the WorkCover WA CEO for referral to a Dust Disease Medical Panel (DDMP - currently known as the Industrial Diseases Medical Panel).
- The claim and DDMP determination processes have been clarified with provision for a special dust disease claim form, progression of the claim by the last employer, changes to clarify the questions for determination by the DDMP, and modification of the timeframes for insurers and self-insurers to make liability decisions on the claim following the DDMP determination.
- The DDMP will make binding determinations on questions relating to the diagnosis of the disease, the extent of any incapacity (relevant if the claim relates to income compensation), and the degree of permanent impairment (relevant if the claim relates to permanent impairment compensation and/ or access to common law). The determination will continue to be binding on parties and the courts.

Key Points

- The Bill provides for a lump sum entitlement for permanent impairment arising from a dust disease, which is comparable to the lump sum entitlement under Schedule 5 of the current Act. The entitlement is accessible if the DDMP determines a worker is suffering a dust disease and any impairment level has resulted from exposure to the disease.

Questions & Answers

Q. How does the Bill impact on dust disease common law claims?

A. The Bill maintains the provisions for the worker and employer to register an agreement as to whether the worker's degree of whole person impairment is at least 15% (the impairment threshold to pursue common law) or have the impairment assessed by the Dust Disease Medical Panel. The assessment or agreement is registered to support an election to pursue common law damages. Mesothelioma is deemed to be at least 25% whole person impairment.

Q. Will the panel practices and procedures change?

A. Minor efficiency improvements only. The Bill facilitates determinations without the worker's attendance or physical examination if it is appropriate to do so, and clarifies timeframes for the determination with reference to the receipt of all necessary information required to make the determination (e.g. respiratory specialist report, high resolution CT scan which are current panel requirements).

2021 CONSULTATION ONLY

Death Entitlements

The Government implemented significant improvements to death entitlements in 2018, in line with recommendations of WorkCover WA's Final Report. The Bill replicates the 2018 amendments, makes minor drafting improvements, and consolidates all provisions relating to the claim process and compensation entitlements.

Key Points

Bill ref: Part 2 Division 9

- The Bill provides for minor drafting improvements and consolidation of provisions relating to death entitlements.
- There are no changes to the structure or quantum of compensation payable to dependants, or to the claims process.

Questions & Answers

Q. Where can I find out more about the amendments made in 2018?

A. The WorkCover WA website[1] contains information and resources about workplace fatality entitlements and how to make and resolve a claim.

[1] workcover.wa.gov.au

2021 CONSULTATION ONLY

Settlements

The Bill clarifies the settlement pathway from eligibility through to registration and scrutiny of settlement agreements.

Key Points

Bill ref: Part 2 Division 11, cl. 420

- A settlement commutes to a lump sum the liability of an employer to pay compensation to a worker and discharges that liability.
- Registration of a settlement agreement will be the only pathway to settle a workers compensation claim via a lump sum and to discharge an employer's liability for the injury.
- A settlement can be made 6 months after the worker's injury date.
- The regulations will provide for settlements to be made before 6 months in prescribed circumstances.
- The common law settlement pathway (s 92(f) in current Act) cannot be used to settle workers compensation claims, unless the 15% whole person impairment requirement is met and an election to pursue common law is registered.
- Settlement agreements will continue to be scrutinised by the Director Conciliation for genuineness and the amount paid for any permanent impairment compensation. The Director will refuse to register a settlement agreement if of the opinion the agreement was obtained by fraud, undue influence or other improper means.
- Registration of a settlement agreement will also prevent the awarding of damages as does the current Act (will not prevent the awarding of damages if the settlement agreement applies to dust disease impairment compensation only).

Questions & Answers

Q. What will be the prescribed circumstances for settlement of a claim before 6 months?

A. The circumstances have not been finalised. The following indicative circumstances are listed to guide consultation:

- a claim is made by a worker under a temporary work visa where return to work is not possible or the worker is required to return to their country of origin
- the claim has been accepted and the worker is leaving the Commonwealth either permanently or indefinitely
- liability for the claim is contested in more than one jurisdiction (a cross border matter)
- a claim relating to a dust disease
- any claim where a medical practitioner certifies the worker's death is imminent
- where the claim relates to a psychological injury and a medical practitioner certifies that delayed resolution of the claim is likely to be detrimental to the worker's health
- a conciliator has issued a Certificate of Outcome.

Q. Can a workers compensation settlement include provision for damages?

A. No. Settlement of a workers compensation claim cannot include an amount for damages or for the potential liability of the employer for damages to be commuted. Also, settlement of a workers compensation claim prevents the awarding of damages. The settlement pathways for an employer's liability for workers compensation entitlements and damages will be completely separated.

2021 CONSULTATION ONLY

Reducing, Suspending, or Discontinuing Income Compensation

The Bill clarifies the circumstances for reducing, suspending, or discontinuing income compensation payments to a worker.

Key Points

Bill ref: cl. 64-68

- The Bill provides that once an entitlement to income compensation is established and payments commence the payments cannot be reduced, suspended or discontinued, except in accordance with the Act.
  This maintains the general restriction in the current Act on the unilateral reduction or cessation of compensation by an insurer or self-insurer.
- The Bill clarifies and sets out the specific circumstances where an employer is permitted to reduce, suspend, or discontinue income compensation payments to a worker. The circumstances are:
  - to comply with a relevant provision of the Bill such as the calculation of income compensation or any limit on compensation. For example, this includes where the Bill requires a reduction in income compensation payments after the first 26 weeks of incapacity, or where the maximum limit has been reached for income compensation or medical and health expenses compensation.
  - to comply with a direction of a conciliator or an order of an arbitrator.
  - reducing or discontinuing income compensation payments on the basis of a worker's return to work - see *Information Sheet 23*.
  - reducing or discontinuing income compensation payments on the basis of medical evidence - see *Information Sheet 24.*

Key Points

- suspending income compensation payments when a worker is not residing in WA and fails to provide declarations required by the regulations - see *Information Sheet 25*.
- suspending income compensation payments when a worker is in custody under the law of a state or the Commonwealth - see *Information Sheet 26*.
- with the consent of the worker in the approved form.

Questions & Answers

Q. If a worker does not agree that an employer should reduce, suspend, or discontinue income compensation payments what can they do?

A. A worker may apply to have the matter determined as a dispute. An arbitrator can make any order the arbitrator considers appropriate in the circumstances.

2021 CONSULTATION ONLY

Reducing or Discontinuing Income Compensation – Return to Work

The Bill provides for a new provision for reducing or discontinuing income compensation payments to a worker based on the worker having returned to work and deriving earnings.

Key Points

Bill ref: cl. 5, 49, 64, 165

- An employer will no longer have to wait 21 days to reduce or discontinue income compensation payments when a worker has returned to work.
- The Bill defines 'return to work' (cl. 5) as:
  - 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' (defined in cl. 165).
- 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.
- 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.
- The employer must give the worker notice in the approved form of why payments are being reduced or discontinued and specify the amount of income compensation that will be paid to the worker for any partial incapacity.
- For any period during which a worker is partially incapacitated for work, the amount of income compensation is obtained by calculating the amount that would apply if the worker were totally incapacitated for work and deducting from it the amount the worker earns, or is able to earn, in 'suitable employment' (as defined in cl. 165).

Key Points

- The Bill also clarifies that a worker is not entitled to income compensation for a time during which the worker earns, or is able to earn, in suitable employment an amount equal to or greater than the amount of income compensation that would apply if the worker were totally incapacitated for work.
- If a worker returns to work in suitable employment with a different employer, the original employer will be required to verify the worker's earnings in the other employment before reducing or discontinuing income compensation payments.

Questions & Answers

Q. If a worker does not agree with an employer reducing or discontinuing income compensation payments what can they do?

A. A worker may apply to have the matter determined as a dispute. An arbitrator can make any order the arbitrator considers appropriate in the circumstances.

2021 CONSULTATION ONLY

Reducing or Discontinuing Income Compensation – Medical Evidence

The Bill clarifies the process for reducing or discontinuing income compensation payments to a worker based on medical evidence about capacity for work.

Key Points

Bill ref: cl. 5, 65

- Clause 65 essentially replicates the provisions and processes in section 61 of the current Act for discontinuing or reducing weekly payments on the basis of a medical certificate (evidence) indicating a worker has total or partial capacity for work, or the incapacity is no longer a result of the injury.
- An employer who intends to reduce or discontinue income compensation payments on the basis of medical evidence must give the worker written notice in accordance with the regulations.
- A copy of the medical evidence the employer is basing their decision on must also be given to the worker.
- After receiving the required documents, a worker may within 21 days make a dispute resolution application if they do not agree with the proposed reduction or discontinuing of income compensation payments by the employer.
- If a worker makes application within 21 days an employer cannot reduce or discontinue income compensation payments until the dispute is finalised.
- The Bill now clarifies that applying for the resolution of the dispute by conciliation is the first step in seeking an order by an arbitrator and also clarifies when the dispute resolution process has been finalised (e.g. the application is not accepted, or is discontinued or dismissed, or resolved by conciliation).
- If a worker does not make a dispute resolution application within 21 days the employer may proceed to reduce or discontinue income compensation payments.

Questions & Answers

Q. Why doesn't the same notification process and 21 day period apply where income compensation payments are reduced or discontinued based on a worker returning to work?

A. A worker's return to work is a factual matter. There should be minimum delay in reducing or discontinuing income compensation in that circumstance. The Bill provides for an alternative notice to be given to the worker about why payments are being reduced or discontinued based on return to work and the amount of income compensation that will be paid to the worker for any partial incapacity.

2021 CONSULTATION ONLY

Reducing or Discontinuing Income Compensation – Worker not Residing in WA

The Bill provides for the suspension (rather than cessation in the current Act) of income compensation payments to a worker not residing in WA if the worker fails to provide a required declaration about their incapacity at the prescribed intervals.

Key Points

Bill ref: cl. 66

- The Bill replicates the current Act requirement for a worker who is not residing in WA to provide a declaration about their incapacity for work to the relevant insurer or self-insurer at prescribed intervals (the regulations will likely require the same 3 monthly declaration as the current Act and regulations).
- Unlike the current Act, the entitlement will not cease if a worker fails to provide the declaration in time. Instead the Bill sets out a process by which an insurer or self-insurer may suspend income compensation payments.
- Before taking any action the Bill requires an insurer or self-insurer to give the worker a written warning notice reminding the worker of their obligations to provide the required declaration before the due date. The notice must also warn the worker that the payment of income compensation will be suspended from a specified date if the worker fails to provide the declaration.
- The warning notice cannot be issued to a worker earlier than 14 days before the last day the worker has to provide the declaration.
- The date specified as the suspension date must be at least 14 days after the warning notice is given to the worker and cannot be earlier than the last day the worker has to provide the declaration.

Key Points

- Payment of income compensation will be suspended from the specified date until the worker provides the required declaration to the insurer or self-insurer.
- The worker's entitlement does not cease and income compensation payments must recommence from the date the worker provides the required declaration.

Questions & Answers

Q. If a worker believes income compensation payments were not lawfully suspended what can they do?

A. A worker may apply to have the matter determined as a dispute. An arbitrator can make any order the arbitrator considers appropriate in the circumstances.

2021 CONSULTATION ONLY

Reducing or Discontinuing Income Compensation – Worker in Custody

The Bill clarifies that income compensation payments to a worker are suspended when a worker is in custody or serving a term of imprisonment.

Key Points

Bill ref: cl. 67

- The Bill clarifies that payments of income compensation are suspended if a worker is in custody under a law of WA, or another state, or the Commonwealth, or the worker is otherwise serving a term of imprisonment.
- The regulations may prescribe the kinds of imprisonment to which the suspension applies and may exclude certain custody arrangements from the operation of the provision.
- An employer must have written confirmation from the relevant government authority of the facts relevant to the worker being in custody or serving a term of imprisonment. The relevant government authority is the authority administering the law under which the worker is in custody or serving a term of imprisonment.
- An arbitrator will no longer be required to order payments be suspended or certify the period of the suspension.
- The worker's entitlement does not cease and payments will be required to recommence from the date the worker is no longer in custody or serving a term of imprisonment.

Questions & Answers

Q. If a worker believes income compensation payments were not lawfully suspended what can they do?

A. A worker may apply to have the matter determined as a dispute. An arbitrator can make any order the arbitrator considers appropriate in the circumstances.

2021 CONSULTATION ONLY

Return to Work and Suitable Employment

The Bill defines and clarifies the terms 'return to work' and 'suitable employment' which occur in several Parts of the Bill.

Key Points

Bill ref: cl. 5, 165, 49, 64, Part 3

- The term 'return to work' integrates the worker's pre-incapacity position and 'suitable employment'. These terms are used for the purpose of injury management, working out the amount of income compensation for partial incapacity, and for reducing or discontinuing income compensation payments based on return to work. The amended terms are consistent with definitions used in other jurisdictions.
- The Bill defines 'return to work' (cl. 5) as:
  - 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.
- 'Suitable employment' (cl. 165) in relation to a worker with an incapacity for work means employment with any employer performing duties (suitable duties) for which the worker is suited having regard to:
  - the nature of the incapacity with reference to medical information
  - the nature of the position and duties before the worker was incapacitated
  - the worker's age, education, skills, work experience and place of residence
  - any return to work program or workplace rehabilitation services in place for the worker
  - suitable training or vocational re-education (if the worker is paid).

Key Points

- 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.
- 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.

Questions & Answers

Q. Why is a definition of 'suitable employment' required?

A. To clarify what suitable duties a worker with a partial incapacity can perform in order to return to work. The current Act is not clear and does not expressly recognise paid alternative positions created for a worker to accommodate their restrictions.

Q. Can suitable employment be a different position and/ or with a different employer?

A. Yes. Returning to work in suitable employment can be a different position with any employer in some circumstances, for example, where a worker is unable to work in their pre-incapacity position but has capacity to work and derive earnings in another position.

2021 CONSULTATION ONLY

Worker's Treating Medical Practitioner & Medical Examinations

The Bill clarifies the role of the worker's treating medical practitioner, reinforces the worker's right to choose their treating medical practitioner and delivers on a 2021 election commitment to prohibit employer attendance in the medical examination of workers.

Key Points

Bill ref: cl. 170, 171

- The Bill provides that an injured worker is entitled to attend a medical practitioner of the worker's own choice and cannot be required to choose or attend a medical practitioner chosen by the worker's employer or insurer.
- A worker's treating medical practitioner performs a number of important functions which will now be expressly recognised in legislation:
  - to diagnose the nature of the worker's injury
  - to provide primary medical treatment to the worker
  - to coordinate medical treatment in relation to the worker's injury
  - to issue certificates of capacity
  - to monitor, review and advise on the worker's condition and treatment
  - to advise on the suitability of, and to specify restrictions on, duties the worker may be expected to perform
  - to participate in the development of a return to work program for the worker and in return to work case conferences.
- The Bill will deliver on a 2021 election commitment to prohibit employers, insurers, and agents of insurers from being present at medical examinations of workers during medical appointments with treating medical practitioners.

Questions & Answers

Q. Can an employer attend the medical examination to discuss return to work options or restrictions?

A. No. The Bill specifically prohibits employers, insurers, and agents of insurers from being present at medical examinations. There are other ways an employer can work with the treating medical practitioner to facilitate return to work without being present in the medical examination.

Q. Does a worker have the right to choose the medical practitioner if an employer/ insurer is seeking their own medical review of the worker's condition and capacity for work?

A. No. Employers / insurers will continue to have the right to review a worker's condition by a medical practitioner nominated by the employer / insurer (restrictions apply).

2021 CONSULTATION ONLY

Certificates of Capacity

The Bill clarifies arrangements for the issuing of certificates of capacity which are integral to claim assessment, medical management of a worker's injury and return to work planning.

Key Points

Bill ref: cl. 26, 159, 162, 169

- The Bill provides for a claim to be effectively made when a completed claim form is given to an employer with a certificate of capacity for the claim.
- The certificate of capacity will be in an approved form and issued by the worker's treating medical practitioner.
- The requirement in the Bill for the certificate of capacity to be in an approved form provides flexibility to modernise the certificate, including the possibility of adopting a nationally consistent certificate, in the future.
- The certificate of capacity will continue to include all relevant information to assist insurers with liability decisions, to guide medical and health treatment of the worker's injury, and to inform return to work programs and injury management. It will continue to certify:
  - the nature of the injury
  - whether there is incapacity for work and the extent of any incapacity for work (partial or total)
  - the nature of duties the worker can perform and the nature of any restrictions on the worker's capacity for work
  - an estimation of the period of any incapacity for work
  - a medical and injury management plan.

Key Points

- After a claim is made, the Bill provides that a worker is required to provide any 'progress' certificate of capacity to their employer / insurer within 7 days. This is to ensure the relevant insurer is informed of any changes to the status of the worker's injury, capacity for work, medical and health treatment, or return to work options.
- The Bill also provides for regulations to authorise a health practitioner (other than the worker's treating medical practitioner) to issue a certificate of capacity in specific circumstances.

Questions & Answers

Q. In what circumstances would health practitioners (other than the worker's treating medical practitioner) be permitted to issue a certificate of capacity?

A. It may be necessary to permit nurse practitioners or certain other health practitioners to certify minor or short duration lost time claims, or to prescribe initial treatment for workers in remote or regional areas where a worker does not have immediate access to their treating medical practitioner. Any future regulation would be subject to industry consultation.

2021 CONSULTATION ONLY

Return to Work Programs

The Bill provides for the establishment and implementation of return to work programs under comparable arrangements to the current Act.

Key Points

Bill ref: cl. 159-160

- An early return to work is the best possible outcome for injured workers and employers.
- Return to work programs assist injured workers to return to work in a timely, safe and durable way.
- Employers have obligations to establish return to work programs for partially incapacitated workers, or when required by the worker's treating medical practitioner.
- Injured workers also have obligations to participate and cooperate in return to work programs.
- There is no intention to depart from the current approach of specifying minimum standards for return to work programs. A one-size-fits-all prescriptive approach to return to work programs is not appropriate given the significant variation in the nature and extent of injuries and workplaces.
- Regulations may therefore specify minimum standards or requirements for the establishment, content and implementation of return to work programs, or require return to work programs to be in an approved form or include prescribed provisions.
- An arbitrator may order an employer or worker to comply with their return to work program obligations, if required.

Questions & Answers

Q. Is it necessary to consult the injured worker in the establishment of a return to work program?

A. Yes. A return to work program must, as far as reasonably practicable, be established in consultation with the worker.

2021 CONSULTATION ONLY

Return to Work Case Conferences

The Bill provides for a new obligation requiring a worker's attendance at a return to work case conference, which is aimed at supporting a worker's recovery and enhancing opportunities for return to work.

Key Points

Bill ref: cl. 164

- The Bill provides for workers with an incapacity to attend, participate, and cooperate in a case conference if arranged by the employer, employer's insurer or the worker's treating medical practitioner.
- When arranging a case conference it will be a requirement to give notice setting out the time and place of the conference and if the worker needs to attend in person or by other means.
- Regulations may prescribe:
  - the maximum number of times and frequency a worker must participate in case conferences
  - the conduct of a case conference
  - matters that can be discussed at case conferences
  - persons who may attend or participate in case conferences
  - other matters relevant to case conferences
  - a return to work case conference will not be utilised for the purpose of obtaining a medical examination or medical report about a worker's condition or incapacity for liability purposes - there are other provisions that provide for medical review for liability purposes.

Questions & Answers

Q. What will happen if a worker refuses to cooperate in a case conference?

A. An arbitrator may order the worker to cooperate in a return to work case conference. Failure to comply without a reasonable excuse may result in the suspension of income compensation and continued refusal can result in the termination of income compensation.

2021 CONSULTATION ONLY

Injury Management Obligations - Worker

The Bill clarifies an injured worker's return to work and injury management obligations.

Key Points

Bill ref: cl. 5, 162, 163, 165

- Return to work programs assist workers to return to work in a timely, safe and durable way. There are no changes to requirements for the establishment and implementation of return to work programs.
- The Bill defines 'return to work' (cl. 5) as:
  - 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.
- Suitable employment (cl. 165) 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.
- 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.
- A worker's duties in the return to work process have been clarified. A worker will be required to:
  - make reasonable efforts to return to work in cooperation with the employer
  - participate in and comply with reasonable obligations under a return to work program
  - provide each progress certificate of capacity to the worker's employer and insurer within seven days of receipt - see *Information Sheet 29.*
  - attend and participate in case conferences - see *Information Sheet 31.*

Questions & Answers

Q. What happens if a worker fails to comply with injury management obligations?

A. An arbitrator may compel a worker to comply with the return to work or injury management obligation, or can order payment of income compensation be suspended, unless there is a reasonable excuse. If a worker continues to fail to comply with the obligation for one month after payments are suspended income compensation may be terminated.

2021 CONSULTATION ONLY

Injury Management Obligations – Employer

The Bill clarifies an employer's return to work and injury management obligations including obligations to maintain a worker's pre-injury position or provide suitable employment.

Key Points

Bill ref: cl. 5, 158–160, 165, 166, 168

- An employer's obligations with respect to injury management systems and return to work programs will be retained in the same form as the current Act.
- Return to work programs assist workers to return to work in a timely, safe and durable way. The Bill defines 'return to work' (cl. 5) as –
  - 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.
- The Bill maintains the existing obligation for employers to make the worker's pre-injury position available (unless it is not reasonably practicable to do so) or provide suitable employment. The obligation runs for 12 months from the date of the worker's incapacity for work (the employment obligation period).
- The term 'suitable employment' is defined and clarified - see *Information Sheet 27*.
- Suitable employment (cl. 165) 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.
- 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.

Key Points

- The Bill also clarifies 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.

Questions & Answers

Q. Do employers need to establish a return to work program for a worker who has returned to work with full capacity?

A. No. Return to work programs are only necessary where the worker is partially incapacitated for work or in circumstances prescribed by regulations.

Q. What is the employment obligation period that applies to making employment available?

A. The employment obligation period is the period of 12 months beginning on the day on which the worker first has an incapacity for work as a result of the injury.

Q. In some cases it is not practicable to provide a worker with their pre-incapacity position or a worker may not have capacity to work in their position. What is the employer's obligation?

A. If a worker cannot carry out duties in the pre incapacity position or it is not practicable to do so, other suitable employment must be provided. - see *Information Sheet 27*.

2021 CONSULTATION ONLY

Labour Hire Employers & Host Organisations

The Bill maintains the obligation of labour hire employers to cover workers who are hired to host organisations and includes 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.

Key Points

Bill ref: cl. 14, 167

- The Bill clarifies labour hire employment: employment of an individual (the employee) under a contract of employment pursuant to which the services of the employee are temporarily lent or let on hire by the employer (the labour hirer) to another person (the host).
- If employment is labour hire employment, the employee is a worker for the purposes of the Act. The labour hirer (and not the host) is the worker's employer for work done personally by the worker for the host, but only if there is no contract between the worker and the host for the work to be done for the host.
- If a worker has an incapacity for work as a result of an injury from employment for work done for the host, the host will be required to cooperate with the labour hirer to assist them to comply with their obligations to establish and implement a return-to-work program and make employment available during the incapacity.

Questions & Answers

Q. Does 'labour hire employment' include finding work for a worker as an employment agent?

A. No. The Bill does not make an employment agent the employer of a person for whom the agency finds work if there is no contract of employment with the person.

Q. Why should the host have any role to assist the labour hirer in injury management?

A. In many labour hire arrangements workers work 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.

Q. Under what circumstances might a host have a liability to pay compensation to a worker?

A. The host may be liable as "principal" to pay compensation to the worker if the specific circumstances set out in Part 5 Division 2 of the Bill apply (contractors and subcontractors).

2021 CONSULTATION ONLY

Workplace Rehabilitation

The Bill characterises workplace rehabilitation as an injury management expense and provides for the approval and regulation of workplace rehabilitation providers.

Key Points

Bill ref: Part 3 Division 4, cl. 565, 566

- Workplace rehabilitation is central to injury management. The Bill characterises workplace rehabilitation services as an injury management cost for which an employer is liable (currently, workplace rehabilitation expenses are treated as a form of compensation).
- An employer will be liable for workplace rehabilitation services by an approved workplace rehabilitation provider where it is reasonably necessary to access those services. Circumstances where it is reasonably necessary to provide workplace rehabilitation will be set out in regulations.
- The Bill introduces a revised framework for the approval and regulation of workplace rehabilitation providers. 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.
- 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).

Questions & Answers

Q. How will the new provisions impact on workplace rehabilitation programs in place when the new Act commences?

A. Current programs will not be affected. Savings and transitional provisions preserve workplace rehabilitation programs in operation when the new Act commences.

Q. Will approved workplace rehabilitation providers need to seek re-approval under the new framework?

A. No. Savings and transitional provisions provide that a person approved as a workplace rehabilitation provider under the current Act is taken to be approved under the new Act. Providers approved under the current Act will still be subject to the approval criteria, conditions, performance monitoring and fee orders in the new Act.

2021 CONSULTATION ONLY

Independent Medical Review of Workers

The Bill replicates the current Act provisions that authorise an insurer or self-insurer to require a worker to undergo a medical examination for the purpose of obtaining a report as to the worker's medical condition.

Key Points

Bill ref: cl. 183, 184

- Insurers and self-insurers sometimes arrange to have a worker medically reviewed as part of the initial liability assessment for the claim, or where a second opinion is sought to answer questions about the nature or extent of the injury/ incapacity for work, or the effectiveness of health treatment provided to the injured worker.
- The Bill replicates and consolidates sections 64 – 66 and 70 of the current Act which provide for the medical review of injured workers.
- An insurer or self-insurer will be required to pay for any medical examination/ report and must provide a copy of the report to the worker within 14 days. If a worker is given the report, the worker will be required to provide a copy to the insurer or self-insurer within 14 days.
- The regulations will continue to specify the maximum number of times and frequency a worker can be required to undergo a medical examination.
- The Bill replicates the current Act where a worker fails to comply with a requirement to undergo a medical examination, including arbitrator orders suspending payments of compensation to the worker and suspending the worker's entitlement to take and prosecute any proceedings under the Act.

Questions & Answers

Q. What happens if an injured worker continues to refuse to attend a medical review?

A. An arbitrator may initially suspend payments. If there is continued non-compliance with the requirement for medical examination for one month after an arbitrator suspends payments (or longer period if an arbitrator determines should be allowed), without any reasonable excuse, an order can be made to cease the worker's entitlement.

2021 CONSULTATION ONLY

Assessment of Permanent Impairment & Approved Assessors

The Bill provides for the continuation of an impairment assessment process in accordance with Guidelines issued by WorkCover WA, and provides for a new modernised framework for approval and regulation of permanent impairment assessors.

Key Points

Bill ref: Part 4 Division 3 and 4, cl. 574

- WorkCover WA will continue to issue Guidelines for the Evaluation of Permanent Impairment.
- New Guidelines will be issued when the new Act commences due to minor terminology changes, however there is no intention to make any substantive changes to the impairment assessment methodology or clinical assessment parts of the Guidelines at this stage.
- The current Act provisions relating to the status of pre-existing diseases, secondary conditions, and multiple injuries from a single event are replicated in the Bill with minor terminology changes for clarity.
- Approved medical specialists will now be referred to as approved permanent impairment assessors.
- A new framework for the approval and regulation of approved permanent impairment assessors will apply. The framework addresses:
  - approval criteria and conditions, duration of approval and registration of permanent impairment assessors
  - provision for compliance audits and investigations to ensure compliance with the Act, regulations, conditions of approval and the Guidelines
  - suspension or cancellation of permanent impairment assessors.

Key Points

- The Minister will fix maximum fees and charges for permanent impairment assessments undertaken by approved permanent impairment assessors.
- The current Act requirement for WorkCover WA to establish a medical committee to advise on amendments to the Guidelines for the Evaluation of Permanent Impairment is not retained in the Bill. WorkCover WA participates via a national process under the auspices of Safe Work Australia as the Guidelines are based on a nationally consistent Guideline used across many jurisdictions.

Questions & Answers

Q. Will approved medical specialists under the current Act have to reapply to become approved permanent impairment assessors when the new Act commences?

A. No. Savings and transitional provisions provide that an approved medical specialist under the current Act is taken to be an approved permanent impairment assessor under the new Act, and is subject to the new Act. This means approved medical specialists under the current Act will be subject to the approval criteria, conditions, performance monitoring and compliance requirements in the new Act and regulations.

2021 CONSULTATION ONLY

Common Law

The common law provisions in the Bill are closely modelled on the current Act provisions, with some restructuring of subdivisions, and minor changes to clarify that the impairment and election registration requirements apply to the commencement of proceedings.

Key Points

Bill ref: Part 7, cl. 152, 420

- The threshold requirements for the awarding of damages will be the same as the current Act:
  - 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.
- However, the Bill clarifies the threshold requirements apply to both the commencement of proceedings and the awarding of damages.
- This means a writ cannot be issued, or settlement of the common law claim effected, without the impairment assessment and election being registered.
- The limit on damages for whole person impairment between 15% and 25% will be retained, along with the provision for reduction in compensation after an election is made for impairments in this range.
- The Bill also includes special provisions for dust disease damages claims including referral to a Dust Disease Medical Panel for assessment of the worker's degree of permanent impairment (will be automatically assessed by the Panel if a worker makes a dust disease compensation claim).

Key Points

- The *Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020* discontinued the 'termination day', which previously applied to the election for common law damages.
- Common law settlement agreements (92(f) deeds in the current Act) must still be filed with the Director. However, the Director will no longer have a role in scrutinising the settlement for fraud or misrepresentation.

Questions & Answers

Q. Can a workers compensation settlement include provision for damages?

A. No. Settlement of a workers compensation claim cannot include an amount for damages or for the potential liability of the employer for damages to be commuted. Also, settlement of a workers compensation claim prevents the awarding of damages. The settlement pathways for an employer's liability for workers compensation entitlements and damages will be completely separated.

2021 CONSULTATION ONLY

Dispute Resolution

The Bill replicates the dispute resolution provisions of the current Act with some minor amendments.

Key Points

Bill ref: Part 6, Part 14 Division 4

- Provisions for the establishment of the Conciliation Service and Arbitration Service have been consolidated into Part 6 Division 2.
- Part 6 Division 5 consolidates provisions common to conciliation and arbitration proceedings that are duplicated in separate divisions in the current Act.
- The Bill provides for legal practitioners or authorised agents to represent a party at a conciliation conference or arbitration hearing.
- The definition of 'authorised agent' includes persons authorised by the regulations to perform agent services and registered independent agents. Regulations will provide for a scheme for registered independent agents on a two-year transitional basis - see *Information Sheet 40*.
- The Bill permits an arbitrator to dismiss a proceeding for abuse of process, want of prosecution or other ground for dismissal specified in the arbitration rules. This may be on application by a party to the dispute or on the arbitrator's own initiative.
- Provision for matters to be referred to a medical panel are not retained in the Bill. Instead, an arbitrator may refer any medical matter to an expert to obtain a report.
- The provision for reconsidering a decision on the basis of new information has been amended to clarify what an arbitrator may consider when deciding if the new information justifies reconsideration of a decision.

Key Points

- 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.
- The Bill provides for the Director to make Conciliation Rules and the Registrar to make Arbitration Rules, instead of the Minister under the current Act.

Questions & Answers

Q. What happens to dispute proceedings in progress under the current Act when the new Act commences?

A. The savings and transitional provisions provide for various matters including pending dispute proceedings, dispute decisions under the current Act, continuity of conciliation and arbitration services, and the making of transitional directions.

2021 CONSULTATION ONLY

Registered Independent Agents

The Bill discontinues the regime for approving and regulating registered agents and transitions independent agents out of the scheme over a two-year period from when the new Act commences.

Key Points

Bill ref: cl. 304, 366, 573

- 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.
- The Bill discontinues the scheme of registration for registered agents.
- Regulations will set out the types of authorised agents who can represent parties in WorkCover WA's Conciliation and Arbitration Services.
- Authorised agents do not need to be registered or approved by WorkCover WA.
- The very small number of 'independent' (self-employed) agents currently registered will be permitted to continue to operate for a two-year transitional period.
- Regulations will provide for a scheme of registration of independent agents over the two-year transitional period. Regulations may provide for a range of circumstances relating to conduct, registration conditions, audits and investigations, suspension and cancellation.
- 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.
- 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).

Questions & Answers

Q. Will the two-year transitional period apply to all types of registered agent?

A. No. It only applies to independent agents. The current registration requirement for all other types of registered agent (such as agents employed by insurers, unions or associations) will cease when the new Act commences, but will not prevent these types of agent from representing parties in the Conciliation and Arbitration Services, as the regulations will authorise them.

2021 CONSULTATION ONLY

Insurance Requirements for Employers

The Bill maintains the fundamental employer obligation to effect and maintain a workers compensation insurance policy to cover workers suffering an injury from employment, clarifies the information required to be given to insurers, and provides for a new record keeping requirement.

Key Points

Bill ref: cl. 205-207, 212, 215

- The Bill requires employers when effecting and renewing a workers compensation policy to provide a declaration of aggregate remuneration in respect of workers employed by the employer. This is consistent with the current Act and assists with the assessment of premium.
- There is greater flexibility to set out all elements of 'remuneration' in regulations. This will provide clarity about the treatment of some elements that can sometimes cause confusion, such as fringe benefits.
- Employers will also be required to provide to the insurer any other information required by the regulations. 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.
- The new employer record keeping obligation relates to the number of workers employed, the appropriate industry classification, and total remuneration paid or payable for each period of insurance. Records must be retained for not less than 7 years.
- An insurer may recover the cost of undertaking an audit of employer records if there is a serious misstatement in the information provided that is relevant to the calculation of the premium.

Key Points

- The penalty for the offence of failing to effect or renew a workers compensation policy, or for failing to provide a remuneration declaration (or one that is provided but is known to be false and misleading) has increased from $5,000 to $10,000 in respect of each of the employer's workers to whom the offence relates.

Questions & Answers

Q. What other information is required to be given to the insurer other than the remuneration statement?

A. The regulations will likely require some further background information for new policy requests which may include records relating to the employer's OSH performance, claims experience or further details about the working arrangements under the employer, if requested by the insurer.

Q. Why has the penalty per worker increased for failing to have a workers compensation policy?

A. The increase in the maximum penalty is required to ensure it can be applied when necessary and is commensurate with high risk, recidivous offenders. The maximum penalty is seldomly awarded in the courts and has not changed since 1999. In practice only a small proportion of offences progress to prosecution. Most offences for failing to effect or renew a workers compensation policy are dealt with via an infringement notice and modified penalty.

2021 CONSULTATION ONLY

Licensing of Insurers

The Bill provides for a modernised licensing framework for the approval and regulation of workers compensation insurers.

Key Points

Bill ref: cl. 229-238; 591

- Insurers will be required to hold a licence from WorkCover WA to issue a workers compensation policy.
- Insurer licences will be granted by WorkCover WA - rather than the Minister.
- Regulations may specify criteria that must be satisfied for the grant of an insurer licence.
- An insurer licence is subject to conditions prescribed by the Act, regulations or WorkCover WA (e.g. compliance with liability decision timeframes and existing principles and standards).
- Insurer licences may be fixed term or granted to remain in force indefinitely.
- WorkCover WA will monitor and review the functions of insurers to determine whether they are being carried out in compliance with the Act, regulations and licence conditions.
- WorkCover WA may suspend or cancel an insurer licence (and / or issue an improvement notice) if an insurer fails to satisfy the criteria for the grant of a licence, or fails to comply with any provision of the Act or regulations, or a licence condition.
- There are new provisions for specialised insurers. An insurer licence may be granted, subject to a specialised insurer condition, that limits the insurance business carried out under the licence to a particular industry or class of business or employer.

Questions & Answers

Q. Will the insurers approved under the current Act have to reapply to become licensed insurers when the new Act commences?

A. No. Savings and transitional provisions provide that an approved insurer under the current Act is taken to be a licensed insurer under the new Act, but is subject to the new Act. This means insurers approved under the current Act will be subject to the licence criteria, conditions, performance monitoring and compliance requirements in the new Act and regulations.

Q. Why is there a need for specialised insurers and will this enable insurers to avoid insuring higher risk employers or industries?

A. Workers compensation insurance is mandatory for employers. It is a fundamental requirement in the privately underwritten competitive market system that insurers insure any employer in any industry that requests a workers compensation policy. WorkCover WA will have discretion to grant a licence subject to a specialised insurer condition. This discretion will not be used to permit insurers to avoid high insurable risks, and is simply to recognise the small number of insurers that already provide insurance to a particular industry or class of employer.

2021 CONSULTATION ONLY

Licensing of Self-Insurers

The Bill provides for a modernised licensing framework for the approval and regulation of self-insurers.

Key Points

Bill ref: cl. 248-255, 280, 281, 592

- Self-insurers will be required to hold a self-insurer licence granted by WorkCover WA - rather than the Governor. Licences may be fixed term or granted to remain in force indefinitely.
- The Bill clarifies the status of self-insurers covered by a group self-insurer license (i.e. a group of related entities).
- Regulations may specify criteria that must be satisfied for the grant of a self-insurer licence.
- A self-insurer licence will be subject to conditions prescribed by the Act, regulations or WorkCover WA.
- WorkCover WA will monitor and review the functions of self-insurers to determine whether they are being carried out in compliance with the Act, regulations and licence conditions.
- WorkCover WA may suspend or cancel a self-insurer licence (and / or issue an improvement notice) if a self-insurer fails to satisfy the criteria for the grant of a licence, or fails to comply with any provision of the Act or regulations, or a licence condition.
- The Bill provides for securities other than a bank guarantee to be provided to cover potential self-insurer liabilities if approved by WorkCover WA.
- The Bill clarifies that WorkCover WA may demand payment under a self-insurer security to the extent of any payments to be made by WorkCover WA on a claim under Part 5 Division 8 of the Bill (this will arise when a self-insurer is insolvent).

Questions & Answers

Q. Will self-insurers approved under the current Act have to reapply to become licensed insurers when the new Act commences?

A. No. Savings and transitional provisions provide that an approved self-insurer under the current Act is taken to be a licensed self-insurer under the new Act, but is subject to the new Act. This means self-insurers approved under the current Act will be subject to the licence criteria, conditions, performance monitoring and compliance requirements in the new Act and regulations. Savings and transitional provisions also convert self-insured groups of employers under the current Act to a group self-insurer licence under the new Act.

Q. Will the bank guarantee held for existing self-insurers need to be reissued when the new Act commences?

A. No. Savings and transitional provisions provide that self-insurer securities given by self-insurers under the current Act are taken to be securities under the new Act.

2021 CONSULTATION ONLY

Workers Compensation (Employer Indemnity) Policies

The Bill will clarify and standardise workers compensation (employer indemnity) policies including the scope of the indemnity for an employer's liability to pay compensation or damages for injuries that arise in respect of employment during the period of insurance.

Key Points

Bill ref: cl. 205, 206, 239-243, 587

- The Bill maintains the existing obligation requiring insurers to issue or renew a workers compensation policy to any employer who makes a request. The obligation extends to providing a quote of the premium to be demanded for the issue or renewal of a workers compensation policy.
- An employer applying for the issue or renewal of a workers compensation policy will be required to provide to the licensed insurer information required by the regulations. 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.
- The Bill clarifies that a workers compensation policy provides indemnity for an employer's liability to pay compensation or damages for injury in respect of employment during the period of insurance (not an injury occurring during the policy period).
- The Bill provides for regulations to 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).
- The form, content, terms and conditions of a workers compensation policy will be standardised and prescribed in regulations.

Key Points

- The Bill provides a framework for adjustable premium policies (also known as burning cost policies) that meet requirements in regulations.

Questions & Answers

Q. Will the existing employer indemnity policy standard wording need to change when the new Act commences?

A. Yes. The existing standard employer indemnity policy wording will be reviewed as part of the development of regulations. The terminology in workers compensation policies issued by insurers will need to align with terminology in the new Act including the reference to indemnity for injuries arising in respect of employment during the policy period, policy extensions, and clauses relating to indemnity conditions (e.g. refusing indemnity).

Q. Will policy extensions / endorsements or contractual indemnities be addressed in regulations?

A. Yes. Industry will be consulted on the status of policy extensions, endorsements and contractual indemnities as part of the development of regulations to standardise workers compensation policies.

Q. What will happen to policies issued before the new Act commences?

A. Savings and transitional provisions clarify that the repeal of the current Act does not affect the validity or operation of a policy issued under the current Act. However, policies issued under the current Act will also provide indemnity for any liability for compensation or damages arising under the provisions of the new Act.

2021 CONSULTATION ONLY

Refusal of Indemnity

The Bill provides for 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.

Key Points

Bill ref: cl. 244

- Insurers can currently refuse indemnity to an employer if an employer breaches a condition, or the subject matter is excluded, under a workers compensation policy. The 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).
- The current (unregulated) standard employer indemnity policy does not make indemnity for compensation subject to conditions or exclusions, but provides that indemnity for common law damages is subject to a policy limit and the exclusions and conditions of the policy (for which there are many exclusions and conditions). Some limits and exclusions are statutorily provided for (such as the policy limit of $50,000,000 per event and exclusions for common law liabilities arising outside of Australia).
- In practice indemnity refusal is rare. Where it has occurred, it has always been in relation to indemnity for common law damages only and due to conduct of the employer being grossly negligent in causing the injury.
- There is an intention to standardise all workers compensation policy terms, limits, exclusions and the permitted circumstances for an insurer refusing indemnity (such matters being better addressed in statute rather than contract).
- Regulations will therefore set out the permitted circumstances in which a licensed insurer may refuse to indemnify an employer against liability to pay compensation or damages in respect of an injury to the employer's workers.

Key Points

- There are likely to be very limited (or none at all) circumstances prescribed but this issue will be canvassed further in the development of regulations along with the development of a standard form policy.
- In the event indemnity refusal is permitted, the Bill provides for notification to WorkCover WA, the employer and worker within 5 days after the decision to refuse indemnity. The Bill also addresses what happens to the claim if the notice is sent before or after the insurer is required to make a liability decision and how disputes about the indemnity refusal and the employer's liability for compensation are dealt with.

Questions & Answers

Q. Why are the circumstances for refusing indemnity now being provided for in regulations?

A. There is a need to standardise policy terms including the basis, if any, of refusing to indemnify employers. Exclusions and conditions on indemnity should not be dealt with as contractual conditions up for negotiation. Ultimately all insurers contribute towards the cost of the compensation or damages where indemnity is refused and the employer cannot pay.

Q. Will the permitted circumstances for refusing indemnity need to be in regulations when the new Act commences?

A. Yes. Industry will be consulted on the permitted circumstances for refusing indemnity as part of the development of regulations to standardise workers compensation policies.

2021 CONSULTATION ONLY

Insurance Premium Rates and Review

The Bill maintains WorkCover WA's role in setting recommended premium rates for workers compensation policies but a new review process will be implemented where employers seek to challenge the premium charged by insurers.

Key Points

Bill ref: cl. 256-258

- The Bill provides for the making of an industry classification order and the fixing of recommended premium rates by WorkCover WA. This is substantively the same as the current Act. An industry classification order classifies all industries for the purposes of recommending a premium rate for each industry class.
- The existing provisions that prohibit an insurer from charging a loading on a recommended premium rate of more than 75%, unless permitted by WorkCover WA, are not replicated in the Bill. However, the provisions for appeal of the premium rate or industry classification of the employer (called review of premium charged) have been retained and clarified.
- A premium review can only be undertaken if the premium charged is at least 75% greater than the relevant recommended premium rate. Provisions for the review process have also been streamlined to ensure parties have made reasonable efforts to resolve the issue.

Questions & Answers

Q. Is a premium amount determined by an insurer payable if it is subject to a premium review?

A. Yes, the premium will be payable in accordance with the terms of the policy of insurance. However, if as a result of a premium review a lesser premium amount is payable than that already paid by the employer, the insurer will be required to repay to the employer the amount of the overpayment.

Q. Why is a premium review only available if the premium determined by the insurer is at least 75% greater than the recommended premium rate?

A. Insurers can currently charge up to 75% greater than the recommended premium rate without WorkCover WA approval, and this loading percentage on the premium will be used instead as a threshold amount for a premium review.

Q. Will all cases be reviewed where the premium charged is at least 75% greater than the recommended premium rate?

A. No. Historically, many premium loadings greater than 75% of the recommended premium rate are found to be appropriate based on the claims experience and/ or risk of the employer, with many employers accepting the insurer's assessment of the premium payable. The premium review process in the Bill provides a mechanism for employers who do not accept an assessed premium greater than 75% of the recommended premium rate is proper in the circumstances so long as reasonable efforts have been made to resolve the issue with the insurer.

2021 CONSULTATION ONLY

Default Insurance Fund

The Bill streamlines and consolidates into a Default Insurance Fund (DIF) the administrative and funding arrangements for liabilities associated with uninsured employers, insolvent insurers and self-insurers, and acts of terrorism.

Key Points

Bill ref: Part 5, Division 6

- 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.
- The Default Insurance Fund replaces the Employers Indemnity Supplementation Fund (EISF) and WorkCover WA General Account as a consolidated, efficient, and fit for purpose framework to manage and fund the following liabilities:
  - liabilities for claims relating to uninsured employers currently funded via the WorkCover WA General Account (Division 7)
  - liabilities of insolvent insurers currently funded via the EISF and liabilities of insolvent self-insurers including use of the self-insurer security (Division 8)
  - initial liabilities relating to acts of terrorism currently provided for under the EISF and subsequently recovered from insurers and self-insurers via contribution agreements (Division 9)
  - liabilities of the scheme established under the *Waterfront Workers' (Compensation for Asbestos Related Diseases) Act 1986* (Division 10) - which is in run off.

Key Points

- Payments from the Default Insurance Fund will be met by a levy contribution from licensed insurers and self-insurers - the same methodology that applies to contributions to WorkCover WA's General Account (based on premium income for insurers and notional premium for self-insurers).
- See *Information Sheet 48* for specific information about changes relating to liabilities associated with acts of terrorism.

Questions & Answers

Q. How will the levy contribution amount be determined?

A. The levy contribution amount will be based on the amount already in the DIF and on actuarial advice of the amount required to provide for existing and expected liabilities. Any surplus funds of the Employers Indemnity Supplementation Fund will be transferred to the Default Insurance Fund on commencement of the new Act.

2021 CONSULTATION ONLY

Default Insurance Fund – Acts of Terrorism

The Bill repeals the *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001* and integrates relevant provisions into the principal Act. The Bill also 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.

Key Points

Bill ref: Part 5, Division 9

Part 5 Division 9 of the Bill provides for:

- A statutory definition of 'act of terrorism' based on the Commonwealth's *Criminal Code Act 1995*, modified to ensure application to personal injury.
- Ministerial declaration as the sole trigger to activate acts of terrorism claims.
- An employer who has a compensation liability in respect of a declared act of terrorism may claim on WorkCover WA for payment or reimbursement.
- Amounts paid to satisfy claims are payable from the Default Insurance Fund via a levy on licensed insurers and self-insurers.
- Regulations may impose a claims limit on the total liability of all employers in respect of a declared act of terrorism. Either or both of the following limits may be imposed:
  - a limit on the total amount of the compensation liability for claims payable during a specified period; or
  - a limit on the total amount of the claims that are payable in respect of a particular declared act of terrorism (likely to be a limit of $100 million per terrorism event).
- The present exclusion regarding common law liabilities relating to terrorism claims will be maintained.

Questions & Answers

Q. What is the basis for funding terrorism claims through the Default Insurance Fund via a levy on licensed insurers and self-insurers?

A. The Default Insurance Fund provides for payments to be made to address scheme and system risks. Claim costs relating to acts of terrorism are met by the DIF as a system risk as insurers are unable to secure reinsurance from reputable AAA rated reinsurers. DIF payments are met via a levy on licensed insurers and self-insurers which is comparable with other jurisdictions and preferable to a direct levy on employers.

Q. What is the basis for placing a limit on the total cost of claims per terrorism event?

A. An increase in the cap 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.

For context, $100 million is four times the original, non-indexed limit that has been in place since 2001, double the standard common law indemnity and equal to the industry wide retention for terrorism claims under the Commonwealth's national scheme.

2021 CONSULTATION ONLY

ICWA Industrial Diseases Policy for Mining Employers

The Bill provides for the discontinuation of the special insurance policy mining employers are required to hold with the Insurance Commission of Western Australia for coverage of certain industrial diseases and includes a savings provision for coverage of historical liabilities.

Key Points

Bill ref: cl. 590

- The 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.
- The insurance policy is issued by the Insurance Commission of Western Australia (an ID policy) with premium payable by mining employers and payments made from a special Compensation Industrial Diseases Fund (CIDF).
- The Bill discontinues the special insurance arrangement mining employers are required to hold for liabilities arising in respect of employment after commencement of the new Act. The special insurance arrangement will continue to respond only to liabilities arising out of employment before commencement of the new Act.
- Relevant operative provisions in the *Insurance Commission of Western Australia Act 1986* will be amended to continue the CIDF for liabilities arising in respect of employment before commencement of the new Act.

Questions & Answers

Q. What is a 'liability arising in respect of employment before or after commencement' referring to? Is it the same thing as the worker's employment when the disease was contracted?

A. The reference to a 'liability arising in respect of employment on or after commencement' is not a reference to the worker's employment when the disease is contracted. Latent onset diseases such as mesothelioma manifest years after exposure to asbestos dust. The disease is caused by exposure to asbestos while working in employment many years before and it is the policy that insured the employer over the relevant period of that employment that exposed the worker or caused the injury that will respond to the claim, irrespective of when the injury occurs.

Q. What is the effect on historical ID policies and current ID policies in force when the new Act commences?

A. Historical ID policies (those for which the period of insurance expired before commencement of the new Act) and current ID policies (those that are in force on commencement of the new Act with a period of insurance expiring after commencement of the new Act) will continue to cover mining dust diseases contracted on or after commencement but only if the disease arises from employment before commencement.

Current ID policies will lapse on commencement in respect of liabilities arising from employment on or after commencement. The coverage that a current 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.

2021 CONSULTATION ONLY

Workers Compensation Insurance Brokers

The Bill provides for the registration of workers compensation insurance brokers should a registration scheme be required in the future.

Key Points

Bill ref: cl. 216

- Insurance brokers play an important role as an agent of employers in connection with workers compensation insurance. Traditionally, this role focussed solely on insurance related activities on behalf of their clients but has evolved into other activities such as reviewing claims, injury management and dispute resolution advice.
- Brokers are not recognised in the current Act. An Insurance Brokers Code of Practice, developed collaboratively by WorkCover WA and the National Insurance Brokers Association, provides clear guidelines for insurance brokers operating within the workers compensation system. This is supported by ongoing industry engagement and training on issues affecting brokers.
- This method of self-regulation, engagement and training is preferred over a formal licensing regime. Nonetheless, the Bill provides for a scheme for the registration of workers compensation insurance brokers should it be required in the future.

Questions & Answers

Q. What type of registration scheme for brokers is being contemplated?

A. No registration scheme for workers compensation brokers is being contemplated at this stage. Industry will be consulted on any proposal to establish a registration scheme in the future.

Q. Why does the Bill provide for a registration scheme for brokers operating in workers compensation insurance if there is no intention to introduce a scheme at this stage?

A. In the event there is a need for formal registration and regulation in the future. The role of brokers has expanded over time and there is a risk the current method of self-regulation, engagement and training may be insufficient in dealing with potential conduct or service delivery risks specific to workers compensation in the future. Statutory based licensing or registration systems apply to most service providers in the workers compensation scheme that set out eligibility for registration, activities that can be undertaken, and compliance with service standards.

2021 CONSULTATION ONLY

WorkCover WA & Administration

The Bill provides for the continuation of WorkCover WA as the statutory authority responsible for administering the workers compensation scheme, funded by a levy contribution from licensed insurers and self-insurers.

Key Points

Bill ref: Part 8 & 9, Part 14 Division 10

- The Bill provides for the establishment of WorkCover WA and its functions and powers, the appointment of WorkCover WA Board members and Board administration, and the staff of WorkCover WA.
- There are no substantive changes from the current Act.
- The Bill consolidates the various functions of WorkCover WA in one place. There are minor changes to Board meeting and administration provisions to align with contemporary drafting conventions for statutory authorities, and flexibility for meetings to be held remotely or for an issue to be decided without a meeting if an issue requires it.
- There is provision for the use of committees to assist WorkCover WA in the performance of its functions. The current Act requirement for WorkCover WA to establish a medical committee to advise on amendments to the Guidelines for the Evaluation of Permanent Impairment is not retained in the Bill, as WorkCover WA seeks advice and participates via a national process under the auspices of Safe Work Australia.
- WorkCover WA operations are currently funded by a levy on approved insurers and self-insurers which is paid into the General Account, which will continue under the new Act. Savings and transitional provisions provide for the continuation of the General Account.
- The only change in relation to the General Account is that liabilities relating to uninsured employers will no longer be payable from the General Account. The liabilities of uninsured employers will be payable from the Default Insurance Fund (under Part 5 Division 7).

Key Points

- The contribution (levy) methodology that applies to each insurer or self-insurer will be the same methodology that applies currently for the General Account and is based on premium income for insurers and notional premium for self-insurers. The same methodology will also apply with respect to insurer and self-insurer contributions to the Default Insurance Fund.

Questions & Answers

Q. What happens to WorkCover WA Board members and statutory office holders when the new Act commences?

A. Savings and transitional provisions continue the governing body of WorkCover WA as the WorkCover WA Board, and all appointed members immediately before commencement of the new Act will be taken to be appointed under the new Act. Similar savings and transitional provisions apply to other statutory office holders including inspectors, conciliators, arbitrators, the Director Conciliation and Registrar Arbitration.

2021 CONSULTATION ONLY

Approved Forms and Service and Facilitation of Electronic Processes

The Bill provides flexibility for many forms to be approved administratively by the WorkCover WA CEO and also facilitates electronic creation, transmission, service and registration of documents in the future.

Key Points

Bill ref: cl. 495, 496

- The Bill facilitates electronic processes and is an important change in the context of digitisation and modern communication methods. Regulations, arbitration rules or conciliation rules may address any, or all, of the following:
  - the means by which documents and information given under the Act may or must be created, recorded, given, exchanged, accessed or obtained
  - the creation, recording, giving, lodging and exchange of documents and information by electronic means for, or related to, the purposes of this Act, including the use of an electronic database or document system
  - when the giving, lodgment or exchange of documents and information is taken to be effected
  - the authentication of documents and information given, lodged or exchanged
  - the production of documents and information kept electronically
  - the status and effect of things done electronically under the rules or regulations.
- In light of these changes most hard coded references in the current Act to how documents must be given, exchanged, or verified are not replicated in the Bill.

Key Points

- Some forms, documents and notices will continue to be prescribed in regulations or, if related to disputes, prescribed by the conciliation rules or arbitration rules. However, many scheme related forms that are unsuitable for regulations or rules will be in a form approved by the CEO. The Bill provides for the WorkCover WA CEO to approve scheme related forms and documents (such as the claim form, certain notices) and to determine the manner in which approved forms are to be created, recorded, provided or exchanged.

Questions & Answers

Q. Will all forms and documents be able to be created, exchanged and registered electronically when the new Act commences?

A. No. It is envisaged a staged approach will be taken in the future to the making of regulations and rules to facilitate electronic communication and transmission as not all processes are capable of being done electronically - due to legal, technical or practical reasons.

2021 CONSULTATION ONLY

Disclosure of Information

The Bill addresses various circumstances where information disclosure is permitted or prohibited, including a new provision that prohibits disclosure of a worker's claim history for pre-employment screening purposes.

Key Points

Bill ref: Part 10, Division 2

- The Bill maintains the default position of confidentiality in the current Act. A person must not, directly or indirectly, use or disclose any information obtained by the person because of:
  - the person's office, position, employment or engagement under or for the purposes of the Act; or
  - any disclosure made to the person under or for the purposes of the Act.
- The prohibition on disclosure will not apply 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. It will also not apply if the disclosure is authorised. Authorised disclosures include:
  - for the purposes of, or in connection with, performing a function under the Act or another law
  - as required or authorised under the Act or another law (e.g. collection and disclosure of information about a worker's injury for claim and injury management purposes)
  - for the purposes of any legal proceedings arising under the Act or another law
  - under an order of a court or other person or body acting judicially
  - with the consent of the person to whom the information relates
  - in other circumstances prescribed by the regulations.

Key Points

- 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.
- The Bill requires WorkCover WA to disclose information to the WorkSafe Commissioner or Department CEO that is relevant to occupational safety and health (same as current Act). The Bill also permits WorkCover WA to disclose historical information such as the identity of a worker's employer and the employer's insurance status at a specified time or period (for example, a dust disease that may be connected to employment in the 1970s or 1980s).

Questions & Answers

Q. Under what circumstances will the prohibition on disclosure of a worker's claim history apply?

A. The Bill prohibits workers being required to disclose previous workers compensation claims to employers or their agents seeking access to claim records as part of pre-employment recruitment practices. The prohibition does not apply in relation to information disclosure to facilitate return to work programs or the provision of suitable employment for workers that have an incapacity for work.

2021 CONSULTATION ONLY

Compliance and Enforcement

The Bill provides for compliance and enforcement of the workers compensation legislation, including revised penalties for some offences, and integrating the infringement notice regime into the *Criminal Procedure Act 2004.*

Key Points

Bill ref: Part 11

- The Bill generally replicates provisions of the current Act relating to the designation of WorkCover WA staff members as inspectors, and the powers of inspectors in undertaking compliance investigations.
- Part 11 of the Bill consolidates provisions for several offences (e.g. fraud, providing false and misleading information) that presently sit in various parts of the current Act.
- The Bill includes revised penalties for a number of offences as recommended in the 2014 legislative review, including an increase in the penalty for the failure of an employer to hold a workers compensation policy.
- The specific infringement notice provisions of the current Act will be repealed, as infringement notices issued for the purposes of the new Act will be made under the general framework of the *Criminal Procedure Act 2004* – which applies to most WA state Acts.
- 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).

Key Points

- The Bill extends the time for giving an infringement notice from 6 months to 12 months. This reflects the complexity of some investigations and will allow for minor matters to be dealt with by way of an infringement notice instead of a court prosecution.

Questions & Answers

Q. What powers will an inspector have?

A. An inspector's powers are consistent with the current Act and include powers of entry to workplaces for compliance purposes, to require relevant documents and information to be provided, copied or retained, and to require persons to answer questions in an interview with the inspector.

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Prohibition on Circumventing Act: No Contracting Out

The Bill maintains and clarifies the prohibition on circumventing the Act through the use of alternative arrangements to manage workers compensation claims.

Key Points

Bill ref: cl. 4

- The current Act prohibits 'contracting out' (s. 301) of any of the Act's provisions.
- The Bill retains this prohibition and clarifies its meaning by stating that the application of the Act or any of its provisions cannot be excluded, restricted or modified by contract, agreement or otherwise, except as provided by the Act.
- This prevents the statutory workers compensation scheme from being circumvented or modified by 'agreements' between parties. An example is where an employer seeks a worker's agreement not to pursue a claim and instead asks them to sign up to receive certain payments outside the statutory scheme.

Questions & Answers

Q. Is it mandatory for workers to make a claim if they are injured at work?

A. No. It is the worker's choice and responsibility to make a claim and workers should not be discouraged from doing so. If a worker makes a claim an employer must progress it in accordance with the claim procedure in the Bill, regardless of the employer's views about the merits of the claim, their insurer, or any alternative payments that may have been offered to the worker in lieu of compensation.

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Use of Regulations

The Bill seeks to provide an appropriate balance of matters provided for in the principal Act and regulations. Fundamental rights and obligations are provided for in the Bill with the regulations dealing with technical and procedural matters, to expand certain concepts, or to deal with changing or uncertain situations (e.g. prescribing COVID-19 a presumptive disease).

Key Points

Bill ref: cl. 538, 539

- There are many regulation making powers in the current Act dealing with procedural or technical matters which are replicated throughout the Bill.
- Regulations may also be made to address the following key issues:
  - providing who is a 'worker' and 'employer' (cl. 13) to deal with new forms of employment that should fall within the workers compensation scheme
  - providing for a consolidated list of presumptive diseases that are taken to be work related (cl. 10) if there is scientific evidence about the association between particular occupational exposures and particular diseases
  - the assessment of noise induced hearing loss (Part 2 Division 7)
  - prescribing circumstances where an insurer may refuse indemnity to an insured employer (cl. 244) - as the *Insurance Contracts Act 1984* (Cwth) does not apply to workers compensation insurance
  - the eligibility criteria and conditions that apply to licensed or approved service providers.
- There is provision to adopt a code or any other subsidiary legislation into regulations or by reference. If adopted by reference the code or regulations will be published on the WorkCover WA website.

Questions & Answers

Q. What types of codes or other subsidiary legislation are intended to be adopted in regulations?

A. Very few. Technical standards that apply to assessing binaural hearing loss in workers is one example.

2021 CONSULTATION ONLY

Savings and Transitional Provisions

Savings and transitional provisions in the Bill provide for the treatment and status of matters provided for in the current Act at the time when the new Act comes into operation and the *Workers' Compensation and Injury Management Act 1981* and other related statutes are repealed.

Key Points

Bill ref: Part 14

- The new Act will apply to any injury or death, an employer liability, and any insurance policy issued before commencement of the new Act (there are some exceptions in Part 14).
- The general approach with the savings and transitional provisions is that the new Act (the Bill when enacted) operates as a continuation of the current Act. Any pending matter (which is defined) continues and will be dealt with under the corresponding provisions in the new Act as if it arose under the new Act.
- There are specific savings and transitional provisions for all major scheme elements including injury, claims, compensation, injury management, dispute resolution, insurance, settlements, common law proceedings and administration.
- Transitional regulations may be made to address any transitional matter not specifically addressed in Part 14. Directions can also be made about which provisions in the former Act correspond with provisions in the new Act and may modify the effect of either the current Act or new Act in relation to pending matters.

Questions & Answers

Q. What happens to pended claims under the current Act when the new Act commences?

A. The Bill provides that any claim for weekly payments of compensation made under the current Act that was not decided before commencement of the new Act must be dealt with as a claim for income compensation under the new Act, as if made under the new Act. Part 14 of the Bill also addresses where a claim was disputed or deferred before commencement of the new Act.

Q. How does the Bill treat entitlement to compensation established under the current Act?

A. The Bill converts entitlements to compensation under the current Act to entitlements to compensation under the new Act and provides for the treatment of compensation caps. The Act does not renew or revive a liability for compensation under the current Act that was discharged or extinguished. The Bill also addresses the calculation of income compensation that commenced as weekly payments under the current Act, and the status of other entitlements including medical and health expenses, lump sum compensation for permanent impairment, noise induced hearing loss, and compensation for death.

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Review of Act

The Bill provides for a mandatory five yearly review of the new Act.

Key Points

Bill ref: cl. 540

- The Bill will require the Minister to review the operation and effectiveness of the Act and prepare a report based on the review:
  - as soon as practicable after the 5th anniversary of the day on which section 540 (of the new Act) comes into operation; and
  - after that, at intervals of not more than 5 years.
- The 5 yearly review and provisions for tabling the report in Parliament are requirements for new statutes and consistent with drafting standards.

Questions & Answers

Q. Will the clause requiring a review of the Act replace the review clauses introduced in 2013 (rebuttable presumption for firefighters who suffer cancer) and 2020 (as part of parliamentary consideration of the *Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020*?

A. Yes. The current Act will be repealed along with the 2013 and 2020 review clauses. The review clause in the Bill will be the only review clause and will apply to the operation and effectiveness of the whole Act.

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