

WESTERN AUSTRALIA

Workers Compensation and Injury Management Bill 2021

DRAFT BILL FOR PUBLIC COMMENT

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- to provide for employers to be liable to compensate workers who suffer injuries from employment; and
- to establish a scheme for compulsory insurance against that liability; and
- to provide for the management of those injuries; and
- to make administrative and other related provisions; and
- to repeal various Acts and consequentially amend other Acts.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

The bracketed references in clause headings are for assistance during consultation and will be removed before a final draft is prepared for introduction into Parliament.

Legend:

EISFA	<i>Employers' Indemnity Supplementation Fund Act 1980</i>
WCIMA	<i>Workers' Compensation and Injury Management Act 1981</i>
WCIMATA	<i>Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001</i>
WW(CARD)	<i>Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986</i>

For further information please see WorkCover Western Australia Authority's website: <https://www.workcover.wa.gov.au/>

2021 CONSULTATION ONLY

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Defined terms

Workers Compensation and Injury Management Bill 2021

A Bill for

An Act —

- **to provide for employers to be liable to compensate workers who suffer injuries from employment; and**
- **to establish a scheme for compulsory insurance against that liability; and**
- **to provide for the management of those injuries; and**
- **to make administrative and other related provisions; and**
- **to repeal various Acts and consequentially amend other Acts.**

The Parliament of Western Australia enacts as follows:

2021 CONSULTATION ONLY

1

Part 1 — Preliminary

2

Division 1 — General

3

1. Short title

4

This is the *Workers Compensation and Injury Management Act 2021*.

5

6

2. Commencement

7

This Act comes into operation as follows —

8

(a) Part 1 Division 1 — on the day on which this Act receives the Royal Assent;

9

10

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

11

12

3. Act binds Crown

13

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

14

15

16

4. No contracting out [WCIMA s. 301]

17

(1) The application of this Act or any of its provisions cannot be excluded, restricted or modified by contract, agreement or other arrangement, except as provided by this Act.

18

19

20

(2) A person who enters into a contract, agreement or other arrangement that purports to exclude, restrict or modify the application of this Act or any of its provisions, except as provided by this Act, commits an offence.

21

22

23

24

Penalty for this subsection: a fine of \$15 000.

25

Division 2 — Terms used

26

5. Terms used [WCIMA s. 5]

27

In this Act —

28

AIDS means acquired immune deficiency syndrome;

29

approved form means a form approved by the CEO under section 495 for the purposes of the provision in which the term is used;

30

31

32

approved permanent impairment assessor has the meaning given in section 196(1);

33

- 1 ***approved workplace rehabilitation provider*** means a workplace
2 rehabilitation provider granted approval under section 174(1);
3 ***arbitration rules*** has the meaning given in section 382(1);
4 ***Arbitration Service*** means the Workers Compensation
5 Arbitration Service established under section 308(1)(b);
6 ***arbitrator*** means a person designated as an arbitrator under
7 section 310(1);
8 ***Board*** means WorkCover WA's board provided for in
9 section 451;
10 ***CEO*** means the person holding or acting in the office of chief
11 executive officer of WorkCover WA;
12 ***certificate of capacity***, in relation to a worker's injury, means a
13 certificate issued in accordance with section 169;
14 ***company*** means a company or a registered body within the
15 meaning of the *Corporations Act 2001* (Commonwealth), other
16 than a registered body specified, or of a kind specified, in the
17 regulations;
18 ***compensation*** means compensation under this Act;
19 ***conciliation rules*** has the meaning given in section 381(1);
20 ***Conciliation Service*** means the Workers Compensation
21 Conciliation Service established under section 308(1)(a);
22 ***conciliator*** means a person designated as a conciliator under
23 section 310(1);
24 ***degree of permanent impairment*** means —
25 (a) degree of permanent impairment of a part or faculty of
26 the body; or
27 (b) degree of permanent whole of person impairment;
28 ***DI Fund*** means the WorkCover WA Default Insurance Fund
29 established under section 259(1);
30 ***Director*** means the WorkCover WA officer designated under
31 section 309(1) as the Director;
32 ***disease*** includes any ailment, disorder, defect or morbid
33 condition whether physical or mental and whether of sudden or
34 gradual development;
35 ***dispute resolution authority*** means the Director, the Registrar, a
36 conciliator or an arbitrator;

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Part 1 Preliminary

Division 2 Terms used

s. 5

1 **document** includes anything that falls within 1 or more of the
2 following —

- 3 (a) a record of information, irrespective of how the
4 information is recorded or stored or able to be
5 recovered;
- 6 (b) a thing on which there is writing;
- 7 (c) a map, plan, graph, drawing or photograph;
- 8 (d) a thing on which there are marks, figures, symbols or
9 perforations that have a meaning for persons qualified to
10 interpret them;
- 11 (e) a thing from which images, sounds or writings can be
12 reproduced with or without the aid of anything else;
- 13 (f) a thing on which information is recorded or stored,
14 whether electronically, magnetically, mechanically or by
15 some other means;

16 **dust disease** has the meaning given in section 112;

17 **dust disease impairment compensation** means lump sum
18 compensation under section 116 for impairment resulting from a
19 dust disease;

20 **employer** has the meaning given in section 12 (and see also
21 sections 13 to 16);

22 **General Account** means the WorkCover WA General Account
23 established under section 487(1);

24 **general maximum amount** has the meaning given in
25 section 537(1);

26 **group self-insurer licence** has the meaning given in
27 section 203;

28 **health professional** means —

- 29 (a) a person registered under the *Health Practitioner*
30 *Regulation National Law (Western Australia)* to practise
31 a health profession (other than as a student); or
- 32 (b) a person who is not resident in a State but who is
33 recognised as a health professional for the purposes of
34 this Act by WorkCover WA;

35 **HIV** means human immunodeficiency virus;

36 **incapacity claim** has the meaning given in section 24;

37 **income compensation** means compensation under Part 2
38 Division 3;

39 **injured worker** means a worker who has suffered an injury in
40 respect of which compensation is payable;

- 1 ***injury*** has the meaning given in section 6;
- 2 ***injury by disease*** means an injury that is a disease, or the
3 recurrence, aggravation or acceleration of a pre-existing disease,
4 as provided by section 6;
- 5 ***inspector*** means a staff member designated as an inspector
6 under section 507(1);
- 7 ***Insurance Commission*** means the Insurance Commission of
8 Western Australia referred to in the *Insurance Commission of*
9 *Western Australia Act 1986*;
- 10 ***insured employer*** means an employer who is insured under a
11 workers compensation policy;
- 12 ***insurer*** means an employer's insurer under a workers
13 compensation policy;
- 14 ***licensed insurer*** has the meaning given in section 203;
- 15 ***medical and health expense*** has the meaning given in
16 section 72;
- 17 ***medical and health expenses compensation*** means
18 compensation under Part 2 Division 4;
- 19 ***medical and health expenses general limit amount*** has the
20 meaning given in section 70;
- 21 ***medical practitioner*** means —
- 22 (a) a person registered under the *Health Practitioner*
23 *Regulation National Law (Western Australia)* in the
24 medical profession; or
- 25 (b) a person who is not resident in a State but who is
26 recognised as a medical practitioner for the purposes of
27 this Act by WorkCover WA;
- 28 ***mesothelioma*** means a primary malignant neoplasm of the
29 mesothelium (diffuse mesothelioma) of the pleura or the
30 peritoneum;
- 31 ***miscellaneous expense*** has the meaning given in section 82;
- 32 ***miscellaneous expenses compensation*** means compensation
33 under Part 2 Division 5;
- 34 ***noise-induced hearing loss*** has the meaning given in
35 section 104;
- 36 ***permanent impairment compensation*** means lump sum
37 compensation under Part 2 Division 6;
- 38 ***provisional payments*** means provisional payments made to a
39 worker in accordance with section 37;

Workers Compensation and Injury Management Bill 2021

Part 1 Preliminary

Division 2 Terms used

s. 5

- 1 **Registrar** means the WorkCover WA officer designated under
2 section 309(1) as the Registrar;
- 3 **return to work**, in relation to a worker who has an incapacity for
4 work, means —
- 5 (a) the worker's return to work in the position in which the
6 worker was employed immediately before becoming
7 incapacitated; or
- 8 (b) the worker's return to work in suitable employment;
- 9 **return to work program** means a return to work program
10 established under section 159(2);
- 11 **self-insurer** has the meaning given in section 203;
- 12 **self-insurer licence** has the meaning given in section 203;
- 13 **settlement agreement** means a settlement agreement referred to
14 in Part 2 Division 11;
- 15 **ship** —
- 16 (a) means any kind of vessel used in navigation by water,
17 however propelled or moved; and
- 18 (b) includes any of the following vessels used wholly or
19 primarily in navigation by water —
- 20 (i) a barge, lighter or other floating vessel;
- 21 (ii) an air-cushion vehicle or other similar craft;
- 22 **staff member** means any of the following —
- 23 (a) a WorkCover WA officer;
- 24 (b) a person engaged or appointed under the *Public Sector*
25 *Management Act 1994* section 100 for the purposes of
26 this Act;
- 27 (c) a person referred to in section 479(1);
- 28 **State** includes a Territory;
- 29 **suitable employment** has the meaning given in section 165;
- 30 **Trust Account** means the WorkCover WA Trust Account
31 established under section 493(1);
- 32 **uninsured employer** has the meaning given in section 268;
- 33 **WorkCover WA** means the body established under
34 section 444(1);
- 35 **WorkCover WA officer** means the CEO or a public service
36 officer appointed under section 478(1);
- 37 **WorkCover WA website** means a website maintained or
38 controlled by or on behalf of WorkCover WA;

1 **worker** has the meaning given in section 12 (and see also
2 sections 13 to 16);

3 **workers compensation policy** has the meaning given in
4 section 205(1);

5 **working director** has the meaning given in section 16;

6 **workplace rehabilitation services** means services provided for
7 the purpose of assisting an injured worker to return to work.

8 **Division 3 — Injury and injury from employment**

9 **6. Injury [WCIMA s. 5(1)]**

10 (1) In this Act —

11 **injury** means an injury from employment that is —

- 12 (a) a personal injury by accident; or
13 (b) a disease, or the recurrence, aggravation or acceleration
14 of a pre-existing disease.

15 (2) A personal injury by accident is an injury from employment if
16 the injury arises out of or in the course of the employment or
17 while the worker is acting under the employer's instructions.

18 (3) A disease, or the recurrence, aggravation or acceleration of a
19 pre-existing disease, is an injury from employment if —

- 20 (a) the disease is contracted or the recurrence, aggravation
21 or acceleration is suffered in the course of the
22 employment, whether at or away from the place of
23 employment; and
24 (b) the employment contributed to a significant degree to
25 the contraction of the disease or the recurrence,
26 aggravation or acceleration of the pre-existing disease.

27 (4) In determining whether particular employment contributed to a
28 significant degree to the contraction of a disease or to the
29 recurrence, aggravation or acceleration of a pre-existing disease,
30 account must be taken of the following —

- 31 (a) the duration of the employment;
32 (b) the nature of, and particular tasks involved in, the
33 employment;
34 (c) the likelihood of the injury occurring despite the
35 employment;
36 (d) the existence of any hereditary factors relating to the
37 occurrence of the disease;

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

3 **7. Exclusion of injury: reasonable administrative action**
4 **[WCIMA s. 5(1) and (4)]**

5 (1) In this section —

6 **administrative action** includes any of the following actions —

- 7 (a) an appraisal of the worker's performance;
8 (b) counselling action (whether formal or informal);
9 (c) suspension action;
10 (d) disciplinary action (whether formal or informal);
11 (e) anything done in connection with an action described in
12 paragraph (a), (b), (c) or (d);
13 (f) anything done in connection with the worker's failure to
14 obtain a promotion, reclassification, transfer or other
15 benefit, or to retain any benefit, in connection with the
16 worker's employment.

17 (2) A psychological or psychiatric disorder, including any
18 physiological effect of the disorder on the nervous system, that a
19 worker experiences is not an injury from employment if it
20 results wholly or predominantly from —

- 21 (a) administrative action, not being administrative action
22 that is unreasonable and harsh on the part of the
23 employer; or
24 (b) the worker's expectation of administrative action or of a
25 decision by the employer in relation to administrative
26 action.

27 **8. Injury from employment: work related attendances**
28 **[WCIMA s. 19(1)]**

29 A personal injury by accident suffered by a worker is taken to
30 be an injury from employment if the injury occurs —

- 31 (a) while the worker attends at a place for educational
32 purposes —
33 (i) as required by the terms of that employment; or
34 (ii) with the employer's consent and for the purpose
35 of, or in connection with, that employment;

36 or

- 1 (b) while the worker attends at a place for any treatment of
2 an injury or other purpose the cost of which is payable
3 as compensation in respect of the injury; or
4 (c) while the worker attends at a place to participate in a
5 return to work program or to undertake workplace
6 rehabilitation.

7 **9. Journeys [WCIMA s. 19(2)]**

- 8 (1) In this section —
9 *work journey* means a journey arising out of or in the course of
10 a worker's employment.
11 (2) A personal injury by accident suffered by a worker must not be
12 regarded as arising out of or in the course of the worker's
13 employment if the injury is suffered —
14 (a) during a journey to or from a place at which the worker
15 resides, whether or not temporarily; or
16 (b) while a work journey is substantially interrupted for a
17 purpose unconnected with the worker's employment, or
18 after an interruption of that kind; or
19 (c) during a substantial deviation from a work journey for a
20 purpose unconnected with the worker's employment, or
21 after a deviation of that kind.

22 **10. Prescribed diseases taken to be from certain employment**
23 **[WCIMA s. 32, 44, 45 and Sch. 3]**

- 24 (1) The regulations may —
25 (a) specify diseases for the purposes of this section (each a
26 *prescribed disease*); and
27 (b) for each prescribed disease specify 1 or more kinds of
28 employment as *prescribed employment* for that disease.
29 (2) If a worker suffers an injury by a prescribed disease and the
30 employment in which the worker works at the time of suffering
31 the injury, or in which the worker worked at any time before
32 suffering the injury, is prescribed employment for the disease,
33 the injury is taken to be injury from that employment unless the
34 employer proves that the injury was not from that employment.

35 Note for this subsection:

36 Section 6 determines whether an injury by a disease is from
37 employment. An employer can prove that the injury was not from
38 employment by proving that —

- 39 (a) it was not suffered in the course of the employment; or

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Part 1 Preliminary

Division 3 Injury and injury from employment

s. 11

- 1 (b) the employment did not contribute to a significant degree to the
2 injury.
- 3 (3) The regulations may —
- 4 (a) impose conditions or limitations on the operation of this
5 section; and
- 6 (b) specify the day on which an injury that under this
7 section is taken to be from prescribed employment is
8 taken to have been suffered.
- 9 (4) Unless the regulations otherwise provide, this section extends
10 to —
- 11 (a) an injury suffered before, and employment before, the
12 coming into operation of the regulation by which the
13 disease concerned is specified as a prescribed disease;
14 and
- 15 (b) an injury suffered before, and employment before, this
16 section comes into operation.
- 17 (5) This section does not prevent it from being established
18 independently of this section that an injury by a prescribed
19 disease is from employment whether or not the employment is
20 prescribed employment for the disease.

21 **11. Diseases of firefighters taken to be from employment**
22 **[WCIMA s. 49A to 49E and Sch. 4A]**

- 23 (1) In this section —
- 24 *firefighter disease* means a disease that is —
- 25 (a) listed in column 1 of the Table; or
- 26 (b) a cancer prescribed by the regulations to be a firefighter
27 disease;
- 28 *firefighting employment* means employment by or under the
29 Crown in right of the State a substantial part of the duties of
30 which consists of firefighting duties, being employment that
31 is —
- 32 (a) covered by an industrial instrument as defined in
33 section 58(1) that applies to firefighting or by an
34 agreement that wholly or partially regulates the terms or
35 conditions of employment as a firefighter; or
- 36 (b) prescribed by the regulations to be firefighting
37 employment;
- 38 *hazardous fire* means —
- 39 (a) a fire in a building; or

- 1 (b) a fire in a vehicle, whether designed to move under its
 2 own power or to be towed and whether or not still
 3 movable; or
 4 (c) a fire involving non-organic refuse or rubbish created by
 5 humans; or
 6 (d) a fire that is prescribed by the regulations to be a
 7 hazardous fire;

8 ***hazardous firefighting employment***, in relation to a worker,
 9 means firefighting employment during which the worker —

- 10 (a) is engaged as a member or officer of a permanent fire
 11 brigade as defined in the *Fire Brigades Act 1942*
 12 section 4(1); or
 13 (b) attends hazardous fires at a rate at least equivalent to the
 14 rate of 5 hazardous fires per year;

15 ***qualifying period*** means —

- 16 (a) for a disease listed in column 1 of the Table — the
 17 qualifying period specified for that disease in column 2
 18 of the Table; and
 19 (b) for a cancer prescribed by the regulations to be a
 20 firefighter disease — the qualifying period prescribed by
 21 the regulations for that cancer.

Table

Item	Column 1 Disease	Column 2 Qualifying period
1.	Primary site brain cancer	5 years
2.	Primary site bladder cancer	15 years
3.	Primary site kidney cancer	15 years
4.	Primary non-Hodgkin's lymphoma	15 years
5.	Primary leukaemia	5 years
6.	Primary site breast cancer	10 years
7.	Primary site testicular cancer	10 years
8.	Multiple myeloma	15 years

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Part 1 Preliminary

Division 3 Injury and injury from employment

s. 11

Item	Column 1 Disease	Column 2 Qualifying period
9.	Primary site prostate cancer	15 years
10.	Primary site ureter cancer	15 years
11.	Primary site colorectal cancer	15 years
12.	Primary site oesophageal cancer	25 years

1 (2) An injury by a firefighter disease suffered by a worker is taken
2 to be from firefighting employment in which the worker was
3 engaged if all of the requirements for the application of this
4 section to the injury as specified in subsection (3) are satisfied,
5 unless the employer proves that the injury was not from that
6 employment.

7 Note for this subsection:

8 Section 6 determines whether an injury by a disease is from
9 employment. An employer can prove that the injury was not from
10 employment by proving that —

- 11 (a) it was not suffered in the course of the employment; or
12 (b) the employment did not contribute to a significant degree to the
13 injury.

14 (3) The requirements for the application of this section to an injury
15 by a firefighter disease suffered by a worker are as follows —

16 (a) when the injury is suffered the worker (whether or not
17 still in firefighting employment) has been in firefighting
18 employment for at least a period of, or periods in
19 aggregate amounting to, the qualifying period for the
20 disease;

21 (b) the employer is satisfied that when the injury is suffered
22 the worker has been in hazardous firefighting
23 employment for at least a period of, or periods in
24 aggregate amounting to, the lesser of the following —

- 25 (i) 5 years;
26 (ii) the qualifying period for the disease;

27 (c) in the case of a cancer prescribed by the regulations to
28 be a firefighter disease for the purposes of this section,
29 the conditions, if any, prescribed by the regulations for
30 that cancer are satisfied.

- 1 (4) The day on which a worker's injury by a firefighter disease is
2 taken to have been suffered is the earlier of the following —
3 (a) the day on which the worker becomes totally or partially
4 incapacitated for work by reason of the injury;
5 (b) the day on which the injury is first diagnosed by a
6 medical practitioner.

7 **Division 4 — Worker and employer**

8 **12. Meaning of “worker” and “employer” [New provision, cf**
9 **WCIMA s. 5(1) employer, worker]**

- 10 (1) In this section —
11 **PAYG withholding** has the meaning given in the *Taxation*
12 *Administration Act 1953* (Commonwealth) Schedule 1 Part 2-5;
13 **person** includes the State, or an agency or instrumentality of the
14 State, as well as the Crown, or an agency or instrumentality of
15 the Crown, in any of its other capacities.
16 (2) An individual is a **worker** for the purposes of this Act if
17 payment of salary, wages, commission, bonuses or allowances
18 to the individual is subject to PAYG withholding as a payment
19 to the individual as an employee.
20 (3) The person who makes the payment is the worker's **employer**
21 for the purposes of this Act.
22 (4) The regulations may modify the effect of this section as to who
23 is a worker's employer in a specified case or circumstance.

24 Note for this section:

25 The failure by an employer to withhold an amount required to be
26 withheld by PAYG withholding does not affect the operation of this
27 section. The question is whether a payment is subject to PAYG
28 withholding, not whether an employer has complied with the
29 employer's obligations under PAYG withholding in respect of a
30 payment.

31 **13. Prescribed workers and excluded workers [New provision,**
32 **cf WCIMA s. 8-11, 14(2a)]**

- 33 (1) The regulations may provide that an individual of a specified
34 class or description who otherwise would not be, or might not
35 be, a worker under section 12(2) is a worker for the purposes of
36 this Act.
37 (2) The regulations must provide for the identification of the person
38 who is the employer for the purposes of this Act of each

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Division 4 Worker and employer

s. 14

1 individual who is a worker under regulations made under
2 subsection (1).

3 (3) The regulations may provide that an individual of a specified
4 class or description who otherwise would be, or might be, a
5 worker under section 12(2) is not a worker for the purposes of
6 this Act.

7 **14. Labour hire arrangements [New provision, cf WCIMA**
8 **s. 5(1) employer]**

9 (1) In this section —

10 *labour hire employment* means employment of an individual
11 (the *employee*) under a contract of employment pursuant to
12 which the services of the employee are temporarily lent or let on
13 hire by the employer (the *labour hirer*) to another person (the
14 *host*).

15 (2) If employment is labour hire employment, the employee is a
16 worker for the purposes of this Act.

17 (3) If employment is labour hire employment, the labour hirer (and
18 not the host) is the worker's employer for the purposes of this
19 Act for work done personally by the worker for the host but
20 only if the following conditions are satisfied —

21 (a) there is no contract between the worker and the host for
22 the work to be done for the host;

23 (b) if the labour hirer is a corporation — the worker is not a
24 director of the corporation.

25 (4) A reference in subsection (3) to work done for the host includes
26 work done for another person —

27 (a) at the direction of the host; or

28 (b) under an arrangement between the labour hirer and the
29 host.

30 Notes for this section:

31 1. This section does not make an employment agent the employer of a
32 person for whom the agency finds work if the worker is engaged
33 directly by the person for whom the work is to be done. It makes the
34 labour hire employer the employer only if there is no contractual
35 relationship between the worker and the host.

36 2. Under Part 5 Division 2 the host may be liable as "principal" to pay
37 compensation to the worker as well as the labour hirer under this
38 section. The "principal" may then recover compensation from the
39 labour hirer (see section 220) in specific circumstances.

1 **15. Jockeys [WCIMA s. 11A]**

2 (1) In this section —

3 *licensed* means licensed under the *Racing and Wagering*
4 *Western Australia Act 2003*;

5 *licensed facility* means a place licensed as —

- 6 (a) a racecourse; or
7 (b) a training track; or
8 (c) a trial track;

9 *licensed jockey* means a person licensed as a jockey;

10 *licensed trainer* means a person licensed as a trainer of
11 thoroughbred racing horses;

12 *Racing and Wagering Western Australia* means the body of
13 that name established under the *Racing and Wagering Western*
14 *Australia Act 2003* section 4;

15 *registered club* means a racing club registered under the *Racing*
16 *and Wagering Western Australia Act 2003*.

17 (2) A person who is a licensed jockey is a worker for the purposes
18 of this Act if the person —

- 19 (a) is riding a horse in any race run under the management
20 of a registered club; or
21 (b) is engaged in performing, for a licensed trainer, riding
22 work or the usual duties of a jockey.

23 (3) The employer for the purposes of this Act of a person who,
24 under subsection (2), is a worker is —

- 25 (a) Racing and Wagering Western Australia unless
26 paragraph (b) applies; or
27 (b) the licensed trainer for whom the person is engaged
28 when the person is performing for the licensed trainer
29 riding work or the usual duties of a jockey but not at a
30 licensed facility and not when riding a horse in any race
31 run under the management of a registered club.

32 **16. Working directors [WCIMA s. 10A]**

33 (1) In this section —

34 *company director* has the meaning given to the term *director* in
35 the *Corporations Act 2001* (Commonwealth) section 9;

36 *insurance information requirements* means the requirements of
37 section 206 that apply when a company effects or renews a

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Part 1 Preliminary

Division 4 Worker and employer

s. 16

- 1 workers compensation policy on the basis that a director of the
2 company is a worker;
- 3 **working director**, in relation to a company, means a company
4 director of the company, whether or not the director would be a
5 worker if this section did not apply —
- 6 (a) who does work for or on behalf of the company; and
7 (b) whose remuneration, by whatever means, as a company
8 director of the company is in substance for personal
9 manual labour or services.
- 10 (2) A working director is not a worker for the purposes of this Act
11 except to the extent that this section provides otherwise.
- 12 (3) A company may apply under Part 5 for the issue or renewal of a
13 workers compensation policy on the basis that a working
14 director of the company is a worker.
- 15 (4) If a company applies under Part 5 for the issue or renewal of a
16 workers compensation policy on the basis that a working
17 director of the company is a worker and the company complies
18 with the insurance information requirements —
- 19 (a) the working director is a worker for the purposes of this
20 Act; and
21 (b) the company is the employer of the working director for
22 the purposes of this Act.
- 23 (5) If the company fails to comply with the insurance information
24 requirements that apply after the end or termination of the
25 period of insurance, a working director ceases to be a worker
26 under subsection (4) unless and until the company provides the
27 insurer with the information that is required for compliance with
28 those requirements.
- 29 (6) If a company is a self-insurer —
- 30 (a) a working director of the company is a worker for the
31 purposes of this Act; and
32 (b) the company is the employer of the working director for
33 the purposes of this Act.
- 34 (7) A working director is not a worker for the purposes of
35 section 270.

Part 2 — Compensation for injury

Division 1 — General principles

17. Employer liable for compensation [WCIMA s. 18]

(1) An employer is liable for compensation if a worker suffers an injury from employment with the employer.

(2) If an employer's liability to pay compensation has been accepted (or is taken to have been accepted) or has been determined by an arbitrator, the employer must pay compensation to the worker.

Penalty for this subsection: a fine of \$10 000.

18. Forms of compensation [New provision]

Compensation takes 1 or more of the following forms —

- (a) income compensation payable for injury that results in total or partial incapacity of the worker for work;
- (b) compensation for medical and health expenses;
- (c) compensation for miscellaneous expenses;
- (d) lump sum compensation for permanent impairment from personal injury by accident;
- (e) lump sum compensation for noise-induced hearing loss;
- (f) lump sum compensation for permanent impairment from a dust disease;
- (g) compensation on the death of a worker.

19. Employment must be connected with this State [WCIMA s. 20]

(1) Liability for compensation arises only if the worker's employment is connected with this State.

Note for this subsection:

The State with which employment is connected is determined under Part 12.

(2) The fact that a worker is outside this State when the injury occurs does not prevent liability for compensation under this Act arising from an injury from employment that is connected with this State.

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- 1 (3) There is no liability for compensation in respect of an injury
2 suffered by a worker outside Australia if the worker —
3 (a) has never resided in Australia; or
4 (b) has been continuously resident outside Australia for
5 more than 24 months when the injury occurs.

6 **20. Employer must inform worker of right to claim**
7 **compensation [New provision]**

- 8 (1) An employer must, within 14 days after becoming aware that a
9 worker may have suffered an injury from employment with the
10 employer, inform the worker in the approved form that the
11 worker may have a right to compensation for the injury.
12 Penalty for this subsection: a fine of \$5 000.
13 (2) Subsection (1) does not apply if, before the time for complying
14 with that subsection elapses, the worker claims compensation
15 for the injury from the employer.

16 **21. Compensation excluded: serious and wilful misconduct**
17 **[WCIMA s. 22]**

- 18 (1) In this section —
19 *drug of addiction* has the meaning given in the *Misuse of Drugs*
20 *Act 1981* section 3(1).
21 (2) An employer is not liable for compensation if it is proved before
22 an arbitrator that the worker's injury is attributable to —
23 (a) voluntary consumption by the worker of alcoholic liquor
24 or of a drug of addiction, or both, that impairs the proper
25 functioning of the worker's faculties; or
26 (b) the worker's failure to use protective equipment,
27 clothing or accessories provided by the employer for the
28 worker's use; or
29 (c) other serious and wilful misconduct by the worker.
30 (3) Subsection (2) does not exclude liability if the worker's injury
31 has serious and permanent effects on the worker or results in the
32 death of the worker.
33 (4) Subsection (2)(b) does not exclude liability if it is proved that
34 there was a reasonable excuse for the worker's failure.

1 **22. Compensation excluded: certain employment on ship**
2 **[WCIMA s. 20(9)]**

3 An employer is not liable for compensation if the worker's
4 injury is from employment on a ship and the *Seafarers*
5 *Rehabilitation and Compensation Act 1992* (Commonwealth)
6 applies to the worker's employment.

7 **23. Person not to be paid twice [WCIMA s. 23]**

8 (1) In this section —

9 *other recompense* means —

10 (a) compensation received under the laws of a place other
11 than this State; or

12 (b) an amount for which judgment has been obtained
13 against the employer independently of this Act.

14 (2) Compensation is not payable to a person for a matter to the
15 extent that the person has received or obtained other
16 recompense for the same matter.

17 (3) If a person receives compensation for a matter and subsequently
18 receives or obtains other recompense for the same matter, the
19 person from whom compensation is received may recover, as a
20 debt due, from the person who received it the amount of
21 compensation paid to the extent that it does not exceed the
22 amount of the other recompense.

23 **Division 2 — Claiming compensation**

24 **Subdivision 1 — Preliminary**

25 **24. Terms used [New provision]**

26 In this Division —

27 *deferred decision notice* has the meaning given in section 29(4);

28 *incapacity claim* means a claim for compensation for which the
29 certificate of capacity given to the employer when making the
30 claim (as provided by section 26) specifies that the worker has
31 an incapacity for work;

32 *liability decision notice* means a notice that complies with the
33 requirements of section 29 for a liability decision notice.

1 **25. Application of Division [New provision]**

2 This Division applies only to a claim for any 1 or more of the
3 following kinds of compensation —

- 4 (a) income compensation;
5 (b) medical and health expenses compensation;
6 (c) miscellaneous expenses compensation;
7 (d) dust disease impairment compensation.

8 **Subdivision 2 — Claim process**

9 **26. Making claim for compensation [WCIMA s. 178]**

- 10 (1) A claim for compensation must be made within 12 months after
11 the injury occurs.
- 12 (2) The claim is made when the worker has given to the
13 employer —
- 14 (a) a completed claim form in the approved form; and
15 (b) a certificate of capacity for the claim.
- 16 (3) Different claim forms can be approved for different kinds of
17 claims.
- 18 (4) A failure to make a claim for compensation within the period
19 required by subsection (1) or a defect or inaccuracy in the claim
20 form, certificate of capacity or details of the claim does not
21 invalidate the claim if —
- 22 (a) the failure, defect or inaccuracy results from mistake,
23 absence from the State or another reasonable cause; or
24 (b) the failure, defect or inaccuracy would not prejudice the
25 employer's defence in proceedings that might arise out
26 of the claim.

27 **27. Insured employer must give claim to insurer**
28 **[WCIMA s. 57A]**

- 29 (1) An insured employer must, within 7 days after a worker claims
30 compensation from the employer in accordance with section 26,
31 give the worker's claim to the insurer.
32 Penalty for this subsection: a fine of \$5 000.
- 33 (2) An insured employer gives a worker's claim to the insurer by
34 giving to the insurer the claim form and certificate of capacity
35 that the worker gave to the employer.

1 **28. Worker may give claim to insurer if employer defaults [New**
2 **provision]**

3 (1) If an insured employer from which a worker has claimed
4 compensation fails to give the claim to the insurer in accordance
5 with section 27, the worker may give the claim to the insurer.

6 (2) A worker gives a claim to the insurer by either —

7 (a) giving the insurer a copy of the claim form and
8 certificate of capacity given to the employer; or

9 (b) giving the insurer another completed claim form (in the
10 approved form) with a certificate of capacity for the
11 claim.

12 (3) A claim that a worker gives to an insurer is taken to have been
13 given to the insurer by the employer at the time the worker
14 gives it to the insurer and the insurer must deal with the claim
15 accordingly.

16 (4) WorkCover WA may, for the purposes of this section, disclose
17 to a worker the identity and other details of an employer's
18 insurer.

19 **29. Insurer or self-insurer to make decision on liability**
20 **[WCIMA s. 57A, 57B, 57BA]**

21 (1) Within 14 days after a claim is given to an insurer or
22 self-insurer, the insurer or self-insurer must give the worker and
23 an insured employer a liability decision notice for the claim.

24 Note for this subsection:

25 If the claim is in respect of a dust disease, the time within which a
26 liability decision notice must be given is 14 days after the insurer or
27 self-insurer is notified of the determination of a Dust Disease Medical
28 Panel in respect of the claim (instead of within 14 days after the claim
29 is given to the insurer or self-insurer). See section 118.

30 (2) A liability decision notice is a notice in the approved form
31 stating that —

32 (a) the insurer or self-insurer accepts that the employer is
33 liable to compensate the worker for the injury to which
34 the claim relates; or

35 (b) the insurer or self-insurer does not accept that the
36 employer is liable to compensate the worker for the
37 injury to which the claim relates.

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1 Note for this subsection:

2 Section 31 provides for the determination by an arbitrator of the liability
3 of an employer for compensation to which a liability decision notice
4 relates.

5 (3) In the case of an incapacity claim, the liability decision notice
6 must also state whether or not the insurer or self-insurer accepts
7 that the employer is liable to pay income compensation for
8 incapacity for work.

9 Note for this subsection:

10 Division 3 provides for income compensation.

11 (4) A liability decision notice need not be given if a decision on
12 liability cannot be made and the insurer or self-insurer instead
13 gives the worker and the insured employer within 14 days after
14 the claim is given to the insurer or self-insurer a notice (a
15 **deferred decision notice**) in the approved form stating that a
16 decision on liability has been deferred.

17 (5) An insurer or self-insurer who fails to give a liability decision
18 notice or deferred decision notice as and when required by this
19 section commits an offence.

20 Penalty for this subsection: a fine of \$5 000.

21 (6) If an insurer or self-insurer fails to give a liability decision
22 notice or deferred decision notice as and when required by this
23 section —

24 (a) the insurer or self-insurer is taken to have accepted that
25 the employer is liable to compensate the worker for the
26 injury to which the claim relates; and

27 (b) in the case of an incapacity claim — the insurer or
28 self-insurer is taken to have accepted that the employer
29 is liable to pay income compensation for incapacity for
30 work.

31 Note for this subsection:

32 The employer's obligation to pay income compensation to the worker
33 arises when the insurer or self-insurer is taken to have accepted
34 liability to compensate the worker and the compensation for which the
35 employer is liable includes income compensation. See section 48.

36 (7) A reference in this section and in a liability decision notice to
37 liability of the employer to compensate the worker for the injury
38 includes the employer's liability under section 36 to make
39 payments of compensation for the injury for which another
40 employer may be wholly or partly liable.

- 1 (8) For the purposes of the application of this section to a
2 self-insurer —
- 3 (a) a claim made on an employer who is a self-insurer is
4 considered to have been given to the self-insurer when it
5 is made by the worker; and
- 6 (b) a requirement to give a notice to an insured employer
7 does not apply to the self-insurer.

8 **30. Requirements when decision on liability deferred**
9 **[WCIMA s. 57A, 57B, 57BA]**

- 10 (1) If an insurer or self-insurer gives a deferred decision notice for a
11 worker's claim, the insurer or self-insurer must give a liability
12 decision notice for the claim as soon as practicable and in any
13 event before the day prescribed by the regulations for the
14 purposes of this section (the *deemed liability acceptance day*).

15 Note for this subsection:

16 The employer is also required to make provisional payments if a
17 liability decision notice has not been given before the day prescribed
18 under section 37 as the provisional payments day.

- 19 (2) An insurer or self-insurer who fails to give a liability decision
20 notice before the deemed liability acceptance day commits an
21 offence.

22 Penalty for this subsection: a fine of \$5 000.

- 23 (3) If a liability decision notice has not been given before the
24 deemed liability acceptance day —
- 25 (a) the insurer or self-insurer is taken to have accepted that
26 the employer is liable to compensate the worker for the
27 injury to which the claim relates; and
- 28 (b) in the case of an incapacity claim — the insurer or
29 self-insurer is taken to have accepted that the employer
30 is liable to pay income compensation for incapacity for
31 work.

32 Note for this subsection:

33 The employer's obligation to pay income compensation to the worker
34 arises when the insurer or self-insurer is taken to have accepted
35 liability to compensate the worker and the compensation for which the
36 employer is liable includes income compensation. See section 48.

37 **31. Determination by arbitrator of question about liability for**
38 **compensation [WCIMA s. 58]**

- 39 (1) If a liability decision notice given by an insurer or self-insurer
40 states that liability for compensation is not accepted, an

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- 1 arbitrator may on application by the worker hear and determine
2 the question of liability.
- 3 (2) A liability decision notice is considered to state that liability for
4 compensation is not accepted if —
- 5 (a) the notice states that the insurer or self-insurer does not
6 accept that the employer is liable to compensate the
7 worker for the injury to which the claim relates; or
- 8 (b) the notice states that the insurer or self-insurer does not
9 accept that the employer is liable to pay income
10 compensation for incapacity for work.
- 11 (3) When an arbitrator determines the question of the employer's
12 liability to compensate the worker for the injury, the arbitrator
13 may also determine the compensation (if any) to which the
14 worker is entitled and make any order the arbitrator considers
15 appropriate in the circumstances.

16 **32. Claims on uninsured employers [WCIMA s. 57B, 57BA]**

- 17 (1) If an employer is an uninsured employer in respect of a liability
18 to pay compensation for an injury to a worker, this Division
19 applies in respect of a claim for the compensation as if the
20 employer were a self-insurer.

21 Notes for this subsection:

- 22 1. WorkCover WA may exercise the rights of the uninsured employer in
23 respect of the claim — see section 275.
- 24 2. Section 268 defines **uninsured employer**.

- 25 (2) An employer who is an uninsured employer in respect of a
26 liability to pay compensation for an injury to a worker must give
27 notice to WorkCover WA in the approved form within 7 days
28 after receiving a claim for the compensation.

29 Penalty for this subsection: a fine of \$5 000.

- 30 (3) Subsection (2) does not apply to an employer who is an
31 uninsured employer because the employer's insurer has refused
32 to indemnify the employer against the liability as permitted by
33 section 244.

34 Note for this subsection:

- 35 An insurer is required under section 244(3) to give WorkCover WA
36 notice of a refusal to indemnify an employer.

1 **33. Worker to provide information about other employment**
2 **[WCIMA s. 59]**

- 3 (1) A worker who makes an incapacity claim must give notice to
4 the employer or the insurer as required by this section of any
5 remunerated work that the worker does for any other employer
6 after the claim is made.

7 Penalty for this subsection: a fine of \$5 000.

- 8 (2) The worker's notice must —

9 (a) provide the information required by the regulations; and

10 (b) be given to the employer or insurer before the end of the
11 period required by the regulations.

- 12 (3) If the worker is a working director, the notice required by this
13 section must be given by the worker to the insurer and a notice
14 given by the worker's employer to the insurer is taken to have
15 been given by the worker.

16 **34. Authority for collection and disclosure of information [New**
17 **provision]**

- 18 (1) In this section —

19 *authorised discloser*, in relation to a worker's claim for
20 compensation, means any person specified in the regulations (as
21 in force when the claim is made) as being authorised to disclose
22 relevant information about the worker under the authority
23 conferred by this section;

24 *authorised recipient*, in relation to a worker's claim for
25 compensation, means any person specified in the regulations (as
26 in force when the claim is made) as a person to whom relevant
27 information about the worker is authorised to be disclosed under
28 the authority conferred by this section;

29 *relevant information*, about a worker, means medical and
30 personal information relating to —

31 (a) the worker's injury; or

32 (b) the worker's claim for compensation or entitlement to
33 compensation; or

34 (c) injury management for the worker's injury.

- 35 (2) If a claim for compensation has been made by a worker, this
36 section authorises —

37 (a) the collection of relevant information about the worker
38 by an authorised discloser; and

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- 1 (b) the disclosure of relevant information about the worker
2 by an authorised discloser to an authorised recipient.
- 3 (3) The regulations may include provision for the following —
4 (a) the form and manner of collection and disclosure
5 permitted under the authority conferred by this section;
6 (b) limitations on the relevant information about a worker
7 permitted to be collected and disclosed under the
8 authority conferred by this section.
- 9 (4) The authority for the collection and disclosure of relevant
10 information conferred by this section cannot be revoked.
- 11 (5) A person who, other than for the purpose of the performance of
12 functions in connection with a worker's claim for or entitlement
13 to compensation or injury management for a worker's injury,
14 uses or discloses information disclosed to that person in reliance
15 on the authority conferred by this section commits an offence.
16 Penalty for this subsection: a fine of \$10 000.

17 **35. Incapacity after claim made [New provision]**

- 18 The regulations may make provision for or with respect to the
19 following in connection with a claim for compensation if a
20 certificate of capacity did not specify that the worker had an
21 incapacity for work but a subsequent certificate of capacity
22 specifies that the worker has an incapacity for work —
- 23 (a) the amendment of such a claim to enable the claim to be
24 properly dealt with as including a claim for income
25 compensation;
- 26 (b) the obligations of employers, insurers and self-insurers
27 in respect of such a claim;
- 28 (c) the obligations of an insurer or self-insurer to make a
29 decision on the employer's liability to pay income
30 compensation;
- 31 (d) the circumstances in which an insurer or self-insurer is
32 taken to have accepted that the employer is liable to pay
33 income compensation for incapacity for work.

1 **36. Claiming compensation for certain diseases when more than**
2 **1 employer liable [WCIMA s. 41]**

3 (1) In this section —

4 *disease compensation* means compensation payable for injury
5 by disease that is —

6 (a) a prescribed disease under section 10 taken to be from
7 certain employment under that section; or

8 (b) a dust disease;

9 *relevant employer* means an employer who employs a worker in
10 relevant employment;

11 *relevant employment* means employment in respect of which
12 there is a liability for disease compensation.

13 (2) Disease compensation may be claimed from the employer who
14 last employed the worker in relevant employment (the *last*
15 *employer*) even if there is a question as to which of 2 or more
16 relevant employers is liable to compensate the worker or how
17 that liability is to be apportioned between 2 or more relevant
18 employers.

19 (3) The last employer is liable to deal with the claim and make
20 payments of compensation as if the last employer were wholly
21 liable and the last employer's insurer at the time compensation
22 is paid must indemnify the last employer for any such payment.

23 (4) If there are 2 or more relevant employers in respect of a claim
24 for disease compensation, each relevant employer is liable to
25 make to the last employer such contributions as, in default of
26 agreement, may be determined by an arbitrator.

27 (5) In a proceeding for the determination of a dispute as to the
28 liability for contribution by relevant employers, an arbitrator
29 may make an order requiring the payment of compensation by
30 any relevant employer or for the apportionment of liability for
31 compensation between relevant employers.

32 (6) A worker who makes a claim for disease compensation must
33 provide to the last employer such information as the last
34 employer may reasonably request for the purpose of identifying
35 any relevant employment in which the worker was employed
36 before employment with the last employer.

1 **Subdivision 3 — Provisional payments**

2 **37. Requirement for provisional payments [New provision]**

3 (1) If an insurer or self-insurer gives a deferred decision notice for a
4 worker's claim but has not given a liability decision notice for
5 the claim before the day prescribed by the regulations as the
6 provisional payments day, the employer is required to make
7 provisional payments as provided by this Subdivision.

8 (2) An employer who fails to make a provisional payment as and
9 when required by this Subdivision commits an offence.

10 Penalty for this subsection: a fine of \$10 000.

11 **38. Compensation for which provisional payments are required**
12 **[New provision]**

13 Provisional payments are required to be made for any medical
14 and health expenses compensation and income compensation to
15 which the worker would be entitled had the insurer or
16 self-insurer accepted that the employer is liable to compensate
17 the worker for the injury concerned.

18 **39. Calculating the amount of a provisional payment [New**
19 **provision]**

20 The amount of a provisional payment must be calculated as if
21 the provisional payment were a payment of the kind of
22 compensation for which the provisional payment is required.

23 **40. How and when provisional payments are to be made [New**
24 **provision]**

25 A provisional payment in respect of a particular kind of
26 compensation must be paid at the time and in the manner in
27 which a payment of that kind of compensation would be
28 payable if the worker were entitled to that kind of
29 compensation.

30 **41. Provisional payments of medical and health expenses**
31 **compensation [New provision]**

32 (1) Provisional payments in respect of medical and health
33 expenses compensation are to be made for the period that begins
34 on the day on which the worker's injury occurred and ends on
35 the earliest of the following days —

36 (a) the day on which the insurer or self-insurer gives a
37 liability decision notice for the claim to the worker;

1 (b) the day on which the insurer or self-insurer is taken
2 under section 30(3) to accept that the employer is liable
3 to compensate the worker for the injury.

4 (2) The total amount of provisional payments in respect of medical
5 and health expenses compensation is limited to 5% of the
6 medical and health expenses general limit amount applying on
7 the day the last of those provisional payments is made.

8 **42. Provisional payments of income compensation [New**
9 **provision]**

10 Provisional payments in respect of income compensation are to
11 be made for the period that begins on the day on which the
12 worker first has an incapacity for work as a result of the injury
13 and ends on the earliest of the following days —

- 14 (a) the day on which a certificate of capacity is issued that
15 specifies that the worker no longer has any incapacity
16 for work;
- 17 (b) the day on which the insurer or self-insurer gives a
18 liability decision notice for the claim to the worker;
- 19 (c) the day on which the insurer or self-insurer is taken
20 under section 30(3) to accept that the employer is liable
21 to compensate the worker for the injury.

22 **43. Insurer required to indemnify for provisional payments**
23 **[New provision]**

24 The insurer of an insured employer must indemnify the
25 employer for provisional payments that the employer is required
26 to make under this Subdivision.

27 Penalty: a fine of \$10 000.

28 **44. Status and effect of provisional payments [New provision]**

29 (1) A provisional payment made to a worker must be taken into
30 account for the following purposes as if it were a payment of the
31 compensation in respect of which it is made —

- 32 (a) discharging a liability of the employer to pay
33 compensation to the worker;
- 34 (b) calculating the total amount of compensation, or
35 compensation of a particular kind, paid to the worker.

36 (2) A payment made to a worker as a provisional payment is
37 considered to be a provisional payment made to the worker even

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1 if the payment was made before the obligation to make the
2 provisional payment arose.

3 (3) Except as provided in subsection (1), a provisional payment
4 made to a worker is not a payment of compensation and, unless
5 the worker's claim involved fraud, is not recoverable from a
6 worker even if the employer is found not to have been liable for
7 compensation in respect of the injury concerned.

8 **45. Other employer or insurer liable [New provision]**

9 (1) If an employer makes provisional payments in respect of a
10 worker's claim for compensation and it is agreed between the
11 persons concerned or it is determined by an arbitrator that
12 another employer is liable for the whole or part of the
13 compensation —

14 (a) the employer making the provisional payments may
15 recover as a debt due from the other employer the whole
16 or part of the payments made according to the extent of
17 the compensation for which the other employer is liable;
18 and

19 (b) the provisional payments recoverable from the other
20 employer are taken to have been made to the worker by
21 the other employer.

22 (2) If an insurer by way of indemnity makes provisional payments
23 in respect of a worker's claim for compensation by an employer
24 and it is agreed between the persons concerned or it is
25 determined by an arbitrator that another insurer is required to
26 indemnify that or another employer for liability to pay the
27 whole or part of the compensation —

28 (a) the insurer making the provisional payments may
29 recover as a debt due from the other insurer the whole or
30 part of the payments made according to the extent of the
31 compensation for which the other insurer is required to
32 indemnify that or another employer; and

33 (b) the provisional payments recoverable from the other
34 insurer are taken to have been made to the worker by the
35 other insurer for the employer it is liable to indemnify.

36 (3) Subsection (2) extends to a self-insurer as if provisional
37 payments made by a self-insurer were provisional payments
38 made by an insurer by way of indemnity.

1 **Division 3 — Income compensation**

2 **Subdivision 1 — Preliminary**

3 **46. Terms used [New provision, cf Sch. 1 cl. 11]**

4 In this Division —

5 ***bonus or allowance*** means any bonus or incentive, shift
6 allowance, weekend or public holiday penalty allowance,
7 district allowance, industry allowance, meal allowance, living
8 allowance, clothing allowance, travelling allowance or other
9 allowance;

10 ***earnings***, of a worker —

11 (a) means remuneration paid or payable to the worker; and

12 (b) includes —

13 (i) any payment to the worker for overtime; and

14 (ii) any bonus or allowance paid to the worker; and

15 (iii) any payment in money or money's worth to or
16 for the benefit of the worker that the regulations
17 prescribe as included in the earnings of a worker;

18 but

19 (c) does not include —

20 (i) income compensation paid to the worker; and

21 (ii) any component of the worker's remuneration that
22 the regulations prescribe as excluded from the
23 earnings of a worker;

24 ***income compensation general limit amount*** means the amount
25 that is equal to the general maximum amount;

26 ***overtime*** means time worked in excess of the number of
27 ordinary working hours.

28 **Subdivision 2 — Entitlement to income compensation**

29 **47. Entitlement to income compensation for incapacity for work**
30 **[WCIMA s. 21, Sch. 1 cl. 7]**

31 A worker is entitled to be paid income compensation under this
32 Subdivision if the worker's injury results in total or partial
33 incapacity of the worker for work.

1 **48. Obligation to pay income compensation [WCIMA s. 57A(5),**
2 **(7), (8A)]**

3 (1) An employer's obligation to pay income compensation to a
4 worker for an injury arises when the insurer or self-insurer
5 accepts (or is taken to have accepted) or an arbitrator determines
6 that —

7 (a) the employer is liable to compensate the worker for the
8 injury; and

9 (b) the compensation for which the employer is liable
10 includes income compensation.

11 (2) The employer must, except as otherwise provided under this
12 Act —

13 (a) make the first payment of income compensation within
14 14 days after the employer's obligation to pay income
15 compensation arises, with the first payment to include
16 payments that have accrued from the day on which the
17 worker first has an incapacity for work as a result of the
18 injury; and

19 (b) make subsequent payments of income compensation to
20 the worker on the employer's usual pay days and in the
21 way the worker would normally be paid.

22 Penalty for this subsection: for each income compensation
23 payment not made when due — a fine of \$5 000.

24 (3) The employer must make a payment in compliance with this
25 section whether or not the employer has been indemnified for
26 the payment by the employer's insurer.

27 (4) A person is not liable to be convicted of an offence under
28 subsection (2) and under section 17(2) in respect of the same
29 failure.

30 Note for this section:

31 Provisional payments by the employer in respect of income
32 compensation are taken into account for the purposes of this section
33 as income compensation paid by the employer — see section 44.

34 **49. Total or partial incapacity for work [WCIMA Sch. 1 cl. 7(1)**
35 **and (2)]**

36 (1) For any period during which a worker is totally incapacitated
37 for work, the amount of income compensation must be
38 calculated in accordance with Subdivision 3.

39 (2) For any period during which a worker is partially incapacitated
40 for work, the amount of income compensation is obtained by

1 calculating, in accordance with Subdivision 3, the amount that
2 would apply if the worker were totally incapacitated for work
3 and deducting from it the amount the worker earns, or is able to
4 earn, in suitable employment.

5 Notes for this subsection:

6 1. Section 51 provides for an arbitrator to be able, in certain
7 circumstances, to order that a worker who is partially incapacitated for
8 work is taken to be totally incapacitated for work.

9 2. See section 165 for the meaning of **suitable employment**.

10 (3) For the purposes of determining the amount of income
11 compensation for any period during which the worker is
12 partially incapacitated for work, the amount of income
13 compensation that would apply if the worker were totally
14 incapacitated for work must be determined as if that amount did
15 not include any payments for overtime or any bonus or
16 allowance.

17 (4) A worker is not entitled to any income compensation for a time
18 during which the worker earns, or is able to earn, in suitable
19 employment an amount equal to or greater than the amount of
20 income compensation that would apply if the worker were
21 totally incapacitated for work.

22 **50. Worker not to be prejudiced by resuming work**
23 **[WCIMA s. 84]**

24 If a worker who has an incapacity for work resulting from an
25 injury resumes or attempts to resume work, and is unable, on
26 account of the injury, to perform or continue to perform the
27 work, the resumption or attempted resumption of work or the
28 inability to perform or continue to perform the work does not
29 prejudice any entitlement to compensation under this Act that
30 the worker would otherwise have.

31 **51. Order that worker is taken to be totally incapacitated**
32 **[WCIMA Sch. 1 cl. 8]**

33 (1) A worker who has a partial incapacity for work and has been
34 unable to obtain suitable employment may apply for an
35 arbitrator to order that the worker is taken to be totally
36 incapacitated for work.

37 (2) On application under this section, an arbitrator may order that
38 the worker is taken to be totally incapacitated for work while the
39 order is effective.

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- 1 (3) The order may specify —
- 2 (a) the period for which it is effective; and
- 3 (b) conditions that must be satisfied for the order to be
- 4 effective.
- 5 (4) The order must not be made unless the arbitrator is satisfied
- 6 that —
- 7 (a) the worker has taken all reasonable steps to obtain, and
- 8 has failed to obtain, suitable employment; and
- 9 (b) the failure to obtain suitable employment is wholly or
- 10 mainly a result of the injury.

11 **52. General limit on total income compensation [WCIMA Sch. 1**

12 **cl. 7(3)]**

- 13 (1) A worker's entitlement to income compensation for incapacity
- 14 for work resulting from an injury ceases when the total of all
- 15 amounts of income compensation paid to the worker for that
- 16 incapacity reaches the income compensation general limit
- 17 amount.

18 Note for this subsection:

19 The income compensation general limit amount is equal to the general

20 maximum amount provided for by section 537(1).

- 21 (2) Any additional income compensation paid as ordered by an
- 22 arbitrator under section 53(4) must not be counted for the
- 23 purposes of this section as income compensation paid to the
- 24 worker.

25 Note for this section:

26 Provisional payments by the employer in respect of income

27 compensation are taken into account for the purposes of this section

28 as income compensation paid by the employer — see section 44.

29 **53. Additional income compensation [WCIMA s. 217]**

- 30 (1) In this section —
- 31 *former rate* means the weekly rate at which a worker's final
- 32 payment of income compensation under this Subdivision (other
- 33 than under this section) is calculated.

- 34 (2) A worker may apply for an arbitrator to order that the worker is
- 35 entitled to additional income compensation for incapacity for
- 36 work resulting from an injury.

- 1 (3) The application may be made only if —
- 2 (a) the total of all amounts of income compensation paid for
- 3 the worker's incapacity exceeds 75% of the income
- 4 compensation general limit amount applying when the
- 5 application is made; and
- 6 (b) the employer's liability for compensation in respect of
- 7 the injury concerned has not been commuted by a
- 8 settlement agreement registered under Division 11.
- 9 Note for this subsection:
- 10 Provisional payments by the employer in respect of income
- 11 compensation are taken into account for the purposes of this
- 12 subsection as income compensation paid by the employer — see
- 13 section 44.
- 14 (4) On application under this section, an arbitrator may order that
- 15 the worker is entitled to additional income compensation if the
- 16 arbitrator is satisfied that —
- 17 (a) the worker's injury has resulted in the permanent total
- 18 incapacity of the worker for work; and
- 19 (b) the additional income compensation should be allowed,
- 20 having regard to the social and financial circumstances
- 21 and the reasonable financial needs of the worker.
- 22 (5) The arbitrator must, having regard to the matters referred to in
- 23 subsection (4)(b), specify in the order the weekly rate at which
- 24 additional income compensation is to be calculated, being a rate
- 25 not exceeding the former rate.
- 26 (6) The order may specify —
- 27 (a) the period for which the worker is entitled to the
- 28 additional income compensation; or
- 29 (b) the maximum total amount of all additional income
- 30 compensation that may be made for the worker's
- 31 incapacity.
- 32 (7) The order may, in an appropriate case, require additional
- 33 income compensation to be paid for the period from the end of
- 34 the last period in respect of which the worker previously
- 35 received income compensation to the day on which the order is
- 36 made, and the order may specify when arrears for that period
- 37 are to be paid.

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- 1 (8) The order must not result in the total amount of all additional
2 income compensation that may be paid for the worker's
3 incapacity being capable of exceeding the lesser of —
- 4 (a) the amount that is 75% of the income compensation
5 general limit amount applying on the day on which the
6 order is made; and
- 7 (b) the amount calculated by multiplying the former rate by
8 the number of weeks in the period of the expectation of
9 life of the worker as at the commencement of the first
10 period for which additional income compensation is to
11 be paid.

12 **Subdivision 3 — Calculation of income compensation**

13 **54. Terms used [New provision]**

14 In this Subdivision —

15 ***board and lodging*** means accommodation and any meals,
16 laundry services and other benefits having a monetary value
17 provided together with the provision of the accommodation;

18 ***jockey*** means a person who is a worker because of section 15;

19 ***maximum weekly rate of income compensation*** means the
20 amount prescribed by the regulations as the maximum weekly
21 rate of income compensation;

22 ***pre-injury weekly rate of income***, of a worker, means the
23 worker's pre-injury weekly rate of income calculated as
24 provided by section 55.

25 **55. Worker's pre-injury weekly rate of income [WCIMA s. 42,
26 52, Sch. 1 cl. 11(2) Amount B par. (c), cl. 14, 15]**

- 27 (1) A worker's pre-injury weekly rate of income is —
- 28 (a) unless paragraph (b) applies — the worker's average
29 weekly rate of earnings in the position the worker held
30 on the day on which the worker's injury occurred; or
- 31 (b) if, on the day on which the worker's injury occurred, the
32 worker concurrently held 2 or more positions as a
33 worker, whether in the employment of the same or
34 different employers — the weekly rate obtained by
35 aggregating the worker's average weekly rates of
36 earnings in the positions the worker held.

- 1 (2) A worker's average weekly rate of earnings in a position the
2 worker held on the day on which the worker's injury occurred is
3 calculated over —
- 4 (a) the period of 1 year ending on the day before the day on
5 which the worker's injury occurred; or
- 6 (b) if the worker had been employed in that position for less
7 than 1 year when the injury occurred — the period
8 beginning on the day on which the worker commenced
9 to be employed in that position and ending on the day
10 before the day on which the worker's injury occurred.
- 11 Note for this subsection:
- 12 Section 60 makes special provision for calculating a working director's
13 average weekly rate of earnings.
- 14 (3) For the purposes of this section, 2 or more positions that a
15 worker holds consecutively in the employment of the same
16 employer are taken to be the same position if, having regard to
17 responsibilities, status, level of remuneration and other factors,
18 they are equivalent positions.
- 19 (4) If, at any time during a period over which subsection (2)
20 requires a worker's average weekly rate of earnings in a
21 position to be calculated, the employer provides board and
22 lodging to the worker (in addition to paying the worker's other
23 earnings, if any) as payment for work, the monetary value, if
24 any, of the provision of the board and lodging ascertained
25 according to section 59 must be included when calculating the
26 worker's average weekly rate of earnings over that period.
- 27 (5) If a worker has taken a break from work without pay during a
28 period over which subsection (2) requires the worker's average
29 weekly rate of earnings in a position to be calculated, the part of
30 the period for which the worker was on the break must be
31 excluded in making the calculation.
- 32 (6) For a seasonal or other worker who is ordinarily employed in a
33 position for only part of the year, the amount of the worker's
34 average weekly rate of earnings in that position is the amount
35 calculated by dividing the total amount of the worker's earnings
36 in that position during the period of 1 year before the worker's
37 injury by 52.
- 38 (7) If a worker did not, on the day on which the worker's injury
39 occurred, hold a position with the employer liable to pay income
40 compensation, a reference in this section to the day on which
41 the worker's injury occurred is a reference to the day on which

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1 the worker last held a position with the employer before the
2 worker's injury occurred.

3 **56. Amount of income compensation [WCIMA Sch. 1 cl. 11(3),**
4 **(4), (6)]**

5 (1) The amount of a payment of income compensation for a worker
6 who is totally incapacitated for work must be calculated as
7 provided by this section.

8 Note for this subsection:

9 For a period during which a worker is partially incapacitated for work,
10 see section 49(2).

11 (2) To the extent that the payment of income compensation is for a
12 period within the first 26 weeks in which income compensation
13 is payable to the worker, the amount is calculated at the
14 worker's pre-injury weekly rate of income except as otherwise
15 provided in section 57 or 58.

16 (3) To the extent that the payment of income compensation is for a
17 period after the first 26 weeks in which income compensation is
18 payable to the worker, the amount is calculated at 85% of the
19 worker's pre-injury weekly rate of income except as otherwise
20 provided in section 57 or 58.

21 (4) For the purposes of subsections (2) and (3) —

22 (a) a week is a period of 7 consecutive days that starts on
23 the day of the week that is the first day for which the
24 worker is entitled to income compensation; and

25 (b) a week is a week in which income compensation is
26 payable if income compensation is payable for any day
27 or days during the week.

28 (5) For the calculation under this section, an amount must be added
29 to or deducted from the worker's pre-injury weekly rate of
30 income from time to time to the extent, if any, necessary to
31 reflect any percentage increase or decrease in base rate of pay
32 (but not in any payment for overtime or in any bonus or
33 allowance) that —

34 (a) is effective after the day on which the worker's injury
35 occurred; and

36 (b) would, or having regard to all the circumstances is likely
37 to, have applied to the worker had the worker not been
38 injured.

1 **57. Maximum weekly rate of income compensation**
2 **[WCIMA Sch. 1 cl. 11(2) Amount C, 11(3) and (4)]**

3 If the amount of any payment of income compensation
4 calculated under section 56 for any period would represent a
5 weekly rate of payment exceeding the maximum weekly rate of
6 income compensation applying at that time, the amount of the
7 payment must be reduced to the amount representing a payment
8 at that maximum weekly rate.

9 **58. Minimum weekly rate of income compensation [WCIMA**
10 **Sch. 1 cl. 11(2) Amounts D and E, 11(3) and (4)]**

11 (1) In this section —

12 *base award rate* means the base weekly rate of pay, excluding
13 payments for overtime and any bonus or allowance, applying to
14 a worker —

15 (a) under provisions of an industrial instrument that applied
16 when the worker's injury occurred, or provisions of
17 another industrial instrument that substantially replace
18 those provisions; or

19 (b) under an agreement that specifies the worker's rate of
20 pay by reference to an industrial instrument;

21 *base award rate component*, of a worker's earnings, means the
22 component of the earnings that derives from the base award
23 rate, if any, applying to the worker;

24 *industrial instrument* means, according to the employment in
25 the context of which the term is used —

26 (a) an award or order (including an enterprise order or
27 General Order) made by The Western Australian
28 Industrial Relations Commission under the *Industrial*
29 *Relations Act 1979*; or

30 (b) an industrial agreement as defined in the *Industrial*
31 *Relations Act 1979* section 7(1); or

32 (c) a fair work instrument as defined in the *Fair Work*
33 *Act 2009* (Commonwealth) section 12; or

34 (d) an award, order, agreement or other instrument that is of
35 a class prescribed by the regulations.

36 (2) If the amount of any payment of income compensation
37 calculated under section 56 for any period would represent a
38 weekly rate of payment less than the minimum weekly rate
39 referred to in subsection (3), the amount of the payment is,
40 unless subsection (7) provides that no minimum weekly rate

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1 applies, to be increased to the amount representing a payment at
2 that minimum weekly rate.

3 (3) The minimum weekly rate at which income compensation must
4 be paid is the greater of the following —

5 (a) the minimum amount to which the worker would, if the
6 worker had not been injured, have been entitled under
7 the *Minimum Conditions of Employment Act 1993* to be
8 paid in a week for working, on the basis on which the
9 worker was working when the injury occurred, in the
10 employment in which the worker was working when the
11 injury occurred;

12 (b) the base award rate component, if any, of the earnings to
13 which the worker would, if the worker had not been
14 injured, have been entitled to be paid in a week for
15 working, on the basis on which the worker was working
16 when the injury occurred, in the employment in which
17 the worker was working when the injury occurred.

18 (4) For the purposes of this section, in an agreement mentioned in
19 paragraph (b) of the definition of **base award rate** in
20 subsection (1), the reference to an industrial instrument is taken
21 to include an industrial instrument containing provisions that
22 substantially replace the relevant provisions of the industrial
23 instrument.

24 (5) If an industrial instrument mentioned in the definition of **base**
25 **award rate** in subsection (1) becomes redundant or obsolete
26 without its relevant provisions being replaced as mentioned in
27 paragraph (a) of that definition or in subsection (4), the base
28 award rate for the purposes of this section is the base weekly
29 rate of pay referred to in that definition applying before the
30 industrial instrument becomes redundant or obsolete as adjusted
31 to reflect the timing and extent of any subsequent percentage
32 increase in minimum wages resulting from a national minimum
33 wage order made under the *Fair Work Act 2009*
34 (Commonwealth).

35 (6) If, on the day on which the worker's injury occurred, the worker
36 concurrently held 2 or more positions as a worker, whether in
37 the employment of the same or different employers,
38 subsection (3)(b) does not apply and the minimum weekly rate
39 for the worker is the minimum weekly rate under
40 subsection (3)(a).

- 1 (7) No minimum weekly rate applies under this section if —
- 2 (a) the only component of the worker's pre-injury weekly
- 3 rate of income is the monetary value of the provision of
- 4 board and lodging; or
- 5 (b) the worker is a working director of a company; or
- 6 (c) the worker is a jockey; or
- 7 (d) the worker is a seasonal or other worker who is
- 8 ordinarily employed in a position for only part of the
- 9 year; or
- 10 (e) the worker is a worker of a class prescribed by the
- 11 regulations as excluded from the application of the
- 12 minimum weekly rate.

13 **59. Monetary value of board and lodging [WCIMA Sch. 1**

14 **cl. 15]**

- 15 (1) This section deals with ascertaining the monetary value, if any,
- 16 of —
- 17 (a) board and lodging provided to a worker by the employer
- 18 (in addition to the worker's other earnings, if any) as
- 19 payment for work at any time during the period over
- 20 which section 55(2) requires the worker's average
- 21 weekly rate of earnings to be calculated; and
- 22 (b) board and lodging provided to a worker by the employer
- 23 during any period for which the worker is entitled to
- 24 receive income compensation from the employer.
- 25 (2) When calculating a worker's average weekly rate of earnings
- 26 over a period for the purpose of ascertaining the worker's
- 27 pre-injury weekly rate of income, the monetary value, if any, of
- 28 the provision of board and lodging for a period that
- 29 section 55(4) requires to be included in the calculation must be
- 30 assessed as described in subsection (4).
- 31 (3) For any period during which an employer provides board and
- 32 lodging to a worker during a period for which the worker is
- 33 entitled to income compensation from the employer —
- 34 (a) the monetary value, if any, of the provision of board and
- 35 lodging must be assessed as described in subsection (4);
- 36 and
- 37 (b) to the extent, if any, of its monetary value assessed in
- 38 accordance with paragraph (a), the provision of board
- 39 and lodging is taken to be payment towards income
- 40 compensation to which the worker is entitled.

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- 1 (4) An assessment under subsection (2) or (3) of the monetary
2 value, if any, of the provision of board and lodging for a period
3 must be made in accordance with the regulations but so as not,
4 in any case, to attribute a monetary value exceeding an amount
5 calculated by taking the number of full days for which board
6 and lodging provided by the employer to the worker during that
7 period had a monetary value and multiplying it by the maximum
8 board and lodging daily amount prescribed by the regulations as
9 applying when the worker's injury occurred.

10 Note for this section:

11 Section 58(7)(a) states that no minimum weekly rate at which income
12 compensation must be paid applies if the monetary value of the
13 provision of board and lodging is the only component of the worker's
14 pre-injury weekly rate of income.

15 **60. Working directors [WCIMA Sch. 1 cl. 11(2) Amount B**
16 **par. (a) and (b), cl. 11(2a), (2b), (2c)]**

- 17 (1) In this section —

18 ***declared remuneration***, of a working director who is a worker,
19 means —

- 20 (a) the amount of remuneration stated as actually paid or
21 payable to the working director during a period of
22 insurance in a remuneration statement for the most
23 recent period of insurance ending before the day on
24 which the worker's injury occurred; or
25 (b) if a remuneration statement was not provided for the
26 most recent period of insurance ending before the day
27 on which the worker's injury occurred — the amount of
28 remuneration stated in a remuneration estimate as the
29 amount estimated to be paid or payable to the working
30 director over the period of insurance during which the
31 worker's injury occurred;

32 ***remuneration estimate*** means an estimate provided to an
33 employer's insurer in compliance with section 206 of the
34 aggregate amount of remuneration to be paid or payable to a
35 working director over a period of insurance;

36 ***remuneration statement*** means a statement provided to an
37 employer's insurer in compliance with section 206 of the
38 aggregate amount of remuneration actually paid or payable to a
39 working director during a period of insurance.

- 40 (2) This section applies to the calculation of a worker's average
41 weekly rate of earnings in a position as a working director for

- 1 the purposes of ascertaining the worker's pre-injury weekly rate
2 of income under section 55(1).
- 3 (3) The average weekly rate of earnings of a working director of a
4 company that is an insured employer is —
- 5 (a) the weekly rate calculated by averaging the declared
6 remuneration of the working director over the period to
7 which the declared remuneration relates; or
- 8 (b) if there is no declared remuneration of the working
9 director — the weekly rate calculated in accordance
10 with the default calculation method under
11 subsection (4).
- 12 (4) The default calculation method for calculating a working
13 director's average weekly rate of earnings is as follows —
- 14 (a) the worker's earnings are taken to include all of the
15 worker's remuneration as a working director that is paid
16 or payable during the period over which section 55(2)
17 requires the worker's average weekly rate of earnings to
18 be calculated; and
- 19 (b) the average weekly rate of those earnings is calculated
20 over that period.
- 21 (5) To the extent that it is practicable to do so, before the amount of
22 a worker's remuneration as a working director of a company
23 that is an insured employer is used in a calculation to which this
24 section applies, particulars of the amount must be verified by
25 the company.
- 26 (6) The average weekly rate of earnings of a working director of a
27 company that is a self-insurer must be calculated in accordance
28 with the default calculation method under subsection (4) except
29 that if no remuneration was in fact paid or payable to the
30 working director during the period concerned, remuneration is
31 taken to have been of an amount estimated on the basis of any
32 relevant contract, award or agreement.

33 **61. Public holidays [WCIMA s. 81]**

34 A public holiday that falls within a period for which an
35 employer is liable to pay income compensation to a worker is
36 included as a part of the period for which the employer is liable
37 to pay the income compensation but —

- 38 (a) the employer is not otherwise liable to make any
39 payment to the worker in respect of that holiday; and

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- 1 (b) the employer is not liable to give the worker any time
2 off work in place of that holiday.

3 Note for this section:

4 The *Interpretation Act 1984* section 5 defines **public holiday**.

5 **62. Leave while entitled to income compensation [WCIMA**
6 **s. 80]**

7 (1) In this section —

8 **sick leave** includes leave known as personal leave, or leave by
9 another name, that is substantially of the same nature as sick
10 leave;

11 **take leave**, with reference to annual leave, long service leave or
12 sick leave, means —

- 13 (a) to take time off work with pay on leave of that kind; or
14 (b) to receive a monetary payment instead of taking time off
15 work with pay on leave of that kind;

16 **teacher's vacation entitlement** means an entitlement that a
17 worker employed as a teacher at an educational institution has
18 to be paid for a time during a student vacation period as a
19 separate entitlement to annual leave.

20 (2) For any period for which a worker is entitled to receive income
21 compensation —

- 22 (a) the worker is entitled to take annual leave or long
23 service leave that the worker could have taken if the
24 worker had not been entitled to receive income
25 compensation for that period; and
26 (b) the worker has any teacher's vacation entitlement that
27 the worker would have had if the worker had not been
28 entitled to receive income compensation for that period;
29 and
30 (c) the worker's entitlement to receive income
31 compensation and the amount of those payments are not
32 affected by —
33 (i) the worker being entitled to take, or taking,
34 annual leave or long service leave for all or any
35 of that period; or
36 (ii) the worker having any teacher's vacation
37 entitlement for that period;
38 and

- 1 (d) the worker is not entitled to take sick leave for an
2 absence from work because of the worker's injury; and
3 (e) the worker accrues entitlements to annual leave, long
4 service leave and sick leave that the worker would have
5 accrued if the worker had not been entitled to receive
6 income compensation for that period.

7 Note for this subsection:

8 The *Fair Work Act 2009* (Commonwealth) section 130(1) prevents a
9 worker to whom it applies from taking sick leave during a period for
10 which income compensation is paid.

- 11 (3) If an employer pays a worker any amount as a sick leave
12 entitlement for any period for which the worker subsequently
13 receives income compensation —
14 (a) the amount paid to the worker as a sick leave entitlement
15 is taken to have been paid as, or towards, income
16 compensation; and
17 (b) the employer must reinstate any period of sick leave to
18 which the sick leave entitlement relates.

19 **Subdivision 4 — Reducing, suspending and discontinuing income**
20 **compensation**

21 **63. Restrictions on reduction, suspension or discontinuation of**
22 **income compensation [WCIMA s. 61]**

23 An employer must not reduce, suspend or discontinue income
24 compensation payments to a worker except —

- 25 (a) to give effect to any provision of this Act as to the
26 calculation of the amount of compensation that is
27 payable or any limit on the amount of compensation that
28 is payable; or

29 Note for this paragraph:

30 Paragraph (a) covers changes to the amount of compensation that
31 could result from changes to indexed amounts, changes to award rates
32 of pay, or a change to the rate of compensation after the first 26 weeks
33 of incapacity.

- 34 (b) to give effect to a direction of a conciliator or an order
35 of an arbitrator; or
36 (c) in accordance with section 64, 65, 66 or 67; or
37 (d) with the written consent of the worker given in the
38 approved form.

39 Penalty: a fine of \$10 000.

1 **64. Reducing or discontinuing income compensation on basis of**
2 **worker's return to work [WCIMA s. 61]**

3 (1) An employer must not reduce or discontinue income
4 compensation payments to a worker on the basis of the worker's
5 return to work unless the employer has given the worker notice
6 in the approved form specifying —

7 (a) the basis for the reduction or discontinuance with
8 reference to the earnings of the worker in the
9 employment to which the worker has returned; and

10 (b) the amount, if any, of income compensation that will be
11 paid to the worker for any partial incapacity for work.

12 (2) If the worker returns to work in suitable employment with
13 another employer, the employer liable to pay income
14 compensation must not reduce or discontinue payment without
15 first verifying the worker's earnings in that employment.

16 (3) An arbitrator dealing with an application for determination of a
17 dispute about a reduction or discontinuation of income
18 compensation payments under this section may —

19 (a) determine the amount of income compensation
20 payments; and

21 (b) make an order as to the making of those payments and
22 the amount, if any, of those payments.

23 **65. Reducing or discontinuing income compensation on basis of**
24 **medical evidence [WCIMA s. 61]**

25 (1) The requirements of this section must be complied with before
26 an employer is permitted to reduce or discontinue income
27 compensation payments on the basis of medical evidence from a
28 medical practitioner as to —

29 (a) the worker's capacity for work; or

30 (b) the extent to which the worker's incapacity for work is a
31 result of the worker's injury.

32 (2) The requirements of this section for a proposed reduction or
33 discontinuation of income compensation payments (the
34 ***proposed action***) are as follows —

35 (a) the employer must give the worker written notice in
36 accordance with the regulations of the proposed action
37 together with a copy of the medical evidence on the
38 basis of which it is proposed to take that action;

- 1 (b) the worker must be allowed a period of 21 days after the
2 requirements of paragraph (a) are complied with in
3 which to apply for resolution by conciliation of a dispute
4 about the proposed action (a *dispute resolution*
5 *application*);
- 6 (c) if the worker makes a dispute resolution application
7 within that 21-day period, the employer cannot proceed
8 with the proposed action before the dispute resolution
9 process for the dispute has been finalised as provided by
10 this section;
- 11 (d) if the worker does not make a dispute resolution
12 application within that 21-day period, the employer is
13 permitted to proceed with the proposed action.
- 14 (3) The dispute resolution process for a dispute about a proposed
15 action is considered to have been finalised when 1 of the
16 following occurs —
- 17 (a) the dispute is resolved by conciliation;
- 18 (b) the dispute is not resolved by conciliation and the period
19 for making an application for determination of the
20 dispute by arbitration expires without such an
21 application having been made;
- 22 (c) an application for determination of the dispute by
23 arbitration is made and an arbitrator determines the
24 matter or matters in dispute;
- 25 (d) an application for resolution of the dispute by
26 conciliation or determination of the dispute by
27 arbitration is not accepted or is discontinued or
28 dismissed.
- 29 (4) An arbitrator dealing with an application for determination of a
30 dispute about a proposed reduction or discontinuation of income
31 compensation payments under this section may —
- 32 (a) determine the amount of the income compensation
33 payments; and
- 34 (b) make an order as to the making of those payments and
35 the amount, if any, of those payments.
- 36 (5) For determining, for the purposes of this section, the amount of
37 any income compensation payments, an arbitrator may —
- 38 (a) treat the worker's capacity for work, if any, as being of
39 the degree the arbitrator sees fit; and

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- 1 (b) without limiting the matters to which the arbitrator may
2 have regard, take into consideration whether a return to
3 work program has been established for the worker and
4 the worker's participation, if any, in any such return to
5 work program.
- 6 (6) This section does not limit any power of a conciliator in a
7 proceeding on a dispute to direct the suspension or reduction of
8 income compensation payments.
- 9 **66. Worker not residing in State: failure to provide declaration**
10 **[WCIMA s. 69]**
- 11 (1) The regulations may require a worker who is entitled to income
12 compensation and who does not reside in this State to provide
13 the insurer or self-insurer at specified intervals with declarations
14 by the worker and a medical practitioner as to the worker's
15 capacity for work (the *required declarations*).
- 16 (2) Payment of income compensation to a worker can be suspended
17 for a failure by the worker to provide the required declarations
18 before the end of an interval at which the declarations are
19 required.
- 20 (3) Before payment of income compensation can be suspended
21 under this section, the insurer or self-insurer must first give the
22 worker a written notice (a *warning notice*) —
- 23 (a) informing the worker of the worker's obligation to
24 provide the required declarations before the end of the
25 interval at which the declarations are required; and
26 (b) stating that payment of income compensation to the
27 worker will be suspended from a specified date (the
28 *suspension date*) if the worker fails to provide the
29 required declarations.
- 30 (4) The warning notice can be given no earlier than 14 days before
31 the end of the interval at which the declarations are required and
32 the suspension date must be a date that is at least 14 days after
33 the warning notice is given and not earlier than the end of the
34 interval at which the declarations are required.
- 35 (5) Payment of income compensation is suspended from the
36 suspension date until the worker provides the required
37 declarations and the insurer or self-insurer receives the required
38 declarations.

1 Note for this subsection:

2 Suspension of income payments only affects income payments
3 payable in respect of the period of suspension. Income payments must
4 recommence after the suspension period if the worker is otherwise
5 entitled to income payments in respect of the period after the
6 suspension period. See section 68.

7 (6) A worker may apply for an arbitrator to determine a question as
8 to whether payment of income compensation to the worker was
9 lawfully suspended under this section for a particular period and
10 an arbitrator may determine the question and make any order
11 the arbitrator considers appropriate in the circumstances.

12 **67. Suspension of income compensation while worker in custody**
13 **[WCIMA s. 72]**

14 (1) In this section —

15 *chief executive officer (prisons)* means the chief executive
16 officer as defined in the *Prisons Act 1981* section 3(1);

17 *registrar (MIARB)* means the registrar of the Mentally
18 Impaired Accused Review Board established under the *Criminal*
19 *Law (Mentally Impaired Accused) Act 1996* Part 6;

20 *relevant government authority* means the authority principally
21 assisting the Minister responsible for administering the relevant
22 law in the administration of that law;

23 *relevant law* means the law under which the worker is in
24 custody or is serving the term of imprisonment.

25 (2) Payment of income compensation to a worker must be
26 suspended for any period during which the worker is —

27 (a) in custody under a law of the Commonwealth, this State
28 or another State, other than custody of a kind prescribed
29 by the regulations; or

30 (b) otherwise serving a term of imprisonment of a kind
31 prescribed by the regulations.

32 (3) Before payment of income compensation can be suspended
33 under this section, the employer must have written confirmation
34 from the relevant government authority of the factual
35 circumstances mentioned in subsection (2) in relation to the
36 worker and the date from which those circumstances applied.

37 (4) A worker may apply for an arbitrator to determine a question as
38 to whether payment of income compensation to the worker was
39 lawfully suspended under this section for a particular period and
40 an arbitrator may determine the question and make any order
41 the arbitrator considers appropriate in the circumstances.

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- 1 (5) The chief executive officer (prisons) and the registrar (MIARB)
2 and any other relevant government authority prescribed by the
3 regulations must provide written confirmation for the purposes
4 of subsection (3) in the circumstances, and in the manner and
5 form, provided for by the regulations.

6 **68. Effect of suspension of income compensation payments**
7 **[WCIMA s. 63]**

- 8 (1) If payment of income compensation to a worker is lawfully
9 suspended under this Act for a period, no income compensation
10 is payable to the worker in respect of the period of suspension
11 unless an arbitrator otherwise orders.
- 12 (2) Suspension of income payments does not affect any entitlement
13 to income compensation in respect of any period after the period
14 of suspension.

15 **69. Power of arbitrator to review disputed income**
16 **compensation payments [WCIMA s. 62]**

- 17 (1) An arbitrator may review the payment of income compensation
18 to a worker on the application of the worker or the employer.
- 19 (2) On a review under this section, the arbitrator may make any
20 order for the payment of income compensation to the worker to
21 be suspended, adjusted or discontinued as the arbitrator
22 considers appropriate having regard to the past or present
23 condition of the worker.
- 24 (3) The arbitrator's order has effect from the day specified in the
25 order and, in the case of a suspension, until such day or such
26 time as is specified in the order.

27 **Division 4 — Compensation for medical and health expenses**

28 **70. Terms used [New provision]**

29 In this Division —

30 ***medical and health expenses general limit amount*** means the
31 amount that is 60%, or a greater percentage, if any, prescribed
32 by the regulations, of the general maximum amount;

33 ***medical and health service*** means anything an expense for
34 which is a medical and health expense;

35 ***reasonable***, referring to a medical and health expense, has the
36 meaning given in section 73;

1 **special expense** means a medical and health expense that is —

- 2 (a) an expense in respect of surgical attendance and
3 treatment; or
- 4 (b) an expense in respect of hospital fees and charges for
5 any health service, as defined in the *Health Services*
6 *Act 2016* section 7, provided to the worker in a hospital,
7 as defined in the *Health Services Act 2016* section 8; or
- 8 (c) an expense in respect of post-operative medical
9 treatment; or
- 10 (d) an expense related to an expense described in
11 paragraph (a), (b) or (c);

12 **special increase** means an increase by an order under
13 section 79(3) in the medical and health expenses general limit
14 amount for a claim;

15 **special increase limit amount** means the amount that is 190%,
16 or a greater percentage, if any, prescribed by the regulations, of
17 the medical and health expenses general limit amount;

18 **standard increase** means an increase by an order under
19 section 78(2) in the medical and health expenses general limit
20 amount for a claim;

21 **standard increase limit amount** means the amount that is 40%,
22 or a greater percentage, if any, prescribed by the regulations, of
23 the medical and health expenses general limit amount.

24 **71. Medical and health expenses compensation under this**
25 **Division [WCIMA s. 18, Sch. 1 cl. 17(1)]**

26 (1) Compensation (**medical and health expenses compensation**) is
27 payable under this Division in the form of payment of the
28 amount of reasonable medical and health expenses incurred or
29 to be incurred by a worker as a result of the worker's injury.

30 (2) An employer's obligation to pay medical and health expenses
31 compensation arises when the insurer or self-insurer accepts (or
32 is taken to have accepted) or an arbitrator determines that the
33 employer is liable to compensate the worker for the injury.

34 (3) An employer's liability for medical and health expenses
35 compensation applies to medical and health expenses incurred
36 after the worker's injury occurs and extends to medical and
37 health expenses incurred before the employer's obligation to
38 pay medical and health expenses compensation arises.

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1 Note for this section:

2 Provisional payments in respect of medical and health expenses
3 compensation are to be treated as compensation paid for medical and
4 health expenses — see section 44.

5 **72. Expenses that are medical and health expenses**
6 **[WCIMA s. 5(1), Sch. 1 cl. 17(1)]**

7 (1) In this Division —

8 ***medical and health expense*** means an expense that is for any of
9 the following —

- 10 (a) medicines and medical requisites;
- 11 (b) medical or surgical attendance and treatment, including,
12 if necessary, medical or surgical attendance and
13 treatment by specialists;
- 14 (c) hospital fees and charges for any health service, as
15 defined in the *Health Services Act 2016* section 7,
16 provided to the worker in a hospital, as defined in the
17 *Health Services Act 2016* section 8;
- 18 (d) the treatment and maintenance in a nursing home, as
19 defined in the *Private Hospitals and Health Services*
20 *Act 1927* section 2(1), of a worker certified by a medical
21 practitioner as —
- 22 (i) being permanently totally incapacitated for work;
23 and
- 24 (ii) requiring continuing treatment and maintenance
25 that cannot be administered in the worker's
26 domestic environment;
- 27 (e) dental attendance and treatment;
- 28 (f) the provision of hearing aids, artificial teeth or artificial
29 eyes;
- 30 (g) if the injury renders their use necessary, the provision of
31 spectacles or contact lenses;
- 32 (h) health services prescribed by the regulations to be
33 services the expenses in respect of which are medical
34 and health expenses.

35 (2) Regulations prescribing health services as described in
36 paragraph (h) of the definition of ***medical and health expense***
37 in subsection (1) may operate by reference to the person or class
38 of persons providing the service.

- 1 (3) An expense is not a medical and health expense for the purposes
2 of this Division if the expense is of a kind that is compensable
3 as a miscellaneous expense under Division 5.

4 **73. Requirement that medical and health expenses be**
5 **reasonable [WCIMA Sch. 1 cl. 17]**

- 6 (1) For a medical and health expense to be considered to be
7 reasonable for the purposes of this Division —
8 (a) it must be reasonably necessary for the worker to incur
9 the expense; and
10 (b) the amount of the expense —
11 (i) must be in accordance with a scale of fees and
12 charges fixed by an order under section 74; or
13 (ii) if no fixed scale of fees and charges applies,
14 must be reasonable having regard to prevailing
15 market rates and any other relevant
16 circumstances.
- 17 (2) The regulations may provide for the principles to be applied in
18 determining whether it is reasonably necessary for a worker to
19 incur a medical and health expense.

20 **74. Minister may fix maximum amounts for medical and health**
21 **expenses [WCIMA s. 292(2)]**

- 22 (1) The Minister, on the recommendation of WorkCover WA, may
23 make an order fixing the maximum amount of compensation
24 payable for a medical and health expense for a medical and
25 health service.
- 26 (2) The maximum amount for which an employer is liable for
27 medical and health expenses for a medical and health service
28 must not exceed the amount, if any, that is fixed as the
29 maximum amount of compensation for that medical and health
30 service by an order under this section.
- 31 (3) An order under this section may —
32 (a) fix a maximum amount by reference to a specified
33 amount or by reference to an amount calculated or
34 determined in a specified manner; and
35 (b) provide for the maximum amount fixed in respect of any
36 particular medical and health service to vary by
37 reference to different factors of a specified kind (for
38 example, by reference to the person who provides the

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- 1 service or the circumstances in which it is provided);
2 and
3 (c) fix a maximum amount for medical and health services
4 provided together or in combination.
- 5 (4) An order under this section may adopt or fix a maximum
6 amount by reference to the provisions of other publications,
7 whether with or without modification or addition and whether in
8 force at a particular time or from time to time.
- 9 (5) An order under this section is subsidiary legislation for the
10 purposes of the *Interpretation Act 1984*.
- 11 Notes for this subsection:
- 12 1. Under the *Interpretation Act 1984* section 41(1), subsidiary legislation
13 must be published in the *Gazette*.
- 14 2. Under the *Interpretation Act 1984* section 43(4), a power to make
15 subsidiary legislation includes a power to amend or repeal the
16 subsidiary legislation.

17 **75. Eligibility to provide compensable medical and health**
18 **services [WCIMA s. 5(1) *approved treatment*, s. 292(2), Sch. 1**
19 **cl. 17(1)]**

- 20 (1) The regulations may prescribe requirements (*provider eligibility*
21 *requirements*) for a provider of a medical and health service
22 that a person must satisfy in order that compensation is payable
23 for a medical and health expense for a medical and health
24 service provided by the person.
- 25 (2) An employer is not liable for compensation for medical and
26 health expenses for a medical and health service provided by a
27 person if the person does not satisfy the provider eligibility
28 requirements, if any, for a provider of the service.
- 29 (3) Provider eligibility requirements may be prescribed by reference
30 to a person's qualifications or experience or otherwise.

31 **76. General limit on compensation for medical and health**
32 **expenses [WCIMA Sch. 1 cl. 17(1)]**

33 The total amount of medical and health expenses compensation
34 paid in respect of a worker's injury must not exceed the medical
35 and health expenses general limit amount.

36 Note for this section:

37 The medical and health expenses general limit amount is 60% (or a
38 greater percentage prescribed by the regulations) of the general
39 maximum amount. The medical and health expenses general limit
40 amount for a claim can be increased by a standard increase under
41 section 78(2) or a special increase under section 79(3). The total

1 amount of compensation paid includes any provisional payments (see
2 section 44).

3 **77. Notice to worker that 60% of general limit reached**
4 **[WCIMA Sch. 1 cl. 18A(4)]**

5 When the total amount of medical and health expenses
6 compensation paid in respect of a worker's injury reaches
7 60% of the medical and health expenses general limit amount,
8 the employer or, if the employer is an insured employer, the
9 employer's insurer must within 14 days give the worker notice
10 of that fact in the approved form.

11 Penalty: a fine of \$5 000.

12 **78. Standard increase in compensation limit [WCIMA Sch. 1**
13 **cl. 18A(1b), 18(1CA), (2)]**

14 (1) A worker may apply to an arbitrator at any time for an increase
15 in the medical and health expenses general limit amount for the
16 worker's injury (the *general limit for the claim*).

17 (2) On application under this section, an arbitrator may order an
18 increase in the general limit for the claim if the arbitrator —

19 (a) is satisfied that the worker has incurred, or is likely to
20 incur, reasonable medical and health expenses in an
21 amount that is in excess of the general limit; and

22 (b) considers that the increase should be allowed, having
23 regard to the social and financial circumstances and the
24 reasonable financial needs of the worker.

25 (3) The amount by which the general limit for the claim may be
26 increased by an order under subsection (2) —

27 (a) must be decided after taking into account the amount of
28 any payment for medical and health expenses that the
29 employer or insurer voluntarily made to the worker
30 beyond the amounts to which the worker was entitled
31 under this Act; and

32 (b) is limited by the requirement that the increase (or the
33 total of all standard increases), together with any
34 amounts required by paragraph (a) to be taken into
35 account, must not exceed the standard increase limit
36 amount.

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1 **79. Increase for special expenses in the medical and health**
2 **expenses general limit amount [WCIMA Sch. 1 cl. 18A(1C),**
3 **(1d), (2), (2aa)]**

4 (1) A worker may apply to an arbitrator for an increase for special
5 expenses in the medical and health expenses general limit
6 amount for the worker's injury (the *general limit for the claim*)
7 beyond the standard increase limit amount.

8 Note for this subsection:

9 Subsection (6) imposes a 5-year limit on an application under this
10 section for a special increase.

11 (2) An application under this section may be made only if —
12 (a) the general limit for the claim has been increased by a
13 standard increase; and
14 (b) the worker has incurred, or is likely to incur, reasonable
15 special expenses in excess of those that can be provided
16 for by a standard increase.

17 (3) On application under this section, an arbitrator may order that
18 the general limit for the claim is increased if —
19 (a) the worker has a degree of permanent whole of person
20 impairment of at least 15% as a result of the worker's
21 injury as determined under section 80; and
22 (b) the arbitrator is satisfied that the worker has incurred, or
23 is likely to incur, reasonable special expenses in excess
24 of those that can be provided for by a standard increase;
25 and
26 (c) the arbitrator is satisfied in accordance with the
27 regulations of any other matter of which the regulations
28 require the arbitrator to be satisfied under this
29 paragraph; and
30 (d) the arbitrator considers that the increase should be
31 allowed, having regard to the social and financial
32 circumstances and the reasonable financial needs of the
33 worker.

34 (4) The amount of a special increase —
35 (a) applies only for the payment of compensation for special
36 expenses; and
37 (b) must be decided after taking into account the amount of
38 any payment for medical and health expenses that, since
39 the most recent standard increase, the employer or

- 1 insurer voluntarily made to the worker beyond the
2 general limit for the claim; and
- 3 (c) is limited by the requirement that the increase (or the
4 total of all special increases), together with any amounts
5 required by paragraph (b) to be taken into account, must
6 not exceed the special increase limit amount.
- 7 (5) The arbitrator is not required to be satisfied of the matters
8 described in subsection (3)(c) if the expenses for which the
9 special increase is sought are incurred or likely to be incurred in
10 the course of following a plan for managing and treating the
11 worker's medical and associated conditions with which the
12 arbitrator granting a previous special increase was satisfied.
- 13 (6) An application for a special increase cannot be made more than
14 5 years after the relevant determination of liability for the injury
15 and for that purpose the relevant determination of liability is
16 considered to have occurred on the latest of the following —
- 17 (a) the day on which the worker is first notified that the
18 insurer or self-insurer has accepted that the employer is
19 liable to compensate the worker for the injury;
- 20 (b) the day on which the insurer or self-insurer is taken to
21 have accepted that the employer is liable to compensate
22 the worker for the injury;
- 23 (c) the day on which it is determined by an arbitrator that
24 the employer is liable to compensate the worker for the
25 injury.

26 **80. Assessment of degree of permanent impairment for special**
27 **increase [WCIMA Sch. 1 cl. 18A(2aa)]**

- 28 (1) A worker may, for the purpose of obtaining a special increase,
29 apply for an assessment under Part 4 of the worker's degree of
30 permanent whole of person impairment.
- 31 (2) If the assessment returns a finding that the worker has a degree
32 of permanent whole of person impairment of at least 15% as a
33 result of the worker's injury, the worker may give that
34 assessment to the worker's employer together with notice that
35 the worker intends to apply for a special increase in the medical
36 and health expenses general limit amount.
- 37 (3) The worker is taken for the purposes of a special increase under
38 section 79(3) to have a degree of permanent whole of person
39 impairment of at least 15% as a result of the worker's injury if

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- 1 the worker gives the worker's employer an assessment and
2 notice in accordance with subsection (2) and —
- 3 (a) the employer gives written notice to the worker that the
4 assessment is not disputed; or
- 5 (b) the employer fails to dispute the assessment within the
6 period specified in subsection (4); or
- 7 (c) the employer disputes the assessment within the period
8 specified in subsection (4) and the dispute is determined
9 by an arbitrator determining that the worker has a degree
10 of permanent whole of person impairment of at least
11 15% as a result of the worker's injury.
- 12 (4) An employer can dispute an assessment by giving the worker
13 written notice of the dispute within 14 days after the worker
14 notifies the employer that the worker intends to apply for a
15 special increase.
- 16 (5) If the assessment is disputed, an arbitrator may on application
17 by the worker determine the dispute by determining whether the
18 worker has a degree of permanent whole of person impairment
19 of at least 15% as a result of the worker's injury.
- 20 (6) The arbitrator may order the employer to pay all or any of the
21 costs and expenses connected with a dispute that is the subject
22 of an application for resolution under this section.

23 **81. Effect of participation in catastrophic injuries support**
24 **scheme [New provision]**

25 The employer of a worker ceases to be liable for medical and
26 health expenses compensation to the extent that the
27 compensation is for expenses incurred or to be incurred after the
28 worker becomes a participant in the catastrophic injuries
29 support scheme under the *Motor Vehicle and Workplace*
30 *Accidents (Catastrophic Injuries) Act 2016*.

31 **Division 5 — Compensation for miscellaneous expenses**

32 **82. Term used: miscellaneous expense [New provision]**

33 In this Division —

34 *miscellaneous expense* means an expense that is a
35 miscellaneous expense under a provision of this Division.

1 **83. Compensation for reasonable miscellaneous expenses**
2 **[WCIMA Sch. 1 cl. 17]**

- 3 (1) Compensation (*miscellaneous expenses compensation*) is
4 payable under this Division in the form of payment of the
5 amount of reasonable miscellaneous expenses incurred or to be
6 incurred by a worker as a result of the worker's injury.
- 7 (2) An employer's obligation to pay miscellaneous expenses
8 compensation arises when the insurer or self-insurer accepts (or
9 is taken to have accepted) or an arbitrator determines that the
10 employer is liable to compensate the worker for the injury.
- 11 (3) An employer's liability for miscellaneous expenses
12 compensation applies to miscellaneous expenses incurred after
13 the worker's injury occurs and extends to miscellaneous
14 expenses incurred before the employer's obligation to pay
15 compensation arises.

16 Note for this section:

17 This Division deals separately with each kind of expense for which
18 compensation may be paid under this Division but does not impose a
19 limit on the aggregate amount of all kinds of compensation that may be
20 paid under this Division.

21 **84. Expenses that are miscellaneous expenses [WCIMA Sch. 1**
22 **cl. 17(1aa), (3)-(6)]**

23 An expense is a miscellaneous expense for the purposes of this
24 Division if the expense is for any of the following —

- 25 (a) first aid and emergency transport, as provided by
26 section 86;
- 27 (b) a wheelchair or similar appliance, as provided by
28 section 87;
- 29 (c) a surgical appliance or artificial limb, as provided by
30 section 88;
- 31 (d) repair or replacement of clothing damaged or destroyed,
32 as provided by section 89;
- 33 (e) repair or replacement of an artificial aid damaged or
34 destroyed, as provided by section 90;
- 35 (f) travel, as provided by section 91;
- 36 (g) assessment of degree of permanent impairment, as
37 provided by section 92.

- 1 **85. Requirement that miscellaneous expenses be reasonable**
2 **[WCIMA Sch. 1 cl. 17]**
- 3 (1) For a miscellaneous expense to be considered to be
4 reasonable for the purposes of this Division —
- 5 (a) it must be reasonably necessary for the worker to incur
6 the expense; and
- 7 (b) the amount of the expense must be reasonable.
- 8 (2) The regulations may provide for the principles to be applied in
9 determining whether it is reasonably necessary for a worker to
10 incur a miscellaneous expense.
- 11 **86. First aid and emergency transport [WCIMA Sch. 1 cl. 17(1)]**
- 12 An expense is a miscellaneous expense if it is for —
- 13 (a) first aid to the worker; or
- 14 (b) emergency transport for the worker to attend a hospital
15 or other place for medical treatment.
- 16 **87. Wheelchair [WCIMA Sch. 1 cl. 17(4)]**
- 17 (1) An expense is a miscellaneous expense if it is for providing the
18 use of a wheelchair or similar appliance to the worker when the
19 worker has suffered —
- 20 (a) the loss of both legs; or
- 21 (b) paralysis of both legs.
- 22 (2) The regulations may limit the amount payable to a worker as
23 compensation for a miscellaneous expense under this section.
- 24 **88. Surgical appliance or artificial limb [WCIMA Sch. 1**
25 **cl. 17(5)]**
- 26 (1) An expense is a miscellaneous expense if it is for providing the
27 worker with a suitable surgical appliance or artificial limb.
- 28 (2) A surgical appliance or artificial limb is suitable if —
- 29 (a) it is capable of relieving any effect of the worker's
30 injury; and
- 31 (b) it complies with any standard prescribed by the
32 regulations.

1 **89. Clothing [WCIMA Sch. 1 cl. 17(6)]**

2 (1) An expense is a miscellaneous expense if it is for the repair or
3 replacement of clothing damaged or destroyed in the accident
4 that results in the worker's injury.

5 (2) Compensation for a miscellaneous expense under this section is
6 payable as if the expense were incurred as a result of the
7 worker's injury.

8 Note for this section:

9 An expense under this section is incurred as a result of the accident
10 and not as a result of the injury that results from the accident.
11 Subsection (2) requires the expense to be treated as an expense
12 incurred as a result of the worker's injury because section 83 requires
13 that for compensation to be payable for a miscellaneous expense it
14 must be incurred as a result of the worker's injury.

15 **90. Repair or replacement of artificial aids [WCIMA Sch. 1**
16 **cl. 17(3)]**

17 (1) In this section —

18 *artificial aid* means a hearing aid, artificial limb, artificial teeth,
19 artificial eyes, spectacles or contact lenses;

20 *work accident* means an accident that arises out of or in the
21 course of a worker's employment or while a worker is acting
22 under the employer's instructions.

23 (2) An expense is a miscellaneous expense if it is for —

24 (a) the repair or replacement of any artificial aid damaged
25 or destroyed in a work accident even if the worker did
26 not suffer any injury as a result of the work accident; or

27 (b) services by way of consultations, examinations or
28 prescriptions that are rendered by medical practitioners,
29 dentists or other qualified persons and reasonably
30 required in connection with the repair or replacement
31 referred to in paragraph (a).

32 (3) Compensation for a miscellaneous expense under this section is
33 payable as if the expense were incurred as a result of personal
34 injury by accident suffered by the worker as a result of the work
35 accident.

36 Note for this section:

37 An expense under this section is incurred as a result of the work
38 accident and not as a result of an injury (if any) that results from the
39 accident. Subsection (3) requires the expense to be treated as incurred
40 as a result of an injury suffered in the work accident because
41 section 83 requires that for compensation to be payable for a
42 miscellaneous expense it must be incurred as a result of a work injury.

1 **91. Travel [WCIMA Sch. 1 cl. 19]**

- 2 (1) An expense is a miscellaneous expense if it is a reasonable
3 expense for —
- 4 (a) the running costs of the use of the worker's vehicle for
5 approved travel; or
- 6 (b) any fare or other cost of approved travel; or
- 7 (c) meals and accommodation reasonably required in
8 connection with approved travel.
- 9 (2) Travel by a worker for the purposes of the provision of any
10 thing an expense for which is a medical and health expense or a
11 miscellaneous expense is approved travel if it is —
- 12 (a) travel that the worker is required to undertake by the
13 employer; or
- 14 (b) travel that the worker is advised to undertake by a
15 medical practitioner; or
- 16 (c) travel that the worker establishes is necessary in the
17 particular circumstances of the case.
- 18 (3) Travel by a worker is also approved travel for the purposes of
19 this section if —
- 20 (a) the travel is for the purpose of the assessment of the
21 worker's degree of permanent impairment for the
22 purposes of any provision of this Act; and
- 23 (b) the worker establishes that the travel is necessary for
24 that purpose in the particular circumstances of the case.
- 25 (4) The regulations may specify the rates at which expenses
26 referred to in this section are taken to be reasonable.

27 **92. Assessment of permanent impairment [WCIMA Sch. 1**
28 **cl. 17(1aa)]**

- 29 (1) An expense is a miscellaneous expense if it is for an assessment
30 of the worker's degree of permanent impairment for any of the
31 following purposes (each an *allowable purpose*) —
- 32 (a) establishing eligibility for compensation under
33 Division 6 as required by section 102;
- 34 (b) satisfying the requirements of section 421;
- 35 (c) obtaining a special increase in the medical and health
36 expenses general limit amount as required by section 80.
- 37 (2) Only 1 assessment for each allowable purpose is compensable
38 under this section together with any assessment for any previous

1 attempt at obtaining the assessment if the previous attempt
2 resulted in a finding that the worker's condition had not
3 stabilised to the extent required for the assessment to be made.

4 **93. Effect of participation in catastrophic injuries support**
5 **scheme [New provision]**

6 The employer of a worker ceases to be liable for miscellaneous
7 expenses compensation to the extent that the compensation is
8 for expenses incurred or to be incurred after the worker
9 becomes a participant in the catastrophic injuries support
10 scheme under the *Motor Vehicle and Workplace Accidents*
11 (*Catastrophic Injuries*) Act 2016.

12 **Division 6 — Lump sum compensation for permanent**
13 **impairment from personal injury by accident**

14 **94. Entitlement to lump sum permanent impairment**
15 **compensation [WCIMA s. 31C]**

- 16 (1) Compensation (*permanent impairment compensation*) is
17 payable under this Division as a lump sum amount for
18 permanent impairment suffered by a worker as a result of an
19 injury that is personal injury by accident.
- 20 (2) Permanent impairment compensation is payable only for
21 permanent impairment of a kind described in column 1 of the
22 Table to section 98.
- 23 (3) Permanent impairment compensation for permanent impairment
24 resulting from a worker's injury is payable only when the
25 employer's liability to the worker for compensation for the
26 injury is commuted by a settlement agreement registered under
27 Division 11.

28 **95. Amount of permanent impairment compensation based on**
29 **degree of permanent impairment [WCIMA s. 31C]**

- 30 (1) The amount of permanent impairment compensation payable is
31 the amount calculated under section 98 on the basis of the
32 worker's degree of permanent impairment resulting from the
33 injury.

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1 (2) The worker's degree of permanent impairment resulting from an
2 injury is —

3 (a) in the case of impairment of a part or faculty of the
4 body, the degree of permanent impairment of that part or
5 faculty of the body; or

6 (b) in the case of impairment from scarring or
7 disfigurement, the degree of permanent whole of person
8 impairment resulting from the injury.

9 **96. Worker's degree of permanent impairment [New provision]**

10 (1) For the purpose of calculating the amount of permanent
11 impairment compensation to which a worker is entitled, the
12 worker's degree of permanent impairment resulting from an
13 injury is —

14 (a) the degree of permanent impairment agreed by the
15 worker and employer as provided by section 102; or

16 (b) if section 102 does not result in agreement as to the
17 degree of permanent impairment — the degree of
18 permanent impairment determined by an arbitrator under
19 section 103.

20 (2) In the case of permanent impairment comprising the contracting
21 of AIDS that under section 101(1)(b) is taken to be a permanent
22 impairment of the worker resulting from the infection of the
23 worker with HIV, the worker's degree of permanent impairment
24 is 100%.

25 **97. Limit on permanent impairment compensation**
26 **[WCIMA s. 31J]**

27 (1) The total amount of permanent impairment compensation
28 payable under this Division for permanent impairment suffered
29 as a result of an injury must not exceed the general maximum
30 amount applying on the day on which the injury occurred and
31 this is the *lump sum limit* for the purposes of section 98.

32 (2) In the case of a worker suffering more than 1 impairment as a
33 result of an injury, the limit imposed by this section on the total
34 amount of permanent impairment compensation payable applies
35 as a limit on the aggregate of the amounts of permanent
36 impairment compensation payable for each of those
37 impairments.

98. Calculating permanent impairment compensation
[WCIMA s. 31C, 31D, Sch. 2]

- (1) The amount of permanent impairment compensation payable under this Division for a permanent impairment described in column 1 of the Table is —
- (a) if the degree of permanent impairment is 100% — the amount that is the percentage of the lump sum limit indicated for the impairment in column 2 of the Table; or
 - (b) if the degree of permanent impairment is less than 100% — the amount calculated by multiplying the percentage degree of permanent impairment by the percentage of the lump sum limit that is indicated for the impairment in column 2 of the Table.

Example for this subsection:

For permanent impairment of the sight of 1 eye, the Table indicates 50% of the lump sum limit. This is the amount of permanent impairment compensation payable for a degree of permanent impairment of the sight of 1 eye of 100%. For less than 100% permanent impairment (for example, 80%), the amount of permanent impairment compensation is calculated as 80% of 50% (to arrive at 40%) of the lump sum limit.

- (2) For the purposes of determining the amount of permanent impairment compensation for a permanent impairment resulting from an injury, the amount of the lump sum limit is that amount as applying on the day on which the injury occurs.

Table

Item	Column 1 Permanent impairment	Column 2 % of lump sum limit
EYES		
1.	Impairment of sight of both eyes	100
2.	Impairment of sight of an only eye	100
3.	Impairment of sight of 1 eye	50
4.	Impairment of binocular vision	50

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Item	Column 1 Permanent impairment	Column 2 % of lump sum limit
HEARING		
5.	Impairment of hearing	75
SPEECH		
6.	Impairment of power of speech	75
BODY AND MENTAL		
7.	Impairment of mental capacity	100
8.	Impairment of spinal cord function	100
SENSORY		
9.	Impairment of sense of taste and smell	50
10.	Impairment of sense of taste	25
11.	Impairment of sense of smell	25
ARM		
12.	Impairment of arm at or above elbow	90
13.	Impairment of arm below elbow	80
HAND		
14.	Impairment of both hands	100
15.	Impairment of hand and foot	100
16.	Impairment of hand or thumb and 4 fingers	80
17.	Impairment of thumb	35

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Item	Column 1 Permanent impairment	Column 2 % of lump sum limit
18.	Impairment of forefinger	17
19.	Impairment of middle finger	13
20.	Impairment of ring finger	9
21.	Impairment of little finger	6
22.	Impairment of movement of joint of thumb	17
23.	Impairment of distal phalanx of thumb	20
24.	Impairment of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx	15
25.	Impairment of distal phalanx of forefinger	10
26.	Impairment of distal phalanx of middle finger	8
27.	Impairment of distal phalanx of ring finger	6
28.	Impairment of distal phalanx of little finger	4
29.	Impairment of distal phalanx of each finger of the same hand (not including the thumb) in 1 accident	31
LEG		
30.	Impairment of leg at or above knee	70
31.	Impairment of leg below knee	65

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Item	Column 1 Permanent impairment	Column 2 % of lump sum limit
FEET		
32.	Impairment of both feet	100
33.	Impairment of foot	65
34.	Impairment of great toe	20
35.	Impairment of any toe other than great toe	8
36.	Impairment of 2 phalanges of any toe other than great toe	5
37.	Impairment of phalanx of great toe	8
38.	Impairment of phalanx of any toe other than great toe	4
BACK, NECK AND PELVIS		
39.	Impairment of the back (thoracic spine or lumbar spine or both)	75
40.	Impairment of the neck (including cervical spine)	55
41.	Impairment of the pelvis	30
MISCELLANEOUS		
42.	Impairment of genitals	50
43.	Impairment from facial scarring or disfigurement	80
44.	Impairment from bodily, other than facial, scarring or disfigurement	50
45.	AIDS	100

1 **99. Further permanent impairment from subsequent injury**
2 **[WCIMA s. 31G]**

3 (1) In this section —

4 *compensable injury* means an injury to a worker that is a
5 personal injury by accident in respect of which permanent
6 impairment compensation under this Division has been paid or
7 is payable to the worker.

8 (2) If a worker has, by a compensable injury, suffered a permanent
9 impairment described in column 1 of the Table to section 98 and
10 by a subsequent compensable injury suffers further permanent
11 impairment of the same body part or faculty —

12 (a) the amount of permanent impairment compensation
13 payable for that further impairment is the amount that is
14 proportionate to any increase (resulting from that
15 subsequent compensable injury) in the degree of
16 permanent impairment; and

17 (b) the amount of permanent impairment compensation
18 payable for each such further impairment must be
19 calculated on the basis of the permanent impairment
20 compensation amount applying on the day on which
21 each such subsequent compensable injury occurred.

22 **100. Compensable impairment not to exceed 100%**
23 **[WCIMA s. 31G]**

24 If a worker has received permanent impairment compensation in
25 respect of an impairment of a body part or faculty for a degree
26 of permanent impairment of 100% (in 1 payment for a degree of
27 permanent impairment of 100% or in several payments each for
28 a degree of permanent impairment of less than 100%) the
29 worker is not entitled to any further permanent impairment
30 compensation in respect of that impairment.

31 **101. Special provisions for AIDS [WCIMA s. 31F]**

32 (1) For the purposes of this Division —

33 (a) an injury that is the infection of a worker with HIV by
34 accident is taken to be a personal injury by accident; and

35 (b) the subsequent contracting by the worker of AIDS is
36 taken to be a permanent impairment of the worker
37 resulting from the infection of the worker with HIV; and

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- 1 (c) the degree of permanent impairment of the worker
2 resulting from the infection of the worker with HIV is
3 taken to be 100%; and
4 (d) the infection of the worker with HIV is taken to have
5 occurred on the day on which a medical practitioner
6 certifies that the worker has contracted AIDS.
- 7 (2) The regulations may provide for requirements for satisfying the
8 Director that —
9 (a) a worker was infected with HIV by accident; and
10 (b) the infection of the worker with HIV arose out of, or in
11 the course of, the worker's employment; and
12 (c) the worker subsequently contracted AIDS.
- 13 (3) The regulations may provide for the application of this Division
14 to the contraction of AIDS.
- 15 (4) Section 102 does not apply to permanent impairment
16 compensation for AIDS.

17 **102. Agreement as to degree of permanent impairment**
18 **[WCIMA s. 31D]**

- 19 (1) To be eligible for permanent impairment compensation under
20 this Division for permanent impairment suffered as a result of
21 an injury, a worker must —
22 (a) have an assessment under Part 4 of the worker's degree
23 of permanent impairment resulting from the injury; and
24 (b) give the employer a copy of the assessment (the *original*
25 *assessment*) together with a notice (the *permanent*
26 *impairment notice*) in the approved form requesting the
27 employer to indicate whether or not the employer agrees
28 with the assessed degree of permanent impairment.
- 29 (2) The employer must, within 28 days after being given the
30 permanent impairment notice —
31 (a) notify the worker, in the manner required by that notice,
32 whether the employer does or does not agree with the
33 assessed degree of permanent impairment; and
34 (b) if the employer does not agree with the assessed degree
35 of permanent impairment — request a further
36 assessment under Part 4 of the worker's degree of
37 permanent impairment with the cost of that further
38 assessment to be paid by the employer.

- 1 (3) If the employer does not comply with subsection (2), the
2 employer is taken to agree with the assessed degree of
3 permanent impairment.
- 4 (4) If the employer requests a further assessment of the worker's
5 degree of permanent impairment under subsection (2), the
6 employer must, within 14 days after obtaining the further
7 assessment, give the worker a copy of the further assessment
8 and either —
- 9 (a) agree with the degree of permanent impairment
10 indicated in the original assessment; or
- 11 (b) negotiate with the worker to agree on a degree of
12 permanent impairment that is within the range of the
13 original assessment and the further assessment.
- 14 Note for this subsection:
15 The worker and the employer cannot agree a degree of permanent
16 impairment that is outside the range of the original assessment and the
17 further assessment.
- 18 (5) A degree of permanent impairment is within the range of the
19 original assessment and the further assessment if it is not more
20 than the higher of those assessments and not less than the lower
21 of those assessments.
- 22 (6) An agreement as to the worker's degree of permanent
23 impairment must be recorded in the manner required by the
24 permanent impairment notice.
- 25 **103. Determination by arbitrator when worker and employer fail**
26 **to agree degree of permanent impairment [WCIMA s. 31D]**
- 27 (1) If section 102 does not result in agreement as to the worker's
28 degree of permanent impairment, the worker may apply for an
29 arbitrator to determine the worker's degree of permanent
30 impairment.
- 31 (2) An arbitrator may determine the worker's degree of permanent
32 impairment and is not prevented from determining a degree of
33 permanent impairment that is outside the range of the original
34 assessment and the further assessment under section 102.
- 35 (3) If the degree of permanent impairment is determined to be not
36 less than the degree of permanent impairment indicated in the
37 original assessment under section 102, the arbitrator may order
38 that the employer pay all or any of the costs and expenses
39 connected with the dispute.

1 **Division 7 — Lump sum compensation for noise-induced**
2 **hearing loss**

3 **104. Terms used [New provision]**

4 In this Division —

5 *assessed NIHL*, of a worker, means the percentage loss of
6 hearing suffered by the worker that is assessed by an NIHL
7 assessment to be noise-induced hearing loss, as provided by
8 section 108;

9 *assessment*, of hearing loss, includes assessment of the extent of
10 hearing loss;

11 *further NIHL* means noise-induced hearing loss suffered by a
12 worker that is in addition to noise-induced hearing loss for
13 which the worker has previously received noise-induced hearing
14 loss compensation;

15 *hearing loss* means total or partial loss or diminution of hearing
16 that is permanent;

17 *initial NIHL* means noise-induced hearing loss suffered by a
18 worker who has not previously received noise-induced hearing
19 loss compensation;

20 *NIHL assessment* has the meaning given in section 108(1);

21 *NIHL maximum compensation amount* means the amount that
22 is 75% of the general maximum amount;

23 *noise-induced hearing loss* —

24 (a) means a hearing loss that is noise-induced and due to the
25 nature of any employment; but

26 (b) does not include a hearing loss that is a personal injury
27 by accident;

28 *noise-induced hearing loss compensation* means compensation
29 payable under this Division as provided by section 105.

30 **105. Lump sum compensation for noise-induced hearing loss**
31 **[WCIMA s. 5(1) def. noise induced hearing loss, s. 31E]**

32 (1) Compensation (*noise-induced hearing loss compensation*) is
33 payable under this Division as a lump sum amount for
34 noise-induced hearing loss suffered by a worker and for that
35 purpose noise-induced hearing loss suffered by a worker that is
36 due to the nature of employment with an employer is taken to be
37 an injury from employment with the employer.

- 1 (2) Compensation for noise-induced hearing loss suffered by a
2 worker is payable only under this Division and no compensation
3 for noise-induced hearing loss is payable under any other
4 provision of this Act.
- 5 (3) Noise-induced hearing loss compensation is payable only for
6 noise-induced hearing loss as assessed by an NIHL assessment.
- 7 (4) A claim for noise-induced hearing loss compensation must be
8 made in accordance with the regulations.

9 **106. Minimum compensable hearing loss**

10 A worker is not entitled to noise-induced hearing loss
11 compensation unless —

- 12 (a) in the case of initial NIHL, the assessed NIHL of the
13 worker that is initial NIHL is at least 10%; or
- 14 (b) in the case of further NIHL, the assessed NIHL of the
15 worker that is further NIHL is at least 5%.

16 **107. Calculation of amount of compensation [WCIMA s. 31E]**

- 17 (1) The amount of noise-induced hearing loss compensation to
18 which a worker is entitled is —
- 19 (a) for initial NIHL — the amount calculated by
20 multiplying the worker's assessed NIHL (expressed as a
21 percentage) that is initial NIHL by the NIHL maximum
22 compensation amount applying on the date of the
23 assessment of initial NIHL; or
- 24 (b) for further NIHL — the amount calculated by
25 multiplying the worker's assessed NIHL (expressed as a
26 percentage) that is further NIHL by the NIHL maximum
27 compensation amount applying on the date of the
28 assessment of further NIHL.

- 29 (2) A worker's entitlement to noise-induced hearing loss
30 compensation ceases when the total of all amounts of
31 noise-induced hearing loss compensation paid to the worker
32 reaches the NIHL maximum compensation amount.

33 **108. Assessment and evidence of noise-induced hearing loss**

- 34 (1) In this Division —
- 35 *NIHL assessment* means an assessment made in accordance
36 with the regulations of the hearing loss suffered by a worker
37 during a period (the *assessment period*) and of whether and to

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1 what extent that hearing loss is noise-induced hearing loss (the
2 *assessed NIHL* of the worker).

3 (2) Assessed NIHL must be expressed as a percentage loss of
4 hearing.

5 (3) An NIHL assessment is sufficient evidence for the purposes of a
6 claim for noise-induced hearing loss compensation that the
7 assessed NIHL of the worker is hearing loss that is
8 noise-induced hearing loss due to employment during the
9 assessment period.

10 **109. Apportionment of NIHL compensation between employers**

11 (1) If noise-induced hearing loss suffered by a worker is due to
12 employment with more than 1 employer, liability for
13 noise-induced hearing loss compensation must be apportioned
14 in accordance with the regulations between those employers.

15 (2) An arbitrator may determine a dispute about the apportionment
16 between employers of liability for noise-induced hearing loss.

17 **110. Disputes about hearing loss**

18 (1) An arbitrator may determine a dispute about any of the
19 following matters (*hearing loss matters*) concerning hearing
20 loss suffered by a worker —

- 21 (a) the results of an NIHL assessment of the worker;
22 (b) the extent of hearing loss suffered by the worker;
23 (c) whether and to what extent hearing loss suffered by the
24 worker is noise-induced hearing loss.

25 (2) A hearing loss matter cannot be disputed except on the basis of
26 evidence provided by an NIHL assessment.

27 **111. Regulations [New provision, cf WCIMA Sch. 7]**

28 (1) The regulations may make provision for or with respect to the
29 following —

- 30 (a) the testing for and assessment of hearing loss in
31 workers, including procedures for testing and
32 assessment and testing standards and who is responsible
33 for arranging, conducting or paying for assessments;
34 (b) the compulsory testing and monitoring for hearing loss
35 in workers;
36 (c) the persons who are authorised for the purposes of the
37 regulations to test for and assess hearing loss in workers

- 1 or conduct testing and monitoring of workers for hearing
2 loss;
- 3 (d) the methods and equipment authorised or required to be
4 used for the purposes of the regulations to test for and
5 assess hearing loss in workers or to conduct testing and
6 monitoring of workers for hearing loss;
- 7 (e) the conduct of NIHL assessments including the
8 procedures for NIHL assessments and who is
9 responsible for arranging, conducting or paying for
10 NIHL assessments;
- 11 (f) the persons who are authorised for the purposes of the
12 regulations to make an NIHL assessment;
- 13 (g) requiring a worker who claims noise-induced hearing
14 loss compensation to disclose to specified persons
15 specified information relevant to the claim;
- 16 (h) authorising WorkCover WA to disclose to specified
17 persons information about claims for noise-induced
18 hearing loss compensation and the workers who have
19 made those claims;
- 20 (i) claiming noise-induced hearing loss compensation;
- 21 (j) the handling of claims for noise-induced hearing loss
22 compensation, including required timeframes for the
23 making of decisions on claims and the payment of
24 compensation;
- 25 (k) the apportionment of liability for noise-induced hearing
26 loss compensation between employers;
- 27 (l) the making and keeping of records in respect of hearing
28 tests and assessments conducted under the regulations
29 and in respect of NIHL assessments;
- 30 (m) access to and communication of the results of hearing
31 tests and assessments conducted under the regulations
32 and of NIHL assessments.
- 33 (2) Without limiting subsection (1), the regulations may make
34 provision for or with respect to the following in connection with
35 the apportionment of liability for noise-induced hearing loss
36 compensation between employers —
- 37 (a) prescribing a methodology for the apportionment of
38 liability between employers;
- 39 (b) requiring liability to be apportioned between employers
40 on the basis of a determination by WorkCover WA of
41 appropriate apportionment;

- 1 (c) requiring a particular employer to be responsible for the
2 claims handling process and the payment of
3 compensation (with an entitlement to contribution from
4 other employers).

5 **Division 8 — Compensation for dust disease**

6 **Subdivision 1 — Preliminary**

7 **112. Terms used [New provision]**

8 In this Division —

9 *dust disease* means an injury suffered by a worker that
10 section 113 provides is a dust disease;

11 *dust disease compensation claim* means a claim for
12 compensation in respect of a dust disease;

13 *Dust Disease Medical Panel* or *Panel* means a Dust Disease
14 Medical Panel constituted under section 121.

15 **113. Dust disease taken to be from certain employment**
16 **[WCIMA s. 33, 44, Sch. 3]**

17 If a worker suffers an injury by a disease listed in column 1 of
18 the Table and the employment in which the worker works at the
19 time of suffering the injury, or in which the worker worked at
20 any time before suffering the injury, involved the exposure
21 listed for that disease in column 2 of the Table, the injury is a
22 dust disease and is taken to be from that employment unless the
23 employer proves that the injury was not from that employment.

24 **Table**

Item	Column 1 Disease	Column 2 Exposure
1.	Pneumoconiosis or silicosis	Exposure to mineral dust harmful to the lungs, including silica and asbestos
2.	Mesothelioma	Exposure to asbestos
3.	Lung cancer	Exposure to asbestos

Item	Column 1 Disease	Column 2 Exposure
4.	Diffuse pleural fibrosis contracted on or after 19 September 2009	Exposure to asbestos

1 Note for this section:

2 Section 6 determines whether an injury by disease is from
3 employment. An employer can prove that the injury was not from
4 employment by proving that —

- 5 (a) it was not suffered in the course of the employment; or
6 (b) the employment did not contribute to a significant degree to the
7 injury.

8 **114. Day on which dust disease injury is suffered [New provision]**

9 An injury by dust disease is taken to have been suffered on
10 whichever is the earlier of the following —

- 11 (a) the day on which the worker becomes totally or partially
12 incapacitated for work by reason of the injury;
13 (b) the day that a Dust Disease Medical Panel determines to
14 be the day on which the injury was suffered.

15 **115. Dust diseases taken to be single injury [WCIMA s. 46, Sch. 5
16 cl. 1A]**

17 If a worker suffers more than 1 dust disease, whether
18 concurrently or successively and whether resulting from
19 employment with the same employer or different employers,
20 those dust diseases are together taken to be a single injury for
21 the purposes of this Act.

22 **Subdivision 2 — Compensation for dust disease**

23 **116. Entitlement to lump sum compensation for permanent
24 impairment from dust disease [WCIMA Sch. 5 cl. 1 and 4]**

- 25 (1) A worker who suffers an injury by dust disease that results in
26 some degree of permanent whole of person impairment is
27 entitled to lump sum compensation under this section in
28 addition to any other compensation to which the worker is
29 entitled.
- 30 (2) The amount of lump sum compensation to which a worker is
31 entitled under this section is the amount that is 30%, or a greater
32 percentage, if any, prescribed by the regulations, of the general

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1 maximum amount applying on the day on which the
2 determination of a Dust Disease Medical Panel under
3 section 120 is made in relation to the worker's claim.

4 (3) Lump sum compensation under this section is payable only
5 when the employer's liability to the worker for compensation
6 for the injury is commuted by a settlement agreement registered
7 under Division 11.

8 **117. No entitlement to compensation until Panel determination**
9 **[WCIMA s. 36, 38]**

10 A worker is not entitled to compensation in respect of a dust
11 disease (whether under section 116 or otherwise) until a Panel
12 has made the determination required under section 120 in
13 respect of the worker's claim for that compensation.

14 **118. Claiming dust disease compensation [New provision]**

15 For a dust disease compensation claim, the time within which a
16 liability decision notice must be given under section 29 is
17 14 days after the insurer or self-insurer is notified under
18 section 124(5) of the determination of a Panel in respect of the
19 claim (instead of within 14 days after the claim is given to the
20 insurer or self-insurer).

21 Note for this section:

22 Division 2 applies to a dust disease compensation claim subject to this
23 section.

24 **119. Compensation claims to be referred to CEO [WCIMA s. 36]**

25 (1) An employer must, within 7 days after a dust disease
26 compensation claim is made on the employer, give a copy of the
27 claim to the CEO.

28 Penalty for this subsection: a fine of \$5 000.

29 (2) This section does not affect the obligations of the employer
30 under section 27.

31 **120. Referral of claim to Panel [WCIMA s. 36 and 38]**

32 The CEO must refer a dust disease compensation claim to a
33 Panel for determination of the following questions —

34 (a) Is or was the worker suffering from diffuse pleural
35 fibrosis, lung cancer, mesothelioma, pneumoconiosis or
36 silicosis?

- 1 (b) What is the day on which the injury by dust disease was
2 suffered?
- 3 (c) Is or was the worker incapacitated for work as a result of
4 the injury by dust disease and, if so, what is or was the
5 extent of the worker's incapacity for work?

6 Note for this question:

7 Incapacity for work and its extent is relevant for a claim for income
8 compensation.

- 9 (d) What is assessed to be the degree of permanent whole of
10 person impairment resulting from the injury by dust
11 disease?

12 Notes for this question:

- 13 1. Degree of permanent whole of person impairment is relevant for
14 sections 116 and 425.
- 15 2. Lump sum compensation under this Subdivision is payable if the
16 worker suffers some degree of permanent whole of person impairment
17 but the worker's degree of permanent whole of person impairment
18 must be at least 15% for the worker to be able to pursue a claim for
19 damages — see sections 421 and 425.

20 **Subdivision 3 — Dust Disease Medical Panels**

21 **121. Constitution of Panel [WCIMA s. 36]**

- 22 (1) A Dust Disease Medical Panel is constituted by the CEO.

23 Note for this subsection:

24 A Panel is constituted for the purposes of determination of questions
25 under section 120 or 425.

- 26 (2) A Panel consists of at least 2 members appointed by the CEO,
27 1 of whom must be appointed as chairperson of the Panel.

- 28 (3) Each member of a Panel must be a medical practitioner and at
29 least 1 member must be a medical practitioner who is a
30 specialist in respiratory medicine.

- 31 (4) A medical practitioner who has treated or examined the worker
32 concerned in a professional capacity is not eligible to be a
33 member of the Panel.

34 **122. Panel practice and procedure [WCIMA s. 145D]**

- 35 (1) In determining the questions before it, a Panel —

- 36 (a) must act speedily and informally, and in accordance
37 with good conscience, without regard to technicalities or
38 legal forms; and

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- 1 (b) except as provided under this Act, is not bound by rules
2 of practice or evidence.
- 3 (2) A person is not entitled to be represented in proceedings before
4 a Panel.
- 5 (3) A Panel is not authorised to treat a worker or require that a
6 worker be treated.
- 7 (4) A Panel must give the employer concerned the opportunity to
8 produce documents or provide information for consideration by
9 the Panel.
- 10 (5) To the extent that the practice and procedure of a Panel are not
11 prescribed under this Act, they are to be as the Panel
12 determines.

13 **123. Panel powers [WCIMA s. 145D, 37, 38]**

- 14 (1) A Panel may, for the purpose of assisting it to determine the
15 questions before it, require the worker concerned to do any 1 or
16 more of the following —
- 17 (a) attend before the Panel and answer questions put by the
18 Panel;
- 19 (b) produce documents or provide information to the Panel,
20 or consent to another person producing documents or
21 providing information to the Panel;
- 22 (c) undergo medical examination by, or as directed by, the
23 Panel;
- 24 (d) undergo specified medical tests and assessments and
25 provide the Panel with results and reports from those
26 tests and assessments.
- 27 (2) Any information or document obtained from, or with the
28 consent of, the worker must not be disclosed or given to any
29 other person, except the person from whom it was obtained,
30 without the consent of the worker.
- 31 (3) A Panel may make arrangements in such circumstances as the
32 Panel considers appropriate for a requirement for the worker
33 concerned to attend before the Panel or to undergo a medical
34 examination, medical test or assessment to be satisfied in a
35 manner that does not require the personal attendance of the
36 worker.

1 **124. Determination of Panel [WCIMA s. 145E]**

- 2 (1) A Panel's determination of the questions before it must be made
3 as soon as practicable and in any event within 28 days after the
4 Panel has obtained all the information and documents necessary
5 for the making of the determination.
- 6 (2) A Panel can make a determination without any physical
7 examination of the worker concerned or the worker's attendance
8 before the Panel if the chairperson considers it appropriate to do
9 so in a particular case.
- 10 (3) A question is determined by a unanimous decision (if the Panel
11 consists of 2 members) or majority decision (if the Panel
12 consists of more than 2 members) of the members of the Panel
13 but if there is no such unanimous or majority decision a
14 question is determined by the decision of the chairperson.
- 15 (4) A Panel's determination must be in writing in the approved
16 form and must include the reasons for the determination.
- 17 (5) A copy of the determination must be given to the CEO, the
18 worker concerned, the worker's employer and the employer's
19 insurer (if any) within 7 days after the determination is made.
- 20 (6) The chairperson may correct any error that is apparent on the
21 face of a determination.

22 **125. Effect of determination [WCIMA s. 38(4), 145E(6) and (8)]**

- 23 (1) A determination of a Panel is final and binding on the worker
24 concerned and the worker's employer and on any court or
25 tribunal hearing a matter in which the determination is relevant.
- 26 (2) The determination is not —
- 27 (a) to be vitiated because of any informality or want of
28 form; or
- 29 (b) liable to be challenged, appealed against, reviewed,
30 quashed or called into question by any court.

31 **126. Variation or remaking of determination [WCIMA s. 145F]**

32 A Panel may vary or rescind and remake a determination made
33 by the Panel or another Panel if the Panel considers it necessary
34 or desirable to do so because of a change in the worker's
35 condition or degree of permanent whole of person impairment
36 or in the extent of the worker's incapacity for work.

1 **127. Remuneration and allowances of Panel members**
2 **[WCIMA s. 145G]**

3 A member of a Panel is entitled to be paid from the General
4 Account any remuneration and allowances that the Minister
5 may determine.

6 **Division 9 — Compensation for death of worker**

7 **128. Terms used [WCIMA s. 72C, Sch. 1A cl. 2 to 5]**

8 In this Division —

9 **child**, of a worker, means a person of any age of whom —

- 10 (a) the worker is a parent; or
11 (b) the worker is a step-parent (whether or not the person
12 was legally adopted by the worker);

13 **compensation order** means an order of an arbitrator under
14 section 137(4) determining a claim for compensation under this
15 Division;

16 **dependant**, of a worker, means a partner, child or extended
17 family member of the worker who —

- 18 (a) was wholly or partly dependent on the earnings of the
19 worker at the time of the worker's death; or
20 (b) would have been wholly or partly dependent on the
21 earnings of the worker at the time of the worker's death
22 if the injury as a result of which the worker died had not
23 occurred;

24 **extended family member**, of a worker, means —

- 25 (a) a parent of the worker; or
26 (b) a step-parent of the worker (whether or not the worker
27 was legally adopted); or
28 (c) a person to whom the worker stands in the place of a
29 parent; or
30 (d) a person who stands in the place of a parent to the
31 worker; or
32 (e) a sibling or half-sibling of the worker; or
33 (f) a grandchild of the worker; or
34 (g) a grandparent of the worker;

35 **partner**, of a worker, means a person who —

- 36 (a) is the spouse or de facto partner of the worker; or

1 (b) has previously been a spouse or de facto partner of the
 2 worker.

3 **129. Compensation only payable as provided by compensation**
 4 **order [WCIMA s. 72H(2)]**

5 Compensation under this Division is payable only as specified
 6 in a compensation order.

7 Note for this section:

8 A compensation order is an order of an arbitrator under section 137(4)
 9 determining a claim for compensation under this Division. A
 10 compensation order is not required for the payment of compensation
 11 under section 132.

12 **130. Lump sum compensation for death resulting from injury**
 13 **[WCIMA Sch. 1A cl. 7]**

14 (1) Compensation is payable under this section if a worker who
 15 suffers an injury dies as a result of the injury.

16 (2) In this section —

17 *dependant lump sum entitlement amount (DLSE)* means the
 18 amount that is 250%, or a greater percentage, if any, prescribed
 19 by the regulations, of the general maximum amount applying on
 20 the day on which the worker died.

21 (3) If the worker dies leaving a dependant or dependants as
 22 described in column 1 of an item in the Table, each of those
 23 dependants is entitled to the amount of compensation indicated
 24 for the dependant in column 2 of the Table opposite that item.

Table

	Column 1	Column 2
Item	Dependant or dependants	Amount of entitlement
1.	Partners: 1 Children: 0	100% of the DLSE to the partner
2.	Partners: 1 Children: 1	90% of the DLSE to the partner 10% of the DLSE to the child
3.	Partners: 1 Children: 2 to 5	5% of the DLSE to each child

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Item	Column 1 Dependant or dependants	Column 2 Amount of entitlement
		Balance of the DLSE to the partner
4.	Partners: 1 Children: 6 or more	75% of the DLSE to the partner 25% of the DLSE divided equally between the children
5.	Partners: 2 or more Children: 0	100% of the DLSE divided so that each partner receives an amount proportionate to the loss of financial support suffered by that partner
6.	Partners: 2 or more Children: 1	90% of the DLSE divided between the partners so that each partner receives an amount proportionate to the loss of financial support suffered by that partner 10% of the DLSE to the child
7.	Partners: 2 or more Children: 2 to 5	5% of the DLSE to each child Balance of the DLSE divided between the partners so that each partner receives an amount proportionate to the loss of financial support suffered by that partner

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Item	Column 1 Dependant or dependants	Column 2 Amount of entitlement
8.	Partners: 2 or more Children: 6 or more	75% of the DLSE divided between the partners so that each partner receives an amount proportionate to the loss of financial support suffered by that partner 25% of the DLSE divided equally between the children
9.	Partners: 0 Children: 1	100% of the DLSE to the child
10.	Partners: 0 Children: 2 or more	100% of the DLSE divided equally between the children

- 1 (4) The compensation for a partner or child applies whether or not
2 the worker dies also leaving any extended family member who
3 is a dependant.
- 4 (5) If the worker dies not leaving a partner or child who is a
5 dependant but leaving 1 extended family member who is a
6 dependant, that extended family member is entitled to an
7 amount that is reasonable and proportionate to the loss of
8 financial support suffered by the extended family member, but
9 not exceeding the DLSE applying on the day on which the
10 worker dies.
- 11 (6) If the worker dies not leaving a partner or child who is a
12 dependant but leaving 2 or more extended family members who
13 are dependants, each of those extended family members is
14 entitled to an amount that is reasonable and proportionate to the
15 loss of financial support suffered by the extended family
16 member, but not exceeding, in total, the DLSE applying on the
17 day on which the worker dies.

1 **131. Allowance for eligible dependent children [WCIMA Sch. 1A**
2 **cl. 8]**

3 (1) In this section —

4 *eligible dependent child*, of a worker, means a child who is a
5 dependant of the worker and —

6 (a) is under 16 years of age; or

7 (b) is between 16 and 21 years of age and is a full-time
8 student; or

9 (c) is the subject of an order in force under subsection (6)
10 or (7).

11 (2) A reference in this section to a child who is between 16 and
12 21 years of age is a reference to a child who has attained the age
13 of 16 years but is under the age of 21 years.

14 (3) If a worker who suffers an injury dies as a result of the injury,
15 each eligible dependent child of the worker is entitled to receive
16 an allowance (the *eligible dependent child allowance*) as
17 compensation.

18 (4) The eligible dependent child allowance is an amount per week
19 that is the amount prescribed by the regulations as applying at
20 the time the allowance is paid.

21 (5) The eligible dependent child allowance is in addition to, and
22 does not affect, any compensation under section 130 for a
23 dependent child who is also an eligible dependent child.

24 (6) An arbitrator may, in the arbitrator's absolute discretion, order
25 in a compensation order that a child who is between 16 and
26 21 years of age and is not a full-time student is entitled to
27 receive the eligible dependent child allowance by reason of
28 circumstances.

29 (7) If a dependent child who is between 16 and 21 years of age
30 ceases to be eligible to receive the eligible dependent child
31 allowance because the child is not a full-time student, an
32 arbitrator may on application, in the arbitrator's absolute
33 discretion, order that the child is entitled to continue to receive
34 the eligible dependent child allowance by reason of
35 circumstances.

36 (8) On application, an arbitrator may, in the arbitrator's absolute
37 discretion, by a further order revoke an order under this section.

1 **132. Funeral and medical expenses [WCIMA Sch. 1A cl. 9]**

2 (1) Compensation is payable under this section if a worker who
3 suffers an injury dies as a result of the injury.

4 (2) In this section —

5 *funeral expenses* —

6 (a) means expenses properly incurred in relation to the
7 funeral and burial or cremation of the worker; and

8 (b) includes fees and charges paid or payable to the Board
9 or local government in which the care, control and
10 management of a cemetery is vested under the
11 *Cemeteries Act 1986*;

12 *funeral expenses maximum amount* means the amount
13 prescribed by the regulations as the funeral expenses maximum
14 amount.

15 (3) A person who has incurred funeral expenses is entitled to
16 compensation for the amount of the expenses incurred but not
17 exceeding the funeral expenses maximum amount applying on
18 the day on which the entitlement arises.

19 (4) A person who has paid medical and health expenses incurred by
20 the worker is entitled to compensation in the amount of the
21 expenses incurred to the extent that those expenses are
22 reasonable and have not been the subject of compensation paid
23 to the worker under Division 4.

24 (5) Despite section 129, compensation can be paid to a person
25 under this section without a compensation order having been
26 made.

27 **133. Lump sum compensation for death not resulting from**
28 **injury [WCIMA Sch. 1A cl. 10, 11]**

29 (1) If a worker who suffers an injury dies but the worker's death
30 was not a result of the injury, compensation is payable under
31 this section if —

32 (a) the worker has received, or was entitled to receive,
33 income compensation for total or partial incapacity for
34 work resulting from the injury for a continuous period of
35 at least 6 months immediately preceding the worker's
36 death; and

37 (b) the worker's claim for compensation for the injury has
38 not been settled under Division 11; and

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- 1 (c) no memorandum of the terms of a settlement has been
2 filed under section 432(3).
- 3 (2) In this section —
- 4 **aggregated amount** means the aggregate obtained by taking the
5 weekly rate of income at which, if the worker had not died,
6 income compensation would have been payable to the worker at
7 the date of the worker's death assuming that the worker was
8 totally incapacitated for work and applying that rate for a period
9 of 1 year after the worker's death;
- 10 **eligible person** means a person who is a partner or child and is a
11 dependant.
- 12 (3) If the worker dies leaving 1 eligible person, that eligible person
13 is entitled to the aggregated amount.
- 14 (4) If the worker dies leaving 2 or more eligible persons, each of
15 those eligible persons is entitled to a portion of the aggregated
16 amount determined using the Table in section 130 as if a
17 reference to the DLSE in column 2 of the relevant item in that
18 Table were a reference to the aggregated amount.
- 19 **134. Claim for compensation under this Division**
20 **[WCIMA s. 72E]**
- 21 (1) A claim for compensation under this Division must be made
22 within 12 months after the date of the worker's death.
- 23 (2) A claim may be made on the employer by, or on behalf of, a
24 claimant.
- 25 (3) Compensation for 2 or more claimants can be the subject of a
26 single claim.
- 27 (4) A claim must be made in the approved form and must be
28 accompanied by supporting information and documents
29 required by the approved form.
- 30 (5) A failure to make a claim for compensation within the period
31 required by subsection (1) or a defect or inaccuracy in the claim
32 form or details of the claim does not invalidate the claim if —
- 33 (a) the failure, defect or inaccuracy results from mistake,
34 absence from the State or another reasonable cause; or
- 35 (b) the failure, defect or inaccuracy would not prejudice the
36 employer's defence in proceedings that might arise out
37 of the claim.

1 **135. Claims procedure: insured employer [WCIMA s. 72F]**

2 (1) An insured employer must give a claim for compensation under
3 this Division made on the employer to the insurer within 7 days
4 after the claim is made.

5 Penalty for this subsection: a fine of \$5 000.

6 (2) On receiving a claim for compensation under this Division, an
7 insurer must give a copy of the claim to WorkCover WA.

8 (3) As soon as practicable after receiving a claim for compensation
9 under this Division, an insurer must —

- 10 (a) give the claimant and the employer notice that liability
11 is accepted in respect of the compensation claimed; or
12 (b) give the claimant and the employer notice that liability
13 is disputed in respect of some or all of the compensation
14 claimed; or
15 (c) give the claimant notice requiring that additional
16 information or documents specified in the notice be
17 provided to enable a decision to accept or dispute
18 liability for compensation to be made.

19 (4) As soon as practicable after receiving information or documents
20 required under subsection (3)(c), the insurer must give the
21 claimant and the employer —

- 22 (a) notice that liability is accepted in respect of the
23 compensation claimed; or
24 (b) notice that liability is disputed in respect of some or all
25 of the compensation claimed.

26 (5) A notice given under subsection (3) or (4) must be in the
27 approved form and the insurer must give a copy of the notice to
28 WorkCover WA.

29 **136. Claims procedure: self-insurer or uninsured employer**
30 **[WCIMA s. 72G]**

31 (1) An employer who is a self-insurer or an uninsured employer
32 must, on receiving a claim for compensation under this
33 Division, give a copy of the claim to WorkCover WA.

34 Note for this subsection:

35 Section 268 defines *uninsured employer*.

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- 1 (2) As soon as practicable after receiving a claim for compensation
2 under this Division, the employer must give the claimant —
3 (a) notice that liability is accepted in respect of the
4 compensation claimed; or
5 (b) notice that liability is disputed in respect of some or all
6 of the compensation claimed; or
7 (c) notice requiring that additional information or
8 documents specified in the notice be provided to enable
9 a decision to accept or dispute liability for compensation
10 to be made.
- 11 (3) As soon as practicable after receiving information or documents
12 required under subsection (2)(c), the employer must give the
13 claimant —
14 (a) notice that liability is accepted in respect of the
15 compensation claimed; or
16 (b) notice that liability is disputed in respect of some or all
17 of the compensation claimed.
- 18 (4) A notice given under subsection (2) or (3) must be in the
19 approved form and the employer must give a copy of the notice
20 to WorkCover WA.

21 **137. Determination of claim by arbitrator [WCIMA s. 72H]**

- 22 (1) An application may be made to the Registrar by or on behalf of
23 a person claiming compensation under this Division for
24 determination of the claim by order of an arbitrator.
- 25 (2) The application may be made —
26 (a) at any time after the claimant receives a notice under
27 section 135(3) or 136(2) about the claim; or
28 (b) if the claimant has not received such a notice within
29 30 days after the day on which the claim is made on the
30 employer — at any time after the end of that 30-day
31 period.
- 32 (3) The making of an application for determination of a claim does
33 not affect the continued operation of section 135 or 136 in
34 relation to the claim.
- 35 (4) An arbitrator must make an order determining the claim and
36 specifying whether the claimant is entitled to compensation in
37 accordance with this Division and, if so, the amount of
38 compensation to which the claimant is entitled.

1 **138. Manner of payment: lump sum compensation**
2 **[WCIMA s. 72I]**

3 (1) A compensation order for the payment of compensation to
4 which a dependant of a deceased worker is entitled under
5 section 130 or 133 must specify whether compensation for the
6 dependant —

- 7 (a) must be paid to WorkCover WA and applied in the
8 manner specified in the order; or
9 (b) must be paid to the dependant as specified in the order.

10 (2) If a compensation order requires the compensation for a
11 dependant to be paid to WorkCover WA and applied in the
12 manner specified in the order, an arbitrator may on application
13 order that the compensation must be —

- 14 (a) applied otherwise than in the manner specified in the
15 compensation order; or
16 (b) paid to the dependant.

17 **139. Manner of payment: child's allowance [WCIMA s. 72J]**

18 (1) In this section —

19 *eligible dependent child allowance* means compensation to
20 which a dependant of a deceased worker is entitled under
21 section 131.

22 (2) A compensation order for the payment of an eligible dependent
23 child allowance must provide for the insurer or employer to pay
24 the amounts of eligible dependent child allowance to
25 WorkCover WA weekly or at such other intervals as are
26 specified in the order.

27 (3) WorkCover WA must make periodic payments of the eligible
28 dependent child allowance to the dependant as specified in the
29 compensation order but payment must not be made in advance
30 of a periodic payment or by way of commutation.

31 (4) Payment of an eligible dependent child allowance under a
32 compensation order must continue as long as the dependant
33 remains entitled to the allowance.

34 (5) If a dependant's entitlement to an eligible dependent child
35 allowance is based on the dependant being a full-time student,
36 WorkCover WA may require evidence of participation in
37 full-time study to be provided and may withhold payment of the
38 allowance until that evidence is provided unless this would be
39 contrary to an order of an arbitrator under section 131(7) that

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1 the dependant is entitled to continue to receive the allowance by
2 reason of circumstances.

3 (6) The liability of an insurer or employer to make payments under
4 this section may be fully discharged by the payment to
5 WorkCover WA of an amount calculated in accordance with the
6 regulations as being the full amount of the eligible dependent
7 child allowance that will be payable on the assumption that the
8 allowance will be payable to the dependant until the dependant
9 attains the age of 21 years.

10 (7) An application by the insurer or employer to pay an amount in
11 discharge of liability to make payments under this section may
12 be made to WorkCover WA in the approved form when or after
13 the compensation order is made.

14 (8) If an amount paid to WorkCover WA by an employer or insurer
15 under this section has been credited to the Trust Account under
16 section 493(2)(b) and the entitlement of the dependant to the
17 eligible dependent child allowance ends before the amount has
18 been exhausted by periodic payments of the allowance, any
19 surplus moneys standing to the credit of the Trust Account must
20 be transferred to the General Account.

21 (9) On application by or on behalf of the claimant, an arbitrator
22 may make an order varying the terms of the compensation order
23 in relation to a matter mentioned in subsection (2) or (3).

24 **140. Effect of recovery of damages on applying trust money**
25 **[WCIMA s. 72K]**

26 (1) In this section —
27 *damages* means —

28 (a) damages due or payable to, or claimed by, a dependant
29 of a deceased worker under the *Fatal Accidents*
30 *Act 1959* for an injury causing the death of the worker;
31 or

32 (b) damages due or payable to, or claimed on behalf of, the
33 estate of a deceased worker under the *Law Reform*
34 *(Miscellaneous Provisions) Act 1941* for an injury
35 causing the death of the worker;

36 *judgment* includes an acceptance of an offer to consent to
37 judgment;

38 *settlement* includes —

39 (a) a settlement by acceptance of an offer of compromise;
40 and

- 1 (b) a memorandum of the terms of a settlement that has
2 been filed under section 432(3);
3 **trust money**, of a dependant, means money credited to the Trust
4 Account under section 493(2)(b) in respect of the dependant.
- 5 (2) Despite anything in this Act, in paying or otherwise applying or
6 dealing with trust money of a dependant WorkCover WA must
7 have regard to, and take into account, any judgment or
8 settlement under which damages are payable to the dependant.
- 9 (3) Without limiting subsection (2), a judgment in or settlement of
10 an action for damages may include directions to
11 WorkCover WA as to how trust money of a dependant must be
12 paid or otherwise applied or dealt with and WorkCover WA
13 must give effect to such a direction.
- 14 (4) Notice must be given to WorkCover WA in the approved form
15 by or on behalf of the claimant if —
16 (a) an action for damages is commenced; or
17 (b) judgment is given or settlement takes place in an action
18 for damages.

19 **141. Application procedure [WCIMA s. 72L]**

- 20 (1) In this section —
21 **application** means —
22 (a) an application for determination of a claim for
23 compensation under this Division; or
24 (b) an application for an order;
25 **order** means an order of an arbitrator under a provision of this
26 Division (including a compensation order).
- 27 (2) An application must be made to the Registrar in accordance
28 with this Act and the arbitration rules and may be rejected by
29 the Registrar if it does not comply.
- 30 (3) An application can be made and received, and an order can be
31 made, whether or not there is a dispute about liability or the
32 payment of compensation.
- 33 (4) A dispute or application in connection with a claim for
34 compensation under this Division must not be the subject of
35 conciliation and sections 332 and 333 do not apply to such a
36 dispute or application.

1 **142. Inconsistency with other provisions [WCIMA s. 72D]**

2 Unless otherwise expressly stated, a provision of this Division
3 prevails to the extent, if any, that it is inconsistent with a
4 provision of this Act that is not in this Division.

5 **Division 10 — Other matters to do with compensation**

6 **143. Recovery of erroneous payments of compensation**
7 **[WCIMA s. 71]**

8 (1) WorkCover WA, an employer or an insurer may apply to an
9 arbitrator for an order for the refund of an erroneous payment of
10 compensation made by WorkCover WA, the employer or the
11 insurer.

12 (2) A payment of compensation is erroneous if the recipient of the
13 payment was not lawfully entitled to the payment or to any part
14 of the amount of the payment.

15 (3) An arbitrator dealing with the application may make any order
16 for the refund of the whole or part of an erroneous payment of
17 compensation that the arbitrator considers appropriate.

18 (4) Instead of making an order for a refund, the arbitrator may order
19 any person who the arbitrator determines was liable for the
20 whole or any part of the compensation to reimburse the person
21 who paid the compensation.

22 (5) If the payment of compensation was in accordance with an
23 order of an arbitrator, the arbitrator dealing with the application
24 may make an order for a refund only if satisfied that the claim
25 for the payment was fraudulent or made without proper
26 justification.

27 **144. Deductions from wages towards compensation not lawful**
28 **[WCIMA s. 302]**

29 (1) An employer or insurer or any person acting on behalf of an
30 employer or insurer must not, directly or indirectly, take or
31 receive any money from a worker whether by way of deduction
32 from wages or otherwise in respect of any liability of an
33 employer to pay compensation under this Act.

34 Penalty for this subsection: a fine of \$10 000.

35 (2) If money is taken or received from a worker in contravention of
36 this section, whether or not with the consent of the worker, the
37 worker may sue for and recover the amount of that money from
38 the employer, insurer or person who took or received it.

1 **145. Recovery of cost of services provided to worker**
2 **[WCIMA s. 82]**

- 3 (1) An employer liable to pay medical and health expenses
4 compensation or miscellaneous expenses compensation for a
5 service provided to a worker (a *compensable service*) may
6 discharge the employer's liability to pay that compensation by
7 paying to the provider of the service the whole or any part of the
8 outstanding cost of the service.
- 9 (2) If payment to the provider of a compensable service of the
10 whole or any part of the cost of the service remains outstanding,
11 the provider has the same rights to recover the outstanding
12 amount from the employer as the worker has to recover medical
13 and health expenses compensation or miscellaneous expenses
14 compensation for the service.
- 15 (3) The employer's liability to compensate the worker, and the
16 worker's liability to pay the provider, for the cost of a
17 compensable service is discharged to the extent of any amount
18 paid by or recovered from the employer as provided by this
19 section.
- 20 (4) A dispute about the amount that a provider of a compensable
21 service is entitled to recover from an employer under this
22 section may be dealt with under Part 6.

23 **Division 11 — Settlement of compensation claim**

24 **146. Commuting compensation liabilities by settlement**
25 **agreement [WCIMA s. 67, 76(1), 77]**

- 26 (1) An injured worker and the worker's employer may enter into an
27 agreement in writing (a *settlement agreement*) that operates
28 to —
- 29 (a) commute to a lump sum the liability of the employer to
30 pay compensation to the worker in respect of the injury;
31 and
32 (b) permanently discharge that liability of the employer.

33 Note for this subsection:

34 Lump sum compensation that is permanent impairment compensation
35 or dust disease impairment compensation must be included in a
36 settlement agreement — see section 149.

- 37 (2) A settlement agreement is of no effect unless and until it is
38 registered under this Division.

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1 (3) An agreement (however described) that purports to discharge a
2 liability to pay compensation to a worker in respect of an injury
3 is void unless the agreement is a settlement agreement
4 registered under this Division.

5 (4) A settlement agreement registered under this Division applies
6 only to the employer's liability to pay compensation to the
7 worker and does not affect any liability of the employer to pay
8 compensation to a dependant of the worker under Division 9.

9 **147. Form of settlement agreement [WCIMA s. 67(6), 76(1)]**

10 A settlement agreement must be in the approved form.

11 **148. Restrictions on when application for registration of
12 settlement agreement can be made [WCIMA s. 67(1)]**

13 (1) An application for registration of a settlement agreement cannot
14 be made until —

15 (a) a decision has been made that the employer is liable to
16 compensate the worker, either by liability having been
17 accepted (or taken to have been accepted) by the insurer
18 or self-insurer or by liability having been determined by
19 an arbitrator; and

20 (b) a period of at least 6 months has elapsed since the date
21 of the worker's injury.

22 (2) The regulations may prescribe circumstances in which an
23 application for registration of a settlement agreement can be
24 made even if subsection (1) would otherwise prevent the
25 making of the application.

26 **149. Lump sum compensation required to be included in
27 settlement agreement [WCIMA s. 76(1) and (6), 31H]**

28 If a worker is entitled to permanent impairment compensation or
29 dust disease impairment compensation —

30 (a) a settlement agreement must include provision for
31 commuting the liability for that compensation; and

32 (b) the application for registration of the settlement
33 agreement must be accompanied by the information and
34 documents necessary to establish the worker's degree of
35 permanent impairment resulting from the injury
36 concerned.

37 Note for this paragraph:

38 Under paragraph (b) the application must be accompanied by evidence
39 of the agreement of the parties under section 102, the determination of

- 1 **153. Scrutiny by Director of settlement agreement [WCIMA**
2 **s. 76]**
- 3 (1) The Director must refuse to register a settlement agreement
4 unless satisfied that —
- 5 (a) the agreement is genuine; and
6 (b) the worker understands the consequences of the
7 settlement agreement; and
8 (c) the amount of any permanent impairment compensation
9 for which the settlement agreement provides is the
10 correct amount to which the worker is entitled.
- 11 (2) The Director must refuse to register a settlement agreement if of
12 the opinion that the agreement was obtained by fraud or undue
13 influence or by other improper means.
- 14 (3) The Director may defer a decision on registration of a
15 settlement agreement until —
- 16 (a) the parties give the Director such further relevant
17 information as the Director may request; and
18 (b) either or both of the parties attend before the Director
19 and answer relevant questions as requested by the
20 Director.
- 21 (4) If registration of a settlement agreement is refused, the Director
22 must refer the matter to the Registrar for allocation of the matter
23 to an arbitrator for determination of the question of whether
24 registration of the settlement agreement should be granted or
25 refused.
- 26 **154. Cancellation of registration of settlement agreement**
27 **[WCIMA s. 76(8)]**
- 28 (1) On application made within 6 months after a settlement
29 agreement is registered, an arbitrator may order the cancellation
30 of the registration of the settlement agreement if the arbitrator is
31 satisfied that the agreement was obtained by fraud or undue
32 influence or by other improper means.
- 33 (2) The arbitrator may make such other order as the arbitrator
34 thinks just, including an order as to any amount already paid
35 under the agreement.

1 **155. Implementation of settlement agreement [WCIMA s. 67(5)**
2 **and (7)]**

- 3 (1) Any entitlement of a worker to compensation in respect of an
4 injury to which a registered settlement agreement relates ceases
5 on the date of registration of the agreement.

6 Note for this subsection:

7 Section 420 provides that damages must not be awarded against a
8 worker's employer in respect of an injury if a settlement agreement has
9 been registered in respect of the injury unless the injury is a dust
10 disease.

- 11 (2) An employer who is liable to pay an amount under a registered
12 settlement agreement must pay the amount within 14 days after
13 the agreement is registered or, if another law (including a
14 Commonwealth law) prevents payment within that period,
15 within 7 days after payment is permitted under that other law.

16 Penalty for this subsection: a fine of \$10 000.

17 **156. Limit on lump sum compensation included in settlement**
18 **agreement [WCIMA s. 31J]**

- 19 (1) In this section —

20 *income compensation general limit amount* has the meaning
21 given in section 46;

22 *total income compensation payments* means the total of all the
23 payments of income compensation to which a worker is entitled
24 in respect of incapacity for work resulting from an injury,
25 including payments already paid and payments the entitlement
26 to which is to be commuted by a settlement agreement.

27 Note for this definition:

28 The amount of income compensation payments includes provisional
29 payments of income compensation — see section 44(1).

- 30 (2) The amount arrived at by adding the amount of permanent
31 impairment compensation or dust disease impairment
32 compensation to which a worker is entitled to the total income
33 compensation payments to which the worker is entitled must not
34 exceed the income compensation general limit amount.

- 35 (3) The amount of permanent impairment compensation or dust
36 disease impairment compensation to which a worker is entitled
37 for the purposes of a settlement agreement that applies to that
38 compensation must be reduced to the extent, if any, necessary to
39 ensure compliance with subsection (2).

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Part 2 Compensation for injury

Division 11 Settlement of compensation claim

s. 156

1 Note for this section:

2 This section can operate to reduce the amount of permanent
3 impairment compensation or dust disease impairment compensation to
4 which a worker is entitled but does not affect entitlement to medical
5 and health expenses compensation or miscellaneous expenses
6 compensation.

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1 **Part 3 — Injury management**

2 **Division 1 — General**

3 **157. Terms used [New provision]**

4 In this Part —

5 *employment obligation period* for an injured worker means the
6 period of 12 months beginning on the day on which the worker
7 first has an incapacity for work as a result of the injury;

8 *treating medical practitioner*, in relation to a worker, means the
9 medical practitioner who is the worker's treating medical
10 practitioner under section 170.

11 **158. Employer must establish injury management system**
12 **[WCIMA s. 155B]**

13 (1) In this section —

14 *injury management system* means a process setting out the
15 steps to be followed when there is an injury from employment.

16 (2) An employer must ensure that —

17 (a) an injury management system is established and
18 implemented in accordance with the regulations in
19 relation to workers employed by the employer; and

20 (b) the injury management system is described in a
21 document that is available to the workers.

22 Penalty for this subsection: a fine of \$5 000.

23 (3) The regulations may deal with the following —

24 (a) the content of an injury management system, including
25 the matters that must be included in an injury
26 management system;

27 (b) implementation of the injury management system.

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Division 2 — Return to work

Subdivision 1 — Duties of employer, insurer and worker

159. Duty of employer to establish and implement return to work program [WCIMA s. 155C]

(1) In this section —

return to work program means a program for assisting an injured worker to return to work in a timely, safe and durable way.

(2) The employer of an injured worker must ensure that a return to work program is established for the worker as soon as practicable after the earliest of the following —

- (a) the day on which the worker’s treating medical practitioner issues a certificate of capacity to the effect that the worker is partially incapacitated for work;
- (b) the day on which the worker’s treating medical practitioner advises the employer in writing that a return to work program should be established for the worker;
- (c) the day on which, in proceedings under Part 6, an arbitrator determines, or the parties agree, that the worker has suffered an injury in respect of which compensation is payable and is partially incapacitated for work.

Penalty for this subsection: a fine of \$5 000.

(3) The return to work program must, as far as is reasonably practicable, be established in consultation with the injured worker.

(4) Subsection (2) does not require a return to work program to be established —

- (a) for a worker who has returned to work unless the worker has a partial incapacity for work; or
- (b) in circumstances prescribed by the regulations.

(5) The employer must ensure that the establishment, content and implementation of a return to work program are in accordance with the regulations.

Penalty for this subsection: a fine of \$5 000.

- 1 (6) The regulations may —
- 2 (a) specify minimum standards or requirements for the
- 3 establishment, content and implementation of return to
- 4 work programs; and
- 5 (b) require a return to work program to be in the approved
- 6 form or include prescribed provisions.

7 **160. Employer may be ordered to establish and implement**

8 **return to work program [WCIMA s. 156B]**

- 9 (1) A worker may apply for an order of an arbitrator requiring the
- 10 worker's employer to —
- 11 (a) establish and implement a return to work program for
- 12 the worker in accordance with section 159; or
- 13 (b) alter the terms of a return to work program for the
- 14 worker.
- 15 (2) The arbitrator may require the employer to establish and
- 16 implement the return to work program if satisfied that —
- 17 (a) the worker has suffered an injury in respect of which
- 18 compensation is payable; and
- 19 (b) the worker is partially incapacitated for work; and
- 20 (c) the employer has failed to comply with section 159(2).
- 21 (3) The arbitrator may require the employer to alter the terms of the
- 22 return to work program if satisfied that any of the obligations
- 23 placed on the worker under the return to work program are
- 24 unreasonable.

25 **161. Duties of insurer [WCIMA s. 155D]**

- 26 (1) When an insurer issues to an employer, or renews, an insurance
- 27 policy the insurer must give the employer written notice of the
- 28 employer's duties under section 159.
- 29 Penalty for this subsection: a fine of \$5 000.
- 30 (2) If an insured employer requests the insurer to assist the
- 31 employer to comply with any of the employer's duties under
- 32 section 159, the insurer must take such action as is
- 33 reasonable —
- 34 (a) to assist the employer to comply with the employer's
- 35 duties that are the subject of the employer's request; and

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s. 162

1 (b) to ensure that the employer complies with the duties that
2 are the subject of the employer's request.

3 Penalty for this subsection: a fine of \$10 000.

4 (3) If an insured employer requests the insurer to discharge any of
5 the employer's duties under section 159 on behalf of the
6 employer, the insurer must take such action as is reasonable —

7 (a) to discharge the employer's duties that are the subject of
8 the employer's request; and

9 (b) to comply with the duties that are the subject of the
10 employer's request.

11 Penalty for this subsection: a fine of \$10 000.

12 **162. Duties of worker [New provision, WCIMA s. 156B]**

13 (1) An injured worker must, in cooperation with the worker's
14 employer, make reasonable efforts to return to work.

15 (2) A worker for whom an employer is required to establish a return
16 to work program must participate and cooperate in the
17 establishment of the return to work program.

18 (3) The worker must comply with any reasonable obligations
19 placed on the worker under the worker's return to work
20 program, including any obligation to undertake workplace
21 rehabilitation.

22 (4) The worker must comply with any requirement to attend a
23 return to work case conference under section 164 and must
24 participate and cooperate in the conference.

25 (5) The worker must give each progress certificate of capacity
26 issued to the worker to the worker's employer or the employer's
27 insurer within 7 days after the day the certificate is given to the
28 worker.

29 (6) In subsection (5) —

30 *progress certificate of capacity* means a certificate of capacity
31 issued after the certificate of capacity given under
32 section 26(2)(b) to the worker's employer.

33 **163. Consequences of refusal or failure to comply with s. 162**
34 **duty [WCIMA s. 72B, 156B]**

35 (1) If an arbitrator is satisfied that a worker, without reasonable
36 excuse, refuses, or has failed, to comply with a duty under

1 section 162 the arbitrator may do either or both of the
2 following —

- 3 (a) order the worker to comply with the duty;
4 (b) order that the payment of income compensation to the
5 worker is suspended.

6 (2) Payment of income compensation to the worker is suspended
7 from the day on which the arbitrator makes the order under
8 subsection (1)(b) until the earliest of the following —

- 9 (a) the day specified in the order as the day on which the
10 order ceases to have effect;
11 (b) the day on which the order is revoked by an arbitrator;
12 (c) the day on which the worker's entitlement to income
13 compensation ceases under subsection (3).

14 Note for this subsection:

15 Sections 68 and 324 provide for the effect of suspension of payments
16 of income compensation.

17 (3) If a worker refuses or fails to comply with a duty under
18 section 162 for 1 month, or such time as an arbitrator otherwise
19 orders, after an order is made under subsection (1)(a) or (b) in
20 relation to the duty, an arbitrator may order that the worker
21 ceases to be entitled to income compensation in respect of the
22 injury in relation to which the duty arose.

23 (4) An arbitrator must not make an order under subsection (3) if the
24 worker satisfies the arbitrator that the worker had a reasonable
25 excuse for refusing or failing to comply with the duty after the
26 order under subsection (1)(a) or (b) was made.

27 **Subdivision 2 — Return to work case conferences**

28 **164. Attendance at return to work case conference [New**
29 **provision]**

30 (1) An injured worker who has an incapacity for work may be
31 required to attend a conference arranged by the worker's
32 employer, the employer's insurer or the worker's treating
33 medical practitioner for the purpose of supporting the worker's
34 recovery and enhancing opportunities for the worker's return to
35 work (*a return to work case conference*).

36 Note for this subsection:

37 Section 162(4) imposes a duty on the worker to comply with a
38 requirement under this section and to participate and cooperate in the
39 conference.

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Division 2 Return to work

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- 1 (2) In arranging a return to work case conference, the employer,
2 insurer or medical practitioner must, by notice in writing given
3 to the worker, specify the following —
- 4 (a) the time and place of the conference; and
5 (b) whether the worker must attend the conference in person
6 or may participate in the conference by means of video
7 link, audio link or other electronic means;
8 (c) that the worker must participate and cooperate in the
9 conference.
- 10 (3) Regulations may provide for the following —
- 11 (a) the maximum number of times a worker may be
12 required to participate in a return to work case
13 conference and the maximum frequency of those
14 conferences;
15 (b) the conduct of a return to work case conference;
16 (c) the matters that may be discussed at a return to work
17 case conference;
18 (d) the persons who may attend or participate in a return to
19 work case conference;
20 (e) any other matter relevant to a return to work case
21 conference.

22 **Subdivision 3 — Employment obligations relating to return to work**

23 **165. Suitable employment [New provision, WCIMA s. 5(1) def.**
24 ***return to work*]**

- 25 (1) In this Act —
- 26 ***suitable employment***, in relation to a worker who has an
27 incapacity for work —
- 28 (a) means employment with any employer performing
29 duties (***suitable duties***) for which the worker is currently
30 suited having regard to the following —
- 31 (i) the nature of the worker's incapacity and the
32 details provided in medical information
33 including, but not limited to, any certificate of
34 capacity provided by the worker;
- 35 (ii) the nature of the position in which the worker
36 was employed and the duties undertaken
37 immediately before the worker had an incapacity
38 for work;

- 1 (iii) the worker's age, education, skills and work
2 experience;
- 3 (iv) the worker's place of residence;
- 4 (v) any return to work program established for the
5 worker;
- 6 (vi) any workplace rehabilitation services that are
7 being, or have been, provided to or for the
8 worker;
- 9 and
- 10 (b) includes employment with any employer in a position
11 created or modified particularly to be suitable for the
12 worker having regard to all or any of the matters
13 specified in paragraph (a)(i) to (vi).
- 14 (2) Suitable duties include duties undertaken in the position in
15 which the worker was employed immediately before having an
16 incapacity for work in respect of which the amount of time the
17 worker performs the duties, or the range of duties the worker
18 performs, is increased in stages according to a return to work
19 program.
- 20 (3) For any period during which the worker is engaged in suitable
21 training or vocational re-education provided by, or as approved
22 by, the employer, the worker is taken to be engaged in suitable
23 duties if the worker is paid for that period as if the worker had
24 been working.
- 25 (4) Suitable duties do not include duties that, having regard to the
26 nature of the employer's trade or business, are of a merely token
27 nature or do not involve useful work.

28 **166. Employer must make employment available during**
29 **incapacity [WCIMA s. 84AA]**

- 30 (1) The employer of an injured worker must, during the
31 employment obligation period for the worker —
- 32 (a) unless it is not reasonably practicable to do so, make
33 available to the worker the position in which the worker
34 was employed immediately before having an incapacity
35 for work; and
- 36 (b) if the worker has an incapacity for work in the position
37 in which the worker was employed immediately before
38 having the incapacity — ensure that the worker is given
39 other suitable employment.

40 Penalty for this subsection: a fine of \$10 000.

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1 (2) Subsection (1) does not apply if the worker is lawfully
2 dismissed.

3 **167. Host must cooperate with labour hire employer [New**
4 **provision]**

5 (1) In this section —
6 *host* and *labour hirer* have the meanings given in section 14(1).

7 (2) This section applies if —

- 8 (a) a labour hirer is a worker's employer under
9 section 14(3); and
10 (b) the worker has an incapacity for work as a result of an
11 injury from employment with the labour hirer for work
12 done for the host.

13 (3) The host must, to the extent that it is reasonable to do so,
14 cooperate with the labour hirer in respect of action taken by the
15 labour hirer in order to comply with sections 159 and 166 to
16 facilitate the worker's return to work.

17 Penalty for this subsection: a fine of \$5 000.

18 **168. Dismissal of injured worker [WCIMA s. 84AB]**

19 (1) The employer of an injured worker must not, during the
20 employment obligation period for the worker, dismiss the
21 worker solely or mainly because the worker is totally or
22 partially incapacitated for work.

23 Penalty for this subsection: a fine of \$10 000.

24 (2) Without limiting subsection (1), the employer of an injured
25 worker must not, during the employment obligation period for
26 the worker, dismiss the worker for any reason unless the
27 employer has given to the worker in accordance with
28 subsection (3) a notice of intention to dismiss the worker.

29 Penalty for this subsection: a fine of \$10 000.

30 (3) A notice of intention to dismiss a worker must —

- 31 (a) be given to the worker at least 28 days before the
32 dismissal takes effect; and
33 (b) be in the approved form.

34 (4) This section does not affect any other right or obligation of a
35 worker or employer under this Act or any other written law.

Division 3 — Certificates of capacity

169. Issue of certificate of capacity [WCIMA s. 57A(1)(b), 57B(1)(b), 61(1)]

- (1) A certificate of capacity, in relation to a worker's injury, must —
- (a) be in the approved form; and
 - (b) specify the following —
 - (i) the nature of the injury;
 - (ii) whether the worker has an incapacity for work and the extent of the incapacity for work, if any;
 - (iii) if the worker is partially incapacitated for work — the nature of duties the worker is able to perform and the nature of restrictions on the worker's capacity for work;
 - (iv) how long it is estimated the incapacity for work, if any, will continue;
 - (v) any other matter prescribed by the regulations.
- (2) A certificate of capacity must be issued by —
- (a) the worker's treating medical practitioner; or
 - (b) another health professional, who is permitted under the regulations to issue the certificate.
- (3) The regulations may —
- (a) permit a health professional to issue a certificate of capacity by reference to —
 - (i) the health professional or a class of health professionals; and
 - (ii) the circumstances in which the health professional is permitted to issue a certificate of capacity;
 - and
 - (b) specify circumstances in which a health professional is not permitted to issue a certificate of capacity.

170. Treating medical practitioner [New provision]

- (1) An injured worker is entitled to attend a medical practitioner (a *treating medical practitioner*) of the worker's own choice to perform the functions set out in subsection (3).

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Division 4 Workplace rehabilitation

s. 171

- 1 (2) An injured worker must not be required to choose or attend a
2 medical practitioner chosen or nominated by the worker's
3 employer or the employer's insurer to perform any of the
4 functions set out in subsection (3).
- 5 (3) The treating medical practitioner has the following functions —
6 (a) to diagnose the nature of the worker's injury;
7 (b) to provide primary medical treatment to the worker and
8 to coordinate medical treatment in relation to the
9 worker's injury;
10 (c) to issue certificates of capacity;
11 (d) to monitor, review and advise on the worker's condition
12 and treatment;
13 (e) to advise on the suitability of, and to specify restrictions
14 on, duties the worker may be expected to perform;
15 (f) to participate in the development of a return to work
16 program for the worker and in return to work case
17 conferences.

18 **171. Employer, insurer, agent of insurer must not be present at**
19 **medical examination [New provision]**

20 A worker's employer, the employer's insurer or an agent of the
21 insurer must not be present at a medical examination of the
22 worker by the worker's treating medical practitioner or another
23 health professional permitted under the regulations to issue a
24 certificate of capacity for the worker.

25 **Division 4 — Workplace rehabilitation**

26 **172. Provision of workplace rehabilitation services by approved**
27 **workplace rehabilitation provider [WCIMA s. 5(1) def.**
28 ***vocational rehabilitation*, s. 156A, Sch. 1 cl. 17(1a)]**

- 29 (1) The employer of an injured worker must ensure that workplace
30 rehabilitation services by an approved workplace rehabilitation
31 provider are provided to or for the worker if it is reasonably
32 necessary to do so.

33 Note for this subsection:

34 Regulations referred to in section 180 may specify when it is
35 reasonably necessary for an approved workplace rehabilitation
36 provider to provide workplace rehabilitation services.

- 37 (2) The employer of an injured worker is liable to pay the costs of
38 workplace rehabilitation services provided under subsection (1).

- 1 (3) An employer is not liable to pay the fee or charge for a
2 workplace rehabilitation service provided under subsection (1)
3 to the extent that the amount of the fee or charge exceeds the fee
4 or charge fixed under section 181.

5 **173. Approval of workplace rehabilitation providers**
6 **[WCIMA s. 156(1)(a)]**

- 7 (1) A workplace rehabilitation provider may apply to
8 WorkCover WA for approval for the purposes of this Act.
9 (2) An application for approval must be made in the approved form.

10 **174. Determination of application for approval**
11 **[WCIMA s. 156(2)]**

- 12 (1) WorkCover WA must —
13 (a) consider an application for approval of a workplace
14 rehabilitation provider; and
15 (b) grant approval or refuse to grant approval.
16 (2) The regulations may specify criteria that must be satisfied for
17 the grant of approval.
18 (3) The onus is on the applicant to satisfy WorkCover WA as to any
19 matter that is relevant to the approval of the workplace
20 rehabilitation provider.

21 **175. Conditions of approval [WCIMA s. 156(1)(a), (3)]**

- 22 (1) An approval granted under section 174(1)(b) is subject to the
23 following conditions —
24 (a) a condition that the fees and charges of the approved
25 workplace rehabilitation provider will not exceed the
26 fees and charges fixed by an order under section 181 and
27 will comply with the requirements of that order;
28 (b) any conditions prescribed by the regulations;
29 (c) any conditions imposed by WorkCover WA when the
30 approval is granted or at any time during the currency of
31 the approval.
32 (2) WorkCover WA may, by written notice given to an approved
33 workplace rehabilitation provider —
34 (a) impose conditions, or further conditions, to which the
35 approval is subject; or
36 (b) vary any conditions imposed on the approval by
37 WorkCover WA.

- 1 (3) The conditions may apply, adopt or incorporate any matter
2 contained in a document issued or published by WorkCover
3 WA or some other person with or without modification or
4 addition whether in force at a particular time or from time to
5 time.

6 **176. Duration of approval [New provision]**

- 7 (1) An approval under section 174(1)(b) may be granted for a fixed
8 period determined by WorkCover WA or be granted to remain
9 in force indefinitely.
- 10 (2) An approval granted for a fixed period continues in force until
11 the expiration of that period unless the approval is cancelled
12 sooner.
- 13 (3) An approval granted to remain in force indefinitely continues in
14 force indefinitely unless and until it is cancelled or converted to
15 an approval granted for a fixed period.
- 16 (4) WorkCover WA may, by direction in writing to an approved
17 workplace rehabilitation provider, convert the provider's
18 approval from an approval granted to remain in force
19 indefinitely to an approval granted for a fixed period specified
20 in the direction.

21 **177. Suspension or cancellation of approval**
22 **[WCIMA s. 156(1)(b)]**

- 23 (1) WorkCover WA may suspend or cancel the approval of an
24 approved workplace rehabilitation provider if of the opinion that
25 the approved workplace rehabilitation provider —
- 26 (a) does not satisfy any of the criteria that must be satisfied
27 for the grant of approval of a workplace rehabilitation
28 provider; or
- 29 (b) has failed to comply with any provision of this Act or
30 the regulations; or
- 31 (c) has failed to comply with any condition of the approval.
- 32 (2) A suspension or cancellation is effected by written notice given
33 to the approved workplace rehabilitation provider.
- 34 (3) The approval of a workplace rehabilitation provider may also be
35 cancelled by WorkCover WA at the request of the approved
36 workplace rehabilitation provider.

1 **178. Register of approved workplace rehabilitation providers**
2 **[WCIMA s. 156A(1)]**

- 3 (1) WorkCover WA must maintain a register of the names and
4 contact details of approved workplace rehabilitation providers.
- 5 (2) The register may include such other relevant information about
6 approved workplace rehabilitation providers as WorkCover WA
7 considers desirable for assisting interested parties to access an
8 approved workplace rehabilitation provider appropriate to their
9 needs.
- 10 (3) The register must be available for inspection on the
11 WorkCover WA website.
- 12 (4) WorkCover WA may provide access to information on the
13 register by such other means as it considers appropriate.

14 **179. Performance monitoring and review of approved workplace**
15 **rehabilitation providers [WCIMA s. 156]**

- 16 (1) WorkCover WA may monitor and review the activities of
17 approved workplace rehabilitation providers to determine
18 whether those activities are being carried out effectively,
19 economically and efficiently and in compliance with this Act,
20 the regulations and the conditions of any relevant approval.
- 21 (2) WorkCover WA may inspect the financial and other records of
22 an approved workplace rehabilitation provider for the purposes
23 of the performance of the functions of WorkCover WA under
24 subsection (1).
- 25 (3) A person must not obstruct or hinder a person performing a
26 function of WorkCover WA under this section as a delegate of
27 WorkCover WA.

28 Penalty for this subsection: a fine of \$10 000.

- 29 (4) An approved workplace rehabilitation provider must provide all
30 reasonable assistance to WorkCover WA or a delegate of
31 WorkCover WA for the purpose of facilitating the performance
32 of functions of WorkCover WA under this section.
- 33 (5) WorkCover WA may publish such reports and other
34 information concerning a review under this section as it thinks
35 fit.

1 **180. Workplace rehabilitation regulations [New provision]**

2 The regulations may include provision for or with respect to the
3 following —

- 4 (a) the circumstances in which it is reasonably necessary for
5 an approved workplace rehabilitation provider to
6 provide a workplace rehabilitation service;
- 7 (b) what services can be provided for the purposes of
8 workplace rehabilitation under this Act;
- 9 (c) who can request the provision of workplace
10 rehabilitation services and the process for selecting,
11 engaging or changing providers;
- 12 (d) the circumstances in which a workplace rehabilitation
13 service should be terminated;
- 14 (e) the maximum amount payable, in the aggregate, for
15 workplace rehabilitation services in relation to a
16 worker's injury.

17 **181. Minister may fix workplace rehabilitation fees and charges**
18 **[WCIMA s. 156A(2), 292(2)(b), Sch. 1 cl. 17(1a)]**

- 19 (1) The Minister, on the recommendation of WorkCover WA, may
20 make an order fixing scales of fees and charges for workplace
21 rehabilitation services provided by approved workplace
22 rehabilitation providers.
- 23 (2) The fees and charges may be fixed by reference to any of the
24 following —
- 25 (a) the service provided;
- 26 (b) time spent providing the service;
- 27 (c) the circumstances in which the service is provided;
- 28 (d) the outcome of the service provided;
- 29 (e) any other criteria specified in the order.
- 30 (3) An order under this section may specify requirements for the
31 billing of fees and charges.
- 32 (4) An order under this section may adopt the provisions of other
33 publications, whether with or without modification or addition
34 and whether in force at a particular time or from time to time.
- 35 (5) An order under this section is subsidiary legislation for the
36 purposes of the *Interpretation Act 1984*.

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Part 4 — Medical assessment

Division 1 — Preliminary

182. Term used: Permanent Impairment Guidelines [WCIMA s. 146]

In this Part —

Permanent Impairment Guidelines means guidelines in force under section 190(1) as applying from time to time.

Division 2 — Medical examination of worker

183. Power to require medical examination of worker [WCIMA s. 64, 65, 66, 66A, 70]

- (1) An insurer or self-insurer may require a worker who has claimed compensation to undergo examination by a medical practitioner arranged and paid for by the employer for the purpose of the medical practitioner providing a written report as to the worker’s medical condition.
- (2) An insurer or self-insurer who is provided with a report from a medical practitioner as to a worker’s medical condition based on an examination that the worker was required to undergo under this section must give a copy of the report to the worker within 14 days after the report is provided.
- (3) A worker who is provided with a report from a medical practitioner as to the worker’s medical condition based on an examination that the worker was required to undergo under this section must give a copy of the report to the insurer or self-insurer within 14 days after the report is provided.
- (4) The regulations may make provision for or with respect to —
 - (a) the requirements an insurer or self-insurer may impose on a worker under this section; and
 - (b) the maximum number of times a worker may be required under this section to undergo examination by a medical practitioner and the maximum frequency of those examinations.

1 **184. Worker contravening requirement for medical examination**
2 **[WCIMA s. 72A]**

3 (1) If a worker contravenes a requirement for a medical
4 examination, an arbitrator may by order (a *suspension order*) —

5 (a) suspend payments of compensation to the worker; and

6 (b) suspend the worker's entitlement to take and prosecute
7 any proceedings under this Act.

8 (2) A worker contravenes a requirement for a medical examination
9 if the worker without reasonable excuse fails to comply with a
10 requirement under section 183 to undergo examination by a
11 medical practitioner or obstructs the examination in any way.

12 (3) A suspension order has effect from the day on which the
13 arbitrator makes the order until the earlier of the following —

14 (a) the day on which the order is revoked; or

15 (b) the day on which an order is made under subsection (5).

16 (4) An arbitrator must revoke a suspension order if satisfied that the
17 worker is no longer contravening the requirement for a medical
18 examination.

19 (5) If an arbitrator determines that the worker's contravention of the
20 requirement for a medical examination has continued for
21 1 month, or such longer period as the arbitrator determines
22 should be allowed, after the suspension order was made, the
23 arbitrator must order that —

24 (a) the worker's entitlement to compensation under this Act
25 ceases; and

26 (b) the worker's entitlement to take and prosecute any
27 proceedings under this Act ceases.

28 (6) The worker bears the onus of satisfying an arbitrator that the
29 worker had a reasonable excuse for contravening a requirement
30 for a medical examination.

31 (7) If payment of medical and health expenses compensation or
32 miscellaneous expenses compensation is suspended by a
33 suspension order, compensation in respect of expenses incurred
34 during the period of the suspension is not payable unless the
35 order provides otherwise.

36 Note for this subsection:

37 Section 68 provides for the effect of suspension of payment of income
38 compensation.

1 **Division 3 — Assessing degree of permanent impairment**

2 **185. Assessments to which Division applies [WCIMA s. 146, 146B**
3 **to 146E]**

4 This Division applies to an assessment of a worker's degree of
5 permanent impairment for the purposes of —

- 6 (a) Part 2 Division 6 or 8; or
7 (b) section 80; or
8 (c) Part 7 Division 2.

9 Note for this section:

10 Under Part 7 Division 2 an assessment of degree of permanent whole
11 of person impairment of at least 15% is required for the purposes of an
12 election to retain the right to seek common law damages, which is a
13 prerequisite to the commencement of proceedings to recover
14 damages. A court hearing a claim for damages is not bound by an
15 assessment of degree of permanent whole of person impairment —
16 see section 421.

17 **186. Method of assessment [WCIMA s. 146A(1)]**

- 18 (1) A worker's degree of permanent impairment must be assessed
19 in accordance with the requirements of the Permanent
20 Impairment Guidelines for the evaluation of degree of
21 permanent impairment.
22 (2) The degree of permanent impairment must be assessed as a
23 percentage.

24 **187. Assessing degree of permanent impairment when multiple**
25 **injuries arise from single event [WCIMA s. 93H]**

26 (1) In this section —
27 *event* —

- 28 (a) means anything that results, whether immediately or not
29 and whether suddenly or not, in injury to a worker; and
30 (b) includes continuous or repeated exposure to conditions
31 that results in injury to a worker.

32 (2) If a worker suffers more than 1 injury arising from a single
33 event, the worker's degree of permanent whole of person
34 impairment must be assessed as the degree of permanent whole
35 of person impairment resulting from all of the worker's injuries
36 arising from the event.

1 **188. Secondary conditions disregarded in certain cases**
2 **[WCIMA s. 146C to 146E]**

- 3 (1) In this section —
4 *secondary condition* means a condition, whether psychological,
5 psychiatric or sexual, that, although it may result from an injury,
6 arises as a secondary, or less direct, consequence of the injury.
- 7 (2) In assessing a worker's degree of permanent impairment, any
8 secondary condition must be disregarded if the assessment is for
9 the purposes of —
10 (a) section 80; or
11 (b) Part 7 Division 2.
- 12 (3) This section does not prevent a secondary condition from
13 contributing in the assessment of damages by a court.

14 **189. Assessment to be by approved permanent impairment**
15 **assessor [WCIMA s. 146A(2)]**

- 16 (1) The assessment of a worker's degree of permanent impairment
17 must be made by an approved permanent impairment assessor
18 except as provided by subsection (2).
- 19 (2) The assessment of a worker's degree of permanent impairment
20 resulting from a dust disease must be made by a Dust Disease
21 Medical Panel.

22 **190. Permanent Impairment Guidelines [WCIMA s. 146R]**

- 23 (1) WorkCover WA must issue guidelines (the *Permanent*
24 *Impairment Guidelines*) that make provision for or with respect
25 to the evaluation of a worker's degree of permanent impairment.
- 26 (2) The Permanent Impairment Guidelines may adopt the
27 provisions of other publications, whether with or without
28 modification or addition and whether in force at a particular
29 time or from time to time.
- 30 (3) WorkCover WA is not required to use the title "Permanent
31 Impairment Guidelines" for the guidelines and may issue the
32 Permanent Impairment Guidelines under a different title.
- 33 (4) The *Interpretation Act 1984* sections 41, 42, 43 and 44 apply to
34 the Permanent Impairment Guidelines as if they were
35 regulations.

1 **191. Requirement for injury to have stabilised [WCIMA s. 146B**
2 **to 146E]**

3 (1) An assessment of a worker's degree of permanent impairment
4 may return a finding that the worker's condition has not
5 stabilised to the extent required for an assessment of the
6 worker's degree of permanent impairment to be made in
7 accordance with the Permanent Impairment Guidelines.

8 (2) The Permanent Impairment Guidelines may provide for
9 circumstances in which an assessment of a worker's degree of
10 permanent impairment must be made even though the worker's
11 condition has not stabilised.

12 **192. Asymptomatic pre-existing disease [WCIMA s. 146A(4)]**

13 For a case in which the assessment of a worker's degree of
14 permanent impairment involves taking into account a
15 recurrence, aggravation or acceleration of any pre-existing
16 disease that was to any extent asymptomatic before the worker's
17 injury occurred, the Permanent Impairment Guidelines must not
18 provide for a deduction to reflect the pre-existing nature of that
19 disease to the extent that it was asymptomatic before the
20 worker's injury occurred.

21 **193. Request for assessment of permanent impairment**
22 **[WCIMA s. 146A(3)]**

23 (1) A request for an assessment of a worker's degree of permanent
24 impairment must be in the approved form.

25 (2) The request must contain all information that the approved form
26 indicates is required.

27 (3) The regulations may make provision for or with respect to the
28 circumstances in which, and the persons by whom, a request for
29 assessment of a worker's degree of permanent impairment can
30 or must be made.

31 (4) The regulations may require a worker who requests an
32 assessment of the worker's degree of permanent impairment to
33 provide any information described in the regulations for use in
34 dealing with the request.

- 1 **194. Powers of approved permanent impairment assessors**
2 **[WCIMA s. 146G]**
- 3 (1) An approved permanent impairment assessor (the *assessor*)
4 conducting an assessment of a worker's degree of permanent
5 impairment may —
- 6 (a) in accordance with the regulations, require the worker to
7 attend at a place specified by the assessor; and
- 8 (b) in accordance with the regulations, require the worker to
9 produce any relevant document or provide any relevant
10 information to the assessor; and
- 11 (c) in accordance with the regulations, require the worker to
12 consent to another person who has any relevant
13 document or information producing the document or
14 providing the information to the assessor; and
- 15 (d) require the worker to undergo specified medical tests
16 and assessments and provide the assessor with results
17 and reports from those tests and assessments; and
- 18 (e) require the worker to answer any question about the
19 injury; and
- 20 (f) require the worker to submit to examination by, or as
21 requested by, the assessor.
- 22 (2) The assessor may, in accordance with the regulations, require
23 the employer or the employer's insurer to —
- 24 (a) produce any relevant document or provide any relevant
25 information to the assessor; and
- 26 (b) consent to another person who has any relevant
27 document or information producing the document or
28 providing the information to the assessor.
- 29 (3) An employer or insurer who fails to comply with a requirement
30 imposed by an assessor under this section commits an offence.
31 Penalty for this subsection: a fine of \$5 000.
- 32 (4) If a worker fails to comply with a requirement imposed by an
33 assessor under this section, the assessor may defer making the
34 assessment of the worker's degree of permanent impairment
35 until the worker complies with the requirement.
- 36 (5) Regulations may be made for or with respect to the period
37 within which a requirement imposed by an assessor under this
38 section must be complied with if the period for complying is not
39 specified in the requirement.

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- 1 (6) WorkCover WA may disclose to the assessor any information
2 that WorkCover WA has in relation to the worker that may be
3 relevant to the assessment of the worker's degree of permanent
4 impairment.
- 5 (7) An assessment is not to be vitiated because of any informality or
6 want of form.
- 7 **195. Report on results of assessment [WCIMA s. 146H]**
- 8 (1) An approved permanent impairment assessor (the *assessor*) who
9 makes an assessment of a worker's degree of permanent
10 impairment must give the worker, the employer and the insurer
11 a report in the approved form on the results of the assessment.
- 12 (2) The report must include —
- 13 (a) a certificate as to the worker's degree of permanent
14 impairment as assessed; and
- 15 (b) a statement of the reasons that justify the assessment;
16 and
- 17 (c) other information required by the approved form.
- 18 (3) If there is an error apparent on the face of a report, the assessor
19 must correct the error if required to do so by the Director.
- 20 (4) If the assessment returns a finding that the worker's condition
21 has not stabilised to the extent required for an assessment of the
22 worker's degree of permanent impairment, the assessor must
23 notify the worker, the employer and the insurer of that finding.

24 **Division 4 — Permanent impairment assessors**

25 **196. Approval of permanent impairment assessors [WCIMA**
26 **s. 146F]**

- 27 (1) WorkCover WA may approve a medical practitioner as a
28 permanent impairment assessor for the purposes of this Act (an
29 *approved permanent impairment assessor*).
- 30 (2) An application for approval must be made in the approved form.
- 31 (3) WorkCover WA may issue, and amend or revoke, criteria that
32 must be satisfied for the approval of a medical practitioner as a
33 permanent impairment assessor.
- 34 (4) WorkCover WA must make the criteria applying for the time
35 being publicly available on the WorkCover WA website and in
36 any other manner it considers appropriate.

- 1 (5) The criteria may apply, adopt or incorporate any matter
2 contained in a document issued or published by
3 WorkCover WA or some other person with or without
4 modification or addition and whether in force at a particular
5 time or from time to time.
- 6 (6) WorkCover WA must —
- 7 (a) consider an application for approval as a permanent
8 impairment assessor; and
- 9 (b) grant approval or refuse to grant approval.
- 10 (7) The onus is on the applicant to satisfy WorkCover WA as to any
11 matter that is relevant to the approval of a permanent
12 impairment assessor.

13 **197. Conditions of approval [WCIMA s. 146F]**

- 14 (1) An approval of a permanent impairment assessor is subject
15 to the following conditions —
- 16 (a) a condition that the fees and charges of the approved
17 permanent impairment assessor will not exceed the fees
18 and charges fixed by an order under section 198;
- 19 (b) a condition that the approved permanent impairment
20 assessor will comply with the requirements of the
21 Permanent Impairment Guidelines;
- 22 (c) any conditions prescribed by the regulations;
- 23 (d) any conditions imposed by WorkCover WA when the
24 approval is granted or at any time during the currency of
25 the approval.
- 26 (2) WorkCover WA may, by written notice given to an approved
27 permanent impairment assessor —
- 28 (a) impose conditions, or further conditions, to which the
29 approval is subject; or
- 30 (b) vary any conditions imposed on the approval by
31 WorkCover WA.

32 **198. Minister may fix scale of fees and charges for permanent**
33 **impairment assessment [WCIMA s. 292(3)]**

- 34 (1) The Minister, on the recommendation of WorkCover WA, may
35 make an order fixing scales of fees and charges for services
36 provided by approved permanent impairment assessors.

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- 1 (2) An order under this section may adopt the provisions of other
2 publications, whether with or without modification or addition
3 and whether in force at a particular time or from time to time.
- 4 (3) An order under this section is subsidiary legislation for the
5 purposes of the *Interpretation Act 1984*.
- 6 Notes for this subsection:
- 7 1. Under the *Interpretation Act 1984* section 41(1), subsidiary legislation
8 must be published in the *Gazette*.
- 9 2. Under the *Interpretation Act 1984* section 43(4), a power to make
10 subsidiary legislation includes a power to amend or repeal the
11 subsidiary legislation.

12 **199. Duration of approval [New provision]**

- 13 (1) An approval of a permanent impairment assessor may be
14 granted for a fixed period determined by WorkCover WA or be
15 granted to remain in force indefinitely.
- 16 (2) An approval granted for a fixed period continues in force until
17 the expiration of that period unless the approval is cancelled
18 sooner.
- 19 (3) An approval granted to remain in force indefinitely continues in
20 force indefinitely unless and until it is cancelled or converted to
21 an approval granted for a fixed period.
- 22 (4) WorkCover WA may, by direction in writing to an approved
23 permanent impairment assessor, convert the approval from an
24 approval granted to remain in force indefinitely to an approval
25 granted for a fixed period specified in the direction.

26 **200. Suspension or cancellation of approval [WCIMA s. 146F]**

- 27 (1) WorkCover WA may suspend or cancel the approval of a
28 permanent impairment assessor if of the opinion that the
29 approved permanent impairment assessor —
- 30 (a) does not satisfy any of the criteria that must be satisfied
31 for the grant of approval of a permanent impairment
32 assessor; or
- 33 (b) has failed to comply with any provision of this Act or
34 any regulations made under this Act; or
- 35 (c) has failed to comply with any condition of the approval.
- 36 (2) A suspension or cancellation is effected by written notice given
37 to the approved permanent impairment assessor.

- 1 (3) The approval of a permanent impairment assessor may also be
2 cancelled by WorkCover WA at the request of the approved
3 permanent impairment assessor.

4 **201. Compliance audits and investigations [WCIMA s. 146F]**

- 5 (1) WorkCover WA may conduct audits and investigations
6 (*compliance audits and investigations*) for the purpose of
7 ensuring compliance by approved permanent impairment
8 assessors with this Act, the regulations, the conditions of their
9 approval and the Permanent Impairment Guidelines.
- 10 (2) An approved permanent impairment assessor must, on request
11 by WorkCover WA, provide information or produce documents
12 to WorkCover WA for the purposes of a compliance audit or
13 investigation.
- 14 (3) The information or documents that WorkCover WA may
15 request includes information or documents concerning the
16 assessment of a worker's degree of permanent impairment.
- 17 (4) For the purposes of this section an approved permanent
18 impairment assessor is authorised to provide WorkCover WA
19 with information or documents concerning the assessment of a
20 worker's degree of permanent impairment without the consent
21 of the worker.

22 **202. Register of approved permanent impairment assessors**
23 **[WCIMA s. 146F(6) and (7)]**

- 24 (1) WorkCover WA must maintain a register of the names and
25 contact details of approved permanent impairment assessors.
- 26 (2) The register may include such other relevant information about
27 approved permanent impairment assessors as WorkCover WA
28 considers desirable for assisting interested parties to access an
29 approved permanent impairment assessor who is appropriate to
30 their needs.
- 31 (3) The register must be available for inspection on the
32 WorkCover WA website.
- 33 (4) WorkCover WA may provide access to information on the
34 register by such other means as it considers appropriate.

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Part 5 — Insurance

Division 1 — General

203. Terms used [WCIMA s. 159]

In this Part —

damages —

(a) means —

- (i) damages due or payable to, or claimed by, a worker for an injury caused to that worker by the tort of the worker’s employer or the tort of any person for whose conduct the worker’s employer is vicariously liable; or
- (ii) damages due or payable to, or claimed by, a dependant of a deceased worker under the *Fatal Accidents Act 1959* for an injury causing the death of the worker; or
- (iii) damages due or payable to, or claimed on behalf of, the estate of a deceased worker under the *Law Reform (Miscellaneous Provisions) Act 1941* for an injury causing the death of the worker; or
- (iv) the amount of any contribution or indemnity due or payable to, or claimed by, a concurrent tortfeasor under the *Law Reform (Contributory Negligence and Tortfeasors’ Contribution) Act 1947* in respect of an injury to, or the death of, a worker;

but

- (b) does not include damages in respect of a liability imposed by contract that would not arise as a coordinate liability in tort;

deemed worker, in relation to an employer, means —

- (a) a worker of whom the employer would not be the employer but for being taken to be the employer by section 218; or
- (b) a person to whom the employer would be liable to pay compensation under Division 2 Subdivision 3 as a person who does work for the employer under an avoidance arrangement as provided by that Subdivision; or

1 (c) if the employer is Racing and Wagering Western
2 Australia — a person of whom Racing and Wagering
3 Western Australia would not be the employer but for
4 section 15;

5 **group self-insurer licence** means a self-insurer licence granted
6 on terms that extend the licence to 1 or more specified related
7 entities of the holder of the licence, as provided for by
8 section 249(2);

9 **industry classification** means an industry classification in
10 accordance with an industry classification order under
11 section 256;

12 **insurable damages** means damages in respect of which an
13 employer is required by section 205 to insure;

14 **insurer licence** means a licence under Division 3 Subdivision 1;

15 **licensed insurer** means the holder of an insurer licence;

16 **remuneration** means any payment in money or money's worth
17 paid to or for the benefit of a worker that is prescribed by the
18 regulations as remuneration for the purposes of this Part;

19 **self-insurer** means —

20 (a) the holder of a self-insurer licence; and

21 (b) a related entity, as defined in section 249(1), to which a
22 group self-insurer licence extends;

23 **self-insurer liability**, of an employer, means a liability of the
24 employer in respect of an injury to or the death of a worker that
25 is a liability in respect of employment when the employer was a
26 self-insurer and that is a liability in respect of which the
27 employer would have been required to hold a workers
28 compensation policy had the employer not been a self-insurer;

29 **self-insurer licence** means a licence under Division 4;

30 **specialised insurer** means a licensed insurer whose insurer
31 licence is subject to a specialised insurer condition under
32 section 237(1);

33 **tort** means negligence or other tort (including breach of
34 statutory duty).

35 **204. Agency arrangements [New provision]**

36 (1) WorkCover WA may enter into an arrangement (an **agency**
37 **arrangement**) by contract or otherwise for the appointment of a
38 person to act as agent for WorkCover WA in connection with
39 the performance of any functions of WorkCover WA under this
40 Part.

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1 (2) An agent is, in the performance of functions under an agency
2 arrangement, subject to the direction and control of
3 WorkCover WA as provided by the terms of the agency
4 arrangement.

5 (3) For the purposes of section 533, the exercise or purported
6 exercise of a function of WorkCover WA under this Part by a
7 person as agent of WorkCover WA under an agency
8 arrangement is taken to be the exercise or purported exercise by
9 the person of a function under this Part if done within the scope
10 of the agent's actual authority to act.

11 **Division 2 — Employer obligations**

12 **Subdivision 1 — Insurance requirements for employers**

13 **205. Requirement for employers to be insured**
14 **[WCIMA s. 160(1)]**

15 (1) In this Act —

16 *workers compensation policy* means an insurance policy that
17 insures an employer for the full amount of the following
18 liabilities of the employer that arise in respect of employment
19 during the period of insurance —

20 (a) any liability of the employer that arises under this Act to
21 pay compensation or make any other payment in respect
22 of an injury to or the death of a worker;

23 (b) any liability of the employer to pay damages in respect
24 of an injury to or the death of a worker if the employer
25 is liable to pay compensation under this Act in respect of
26 the injury or death, other than an injury to or the death
27 of a deemed worker of the employer.

28 (2) An employer must at all times have a current workers
29 compensation policy issued by a licensed insurer.

30 (3) Subsection (2) does not apply to an employer while the
31 employer is a self-insurer.

32 (4) The requirements of this section are subject to —

33 (a) regulations under section 240(1); and

34 (b) section 291.

1 **206. Information to be provided by employer to insurer**
2 **[WCIMA s. 160(2)-(2b)]**

3 (1) In this section —

4 *relevant industry classification* means an industry classification
5 on the basis of which the premium payable by an employer for
6 the issue or renewal of a workers compensation policy is
7 calculated.

8 (2) An employer applying for the issue or renewal of a workers
9 compensation policy must provide to the licensed insurer an
10 estimate, made to the best of the employer's knowledge,
11 information and belief, of the aggregate amount of remuneration
12 to be paid or payable by the employer to workers in each
13 relevant industry classification over the proposed period of
14 insurance.

15 (3) As soon as practicable after the end or termination of the period
16 of insurance, the employer must provide to the licensed insurer
17 a statement of the aggregate amount of remuneration actually
18 paid or payable by the employer to workers in each relevant
19 industry classification over the period.

20 (4) An employer applying for the issue or renewal of a workers
21 compensation policy must provide to the licensed insurer any
22 other information required by the regulations.

23 (5) When a company applies to a licensed insurer to issue or renew
24 a workers compensation policy on the basis that a director of the
25 company is a worker, the company must include —

26 (a) in the estimate under subsection (2) — the name of the
27 director and an estimate of the aggregate amount of
28 remuneration to be paid or payable to the director over
29 the proposed period of insurance; and

30 (b) in the statement under subsection (3) — a statement of
31 the aggregate amount of remuneration actually paid or
32 payable to the director over the period of insurance
33 together with supporting particulars to verify that
34 amount.

35 (6) An estimate under subsection (2) and a statement under
36 subsection (3) must be provided in an approved form.

1 **207. Offences [WCIMA s. 170(1)]**

2 (1) An employer who fails to comply with a requirement of
3 section 205 or 206 commits an offence.

4 Penalty for this subsection: a fine of \$10 000 in respect of each
5 of the employer's workers to whom the offence relates.

6 (2) An employer who is convicted of an offence for a failure to
7 comply with a requirement of section 205 or 206 commits a
8 separate and further offence in respect of each week after the
9 day of the conviction during which the failure continues.

10 Penalty for this subsection: a fine of \$10 000 in respect of each
11 of the employer's workers to whom the offence relates.

12 (3) An employer who in purported compliance with a requirement
13 under section 206 provides information or a statement that the
14 employer knows to be false or misleading in a material
15 particular commits an offence.

16 Penalty for this subsection: a fine of \$10 000 in respect of each
17 of the employer's workers to whom the offence relates.

18 **208. Evidence of non-compliance with insurance requirements**
19 **[WCIMA s. 170(4)]**

20 In any prosecution for an offence of failing to comply with a
21 requirement of section 205 (an *insurance requirement*), proof
22 that the employer failed to comply with an inspector's request to
23 produce a workers compensation policy issued to the employer
24 and in force at a specified date or between specified dates is, in
25 the absence of evidence proving the contrary, sufficient
26 evidence that the employer failed to comply with the insurance
27 requirement at the specified date or between those specified
28 dates.

29 **209. Defence: employment not connected with this State**
30 **[WCIMA s. 170(3a), (3b)]**

31 (1) It is a defence to a prosecution for an offence of failing to
32 comply with a requirement of section 205 or 206 in respect of a
33 worker if the court is satisfied that at the time of the alleged
34 offence the employer believed on reasonable grounds that the
35 worker's employment was not connected with this State.

36 Note for this subsection:

37 Section 528 provides for the State with which a worker's employment
38 is connected.

- 1 (2) If the employer's belief on reasonable grounds was that the
2 worker's employment was connected with another State, the
3 defence under subsection (1) does not apply unless at the time
4 of the alleged offence the employer had workers compensation
5 cover in respect of the worker under the law of that other State.
- 6 (3) An employer is considered to have workers compensation cover
7 under the law of a State if the employer has insurance or
8 registration under the law of the State in respect of liability for
9 statutory workers compensation under that law.
- 10 **210. Recovery of premiums avoided by employer**
11 **[WCIMA s. 170(2), (2a)]**
- 12 (1) The court convicting an employer of an offence under
13 section 207 must order (a *premium reimbursement order*) that
14 the employer pay to the General Account an amount equal to the
15 total of any insurance premiums, payment of which the court is
16 satisfied the employer has, at any time during the period of
17 5 years before the conviction, avoided by reason of the act or
18 omission constituting the offence.
- 19 (2) In making a premium reimbursement order, an amount that has
20 already been taken into account in making a previous premium
21 reimbursement order must not be taken into account.
- 22 (3) A certificate executed by WorkCover WA and certifying that an
23 amount specified in the certificate is the amount of any
24 insurance premiums that an employer has avoided during a
25 specified period by reason of an act or omission constituting an
26 offence under section 207 is (without proof of its execution by
27 WorkCover WA) admissible in any proceedings and is evidence
28 of the matters specified in the certificate.
- 29 (4) In the absence of information that would enable
30 WorkCover WA to accurately determine the premium that
31 would have been payable for the issue of a particular policy of
32 insurance, the following provisions have effect —
- 33 (a) WorkCover WA is entitled to make an estimate of that
34 premium (based on the information available to
35 WorkCover WA);
- 36 (b) that estimate is presumed to be accurate as to the
37 premium that would have been payable and cannot be
38 challenged on the basis that insufficient information was
39 available to enable the making of an accurate
40 assessment, but can be challenged by the provision of

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- 1 information that enables a more accurate estimate to be
2 made;
- 3 (c) if WorkCover WA's estimate is successfully challenged
4 and as a result a more accurate estimate is substituted —
5 the proceedings are not open to challenge merely
6 because of the inaccurate estimate and may continue to
7 be heard and be determined on the basis of the
8 substituted assessment.
- 9 (5) A premium reimbursement order is in addition to any fine
10 imposed in respect of the offence.
- 11 **211. Liability of responsible officers of corporations**
12 **[WCIMA s. 170(2b), (2c), (2d), (5), (6)]**
- 13 (1) In this section —
14 *officer*, in relation to a body corporate, has the meaning given in
15 the *Corporations Act 2001* (Commonwealth) section 9;
16 *premium reimbursement order* has the meaning given in
17 section 210(1).
- 18 (2) For the purposes of this section, an officer of a body corporate
19 that commits an offence under section 207 is a **responsible**
20 **officer** for the offence if the officer failed to take all reasonable
21 steps to prevent the commission of the offence by the body
22 corporate.
- 23 (3) In determining whether things done or omitted to be done by an
24 officer constitute reasonable steps, a court must have regard
25 to —
26 (a) what the officer knew, or ought to have known, about
27 the commission of the offence by the body corporate;
28 and
29 (b) whether the officer was in a position to influence the
30 conduct of the body corporate in relation to the
31 commission of the offence; and
32 (c) any other relevant matter.
- 33 (4) If a body corporate commits an offence under section 207, every
34 person who is a responsible officer for the offence also commits
35 the offence.
- 36 (5) If a premium reimbursement order is made requiring a body
37 corporate convicted of an offence to pay an amount to the
38 General Account and all or any of the amount required to be
39 paid remains unpaid, a responsible officer for the offence is

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- 1 the employer is required to keep a record under this
2 section;
- 3 (b) make available at a specified time and place for
4 inspection by a specified person authorised by
5 WorkCover WA the records required to be kept by the
6 employer under this section relating to a specified
7 period;
- 8 (c) make available at a specified time and place for
9 inspection by a specified person authorised by
10 WorkCover WA records of a specified kind in the
11 possession of the employer that are relevant to —
- 12 (i) information provided by the employer to an
13 insurer in connection with an application for the
14 issue or renewal of a workers compensation
15 policy; or
- 16 (ii) the calculation of premiums payable under a
17 workers compensation policy; or
- 18 (iii) the determination of whether the employer or
19 another employer is required to obtain a workers
20 compensation policy or has paid the correct
21 premium for a workers compensation policy.
- 22 (6) WorkCover WA may provide information obtained by
23 WorkCover WA from an employer under this section to any
24 insurer for the purpose of assisting the insurer to determine
25 whether the correct premium has been paid for a workers
26 compensation policy issued by the insurer.
- 27 (7) An employer who fails to comply with a requirement imposed
28 under this section commits an offence.
29 Penalty for this subsection: a fine of \$5 000.

30 **213. Insurer may recover underpaid premiums from employer**
31 **[WCIMA s. 172]**

- 32 (1) In this section —
33 *premium information* means information relevant to the
34 calculation of the premium payable by an employer for a
35 workers compensation policy.
- 36 (2) If an employer has knowingly or unknowingly provided false or
37 misleading premium information to the employer's insurer and
38 as a result has been charged a lesser premium than would
39 otherwise have been payable, the insurer may sue for and
40 recover from the employer as a debt the full amount of the

1 premium that could have been charged less any amount already
2 paid as the premium.

3 (3) If WorkCover WA is satisfied (whether as a result of an
4 inspection or audit or otherwise) that an employer has
5 knowingly or unknowingly provided false or misleading
6 premium information to the employer's insurer, WorkCover
7 WA may provide premium information about the employer to
8 the insurer.

9 (4) This section is not limited to premium information provided to
10 an insurer pursuant to a requirement under this Act or the
11 regulations and extends to premium information provided in or
12 in connection with an application for the issue or renewal of a
13 workers compensation policy.

14 **214. Recovery of costs of audit of employer [New provision]**

15 (1) In this section —

16 *employer audit* means an audit of an employer's records carried
17 out by a licensed insurer under a provision of a workers
18 compensation policy.

19 (2) The reasonable costs incurred by a licensed insurer in
20 connection with an employer audit by the insurer can be
21 recovered by the insurer from the employer as a debt if the
22 employer audit discloses —

23 (a) a serious misstatement of premium information by the
24 employer; or

25 (b) the existence of any other circumstances prescribed by
26 the regulations.

27 (3) For the purposes of subsection (2)(a), an employer audit
28 discloses a serious misstatement of premium information by an
29 employer if the audit discloses that the employer has knowingly
30 or unknowingly provided false or misleading information that is
31 relevant to the calculation of the premium payable by the
32 employer for a workers compensation policy and as a result has
33 been charged a premium that is at least 25% less than the
34 premium that would otherwise have been payable.

35 **215. Certificate of currency [WCIMA s. 160(7), (8)]**

36 An employer who has obtained a workers compensation policy
37 from a licensed insurer must ensure that a valid certificate of

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1 currency issued by the insurer in respect of the policy is
2 available for inspection by WorkCover WA.

3 Penalty: a fine of \$5 000.

4 **216. Workers compensation insurance brokers [New provision of**
5 **WCIMA s. 292(1)(l)]**

6 (1) In this section —

7 *workers compensation insurance broker* means a person who
8 engages in a business that includes acting as agent for an
9 employer in connection with insurance required by this Act
10 (*workers compensation insurance*).

11 (2) The regulations may provide for or with respect to the
12 following —

- 13 (a) a scheme for the registration of workers compensation
14 insurance brokers;
- 15 (b) regulating the conduct of the business activities of
16 workers compensation insurance brokers in connection
17 with workers compensation insurance;
- 18 (c) prescribing scales of the maximum amount of
19 commission or brokerage that may be charged or
20 recovered by a workers compensation insurance broker
21 in connection with workers compensation insurance.

22 (3) A scheme for the registration of workers compensation
23 insurance brokers may include provision for the following —

- 24 (a) eligibility for registration;
- 25 (b) the circumstances in which registration may be refused,
26 suspended or cancelled;
- 27 (c) conditions on registration (including the result of or
28 sanctions for the contravention of a condition of
29 registration);
- 30 (d) prohibiting a person from engaging in the business of a
31 workers compensation insurance broker unless the
32 person is registered under the regulations.

33 **Subdivision 2 — Contractors and subcontractors [WCIMA s. 175]**

34 **217. Terms used**

35 In this Subdivision —

36 *contractor* means a person who contracts for the execution of
37 any work by or under the person;

1 *principal* means a person who contracts with a contractor for
2 the execution of any work by or under the contractor.

3 **218. Both principal and contractor taken to be employers**
4 **[WCIMA s. 175(1), (3)-(7)]**

5 (1) If a worker suffers an injury from employment with a contractor
6 that is relevant employment as provided by subsection (2) —

7 (a) both the principal and the contractor are, for the
8 purposes of this Act, taken to be employers of the
9 worker; and

10 (b) both the principal and the contractor are jointly and
11 severally liable to pay any compensation that the
12 contractor would be liable to pay under this Act if the
13 contractor were the sole employer.

14 (2) Employment with a contractor from which a worker suffers an
15 injury is relevant employment if —

16 (a) the employment is in execution of any work by or under
17 the contractor; and

18 (b) the work on which the worker is employed is directly a
19 part of or process in the trade or business of the
20 principal; and

21 (c) the injury arises in respect of premises on which the
22 principal has undertaken to do the work or that are
23 otherwise under the control or management of the
24 principal.

25 (3) The principal is jointly and severally liable under this section in
26 respect of compensation payable to a worker irrespective of
27 whether any award of compensation is made against both the
28 principal and the contractor or only against the contractor.

29 (4) The right of recovery of WorkCover WA under Division 7
30 against an employer who is uninsured in respect of a liability to
31 a worker extends to recovery against a principal who is
32 uninsured in respect of the joint and several liability of the
33 principal to the worker under this section.

34 (5) The principal must be joined as a party to proceedings before an
35 arbitrator in respect of compensation for which the principal is
36 jointly and severally liable under this section.

1 **219. Claim or proceedings against principal [WCIMA s. 175(5)]**

2 (1) In the application of this Act for the purposes of a claim or
3 proceedings for compensation against the principal, a reference
4 to the employer must be read as a reference to the principal
5 except as provided by subsection (2).

6 (2) For the purpose of calculating the amount of income
7 compensation payments, a reference to the earnings of the
8 worker in the employment concerned must be read as a
9 reference to the earnings of the worker under the contractor.

10 **220. Indemnity [WCIMA s. 175(2), (3A), (3B)]**

11 (1) The principal is entitled to indemnity from the contractor for the
12 principal's liability under this Subdivision.

13 (2) The right of indemnity under this section does not allow —

14 (a) recovery by the principal from the worker of any
15 amount that the worker receives from the contractor by
16 way of compensation or damages in respect of an injury;
17 or

18 (b) recovery by the principal from the worker of any
19 amount that the worker receives from WorkCover WA
20 under section 269 in respect of the contractor's liability
21 to pay compensation or damages to the worker; or

22 (c) recovery by the principal of any amount from
23 WorkCover WA.

24 **221. Effect of judgment against principal or contractor**
25 **[WCIMA s. 175(4)]**

26 If the principal and the contractor are jointly and severally liable
27 under this Subdivision, a judgment obtained against 1 is not a
28 bar to proceedings against the other except to the extent that the
29 judgment has been satisfied.

30 **222. Application of Subdivision to subcontractors**
31 **[WCIMA s. 175(6)]**

32 This Subdivision extends to subcontracts made for the execution
33 of work, and for that purpose —

34 (a) a reference to the principal is a reference to the original
35 principal for whom the work is being done and each
36 contractor who constitutes themselves a principal with
37 respect to a subcontractor by contracting with the

- 1 subcontractor for the execution by the subcontractor of
2 the whole or any part of the work; and
3 (b) a reference to the contractor is a reference to the original
4 contractor and each subcontractor; and
5 (c) a principal's right to indemnity is a right against each
6 contractor standing between the principal and the
7 worker.

8 **223. Subdivision does not extend right to damages**
9 **[WCIMA s. 175(8)]**

10 Nothing in this Subdivision makes either a principal or a
11 contractor liable to pay any damages that, but for this
12 Subdivision, the principal or contractor would not be liable to
13 pay.

14 **224. Contractor remuneration information [New provision]**

- 15 (1) In this section —
16 *contract worker*, of a principal, means a worker who by
17 operation of this Subdivision is taken to be employed by the
18 principal while employed by a contractor to the principal;
19 *relevant period* means the period during which a worker is
20 engaged in work in respect of which the worker is a contract
21 worker of the principal.
22 (2) A principal is not required to comply with a requirement under
23 section 206 in respect of remuneration of a contract worker of
24 the principal if the contractor who employs the worker holds a
25 workers compensation policy that extends to indemnifying the
26 principal in respect of any liability that arises under this
27 Subdivision in respect of the worker during the relevant period.
28 (3) Section 212 extends to a principal who is indemnified under a
29 workers compensation policy held by a contractor as if the
30 principal were the employer insured under the policy except that
31 the matters in respect of which the principal is required to keep
32 a record under that section are limited to the following —
33 (a) details of the workers compensation policy under which
34 the principal is indemnified as provided by
35 subsection (2);
36 (b) any other matter prescribed by the regulations.

1 **Subdivision 3 — Avoidance arrangements [WCIMA s. 175AA, 303A]**

2 **225. What constitutes an avoidance arrangement**
3 **[WCIMA s. 175AA(1), (2)]**

4 (1) For the purposes of this Subdivision, a person (the *worker*) does
5 work for another person (the *employer*) under an avoidance
6 arrangement if —

7 (a) the work is done under an arrangement (whether or not
8 the arrangement is with the employer) that is contrived
9 to enable the employer to have the benefit of the
10 worker's services without having liabilities and duties as
11 the worker's employer under this Act; and

12 (b) while the arrangement is in effect the worker does work
13 principally for the employer on behalf of a company of
14 which the worker is an employee or director (the
15 *company*); and

16 (c) the work that the worker does for the employer is
17 directly a part of or process in the trade or business of
18 the employer.

19 (2) It is sufficient evidence, in the absence of evidence proving the
20 contrary, that an arrangement is contrived to enable the
21 employer to have the benefit of the worker's services without
22 having liabilities and duties as the worker's employer under this
23 Act if it is established that —

24 (a) before doing work under the arrangement, the worker
25 was the employer's worker and provided substantially
26 similar services; or

27 (b) the employer intimated, before the arrangement was
28 entered into, that the employer was unwilling to enter
29 into an arrangement for the provision of substantially
30 similar services that would have resulted in the worker
31 being the employer's worker.

32 **226. Offence if work done under avoidance arrangement**
33 **[WCIMA s. 303A]**

34 If a person does work for another person under an avoidance
35 arrangement, the person for whom the work is done commits an
36 offence.

37 Penalty: a fine of \$15 000.

1 **227. Arbitrator's determination about avoidance arrangement**
2 **[WCIMA s. 175AA(3), (4)]**

3 (1) A person may apply to an arbitrator for a determination as to
4 whether a person was, at a particular time or during a particular
5 period, doing work for another person under an avoidance
6 arrangement.

7 (2) In making a determination for the purposes of this section an
8 arbitrator must not have regard to whether or not proceedings
9 for an offence under section 226 have been instituted against the
10 person for whom the work was done or to the outcome of those
11 proceedings, if any.

12 **228. Effect of avoidance arrangement on compensation and**
13 **insurance [WCIMA s. 175AA(5)-(9)]**

14 (1) If a worker suffers an injury and the worker and the employer
15 agree or an arbitrator determines that when the injury occurred
16 the worker was doing work for the employer under an
17 avoidance arrangement —

18 (a) the employer is liable to pay any compensation that the
19 employer would have been liable to pay in respect of the
20 injury if the worker had been the employer's worker
21 when the work was done; and

22 (b) any workers compensation policy that the employer has
23 in respect of the period when the work was done extends
24 to the employer's liability under paragraph (a) to pay
25 compensation and the insurer under the policy is entitled
26 to indemnity from the employer for the cost of satisfying
27 the insurer's liability under this paragraph; and

28 (c) the company is relieved of its duties and liabilities, if
29 any, under this Act in respect of the payment of
30 compensation to the worker, and in respect of its duties,
31 if any, under Part 3 Division 2 in respect of the worker;
32 and

33 (d) Subdivision 2 does not apply so as to entitle the
34 employer to an indemnity from the company or the
35 worker.

36 (2) If the employer is liable under this section to pay compensation,
37 this Act applies for purposes related to the compensation and

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- 1 duties under Part 3 Division 2 and matters related to the
2 compensation and those duties as if —
- 3 (a) the employer were the actual employer of the worker;
4 and
- 5 (b) for the purpose of calculating the amount of
6 compensation, a reference to the earnings of the worker
7 were a reference to the earnings of the company to the
8 extent that those earnings were for work done for the
9 employer by the worker on behalf of the company.
- 10 (3) The employer or any person on behalf of the employer, or an
11 insurer of the employer or any person on the insurer's behalf,
12 must not, directly or indirectly, take or receive any money or
13 indemnity from the company or the worker in respect of any
14 liability of the employer or the company to pay compensation in
15 respect of the worker under this Act.
16 Penalty for this subsection: a fine of \$15 000.
- 17 (4) An indemnity taken or received in contravention of this section
18 is void.
- 19 (5) If money is taken or received in contravention of subsection (3),
20 whether with the consent of the company or the worker or not,
21 the company or the worker, as the case requires, may sue and
22 recover the amount of that money from the person who took or
23 received it.

24 **Division 3 — Licensed insurers**

25 **Subdivision 1 — Licensing of insurers**

26 **229. Offence: unlicensed insurers [WCIMA s. 161A]**

27 A person must not issue or renew an insurance policy that is or
28 that purports to be a workers compensation policy unless the
29 person is a licensed insurer.

30 Penalty for this subsection: a fine of \$15 000.

31 **230. Application for licence [WCIMA s. 161(4)]**

- 32 (1) A body corporate authorised under the *Insurance Act 1973*
33 (Commonwealth) section 12 to carry on insurance business in
34 Australia may apply to WorkCover WA for the grant of an
35 insurer licence.
- 36 (2) An application must be made in the form and manner
37 determined by WorkCover WA.

1 **231. Determination of licence application [WCIMA s. 161(2)**
2 **to (4)]**

- 3 (1) WorkCover WA must —
4 (a) consider an application for an insurer licence; and
5 (b) grant an insurer licence to the applicant or refuse the
6 application.
- 7 (2) The regulations may specify criteria that must be satisfied for
8 the grant of an insurer licence.
- 9 (3) The onus is on the applicant to satisfy WorkCover WA as to any
10 matter that is relevant to the grant of an insurer licence.
- 11 (4) WorkCover WA may issue guidelines relating to matters taken
12 into consideration in determining an application for an insurer
13 licence.

14 **232. Conditions of licence [WCIMA s. 161(3), (4)]**

- 15 (1) An insurer licence is subject to —
16 (a) any conditions prescribed by this Act or the regulations;
17 and
18 (b) any conditions (not inconsistent with this Act or the
19 regulations) imposed by WorkCover WA when the
20 licence is granted or at any time during the currency of
21 the licence.
- 22 (2) WorkCover WA may, by notice served on a licensed insurer,
23 impose conditions, or further conditions, on the licence or vary
24 any conditions imposed on the licence by WorkCover WA.
- 25 (3) A licensed insurer must comply with any condition to which the
26 insurer licence is subject.

27 Penalty for this subsection: a fine of \$10 000.

- 28 (4) A contravention by a licensed insurer of any condition to which
29 the insurer licence is subject does not affect any liability of the
30 insurer under a workers compensation policy issued by the
31 insurer.

32 **233. Duration of licence [WCIMA s. 161(5)]**

- 33 (1) An insurer licence may be granted for a fixed period determined
34 by WorkCover WA or be granted to remain in force
35 indefinitely.

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- 1 (2) An insurer licence granted for a fixed period continues in force
2 until the expiration of that period unless the licence is cancelled
3 sooner.
- 4 (3) An insurer licence granted to remain in force indefinitely
5 continues in force indefinitely unless and until it is cancelled or
6 converted to a licence for a fixed period.
- 7 (4) WorkCover WA may, by direction in writing to a licensed
8 insurer, convert the insurer's licence from a licence granted to
9 remain in force indefinitely to a licence granted for a fixed
10 period specified in the direction.

11 **234. Suspension, cancellation or surrender of licence**
12 **[WCIMA s. 161(3), (7)]**

- 13 (1) WorkCover WA may, by notice served on the licensed insurer,
14 suspend or cancel an insurer licence if of the opinion that the
15 insurer —
- 16 (a) does not satisfy any of the criteria that must be satisfied
17 for the grant of a licence; or
- 18 (b) has failed to comply with any provision of this Act or
19 the regulations; or
- 20 (c) has failed to comply with any condition of the licence.
- 21 (2) A licensed insurer may request that WorkCover WA cancel an
22 insurer licence and WorkCover WA may cancel the licence but
23 only if satisfied that all accrued, continuing, future and
24 contingent insurer liabilities of the insurer have been discharged
25 or adequately provided for.
- 26 (3) For the purposes of subsection (2) —
27 *insurer liabilities*, of an insurer, means liabilities of the insurer
28 under workers compensation policies issued by the insurer.
- 29 (4) The cancellation or suspension of an insurer licence does not
30 affect any liability of the insurer under a workers compensation
31 policy issued by the insurer.
- 32 (5) While an insurer licence is suspended, the insurer cannot issue
33 or renew a workers compensation policy but otherwise has the
34 functions of a licensed insurer.

35 **235. Performance monitoring and review of insurers [New**
36 **provision]**

- 37 (1) WorkCover WA may monitor and review the workers
38 compensation functions of licensed insurers to determine

- 1 whether those functions are being carried out effectively,
2 economically and efficiently and in compliance with this Act,
3 the regulations and any conditions of the insurer's licence.
- 4 (2) WorkCover WA may inspect the financial and other records of
5 a licensed insurer for the purposes of the performance of the
6 functions of WorkCover WA under subsection (1).
- 7 (3) A person must not obstruct or hinder a person performing a
8 function of WorkCover WA under this section as a delegate of
9 WorkCover WA.
- 10 Penalty for this subsection: a fine of \$10 000.
- 11 (4) A licensed insurer must provide all reasonable assistance to
12 WorkCover WA or a delegate of WorkCover WA for the
13 purpose of facilitating the performance of functions of
14 WorkCover WA under this section.
- 15 (5) WorkCover WA may publish such reports and other
16 information concerning a review under this section as it thinks
17 fit.

18 **236. Improvement notice to licensed insurer [New provision]**

- 19 (1) If WorkCover WA is satisfied that a licensed insurer has
20 contravened a provision of this Act or the regulations or a
21 condition of its insurer licence, WorkCover WA may (as an
22 alternative to or in addition to any other action that it may take
23 in respect of the contravention) issue an improvement notice to
24 the licensed insurer.
- 25 (2) WorkCover WA may publish any improvement notice issued to
26 a licensed insurer.

27 **237. Specialised insurers [New provision]**

- 28 (1) WorkCover WA may grant an insurer licence subject to a
29 condition (a *specialised insurer condition*) that limits the
30 insurance business carried on pursuant to the licence to a
31 particular industry or class of business or employer.
- 32 (2) An insurer licence cannot be granted subject to a specialised
33 insurer condition unless WorkCover WA is satisfied —
- 34 (a) that the insurance business to be carried on pursuant to
35 the licence will be limited to a particular industry or
36 class of business or employer; and
- 37 (b) that the insurance business to be carried on pursuant to
38 the licence will not have an adverse effect on the

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1 efficiency of the workers compensation scheme under
2 this Act generally; and

3 (c) as to such other matters as WorkCover WA considers
4 relevant.

5 (3) An application for an insurer licence may be made conditional
6 on the licence being granted subject to a specialised insurer
7 condition.

8 (4) WorkCover WA may, at any time by notice in writing to a
9 licensed insurer, vary the terms of or cancel a specialised insurer
10 condition to which the licence is subject.

11 (5) The cancellation of a specialised insurer condition is grounds
12 for the suspension or cancellation of the relevant insurer licence
13 under this Subdivision.

14 **238. Special arrangements for Insurance Commission and public**
15 **authorities [New provision, s. 44 of ICWA Act]**

16 (1) In this section —

17 *public authority* has the meaning given in the *Insurance*
18 *Commission of Western Australia Act 1986* section 3.

19 (2) The Insurance Commission is taken to be an insurer that holds
20 an insurer licence and that licence is taken to be subject to a
21 specialised insurer condition that limits the Insurance
22 Commission to the insurance of public authorities under the
23 *Insurance Commission of Western Australia Act 1986*.

24 (3) The following provisions apply in respect of a public authority
25 on behalf of which the Insurance Commission manages and
26 administers insurance arrangements in respect of liability to pay
27 compensation or damages in respect of an injury to a worker —

28 (a) the public authority is taken to hold a workers
29 compensation policy issued by the Insurance
30 Commission and accordingly is taken to comply with
31 section 205 (which requires an employer to have a
32 current workers compensation policy at all times);

33 (b) the public authority must pay to the Insurance
34 Commission such amounts as the Insurance Commission
35 determines and notifies to the public authority from time
36 to time as the premium for a workers compensation
37 policy taken to have been issued to the public authority
38 by the Insurance Commission;

- 1 (c) the public authority must provide to the Insurance
2 Commission such information as the Insurance
3 Commission may request from time to time for the
4 purpose of determining the premium for a workers
5 compensation policy taken to have been issued to the
6 public authority by the Insurance Commission;
- 7 (d) Division 5 does not apply to a premium payable in
8 respect of a workers compensation policy taken to have
9 been issued by the Insurance Commission under this
10 section;
- 11 (e) section 206 does not require the provision of
12 information by the public authority to the Insurance
13 Commission.
- 14 (4) A public authority that is taken to hold a workers compensation
15 policy issued by the Insurance Commission cannot make a
16 request of the Insurance Commission referred to in
17 section 161(2) or (3).
- 18 (5) The Insurance Commission is not a licensed insurer required to
19 contribute to the General Account or the DI Fund.
- 20 (6) The functions of the Insurance Commission as a licensed insurer
21 in respect of workers compensation policies taken to have been
22 issued under this section (including, without limitation, the
23 function of discharging the liabilities of a public authority under
24 any such policy) are taken to be functions of the Insurance
25 Commission under the *Insurance Commission of Western*
26 *Australia Act 1986* section 6(c).

27 **Subdivision 2 — Insurance obligations of licensed insurers**

28 **239. Obligation of licensed insurers to insure employers**
29 **[WCIMA s. 154A, 160(3)]**

- 30 (1) A licensed insurer must not refuse to —
31 (a) issue a workers compensation policy to any employer;
32 or
33 (b) renew a workers compensation policy issued to an
34 employer; or
35 (c) provide a quote of the premium to be demanded for the
36 issue or renewal of a workers compensation policy.
- 37 Penalty for this subsection: a fine of \$10 000.
- 38 (2) A licensed insurer is not required to comply with this section in
39 a case where the employer has failed to comply with a request

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1 by the insurer to provide information that the insurer reasonably
2 requires for the purposes of the issue or renewal of a workers
3 compensation policy or the provision of a quote of premium.

4 (3) The regulations may specify the information that an insurer
5 reasonably requires for the purposes of the issue or renewal of a
6 workers compensation policy or the provision of a quote of
7 premium.

8 (4) In the application of this section to a specialised insurer, a
9 reference to an employer is a reference to an employer in the
10 particular industry or class of business or employer to which the
11 insurance business of the specialised insurer is limited.

12 **240. Terms of insurance and form of policies [WCIMA s. 169]**

13 (1) The regulations may do any 1 or more of the following —

14 (a) prescribe any or all of the terms and conditions of a
15 workers compensation policy;

16 (b) limit, modify or exclude any term or condition of a
17 workers compensation policy;

18 (c) prescribe the form of a workers compensation policy;

19 (d) prescribe 1 or more standard forms of a workers
20 compensation policy and the circumstances in which a
21 standard form must be used;

22 (e) limit, modify or exclude any requirement in section 205
23 to have a workers compensation policy in respect of
24 liabilities arising in specified circumstances or out of
25 specified events;

26 (f) limit the amount for which an employer is required to be
27 insured under a workers compensation policy;

28 (g) otherwise limit, modify or exclude the requirement in
29 section 205 that an employer must at all times have a
30 current workers compensation policy issued by a
31 licensed insurer.

32 (2) If a licensed insurer issues a workers compensation policy that
33 includes a term or condition that is inconsistent with a
34 requirement of this Act or the regulations —

35 (a) the term or condition is of no effect to the extent of the
36 inconsistency; and

37 (b) the licensed insurer commits an offence.

38 Penalty for this subsection: a fine of \$10 000.

1 **241. Adjustable premium policies [New provision]**

2 (1) In this section —

3 *adjustable premium policy* means a workers compensation
4 policy that provides for the adjustment of the premium for the
5 policy during the period of insurance under the policy (with
6 adjustments determined on the basis of the claims experience of
7 the employer during the period of insurance).

8 (2) A licensed insurer must not issue an adjustable premium policy
9 to an employer unless —

- 10 (a) the employer agrees to the issue of an adjustable
11 premium policy; and
12 (b) the policy complies with any requirements prescribed by
13 the regulations.

14 (3) The regulations may make provision for or with respect to —

- 15 (a) requiring licensed insurers to provide reports to
16 WorkCover WA in respect of the issue of adjustable
17 premium policies; and
18 (b) modifying the operation of section 206 in respect of
19 adjustable premium policies.

20 Note for this subsection:

21 The regulation-making power in section 240(1) also applies to
22 adjustable premium policies.

23 (4) Section 258 does not apply in respect of a premium payable
24 under an adjustable premium policy.

25 **242. Insurer to indemnify employer for compensation payments**
26 **[WCIMA s. 57A(5)]**

27 The insurer of an insured employer must indemnify the
28 employer for payments of compensation by the employer if the
29 insurer has accepted (or is taken to have accepted) or an
30 arbitrator has determined that the employer is liable to make the
31 payments of compensation.

32 Penalty: a fine of \$10 000.

33 **243. Coverage of insurance policy not limited by employer**
34 **representations [New provision]**

35 The indemnity provided by a workers compensation policy
36 issued by a licensed insurer extends to apply in respect of all
37 workers employed by the employer from time to time during the
38 period of insurance under the policy and is not limited by any

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- 1 information provided or representation made to the insurer by
2 the employer as to —
- 3 (a) the nature of the work engaged in by the employer’s
4 workers; or
 - 5 (b) the industry classification of the employer’s business; or
 - 6 (c) the remuneration of workers employed by the employer;
7 or
 - 8 (d) any other matter relevant to the determination of the
9 premium payable for the policy.

10 **244. Refusal of indemnity [WCIMA s. 174A]**

- 11 (1) The regulations may prescribe circumstances (the *permitted*
12 *circumstances*) in which a licensed insurer is permitted to
13 refuse to indemnify an employer against liability to pay
14 compensation or damages in respect of an injury to a worker for
15 which the employer is liable.
- 16 (2) A licensed insurer who insures an employer under a workers
17 compensation policy against the employer’s liability to pay
18 compensation or damages in respect of an injury to a worker for
19 which the employer is liable —
- 20 (a) may in the permitted circumstances refuse to indemnify
21 the employer against that liability; and
 - 22 (b) cannot refuse in any other circumstances to indemnify
23 the employer against that liability despite any term or
24 condition of a workers compensation policy.
- 25 (3) A licensed insurer who refuses to indemnify an employer
26 against liability to pay compensation or damages in respect of
27 an injury to a worker for which the employer is liable must give
28 notice of refusal of indemnity in the approved form to the
29 worker, the employer and WorkCover WA within 5 days after
30 the decision to refuse indemnity is made by the insurer.
- 31 Penalty for this subsection: a fine of \$5 000.
- 32 (4) If notice of refusal of indemnity is given to the employer within
33 the period within which the insurer is required under section 29
34 or 30 to give a liability decision notice for the claim (the
35 *liability decision period*) —
- 36 (a) the insurer’s obligations in respect of the claim under
37 Part 2 Division 2 cease to apply; and
 - 38 (b) the employer is required to deal with the claim as if the
39 employer were a self-insurer (as required by section 32

1 because the employer is uninsured) and as if the claim
2 had been given to the employer on the day that the
3 employer received the notice of refusal of indemnity.

4 Note for this subsection:

5 Sections 29 and 30 apply to the employer when dealing with the claim
6 as a self-insurer as if the claim had not been given to the employer
7 until the employer was given the notice of refusal of indemnity.

8 (5) If notice of refusal of indemnity is given to the employer
9 (whether or not within the liability decision period) the
10 following provisions apply to a dispute about the liability of the
11 insurer to indemnify the employer —

12 (a) the dispute is not a dispute for the purposes of Part 6 and
13 proceedings for the determination of the dispute cannot
14 be brought under that Part;

15 (b) the dispute must on application to the District Court by
16 the employer be determined by the District Court.

17 (6) Subsection (5) does not prevent proceedings under Part 6 for the
18 determination of a dispute about whether the employer is liable
19 for compensation with which the notice of refusal of indemnity
20 is concerned.

21 **245. Cancellation of insurance policy [WCIMA s. 160(3a)]**

22 (1) An insurer must not cancel a workers compensation policy
23 without the permission in writing of WorkCover WA.

24 (2) WorkCover WA may determine whether an insurer should be
25 permitted to cancel a workers compensation policy and the
26 terms on which a workers compensation policy may be
27 cancelled.

28 (3) WorkCover WA must not permit cancellation of a workers
29 compensation policy for non-payment of a premium unless
30 WorkCover WA is satisfied that —

31 (a) the insurer has given the employer adequate notice of
32 the amount of the premium due; and

33 (b) the premium due has remained unpaid for the period
34 prescribed by the regulations.

35 (4) The cancellation of a workers compensation policy with the
36 permission of WorkCover WA is effective as between the
37 parties to the policy irrespective of any term or condition of the
38 policy.

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- 1 (5) If WorkCover WA permits an insurer to cancel a workers
2 compensation policy, the insurer must notify the employer of
3 the cancellation within 14 days after the cancellation has effect.
4 Penalty for this subsection: a fine of \$5 000.

5 **246. Lapsing of insurance policy [WCIMA s. 160(4)-(6)]**

- 6 (1) A workers compensation policy is considered to lapse at the end
7 of the period of insurance under the policy if the policy is not
8 renewed within that period or within any period of grace
9 provided for by the policy.
- 10 (2) An insurer must notify the CEO in the approved form of the
11 lapsing of a workers compensation policy issued by the insurer.
- 12 (3) The insurer under a workers compensation policy that has
13 lapsed remains liable to indemnify the employer in respect of a
14 liability incurred after the policy lapsed (as if the liability had
15 been incurred during the period of insurance of the policy) but
16 only if the liability is incurred no later than 7 days after
17 WorkCover WA is notified of the policy lapsing as required by
18 subsection (2).
- 19 (4) The insurer under a workers compensation policy that has
20 lapsed does not remain liable under this section to indemnify the
21 employer in respect of a liability if the employer has insurance
22 for the liability under another workers compensation policy.
- 23 (5) If an insurer refuses to indemnify an employer in respect of a
24 liability in respect of which the insurer remains liable under this
25 section, the insurer commits an offence.
26 Penalty for this subsection: a fine of \$15 000.
- 27 (6) Conviction of an insurer for an offence under subsection (5)
28 does not affect the insurer's liability under this section.

29 **247. Worker's rights against insurer when employer cannot be**
30 **proceeded against [WCIMA s. 173]**

- 31 (1) If the employer insured under a workers compensation policy
32 becomes incapable of being proceeded against —
33 (a) the insurer has, to the extent of its liability under the
34 policy, the same liability to a worker of the employer
35 and the same rights and remedies in respect of that
36 liability that the employer otherwise would have had to
37 that worker and in respect of that liability; and

- 1 (b) a worker of the employer may proceed against and
2 recover from the insurer on the basis of the liability that
3 the insurer has under paragraph (a).
- 4 (2) For the purposes of this section, an employer becomes incapable
5 of being proceeded against if the employer —
- 6 (a) in the case of a corporation — has commenced to be, or
7 has been, wound up or has ceased to exist; or
- 8 (b) dies, cannot be found or no longer resides in Australia;
9 or
- 10 (c) has ceased to carry on the business, or business of the
11 kind, to which the policy related.
- 12 (3) If, under subsection (1), the liability of the insurer of an
13 employer is less than that which the liability of the employer to
14 the worker would have been, the worker may proceed for the
15 balance —
- 16 (a) against the employer; or
- 17 (b) in the bankruptcy or liquidation of the employer; or
- 18 (c) against the personal representative of the employer.
- 19 (4) The rights and remedies of a worker against an insurer under
20 this section are not limited by any agreement or arrangement
21 between the employer and the insurer before the employer
22 became incapable of being proceeded against.

23 **Division 4 — Self-insurance**

24 Note for this Division:

25 Self-insurance by an employer is an alternative to the employer
26 obtaining a workers compensation policy from a licensed insurer for
27 the employer's workers compensation and damages liabilities to its
28 workers. To be a self-insurer, an employer must hold a self-insurer
29 licence or be a related entity of the holder of a self-insurer licence that
30 covers the related entity.

31 **Subdivision 1 — Licensing of self-insurers**

32 **248. Application for self-insurer licence [WCIMA s. 164(1)]**

- 33 (1) An employer may apply to WorkCover WA for a self-insurer
34 licence.
- 35 (2) An application must be in an approved form and accompanied
36 by such documents as may be determined by the CEO.

- 1 (3) WorkCover WA may, before determining an application for a
2 self-insurer licence, require the application to be advertised or
3 other notice to be given of the application.

4 **249. Coverage of related entities by group self-insurer licence**
5 **[WCIMA s. 164(1)]**

- 6 (1) In this section —

7 ***related entity***, of the holder of a self-insurer licence, means —

- 8 (a) a related entity as defined in the *Corporations Act 2001*
9 (Commonwealth) section 9 of the holder of the licence;
10 or
11 (b) any other entity that WorkCover WA determines must
12 be treated as a related entity of the holder of the licence
13 on the basis of any relationship between the entity and
14 the holder.

- 15 (2) A self-insurer licence may be granted on terms that extend the
16 licence to 1 or more specified related entities of the holder of
17 the licence, in which case the licence is then a group self-insurer
18 licence with each of the related entities to which the licence
19 extends constituting a group of related self-insurers covered by
20 the licence.

21 Note for this subsection:

22 A related entity to which a self-insurer licence is extended becomes a
23 self-insurer but is not the holder of the licence.

- 24 (3) WorkCover WA may, at any time by notice in writing to the
25 holder of a self-insurer licence, amend the terms of the licence
26 to change the related entities to which the licence extends (by
27 adding, removing or changing the name of a related entity) and
28 such an amendment takes effect when notice of it is given or at
29 such later time as the notice may specify.

- 30 (4) A group self-insurer licence may be subject to conditions
31 relating to the obligations as a self-insurer of any related entity
32 to which the licence extends, and a contravention of any such
33 obligation by a related entity (or by the holder of the licence
34 when acting on behalf of a related entity) is a contravention of a
35 condition of the licence.

36 **250. Liability of holder of group self-insurer licence**
37 **[WCIMA s. 164(1)]**

- 38 (1) The holder or former holder of a group self-insurer licence is
39 jointly and severally liable for any self-insurer liability of an
40 employer that is a liability in respect of an injury to or the death

1 of a worker that arose while the employer was a self-insurer
2 covered by the group self-insurer licence.

3 (2) A reference in this Act to a self-insurer liability of an employer
4 includes, in the case of an employer who is or was the holder of
5 a group self-insurer licence, a self-insurer liability for which the
6 employer is jointly and severally liable under subsection (1).

7 **251. Application of licensed insurer provisions to self-insurers**
8 **[WCIMA s. 164 to 168]**

9 (1) The following provisions of Division 3 Subdivision 1 apply to
10 and in respect of a self-insurer licence in the same way as they
11 apply to an insurer licence —

- 12 (a) section 231;
13 (b) section 232;
14 (c) section 233;
15 (d) section 234;
16 (e) section 235;
17 (f) section 236.

18 (2) Section 234 applies in respect of a self-insurer licence as if a
19 reference in that section to insurer liabilities were a reference to
20 self-insurer liabilities.

21 (3) In addition to the requirements of section 234 (as applied under
22 this section) in respect of the surrender of a self-insurer licence,
23 WorkCover WA must not approve of the surrender of a
24 self-insurer licence unless satisfied that after the licence is
25 surrendered the employer and each employer to which the
26 licence extends —

- 27 (a) will not employ any workers; or
28 (b) will hold a workers compensation policy.

29 **Subdivision 2 — Self-insurer securities**

30 **252. Terms used [New provision]**

31 In this Subdivision —

32 ***required security amount***, for a self-insurer licence, means the
33 amount determined by WorkCover WA to be the amount
34 required to adequately provide for all the accrued, continuing,
35 future and contingent self-insurer liabilities of the employer and
36 each employer to which the licence extends;

37 ***self-insurer security*** has the meaning given in section 253(1).

1 **253. Requirement for security [WCIMA s. 164(1)]**

2 (1) A self-insurer licence is subject to the condition that security for
3 the payment of all the self-insurer liabilities of the employer and
4 each employer to which the licence extends (a *self-insurer*
5 *security*) must be provided and maintained on terms approved
6 by WorkCover WA from time to time.

7 (2) The terms approved for a self-insurer security can require the
8 self-insurer security to provide continuing security for the
9 payment of self-insurer liabilities after the self-insurer licence to
10 which the security relates has expired or been cancelled.

11 (3) A self-insurer security must be provided by means of a
12 guarantee by a financial institution approved by
13 WorkCover WA that guarantees payment of the required
14 security amount to WorkCover WA on demand by
15 WorkCover WA.

16 (4) WorkCover WA may approve of a self-insurer security being
17 provided by means of a bond, indemnity or undertaking to pay
18 or by such other means as WorkCover WA considers
19 acceptable.

20 **254. Review and variation of required security amount**
21 **[WCIMA s. 165]**

22 (1) The required security amount for a self-insurer licence may be
23 reviewed by WorkCover WA from time to time and may be
24 varied by notice in writing to the holder of the self-insurer
25 licence.

26 (2) A variation of the required security amount for a self-insurer
27 licence takes effect 30 days after notice of the variation is given
28 to the holder of the self-insurer licence or on such later date as
29 the notice may specify.

30 **255. Calling on security [New provision]**

31 (1) WorkCover WA may demand payment under a self-insurer
32 security to the extent of any payments made or to be made by
33 WorkCover WA on a claim under Division 8 in respect of a
34 self-insurer liability to which the security relates.

35 (2) Any amount paid to WorkCover WA as a result of a demand
36 made under a self-insurer security must be credited to the
37 DI Fund and is taken to have been recovered from the employer
38 in discharge to the extent of the payment of any liability of the
39 employer to WorkCover WA for any payment made by

1 WorkCover WA in satisfaction of a claim in respect of a
2 self-insurer liability to which the security relates.

3 **Division 5 — Insurance premiums**

4 **256. Fixing of recommended premium rates [WCIMA s. 151]**

5 (1) WorkCover WA must make an order (an *industry classification*
6 *order*) that provides for —

- 7 (a) the classification of industries for the purpose of
8 distinguishing between industries that have different
9 insurable risks; and
10 (b) the determination of the industry classification on the
11 basis of which the premium payable by an employer for
12 the issue or renewal of a workers compensation policy is
13 to be calculated.

14 (2) WorkCover WA must from time to time fix recommended
15 premium rates for workers compensation policies and for that
16 purpose must —

- 17 (a) formulate a basis on which an appropriate recommended
18 premium rate must be fixed for each industry
19 classification under an industry classification order; and
20 (b) on that basis fix a recommended premium rate for each
21 industry classification under an industry classification
22 order.

23 (3) An industry classification order may adopt the provisions of
24 other publications, whether with or without modification or
25 addition and whether in force at a particular time or from time
26 to time.

27 (4) Industry classification orders and recommended premium rates
28 must be published by WorkCover WA on the WorkCover WA
29 website and do not have effect until published.

30 **257. Reports as to recommended premium rates**
31 **[WCIMA s. 151A]**

32 (1) As soon as practicable after fixing recommended premium rates
33 under section 256(2), WorkCover WA must prepare and publish
34 a report as to —

- 35 (a) the actuarial basis of any recommended premium rate
36 fixed; and
37 (b) the comparative claims experience of the different
38 industry classifications concerned.

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1 (2) The report must be published on the WorkCover WA website
2 and in such other manner, if any, as WorkCover WA may
3 consider appropriate.

4 (3) A report under subsection (1) must not contain information
5 identifying or enabling the identification of any employer.

6 **258. Review of premium charged [WCIMA s. 152, 154]**

7 (1) An employer may apply to WorkCover WA for a review by
8 WorkCover WA of either or both of the following in respect of
9 a premium determined by an insurer for the issue or renewal of
10 a workers compensation policy to the employer —

11 (a) whether the industry classification on the basis of which
12 the premium for the policy is determined is the proper
13 industry classification (an *industry classification*
14 *review*);

15 (b) whether the premium determined by the insurer is a
16 proper premium for the policy (a *premium review*).

17 (2) A premium review is available only if the premium determined
18 by the insurer is at least 75% greater than the premium
19 calculated on the basis of the recommended premium rate fixed
20 by WorkCover WA.

21 (3) The following requirements apply to an application for a review
22 under this section —

23 (a) the application must be made within 1 month after the
24 employer is informed of the premium concerned or
25 within such longer period as WorkCover WA may allow
26 in a particular case;

27 (b) the application must not be made unless the employer
28 has made reasonable efforts to resolve the issue with the
29 insurer;

30 (c) the application must provide details of the efforts made
31 by the employer to resolve the issue with the insurer;

32 (d) the application must state the grounds of objection and
33 the industry classification or premium that the employer
34 seeks;

35 (e) the employer must give notice in writing of the
36 application to the insurer within the period allowed for
37 making the application.

- 1 (4) Despite an application for a review, the employer must pay the
2 premium as determined by the insurer and the insurer must issue
3 or renew the policy.
- 4 (5) WorkCover WA may determine its own procedures for the
5 review.
- 6 (6) On a review, WorkCover WA must decide the following —
7 (a) for an industry classification review — the proper
8 industry classification for the calculation of the
9 premium;
10 (b) for a premium review — whether or not the premium
11 determined by the insurer exceeds a proper premium for
12 the policy and (if it is decided that the premium
13 determined exceeds a proper premium) the amount of a
14 proper premium for the policy.
- 15 (7) The insurer must give effect to the decision on the review and if
16 the effect of the decision is that a lesser sum is payable by way
17 of premium than that already paid to the insurer —
18 (a) the insurer must repay to the employer the amount of the
19 overpayment; and
20 (b) the employer may sue for and recover from the insurer
21 any amount unpaid.

22 **Division 6 — Default Insurance Fund**

23 **Subdivision 1 — Establishment of Default Insurance Fund**

24 **259. Establishment of Default Insurance Fund [New provision,**
25 **EISFA s. 5, 11]**

- 26 (1) An account called the WorkCover WA Default Insurance Fund
27 (the *DI Fund*) is established as an agency special purpose
28 account under the *Financial Management Act 2006* section 16.
- 29 (2) WorkCover WA has the direction, control and management of
30 the DI Fund.
- 31 (3) The records of the DI Fund must account separately for
32 payments from the DI Fund under each separate provision of
33 this Act that authorises or requires a payment to be made from
34 the DI Fund.

1 **260. Payments to and from DI Fund [EISFA s. 5, 10,**
2 **WCIMA s. 106(3)(b)]**

- 3 (1) The following must be credited to the DI Fund —
- 4 (a) all contributions received or recovered under
5 Subdivision 2;
- 6 (b) all money paid to or recovered by WorkCover WA in
7 respect of a claim for compensation or insurable
8 damages charged to the DI Fund;
- 9 (c) any income derived from the investment of money
10 standing to the credit of the DI Fund;
- 11 (d) any other amount required under this Act to be credited
12 to the DI Fund.
- 13 (2) All amounts required under this Act to be paid from the DI
14 Fund are charged to the DI Fund.
- 15 (3) This section does not limit the *Financial Management Act 2006*
16 section 18.

17 **261. Payments to and from General Account [EISFA s. 6A]**

- 18 (1) If the Treasurer considers that the amount standing to the credit
19 of the DI Fund exceeds the amount that is reasonably required
20 for the purposes of the DI Fund from time to time, the Treasurer
21 may direct WorkCover WA to transfer the whole or any part of
22 that excess to the General Account for use in accordance with
23 this Act.
- 24 (2) If an amount has been transferred from the DI Fund under
25 subsection (1) and the Treasurer considers that the amount
26 standing to the credit of the DI Fund at any time is insufficient
27 for the purposes of the DI Fund, the Treasurer may direct the
28 transfer of an amount from the General Account to the DI Fund
29 (not exceeding the amount transferred from the DI Fund under
30 subsection (1)) to make up or partially make up for that
31 insufficiency.

32 **262. Advances to DI Fund [EISFA s. 7]**

- 33 (1) If the Treasurer considers that the amount standing to the credit
34 of the DI Fund at any time is insufficient for the purposes of the
35 DI Fund, an amount sufficient for the time being to make up for
36 that insufficiency may be advanced by the Treasurer to
37 WorkCover WA.

- 1 (2) If an amount can be transferred under section 261(2) (a *General*
2 *Account transfer*) to make up or partially make up for the
3 insufficiency referred to in subsection (1)—
- 4 (a) the General Account transfer must be made before an
5 advance under subsection (1) can be made; and
- 6 (b) the amount that can be advanced under subsection (1) is
7 limited to the balance of the insufficiency after the
8 General Account transfer.
- 9 (3) Any amount advanced to WorkCover WA under subsection (1)
10 must be credited to the DI Fund.
- 11 (4) Interest is payable on an advance made under subsection (1) at
12 such rate and at such times as the Treasurer determines.
- 13 (5) As and when there is a sufficient amount standing to the credit
14 of the DI Fund to enable money advanced under subsection (1)
15 to be repaid, WorkCover WA must repay to the Treasurer the
16 money advanced together with any interest payable.
- 17 (6) Until it is repaid, any advance under subsection (1) together
18 with any interest payable is a charge on the DI Fund.

19 **Subdivision 2 — Contributions to DI Fund**

20 **263. Terms used [New provision]**

- 21 (1) In this Subdivision—
- 22 *notional premium income* of a self-insurer for a financial year
23 means the amount estimated by WorkCover WA as the amount
24 that the self-insurer would have been liable to pay as the
25 premium for a workers compensation policy that would have
26 been required under this Act for the financial year had the
27 self-insurer not been a self-insurer;
- 28 *premium income* of a licensed insurer for a financial year
29 means the total amount of the premium income of the insurer
30 (whether received by or owing to the insurer) in respect of
31 workers compensation policies issued or renewed during the
32 financial year excluding any part of those premiums paid by
33 way of reinsurance to any other licensed insurer;
- 34 *total annual DI Fund contribution* has the meaning given in
35 section 264(1).
- 36 (2) WorkCover WA's estimate of the notional premium income of a
37 self-insurer for a financial year must be made on the basis of the
38 recommended premium rate applicable to the industry

1 classification appropriate to the self-insurer and the
2 remuneration of workers of the self-insurer for that financial
3 year.

4 (3) If an employer is a self-insurer for only part of a financial year,
5 the notional premium income of the self-insurer for the financial
6 year is the amount estimated by WorkCover WA as the amount
7 that the employer would have been liable to pay as the premium
8 for a workers compensation policy that would have been
9 required under this Act for that part of the financial year had the
10 employer not been a self-insurer.

11 **264. Required contributions by insurers and self-insurers to**
12 **DI Fund [New provision based on WCIMA s. 109]**

13 (1) For each financial year WorkCover WA must determine the
14 amount (if any) that is required to be paid into the DI Fund (the
15 ***total annual DI Fund contribution***) to ensure the sustainable
16 functioning of the DI Fund, having regard to —

- 17 (a) the amount standing to the credit of the DI Fund; and
18 (b) the amount required to provide for existing and expected
19 liabilities of the DI Fund, determined having regard to
20 independent actuarial advice obtained by WorkCover
21 WA.

22 (2) WorkCover WA must make the following calculations and
23 determinations for the purpose of calculating the contributions
24 to be required from licensed insurers and self-insurers to yield
25 the total annual DI Fund contribution for a financial year (the
26 ***current year***) —

- 27 (a) add the total premium income of all licensed insurers to
28 the total notional premium income of all self-insurers for
29 the financial year preceding the current year to arrive at
30 an amount that is the ***total premium income*** for that
31 preceding financial year;
32 (b) determine the percentage (the ***contribution percentage***)
33 of the total premium income for the preceding financial
34 year that yields the total annual DI Fund contribution for
35 the current year;
36 (c) calculate a contribution (the ***required DI Fund***
37 ***contribution***) for each licensed insurer and each
38 self-insurer for the current year by applying the
39 contribution percentage to the premium income of the
40 licensed insurer, or the notional premium income of the
41 self-insurer, for the preceding financial year.

- 1 (3) WorkCover WA may set a minimum required DI Fund
2 contribution for a financial year (which may be a different
3 minimum for licensed insurers and self-insurers).
- 4 (4) If a minimum required DI Fund contribution is set for a
5 financial year, the determination of the contribution percentage
6 for that financial year must make due allowance for the effect
7 that the minimum required DI Fund contribution will have on
8 the percentage of total premium income required to yield the
9 total annual DI Fund contribution.
- 10 (5) Each licensed insurer and self-insurer must pay to
11 WorkCover WA for payment into the DI Fund —
12 (a) the required DI Fund contribution for the current year
13 calculated under this section; or
14 (b) if a minimum required DI Fund contribution has been
15 set for the current year and is greater than the calculated
16 contribution referred to in paragraph (a) — the
17 minimum required DI Fund contribution for the current
18 year.
- 19 (6) In the case of a group of related self-insurers comprised of the
20 holder of a self-insurer licence and each of the related entities of
21 the holder to which the licence extends —
22 (a) the required DI Fund contribution for the self-insurers of
23 the group must be calculated as a single contribution for
24 the group; and
25 (b) a minimum required DI Fund contribution set by
26 WorkCover WA applies to the contribution calculated
27 for the group; and
28 (c) each self-insurer of the group is jointly and severally
29 liable for payment of the required contribution.
- 30 (7) When an insurer becomes a licensed insurer during the current
31 year (a *new licensed insurer*) or an employer becomes a
32 self-insurer during the current year (a *new self-insurer*) —
33 (a) no contribution to the DI Fund for the current year is
34 required from the new licensed insurer or new
35 self-insurer; and
36 (b) the calculation under this section of the required
37 DI Fund contribution must not include any amount in
38 respect of a new licensed insurer or new self-insurer.

1 **265. Arrangements for payment of contributions [New provision**
2 **based on WCIMA s. 109]**

3 (1) A contribution required to be paid by a licensed insurer or
4 self-insurer under section 264(5) is payable at such times and in
5 accordance with such arrangements (which may include
6 arrangements for payment by instalments) as WorkCover WA
7 determines and notifies to the licensed insurer or self-insurer.

8 (2) If a licensed insurer or self-insurer fails to pay the full amount
9 of a contribution (or contribution instalment) as and when
10 required under the arrangements notified by WorkCover WA —

11 (a) the full amount of the contribution (or the balance of
12 that amount that is unpaid) becomes payable
13 immediately and may be recovered by WorkCover WA
14 as a debt; and

15 (b) the licensed insurer or self-insurer commits an offence.

16 Penalty for this subsection: a fine of \$15 000.

17 (3) In the case of a contribution required to be paid by a group of
18 related self-insurers, the arrangements for payment of the
19 contribution need only be notified to the holder of the
20 self-insurer licence and, in the case of a failure to pay, only the
21 holder of the self-insurer licence commits the offence under
22 subsection (2)(b).

23 Note for this subsection:

24 Each of the related self-insurers of the group remains jointly and
25 severally liable for payment of the required contribution.

26 **266. Additional insurer contribution for unexpected claims [New**
27 **provision]**

28 (1) WorkCover WA may, after determining the total annual
29 DI Fund contribution for a financial year, determine an
30 additional DI Fund contribution for the year if satisfied that the
31 resulting additional contributions to the DI Fund are necessary
32 to enable the DI Fund to meet the cost of unexpected claims in
33 the financial year.

34 (2) A claim must satisfy the following requirements to be
35 considered an unexpected claim in a financial year —

36 (a) the claim or class of claim concerned was not
37 reasonably foreseeable when the determination of the
38 total annual DI Fund contribution for the financial year
39 was made;

40 (b) the claim is brought during the financial year;

1 (c) in the opinion of WorkCover WA the DI Fund will not
2 be able to meet the cost of the claim without the
3 additional DI Fund contribution.

4 (3) If an additional DI Fund contribution is determined for a
5 financial year, each licensed insurer and self-insurer must pay
6 additional contributions to WorkCover WA for payment into the
7 DI Fund and for that purpose sections 264 and 265 apply in
8 respect of any additional DI Fund contribution in the same way
9 as they apply in respect of a total annual DI Fund contribution.

10 (4) More than 1 additional DI Fund contribution may be determined
11 under subsection (1) for a financial year.

12 **267. Provision of information by licensed insurers and**
13 **self-insurers [New provision based on WCIMA s. 109]**

14 (1) WorkCover WA may direct a licensed insurer or self-insurer to
15 provide WorkCover WA with such information as
16 WorkCover WA may reasonably require to determine the
17 premium income of the licensed insurer or the notional premium
18 income of the self-insurer.

19 (2) A direction must specify —
20 (a) the information required to be provided; and
21 (b) the form and manner in which it must be provided; and
22 (c) the period within which it must be provided.

23 (3) A licensed insurer or self-insurer commits an offence if the
24 licensed insurer or self-insurer —
25 (a) fails to provide information to WorkCover WA as
26 directed under this section; or
27 (b) in purported compliance with a direction under this
28 section provides information that the licensed insurer or
29 self-insurer knows to be false or misleading in a material
30 particular.

31 Penalty for this subsection: a fine of \$10 000.

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Division 7 — Uninsured employers

268. Uninsured employer [WCIMA s. 174(1)(b), (1AA)(d)]

- (1) For the purposes of this Division, an employer is an *uninsured employer* in respect of a liability to pay compensation or insurable damages for an injury to a worker if —
 - (a) the employer is not insured against the liability under a workers compensation policy; or
 - (b) the liability of the insurer of the employer under a workers compensation policy is less than the liability of the employer; or
 - (c) the employer’s insurer has refused to indemnify the employer against the liability as permitted by section 244.
- (2) An employer is not an uninsured employer in respect of a liability incurred when the employer was a self-insurer.
- (3) An employer is not an uninsured employer in respect of a liability that is a compensation liability in respect of a declared act of terrorism (as defined in section 288).

269. Payment of compensation when employer uninsured [WCIMA s. 174(1), (5AA)]

- (1) If an employer is uninsured in respect of a liability to pay compensation and fails to pay the compensation within 30 days after the employer has accepted (or is taken to have accepted), or an arbitrator has determined, that the employer is liable to pay the compensation, WorkCover WA must pay to the worker from the DI Fund the amount required to satisfy the liability and any award for costs in respect of it.
- (2) If WorkCover WA is required by this section to pay to a worker an amount in respect of an injury —
 - (a) the amount of that payment is reduced by the amount of any compensation payable to the worker by any other employer in respect of the injury; and
 - (b) the employer paying that compensation has no right under Part 7 Division 3 to recovery of, or indemnity for, the compensation from the worker.

1 **270. Payment of damages when employer uninsured**
2 **[WCIMA s. 174(1AA), (5AA)]**

- 3 (1) If insurable damages are awarded by judgment against an
4 employer who is uninsured in respect of the liability to pay the
5 damages and the employer does not pay the damages awarded
6 within 30 days after the due date for payment, WorkCover WA
7 must pay the appropriate amount to the worker from the
8 DI Fund.
- 9 (2) The appropriate amount for payment is the amount required to
10 satisfy the judgment (to the extent that it provides for the
11 payment of insurable damages) and any order against the
12 employer for costs in respect of the action.
- 13 (3) If the insurable damages awarded to a worker are for
14 mesothelioma or the worker's death is imminent,
15 WorkCover WA may pay the appropriate amount to the worker
16 from the DI Fund after the due date for payment of the damages
17 without regard to the requirement that the employer has not paid
18 the damages awarded within 30 days after the due date for
19 payment.
- 20 (4) For the purposes of this section —
- 21 (a) a reference to judgment includes a reference to the
22 acceptance of an offer to consent to judgment and to
23 settlement by agreement made with WorkCover WA in
24 the performance by WorkCover WA of the rights of an
25 uninsured employer under section 275; and
- 26 (b) a reference to damages awarded includes a reference to
27 damages so agreed; and
- 28 (c) a reference to the the due date for payment of damages
29 is a reference to the date payment is due under the
30 judgment.
- 31 (5) If WorkCover WA is required by this section to pay to a worker
32 an amount in respect of an injury —
- 33 (a) the amount of that payment is reduced by the amount of
34 any compensation payable to the worker by any
35 employer in respect of the injury (except to the extent
36 that the damages awarded have already been reduced on
37 account of compensation payable); and
- 38 (b) the employer paying that compensation has no right
39 under Part 7 Division 3 to recovery of, or indemnity for,
40 the compensation from the worker.

- 1 **271. Payment of compensation for dust disease or prescribed**
2 **disease when insurer unknown or has ceased operation**
3 **[WCIMA s. 174(3), (4), (5)]**
- 4 (1) In this section —
5 *prescribed disease* means a disease that is a prescribed disease
6 under section 10(1).
- 7 (2) If a worker is entitled to compensation from an employer in
8 respect of an injury by disease that is a dust disease or
9 prescribed disease but the identity of the employer's insurer, if
10 any, is not known or the employer's insurer has ceased to
11 operate in Australia, an arbitrator may order WorkCover WA to
12 pay compensation to the worker from the DI Fund.
- 13 (3) The amount of compensation payable to the worker must be
14 paid within 30 days after the employer has accepted (or is taken
15 to have accepted) or an arbitrator has determined that the
16 employer is liable to pay the compensation.
- 17 (4) If the identity of the insurer is ascertained after payment has
18 been made under this section, WorkCover WA may sue for and
19 recover the amount paid from the insurer as a debt to the extent
20 that the insured employer could have sued for and recovered
21 that amount under the insurance policy.
- 22 (5) This section does not apply to an entitlement to compensation
23 from an employer in respect of an injury that is a liability in
24 respect of employment when the employer was a self-insurer.
- 25 **272. Recovery of compensation or damages paid for uninsured**
26 **employer [WCIMA s. 174(6), (7), (8), (9)]**
- 27 (1) WorkCover WA may certify the amount of any payment from
28 the DI Fund under section 269 or 270 in respect of a liability of
29 an employer and may file the certificate in a court of competent
30 jurisdiction.
- 31 (2) The certificate when filed is taken to be a judgment of the court
32 for a debt payable by the employer to WorkCover WA of the
33 amount stated in the certificate, and may be enforced
34 accordingly.
- 35 (3) If the payment from the DI Fund is in respect of the liability of
36 more than 1 person as an employer, a reference in this section to
37 the employer is a reference to each person so liable, and the
38 judgment may be enforced against those persons jointly and
39 severally.

1 (4) No charge is payable for filing a certificate under this section.

2 **273. Setting aside certain judgments and agreements**
3 **[WCIMA s. 174AAA]**

4 (1) WorkCover WA may apply to the Supreme Court for an order
5 setting aside a judgment or agreement that is the basis for a
6 claim against the DI Fund under section 270 for the payment of
7 insurable damages by an employer who is uninsured in respect
8 of the liability to pay the damages.

9 (2) The Supreme Court may set aside the judgment or agreement if
10 satisfied that there are reasonable grounds for believing that the
11 employer has not taken all reasonable steps to protect the
12 employer's own interests.

13 (3) If the Supreme Court sets aside the judgment or agreement the
14 costs of the respondent in relation to the application are to be
15 paid from the DI Fund unless the Supreme Court orders
16 otherwise.

17 (4) The Supreme Court may make an order about those costs only if
18 satisfied that it is appropriate to make the order because of the
19 special circumstances surrounding the giving of the judgment or
20 the making of the agreement.

21 (5) If a judgment or agreement is set aside under this section —

22 (a) the judgment or agreement is taken never to have had
23 effect for the purpose of any proceeding in any court;
24 and

25 (b) evidence of a statement or communication, or a part of a
26 statement or communication, tending to establish the
27 existence of the agreement is not admissible in any
28 proceeding in a court unless the Supreme Court orders
29 otherwise on the basis that the admission of the evidence
30 is necessary to avoid injustice to a party to the
31 proceeding.

32 **274. Recovery of uninsured employer payment from officer of**
33 **body corporate [WCIMA s. 174AA]**

34 (1) If a body corporate was uninsured in respect of a liability to
35 which a payment from the DI Fund under section 269 or 270
36 relates and WorkCover WA has judgment for the recovery from
37 the body corporate of the amount paid, WorkCover WA may
38 sue for and recover from a responsible officer of the body

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Division 7 Uninsured employers

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1 corporate any amount of the judgment that is not recoverable
2 from the body corporate.

3 (2) A person is a *responsible officer* of the body corporate if the
4 person was a director or other officer concerned in the
5 management of the body corporate at the time the body
6 corporate was uninsured.

7 (3) A person is not a responsible officer of the body corporate if the
8 person proves that —

9 (a) the body corporate was uninsured in respect of the
10 liability because of a failure by the body corporate to
11 obtain a workers compensation policy and that failure
12 occurred without the person's consent or connivance;
13 and

14 (b) the person exercised all such due diligence to prevent
15 that failure as ought to have been exercised having
16 regard to the nature of the person's functions and to all
17 the circumstances.

18 (4) An amount is considered to be not recoverable from a body
19 corporate if WorkCover WA certifies that it will be unable or
20 unlikely to recover the amount from the body corporate by
21 reasonable efforts at recovery, whether because the body
22 corporate is being wound up and is unable to pay its debts, or
23 otherwise.

24 (5) This section applies even if the body corporate has ceased to
25 exist.

26 **275. Exercise by WorkCover WA of rights of uninsured**
27 **employer [WCIMA s. 174(1a), 174AB]**

28 (1) If an employer is uninsured in respect of a liability to pay
29 compensation or insurable damages and a claim or action for the
30 compensation or damages is brought against the employer,
31 WorkCover WA has all of the rights of the employer as the
32 party against whom the claim or action is brought in place of the
33 employer, including the right to —

34 (a) become a party to proceedings in relation to the claim or
35 action; and

36 (b) consent to an award or order being made in a proceeding
37 before a dispute resolution authority; and

38 (c) consent to a judgment being given in a proceeding
39 before a court; and

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1 considers necessary or desirable in relation to the
2 exercise or possible exercise of the right; and
3 (c) execute any documents or instruments that may be
4 necessary or desirable to enable WorkCover WA to
5 exercise the right, or to ratify or confirm any exercise or
6 purported exercise of the right by WorkCover WA.

7 (2) An employer must comply with any requirement made under
8 subsection (1).

9 Penalty for this subsection: a fine of \$15 000.

10 **278. Liability of employer if employment believed to be not**
11 **connected with this State [WCIMA s. 174(5a)]**

12 If WorkCover WA is satisfied that the reason for an employer
13 being uninsured in respect of a liability to pay compensation or
14 insurable damages for an injury to a worker is that the employer
15 believed on reasonable grounds that the worker's employment
16 was not connected with this State, the employer is not liable to
17 WorkCover WA for any amount paid under this Division in
18 respect of the liability.

19 Note for this section:

20 Section 528 provides for the State with which a worker's employment
21 is connected.

22 **279. Payment to employer not required [WCIMA s. 174(5AB)]**

23 Nothing in this Division requires WorkCover WA to make any
24 payment to the employer of a worker or to any person who is
25 taken to be the employer of a worker.

26 Note for this section:

27 For example, WorkCover WA is not required to make a payment to a
28 principal who under section 218 is taken to be the employer of a
29 worker employed by a contractor. See also section 220(2)(c).

30 **Division 8 — Insurer and self-insurer insolvency**

31 **280. Terms used [New provision]**

32 (1) In this Division —

33 ***insolvent insurer*** means a licensed insurer that —

34 (a) is an insolvent body corporate; or

35 (b) is believed by WorkCover WA on reasonable grounds to
36 be or to be likely to be unable to discharge in full any
37 liability arising under a workers compensation policy
38 issued by the insurer;

1 ***insolvent self-insurer*** means an employer who is or was a
2 self-insurer and who —

- 3 (a) is an insolvent body corporate; or
4 (b) is, according to the *Interpretation Act 1984* section 13D,
5 a bankrupt or a person whose affairs are under
6 insolvency laws; or
7 (c) has left the State and whose whereabouts are unknown;
8 or
9 (d) is believed by WorkCover WA on reasonable grounds to
10 be or to be likely to be unable to discharge in full any
11 self-insurer liability of the employer;

12 ***liquidator*** includes an official manager, receiver or receiver and
13 manager.

14 (2) For the purposes of this Division —

- 15 (a) a body corporate is ***insolvent*** if —
16 (i) the body corporate is being or has been wound
17 up; or
18 (ii) a receiver or manager of the property of the body
19 corporate has been appointed, or the body
20 corporate has been placed under administration,
21 under the provisions of the *Corporations*
22 *Act 2001* (Commonwealth) or any corresponding
23 previous enactment;

24 and

- 25 (b) a reference to a ***self-insurer*** includes an employer who
26 was a self-insurer.

27 **281. Claims against WorkCover WA for insolvent insurer and**
28 **self-insurer liabilities [EISFA s. 19]**

- 29 (1) If the insurer under an insurance policy that covers an employer
30 for liability for compensation or insurable damages is an
31 insolvent insurer, a claim for the compensation or damages may
32 be made against WorkCover WA.
33 (2) If an employer is an insolvent self-insurer, a claim for
34 compensation or insurable damages payable in respect of a
35 self-insurer liability of the employer may be made against
36 WorkCover WA.
37 (3) A claim against WorkCover WA under this section is for —
38 (a) the amount of a claim that a person has against the
39 employer for the compensation or damages if there has

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- 1 been no judgment given against the employer for the
2 compensation or damages; or
- 3 (b) if judgment has been given against the employer for the
4 compensation or damages — the amount of the
5 judgment.
- 6 (4) If the claim against WorkCover WA is in respect of a judgment,
7 the claim may be made by —
- 8 (a) the person in whose favour the judgment was given (in
9 which case the claim is for payment of the amount of the
10 judgment); or
- 11 (b) the employer if the employer has paid the amount of the
12 judgment (in which case the claim is for reimbursement
13 of the amount paid by the employer).
- 14 (5) If the claim against WorkCover WA is in respect of a claim for
15 compensation or damages where there has been no judgment
16 given against the employer for the compensation or damages,
17 the claim against WorkCover WA may be made by —
- 18 (a) the person entitled to claim the compensation or
19 damages (in which case the claim against
20 WorkCover WA is for payment of the amount of the
21 compensation or damages); or
- 22 (b) the employer if the employer has paid the amount of the
23 compensation or damages claimed (in which case the
24 claim against WorkCover WA is for reimbursement of
25 the amount paid by the employer).
- 26 (6) A reference in this section to judgment given for compensation
27 or damages is a reference to final judgment and includes a
28 reference to an order or award for compensation or damages.
- 29 (7) This section applies in respect of a claim for compensation or
30 damages where there has been no judgment given against the
31 employer for the compensation or damages as if a reference to
32 compensation or damages included an amount in settlement of a
33 claim for compensation or damages.
- 34 (8) A claim against WorkCover WA under this section must be
35 made in writing lodged with WorkCover WA and must be
36 accompanied by —
- 37 (a) a copy of any judgment, order or award to which the
38 claim relates; and
- 39 (b) such other information relevant to the claim as
40 WorkCover WA may require.

1 **282. Payment of claims [EISFA s. 22, 24, 25]**

2 (1) WorkCover WA must pay a claimant under this Division the
3 amount necessary to satisfy the claim, and that payment
4 discharges the liability of WorkCover WA in respect of the
5 claim.

6 (2) Amounts payable by WorkCover WA in satisfaction of a claim
7 are charged to the DI Fund.

8 **283. Recovery by WorkCover WA of payment made in**
9 **satisfaction of claims [EISFA s. 37]**

10 (1) An amount paid by WorkCover WA in satisfaction of a claim
11 under this Division may be recovered by WorkCover WA as a
12 debt due to WorkCover WA from —

13 (a) the insolvent insurer or insolvent self-insurer in respect
14 of which the claim was made; or

15 (b) any person against whom the insolvent insurer or
16 insolvent self-insurer has, or had at any time, a right of
17 indemnity or contribution in respect of the injury to or
18 death of the worker to which the claim relates.

19 (2) The amount recoverable from an insolvent insurer or insolvent
20 self-insurer under subsection (1) in respect of a claim is reduced
21 by the amount of any payment to WorkCover WA in respect of
22 the claim by the liquidator of the insolvent insurer or insolvent
23 self-insurer under section 285.

24 Note for this subsection:

25 The amount recoverable from an insolvent self-insurer is also reduced
26 by any amount paid to WorkCover WA as a result of a demand made
27 under a self-insurer security — see section 255(2).

28 (3) Any amount recovered by WorkCover WA under subsection (1)
29 must be credited to the DI Fund.

30 **284. Control of powers of liquidator of insurer or self-insurer**
31 **[EISFA s. 35]**

32 (1) This section applies to the exercise by the liquidator of an
33 insurer or self-insurer of the liquidator's powers under the
34 *Corporations Act 2001* (Commonwealth) section 477 with
35 respect to any claim, judgment, order or award arising out of or
36 in relation to a workers compensation policy issued by the
37 insurer or a self-insurer liability of the self-insurer.

- 1 (2) The liquidator is not entitled to exercise the liquidator's powers
2 under section 477(1) of that Act without the authority of
3 WorkCover WA.
- 4 (3) Section 477(1)(b) of that Act is not subject to the provisions of
5 section 556 of that Act.
- 6 (4) Section 477(2A) and (2B) of that Act apply as if the references
7 in those provisions to the approval of the Court, of the
8 committee of inspection or of a resolution of the creditors were
9 references to the approval of WorkCover WA.
- 10 (5) Subsections (2) to (4) are declared to be Corporations legislation
11 displacement provisions for the purposes of the *Corporations*
12 *Act 2001* (Commonwealth) section 5G in relation to section 477
13 of that Act.

14 **285. Payment into DI Fund of money recovered by liquidator**
15 **[EISFA s. 36]**

- 16 (1) In this section —
17 *reinsurance payment* means an amount paid by a reinsurer
18 under a contract of reinsurance that insures a defaulting insurer
19 against liability in respect of a workers compensation policy
20 issued by the defaulting insurer.
- 21 (2) For the purposes of this section, an insurer or self-insurer is a
22 *defaulting insurer* if any liability of the insurer under a workers
23 compensation policy or any self-insurer liability of the
24 self-insurer has been met by a payment (a *defaulting insurer*
25 *payment*) by WorkCover WA pursuant to a claim under this
26 Division.
- 27 (3) The liquidator of a defaulting insurer must pay to
28 WorkCover WA for payment into the DI Fund —
29 (a) any reinsurance payment received by the liquidator in
30 respect of a liability of the defaulting insurer that has
31 been met by a defaulting insurer payment; and
32 (b) any amount recovered by the liquidator that is due to the
33 defaulting insurer as a consequence of a liability of the
34 defaulting insurer under a workers compensation policy
35 or any self-insurer liability of the defaulting insurer
36 having been met by a defaulting insurer payment.
- 37 (4) The reinsurance payment or amount that a liquidator is required
38 to pay to WorkCover WA under subsection (3) is reduced by the

1 amount of any expenses of or incidental to the recovery of the
2 reinsurance payment or amount.

3 (5) A payment required by subsection (3) is in priority to all
4 payments in respect of the debts referred to in the *Corporations*
5 *Act 2001* (Commonwealth) section 556.

6 (6) The payment of an amount required by subsection (3) is
7 declared to be an excluded matter for the purposes of the
8 *Corporations Act 2001* (Commonwealth) section 5F in relation
9 to that Act to the extent to which the payment of the amount is
10 governed by this section.

11 (7) This section has effect despite any agreement to the contrary
12 other than an agreement under section 287.

13 **286. Liquidator to notify WorkCover WA of dissolution of**
14 **insurer or self-insurer [EISFA s. 38]**

15 If the liquidator of a licensed insurer or self-insurer applies to a
16 court under a law of the State, another State or the
17 Commonwealth for an order that the insurer or self-insurer be
18 dissolved, the liquidator must —

- 19 (a) notify WorkCover WA in writing of the making of that
20 application; and
21 (b) serve on WorkCover WA a copy of any order made by
22 the court on that application.

23 **287. WorkCover WA may accept final payment from liquidator**
24 **[EISFA s. 38A]**

25 (1) WorkCover WA may accept from the liquidator of an insurer or
26 self-insurer an amount, as agreed between WorkCover WA and
27 the liquidator, for payment into the DI Fund in full and final
28 satisfaction of all rights, whether actual, contingent or
29 prospective, that WorkCover WA has or may have against the
30 liquidator, insurer or self-insurer under this Act.

31 (2) Without limiting the operation of subsection (1), if
32 WorkCover WA accepts an amount from the liquidator of an
33 insurer or self-insurer under that subsection the acceptance
34 discharges any liability the liquidator might otherwise have to
35 make any payment under section 285.

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Division 9 — Acts of terrorism

288. Terms used [New provision]

3 In this Division —

4 *act of terrorism* has the meaning given in section 289(1);

5 *compensation liability* means a liability of an employer for
6 compensation;

7 *compensation liability in respect of a declared act of terrorism*
8 means a compensation liability in respect of an injury to or the
9 death of a worker that is attributable to a declared act of
10 terrorism;

11 *declared act of terrorism* means an action or threat of an action
12 declared by the Minister under section 290 to be a declared act
13 of terrorism.

289. Term used: act of terrorism [New provision]

14 (1) In this Division —

15 *act of terrorism* means a dangerous action or threat of a
16 dangerous action, if the dangerous action is done or the threat is
17 made with the intention of advancing a political, religious or
18 ideological cause and with the intention of —

19 (a) coercing, or influencing by intimidation, the government
20 of a State, the Commonwealth or a foreign country or of
21 part of a State or foreign country; or

22 (b) intimidating the public or a section of the public.

23 (2) A *dangerous action* is an action that has 1 or more of the
24 following results (each a *dangerous result*) —

25 (a) causes serious harm that is physical harm to a person;

26 (b) causes serious damage to property;

27 (c) causes a person's death;

28 (d) endangers a person's life, other than the life of the
29 person taking the action;

30 (e) creates a serious risk to the health or safety of the public
31 or a section of the public.

32 (3) Advocacy, protest, dissent or industrial action is not a dangerous
33 action if it is not intended to have any dangerous result.
34

1 **290. Declaration of act of terrorism [New provision based on**
2 **WCIMATA s. 8]**

3 (1) The Minister may by order published in the *Gazette* declare an
4 action or threat of an action that the Minister is satisfied is an
5 act of terrorism to be a declared act of terrorism for the purposes
6 of this Act.

7 (2) The declaration must identify the declared act of terrorism with
8 sufficient particularity to enable a person to know whether a
9 claim for compensation by the person might be affected by the
10 declaration.

11 (3) The declaration must specify the day on which the declared act
12 of terrorism must be treated, for the purposes of this Act, as
13 having occurred.

14 (4) This Division extends to a compensation liability in respect of a
15 declared act of terrorism that was incurred before the
16 declaration of the declared act of terrorism.

17 **291. Exclusion of declared act of terrorism from insurance [New**
18 **provision based on WCIMATA s. 4 to 7]**

19 A workers compensation policy does not insure, and is not
20 required to insure, an employer for any compensation liability in
21 respect of a declared act of terrorism.

22 **292. Claims for compensation in respect of declared act of**
23 **terrorism [New provision based on WCIMATA s. 9]**

24 (1) An employer who has a compensation liability in respect of a
25 declared act of terrorism may make a claim against
26 WorkCover WA for payment or reimbursement of payment of
27 any claim arising from that liability.

28 (2) WorkCover WA must pay a claimant under this Division such
29 amount as may be necessary to satisfy the claim, and that
30 payment discharges the liability of WorkCover WA.

31 (3) Amounts payable by WorkCover WA in satisfaction of a claim
32 under this Division are payable from the DI Fund.

33 **293. Limits on claims for declared acts of terrorism [New**
34 **provision based on WCIMATA s. 8, WCIMA s. 169]**

35 (1) The regulations may impose a limit (a *claims limit*) on the total
36 amount of the compensation liability of all employers in respect
37 of a declared act of terrorism.

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Part 5 Insurance

Division 9 Acts of terrorism

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- 1 (2) Either or both of the following claims limits may be imposed —
2 (a) a limit on the total amount of the compensation liability
3 for claims payable during a specified period;
4 (b) a limit on the total amount of the claims that are payable
5 in respect of a particular declared act of terrorism.
- 6 (3) If a claims limit is imposed, WorkCover WA must —
7 (a) make an estimate, based on actuarial advice, of the total
8 amount of the compensation liability of all employers in
9 respect of all the claims to which the claims limit is
10 applicable (the *total claims amount*); and
11 (b) determine for that claims limit the amount (the
12 *reduction factor*) by which the total claims amount
13 would have to be multiplied to reduce the total claims
14 amount to the amount of the claims limit applicable to
15 those claims.
- 16 (4) The compensation liability of an employer in respect of a claim
17 to which a claims limit is applicable is limited to the amount
18 arrived at by multiplying that compensation liability by the
19 reduction factor determined for that claims limit.

20 Note for this subsection:

21 The liability of WorkCover WA for a claim to which a claims limit is
22 applicable is also limited by the claims limit because the liability of
23 WorkCover WA is limited to the liability of the employer.

24 **294. WorkCover WA's rights of indemnity and subrogation**
25 **[New provision based on WCIMATA s. 9]**

- 26 (1) If WorkCover WA has paid, or is liable to pay, under this
27 Division an amount as compensation for which an employer is
28 liable, WorkCover WA is subrogated to any right the employer
29 would have had, if the employer had made the payment, to
30 recover any amount from any other person in respect of that
31 payment, whether the right arises by way of liability for
32 contribution, apportionment of liability or otherwise.
- 33 (2) An amount recovered by WorkCover WA in the exercise of any
34 right to which WorkCover WA is subrogated under
35 subsection (1) must be credited to the DI Fund.

1 **Division 10 — Special provisions for waterfront worker dust**
2 **diseases if employer unknown**

3 **295. Terms used [WW(CARD) s. 3]**

4 In this Division —

5 *last relevant employer*, in relation to a worker who suffers an
6 injury from employment that is by dust disease, means the
7 employer who last employed the worker in the employment;

8 *waterfront worker* means a worker employed in or about a
9 harbour or port area at a time when asbestos was being loaded
10 or unloaded from a vessel or otherwise handled in that harbour
11 or port area.

12 **296. Claim for compensation if last relevant employer unknown**
13 **[WW(CARD) s. 5]**

14 (1) A claim for compensation payable by an employer in respect of
15 an injury by dust disease suffered by a waterfront worker or the
16 death of a waterfront worker resulting from such an injury may
17 be made against WorkCover WA if the identity of the last
18 relevant employer of the waterfront worker is not known.

19 (2) A claimant under subsection (1) has the same rights and
20 remedies against WorkCover WA, and WorkCover WA has the
21 same liability to the claimant and the same rights and remedies
22 in respect of that liability, as the claimant and WorkCover WA
23 would have had if WorkCover WA were the last relevant
24 employer of the waterfront worker.

25 **297. Payment of claim [WW(CARD) s. 6]**

26 (1) WorkCover WA must pay a claimant under section 296(1) such
27 amount as may be necessary to satisfy the claim, and that
28 payment discharges the liability of WorkCover WA in respect
29 of the claim.

30 (2) An amount payable by WorkCover WA in satisfaction of a
31 claim under section 296(1) is payable from the DI Fund.

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Part 5 Insurance

Division 11 Contributions to Motor Vehicle and Workplace Accidents
(Catastrophic Injuries) Fund

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1 **298. Recovery of money paid in satisfaction of claim**
2 **[WW(CARD) s. 9]**

- 3 (1) WorkCover WA may apply to an arbitrator for an order under
4 this section if WorkCover WA has evidence of —
- 5 (a) the identity of the employer who was liable to pay the
6 compensation paid by WorkCover WA in satisfaction of
7 a claim under this Division; or
- 8 (b) the identity of that employer and the identity of the
9 insurer who is liable to indemnify the employer against
10 the liability to pay that compensation.
- 11 (2) An arbitrator may make the following orders —
- 12 (a) an order that the employer was liable to pay
13 compensation paid by WorkCover WA in satisfaction of
14 a claim under this Division;
- 15 (b) an order that the insurer is liable to indemnify the
16 employer against the employer's liability to pay that
17 compensation;
- 18 (c) an order that the amount of the compensation be
19 refunded to WorkCover WA by the employer or the
20 insurer.
- 21 (3) An amount refunded to WorkCover pursuant to an order under
22 this section must be paid into the DI Fund.

23 **Division 11 — Contributions to Motor Vehicle and Workplace**
24 **Accidents (Catastrophic Injuries) Fund**

25 **299. Terms used [New provision]**

26 In this Division —

27 **CIF** means the Motor Vehicle and Workplace Accidents
28 (Catastrophic Injuries) Fund administered by the Insurance
29 Commission under the *Insurance Commission of Western*
30 *Australia Act 1986* section 16;

31 **required CIF contribution** has the meaning given in
32 section 301(1);

33 **total annual CIF contribution** has the meaning given in
34 section 300(1);

35 **workplace injury liabilities** means the liabilities of the CIF
36 under the *Motor Vehicle and Workplace Accidents*
37 *(Catastrophic Injuries) Act 2016* in respect of workplace
38 injuries to which that Act applies.

1 **300. Insurance Commission to determine required contributions**
2 **to CIF [New provision]**

3 (1) For each financial year the Insurance Commission must
4 determine the amount (the *total annual CIF contribution*) that
5 is required to be credited to the CIF to ensure the sustainable
6 functioning of the CIF in respect of workplace injury liabilities,
7 having regard to —

8 (a) the amount standing to the credit of the CIF in respect of
9 workplace injury liabilities; and

10 (b) the amount required to provide for existing and expected
11 workplace injury liabilities of the CIF, determined
12 having regard to independent actuarial advice obtained
13 by the Insurance Commission.

14 (2) The Insurance Commission must notify WorkCover WA of the
15 total annual CIF contribution for a financial year.

16 **301. Calculation of required insurer contributions to CIF [New**
17 **provision]**

18 (1) WorkCover WA must calculate the contributions (*required CIF*
19 *contributions*) to be required from licensed insurers and
20 self-insurers to yield the total annual CIF contribution for a
21 financial year.

22 (2) Section 264(2) to (7) applies to the calculation of CIF
23 contributions and to the setting of a minimum contribution as if
24 a reference in that section —

25 (a) to the total annual DI Fund contribution were a
26 reference to the total annual CIF contribution; and

27 (b) to a required DI Fund contribution were a reference to a
28 required CIF contribution.

29 **302. Requirement for payment of CIF contributions by insurers**
30 **and self-insurers [New provision]**

31 (1) Each licensed insurer and self-insurer must pay to
32 WorkCover WA for crediting to the CIF —

33 (a) the required CIF contribution for a financial year
34 calculated under this Division; or

35 (b) if a minimum required CIF contribution has been set for
36 the financial year that is greater than the calculated
37 contribution referred to in paragraph (a) — the
38 minimum required CIF contribution for that year.

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Division 11 Contributions to Motor Vehicle and Workplace Accidents
(Catastrophic Injuries) Fund

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- 1 (2) In the case of a group of related self-insurers comprised of the
2 holder of a self-insurer licence and each of the related entities of
3 the holder to which the licence extends —
- 4 (a) the required CIF contribution for the self-insurers of the
5 group must be calculated as a single contribution for the
6 group; and
- 7 (b) a minimum required CIF contribution set by WorkCover
8 WA applies to the contribution calculated for the group;
9 and
- 10 (c) each self-insurer of the group is jointly and severally
11 liable for payment of the required contribution.
- 12 (3) Section 265 applies to a CIF contribution in the same way as it
13 applies to DI Fund contribution.
- 14 (4) Contributions paid to or recovered by WorkCover WA under
15 this Division must be remitted to the Insurance Commission in
16 accordance with arrangements agreed to by WorkCover WA
17 and the Insurance Commission.

18 **303. Additional insurer contribution for unexpected liabilities**
19 **[New provision]**

- 20 (1) WorkCover WA may, on advice from the Insurance
21 Commission and after determining the total annual CIF
22 contribution for a financial year, determine an additional CIF
23 contribution for the year if satisfied that the resulting additional
24 contributions to the CIF are necessary to enable the CIF to meet
25 unexpected workplace injury liabilities in the financial year.
- 26 (2) A workplace injury liability must satisfy the following
27 requirements to be considered an unexpected workplace injury
28 liability in a financial year —
- 29 (a) the liability was not reasonably foreseeable when the
30 determination of the total annual CIF contribution for
31 the financial year was made;
- 32 (b) the liability will be incurred during the financial year;
- 33 (c) in the opinion of the Insurance Commission the amount
34 standing to the credit of the CIF in respect of workplace
35 injury liabilities will not be sufficient to meet the
36 liability without the additional CIF contribution.
- 37 (3) If an additional CIF contribution is determined for a financial
38 year, each licensed insurer and self-insurer must pay additional
39 contributions to WorkCover WA for crediting to the CIF and for

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-
- 1 that purpose sections 264 and 265 apply in respect of an
2 additional CIF contribution in the same way as they apply in
3 respect of a total annual CIF contribution.
- 4 (4) More than 1 additional CIF contribution may be determined
5 under subsection (1) for a financial year.

2021 CONSULTATION ONLY

1 **Part 6 — Dispute resolution**

2 **Division 1 — General**

3 **304. Terms used [New provision, WCIMA s. 5, 176]**

4 In this Part —

5 ***agent service*** means any service performed by a person —

- 6 (a) in the person's capacity as an agent acting for a person
7 in connection with a dispute under this Act; and
8 (b) in or for the purposes of a proceeding before a dispute
9 resolution authority;

10 ***authorised agent*** means —

- 11 (a) a registered independent agent; or
12 (b) a person who is a member of a class of persons who are
13 authorised by the regulations to provide agent services;

14 Note for this definition:

15 A registered independent agent is a person registered as an
16 independent agent under the regulations (as provided for by
17 section 573(2)). Registration of independent agents is only for 2 years
18 after the day on which section 603 comes into operation.

19 ***decision*** includes an order, award, direction or determination;

20 ***dispute*** means —

- 21 (a) a dispute in connection with a claim for compensation,
22 or the liability to pay compensation, under this Act; or
23 (b) a dispute in connection with an obligation imposed
24 under Part 3; or
25 (c) any matter for which provision is made under this Act
26 for a determination by an arbitrator; or
27 (d) any other matter of a kind prescribed by the regulations;

28 ***interim compensation direction*** has the meaning given in
29 section 321(1);

30 ***party***, to a dispute, means the worker, the employer or the
31 insurer of the employer.

32 **305. Exclusive jurisdiction of arbitrators [WCIMA s. 176]**

- 33 (1) A proceeding for the determination of a dispute cannot be
34 brought other than under this Part.

1 (2) Subject to this Act, arbitrators have exclusive jurisdiction to
2 examine, hear and determine all disputes.

3 Note for this subsection:

4 This Part provides for an appeal to the District Court against a decision
5 of an arbitrator in certain circumstances.

6 **306. Object of this Part [WCIMA s. 177]**

7 The object of this Part is to provide a fair and cost effective
8 system for the resolution of disputes under this Act that —

- 9 (a) is timely; and
10 (b) is accessible, approachable and professional; and
11 (c) minimises costs to parties to disputes; and
12 (d) in the case of conciliation — leads to final and
13 appropriate agreements between parties in relation to
14 disputes; and
15 (e) in the case of arbitration — enables disputes not
16 resolved by conciliation to be determined according to
17 their substantial merits with as little formality and
18 technicality as practicable.

19 **307. Relevant documents [WCIMA s. 180]**

20 (1) In this section —
21 *injury* includes alleged injury;
22 *relevant document*, in relation to a worker who has suffered an
23 injury, means any of the following —

- 24 (a) a contract of service or apprenticeship to which the
25 worker is a party;
26 (b) a contract for service to which the worker is a party;
27 (c) records of wages or other remuneration paid to the
28 worker;
29 (d) a report relevant to the injury by a health professional
30 who has treated the worker for the injury;
31 (e) a report by a health professional who has conducted
32 tests or investigations on the worker in relation to the
33 injury;
34 (f) a report by a health professional who has been consulted
35 by a health professional referred to in paragraph (d)
36 or (e) in connection with treatment of, or tests or
37 investigations in relation to, the injury;

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- 1 (g) a report under section 195(1) on the results of an
2 assessment of the worker's degree of permanent
3 impairment;
- 4 (h) a report by an approved workplace rehabilitation
5 provider in relation to the worker;
- 6 (i) a claim for compensation with respect to the injury
7 made in accordance with this Act;
- 8 (j) a document of a kind prescribed by the regulations.
- 9 (2) A worker who has suffered an injury from employment may
10 request the worker's employer at the time of the employment, or
11 that employer's insurer, to provide the worker with a copy of
12 relevant documents that are in the possession of or under the
13 control of the employer or insurer.
- 14 (3) If a worker has made a claim for compensation with respect to
15 noise-induced hearing loss in accordance with this Act, the
16 worker's employer or that employer's insurer may request
17 WorkCover WA to provide the person making the request with
18 a copy of any documents in the possession of or under the
19 control of WorkCover WA that —
- 20 (a) are of a kind described in paragraph (d), (e) or (f) of the
21 definition of *relevant document* in subsection (1); or
- 22 (b) relate to the worker's employment history or the
23 worker's exposure to noise.
- 24 (4) A request under subsection (2) or (3) must be made in
25 accordance with the conciliation rules or arbitration rules and
26 must be complied with within the period prescribed by the
27 relevant rules.
- 28 (5) A request under subsection (2) may be made by a legal
29 practitioner or authorised agent acting for the worker if the
30 request is accompanied by a written authority from the worker
31 that authorises copies of relevant documents to be provided to
32 the legal practitioner or authorised agent.
- 33 (6) An employer or insurer requested to provide a copy of a
34 document under subsection (2) that fails to comply with the
35 request within the period referred to in subsection (4) commits
36 an offence.
- 37 Penalty for this subsection: a fine of \$5 000.
- 38 (7) An arbitrator may make an order requiring the production of
39 documents that can be requested under this section.

Division 2 — Conciliation Service and Arbitration Service

308. Establishment of Conciliation Service and Arbitration Service [WCIMA s. 181, 182ZO]

(1) The following services are established —

- (a) the Workers Compensation Conciliation Service;
- (b) the Workers Compensation Arbitration Service.

(2) The Conciliation Service consists of —

- (a) the Director; and
- (b) the staff of the Conciliation Service, being the conciliators and the WorkCover WA officers assisting in the administration of the arrangements under this Act for the conciliation of disputes.

(3) The Arbitration Service consists of —

- (a) the Registrar; and
- (b) the staff of the Arbitration Service, being the arbitrators and the WorkCover WA officers assisting in the administration of the arrangements under this Act for the arbitration of disputes.

309. Designation and functions of Director and Registrar [WCIMA s. 182A, 182ZP]

(1) The CEO must designate from among the WorkCover WA officers a person to be the Director and a person to be the Registrar.

(2) The Director —

- (a) is responsible for the administration of the arrangements under this Act for the conciliation of disputes; and
- (b) allocates work to conciliators; and
- (c) without limiting the functions of the CEO, manages and directs the staff of the Conciliation Service; and
- (d) has, and may perform, all the functions of a conciliator; and
- (e) has any other functions conferred on the Director by this Act or any other written law.

(3) The Registrar —

- (a) is responsible for the administration of the arrangements under this Act for the arbitration of disputes; and

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- 1 (b) allocates work to arbitrators; and
2 (c) without limiting the functions of the CEO, manages and
3 directs the staff of the Arbitration Service; and
4 (d) has, and may perform, all the functions of an arbitrator;
5 and
6 (e) has any other functions conferred on the Registrar by
7 this Act or any other written law.

8 (4) The Director and the Registrar are not subject to the
9 management or direction of the CEO as to any decision to be
10 made, or discretion to be exercised, in relation to a particular
11 dispute.

12 (5) The designation of a person as the Director or the Registrar
13 must be in writing and the *Interpretation Act 1984* section 52
14 applies to the designation in the same way as that section
15 applies to an appointment.

16 **310. Designation of conciliators and arbitrators**
17 **[WCIMA s. 182B, 182C, 182ZQ, 182ZR]**

18 (1) The CEO designates conciliators and arbitrators.

19 (2) A person is not eligible to be designated as a conciliator or
20 arbitrator unless the person is —

- 21 (a) a WorkCover WA officer; or
22 (b) a person engaged by the CEO under the *Public Sector*
23 *Management Act 1994* section 100 on a sessional basis.

24 (3) A person is also not eligible to be designated as an arbitrator
25 unless the person is a legal practitioner.

26 (4) The number of persons designated as conciliators and arbitrators
27 is as determined by the CEO, having regard to the object of this
28 Part.

29 (5) Conciliators and arbitrators are not subject to the management
30 or direction of the CEO, the Director or the Registrar as to any
31 decision to be made, or discretion to be exercised, in relation to
32 a particular dispute.

33 (6) The designation of a person as a conciliator or arbitrator must be
34 in writing and the *Interpretation Act 1984* section 52 applies to
35 the designation in the same way as that section applies to an
36 appointment.

1 **311. Delegation by Director or Registrar [WCIMA s. 182D,**
2 **182ZS]**

- 3 (1) The Director may delegate a power or duty given to the Director
4 under another provision of this Act to a WorkCover WA officer
5 or a conciliator.
- 6 (2) The Registrar may delegate a power or duty given to the
7 Registrar under another provision of this Act to a
8 WorkCover WA officer or an arbitrator.
- 9 (3) A delegation must be in writing signed by the delegator.
- 10 (4) A person to whom a power or duty is delegated under this
11 section cannot delegate that power or duty.
- 12 (5) A person exercising or performing a power or duty that has been
13 delegated to the person under this section is taken to do so in
14 accordance with the terms of the delegation unless the contrary
15 is shown.
- 16 (6) Nothing in this section limits the ability of the Director or the
17 Registrar to perform a function through a staff member or agent.

18 **Division 3 — Conciliation**

19 **Subdivision 1 — Process for conciliation**

20 **312. Application for conciliation [WCIMA s. 182E]**

21 A party to a dispute may apply to the Director in accordance
22 with this Act and the conciliation rules for resolution of the
23 dispute by conciliation.

24 **313. Requirements for acceptance of application for conciliation**
25 **[WCIMA s. 182F]**

- 26 (1) An application for conciliation cannot be accepted by the
27 Director unless the Director is satisfied that it relates to a
28 dispute.
- 29 (2) The conciliation rules may —
- 30 (a) impose requirements that must be satisfied before an
31 application for conciliation can be accepted; and
- 32 (b) specify grounds on which, or circumstances in which, an
33 application for conciliation must or may be rejected.

1 (3) The onus is on the applicant to satisfy the Director as to any
2 matter that is relevant to the acceptance or rejection of an
3 application for conciliation.

4 (4) Conciliation commences when an application for conciliation is
5 accepted by the Director.

6 **314. Director may certify dispute not suitable for conciliation**
7 **[WCIMA s. 182H]**

8 The Director may, without allocating the dispute to a
9 conciliator, determine that a dispute is not suitable for
10 conciliation and issue a certificate to that effect.

11 **315. Allocation of dispute [WCIMA s. 182G]**

12 (1) When an application for conciliation is accepted, the Director
13 must allocate the dispute to a conciliator unless the Director has
14 determined that the dispute is not suitable for conciliation.

15 (2) The Director may reallocate the dispute to another conciliator at
16 any time.

17 **316. Duties of conciliators [WCIMA s. 182I, 182P]**

18 (1) A conciliator must make all reasonable efforts to bring the
19 parties to the dispute to an agreement acceptable to all of them.

20 (2) A conciliator must act —
21 (a) fairly, economically, informally and quickly; and
22 (b) according to the substantial merits of the case without
23 regard to technicalities and legal forms.

24 (3) A conciliator is not bound by the rules of evidence and may use
25 any means the conciliator thinks fit in order to be informed
26 about any matter.

27 **317. Scope of conciliation [WCIMA s. 182Q]**

28 (1) The matters that may be discussed and agreed at conciliation or
29 the subject of a direction requiring, suspending or reducing the
30 payment of compensation are not limited by the extent of the
31 dispute as detailed in the application for conciliation.

32 (2) This section does not prevent a conciliator from determining
33 that a matter is beyond the scope of the application for
34 conciliation and should be the subject of a separate application
35 for conciliation.

1 **318. Powers of conciliators [WCIMA s. 182J]**

2 A conciliator may —

- 3 (a) require a party to the dispute to attend at a conciliation
4 conference at which the conciliator and any other party
5 to the dispute is present; and
- 6 (b) require a party to the dispute, or a legal practitioner or
7 authorised agent representing a party, to answer
8 questions put by the conciliator; and
- 9 (c) require a party to the dispute, or a legal practitioner or
10 authorised agent representing a party, to produce
11 documents to the conciliator, or consent to another
12 person who has relevant documents producing them to
13 the conciliator.

14 **319. Finalising orders [WCIMA s. 182N]**

15 (1) A conciliator may, with the consent of the parties to the dispute,
16 make an order of the kind that an arbitrator could make setting
17 out matters that have been agreed during conciliation.

18 (2) An order must not be made under this section unless —

- 19 (a) the parties have lodged with the Director a
20 memorandum of consent that sets out the terms of the
21 order consented to by the parties; and
- 22 (b) the conciliator is satisfied that —
- 23 (i) the parties have given their consent by free
24 exercise of their will and without being induced
25 by fraud or misrepresentation; and
- 26 (ii) the parties understand the effect of giving their
27 consent; and
- 28 (iii) the terms of the order consented to by the parties
29 are terms to which effect can be given under this
30 Act.

31 **320. Conclusion of conciliation and certificate of outcome**
32 **[WCIMA s. 182O]**

33 (1) Conciliation of the dispute ends when —

- 34 (a) agreement is reached by the parties on all matters in
35 dispute; or
- 36 (b) the conciliator believes that there is minimal chance of
37 agreement or further agreement, as the case may be,
38 being reached; or

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- 1 (c) the time limit for conciliation, as provided or extended
2 under the conciliation rules, has expired; or
- 3 (d) the applicant for conciliation discontinues conciliation in
4 accordance with the conciliation rules.
- 5 (2) At the end of conciliation of the dispute the conciliator must
6 issue a certificate in accordance with the conciliation rules
7 setting out —
- 8 (a) the outcome of conciliation; and
9 (b) the terms of any direction currently in force under
10 Subdivision 2 requiring, suspending or reducing the
11 payment of compensation.
- 12 (3) The terms of an agreement reached by the parties must not be
13 included in the conciliator's certificate unless they are terms —
- 14 (a) that are of a kind that an arbitrator could determine; and
15 (b) to which effect can be given under this Act.

16 **Subdivision 2 — Directions for payment of compensation**

17 **321. Interim compensation directions [WCIMA s. 182K(1)-(6)]**

- 18 (1) A conciliator may give a direction (an *interim compensation*
19 *direction*) requiring the payment of compensation by the
20 employer if the conciliator considers that it would be reasonable
21 to expect that the resolution or determination of a dispute would
22 result in the compensation becoming payable.
- 23 (2) An interim compensation direction may require the payment of
24 any or all of the following —
- 25 (a) income compensation;
26 (b) medical and health expenses compensation;
27 (c) miscellaneous expenses compensation.
- 28 (3) A conciliator must not give an interim compensation direction
29 for the payment of income compensation —
- 30 (a) for a period that exceeds 12 weeks; or
31 (b) if 2 or more directions are given — for periods the
32 aggregate of which exceeds 12 weeks.
- 33 (4) A conciliator must not give an interim compensation direction
34 for the payment of medical and health expenses compensation
35 and miscellaneous expenses compensation —
- 36 (a) of an amount that exceeds 5% of the general maximum
37 amount applying when the direction is given; or

1 (b) if 2 or more directions are given — of amounts the
2 aggregate of which exceeds 5% of the general maximum
3 amount applying when the last direction is given.

4 (5) A payment of compensation made in accordance with an interim
5 compensation direction —

6 (a) is not an admission of liability; and

7 (b) does not prevent a question of liability from being heard
8 and determined under this Act as if the payment had not
9 been made.

10 **322. Amendment, suspension or revocation of interim**
11 **compensation directions [WCIMA s. 182K(7)-(9)]**

12 (1) A conciliator may give a direction to amend, suspend or revoke
13 an interim compensation direction.

14 (2) The amendment, suspension or revocation of an interim
15 compensation direction (the *change*) operates as follows unless
16 the conciliator directs otherwise —

17 (a) in the case of income compensation — the change
18 applies only to compensation for a period after the
19 change takes effect, and compensation for a period
20 before the change takes effect remains payable as if the
21 change had not occurred;

22 (b) in the case of medical and health expenses compensation
23 or miscellaneous expenses compensation — the change
24 applies only to compensation for expenses incurred after
25 the change takes effect, and compensation for expenses
26 incurred before the change takes effect remains payable
27 as if the change had not occurred;

28 (c) in the case of suspension — the change has the effect
29 provided for by paragraph (a) or (b) only during the
30 period of the suspension.

31 (3) Subsection (2) applies to the revocation of an interim
32 compensation direction by an arbitrator under section 349(2) as
33 if a reference to the conciliator were a reference to the
34 arbitrator.

1 **323. Payment by insurer if employer fails to comply with interim**
2 **compensation direction [WCIMA s. 182ZL]**

3 (1) If an insured employer fails to make a payment required by an
4 interim compensation direction, the Director may by order made
5 on the application of the worker —

6 (a) require the employer's insurer to make the payment on
7 behalf of the employer within 7 days after the order is
8 made; and

9 (b) if the Director considers it necessary — require the
10 employer's insurer to make on behalf of the employer
11 any remaining payments required under the interim
12 compensation direction.

13 (2) An insurer who makes a payment of compensation on behalf of
14 an employer pursuant to an order under subsection (1) is entitled
15 to recover from the employer any payment received by the
16 employer from the insurer in respect of the employer's liability
17 to make the payment that the employer failed to make to the
18 worker.

19 (3) Subdivision 3 applies to an order of the Director under
20 subsection (1) as if —

21 (a) the order were a conciliation decision (as defined in
22 section 325); and

23 (b) a reference to a conciliator were a reference to the
24 Director.

25 **324. Suspending and reducing income compensation payments**
26 **[WCIMA s. 182L, 182ZJ]**

27 (1) This section applies if payments of income compensation are
28 being made otherwise than by direction of a conciliator.

29 (2) A conciliator may direct that payments of income compensation
30 be suspended or reduced if the conciliator considers that it
31 would be reasonable to expect that the resolution or
32 determination of a dispute would result in the payments being
33 suspended, reduced or discontinued.

34 (3) A conciliator must not direct the suspension or reduction of
35 income compensation payments —

36 (a) for a period that exceeds 12 weeks; or

37 (b) if 2 or more directions are given — for periods the
38 aggregate of which exceeds 12 weeks.

- 1 (4) The suspension or reduction of income compensation payments
2 by direction under this section (the *change*) operates as follows
3 unless the conciliator directs otherwise —
- 4 (a) the change applies only to compensation for a period
5 after the change takes effect, and compensation for a
6 period before the change takes effect remains payable as
7 if the change had not occurred;
- 8 (b) in the case of suspension — the change has the effect
9 provided for by paragraph (a) only during the period of
10 the suspension.
- 11 (5) A conciliator may, by further direction, amend, suspend or
12 revoke a direction given under this section.
- 13 (6) When a direction suspending income compensation payments is
14 revoked —
- 15 (a) the obligation to make income compensation payments
16 recommences from the day on which the suspension is
17 revoked; and
- 18 (b) the worker must be paid the amount of income
19 compensation for the period of suspension unless the
20 conciliator directs otherwise.
- 21 (7) When a direction reducing income compensation payments is
22 revoked —
- 23 (a) the obligation to make income compensation payments
24 as if the direction had not been made recommences from
25 the day on which the direction is revoked; and
- 26 (b) the worker must be paid the amount of income
27 compensation to which the worker would have been
28 entitled if the direction had not been made unless the
29 conciliator directs otherwise.
- 30 (8) Subsections (6) and (7) apply to the revocation by an arbitrator
31 under section 349(2) of a direction of a conciliator under
32 subsection (2) suspending or reducing income compensation
33 payments as if a reference to the conciliator were a reference to
34 the arbitrator.

- 1 (c) a miscalculation of figures or a mistake in the
2 description of any person, thing or matter referred to in
3 the decision or certificate; or
4 (d) a defect of form.

5 **329. Enforcing conciliation decisions and agreements**
6 **[WCIMA s. 182ZH]**

- 7 (1) A person to whom money is payable under a conciliation
8 decision or conciliation agreement may enforce the conciliation
9 decision or conciliation agreement by filing in a court of
10 competent jurisdiction (the *court*) —
11 (a) a copy of the conciliation decision or certificate of
12 outcome that the Director has certified to be a true copy;
13 and
14 (b) an affidavit as to the amount not paid under the
15 conciliation decision or conciliation agreement.
16 (2) No charge is payable for filing documents under subsection (1).
17 (3) On the filing of the required documents under subsection (1),
18 the conciliation decision or conciliation agreement is taken to be
19 an order of the court and may be enforced accordingly.
20 (4) A conciliation agreement cannot be enforced under this section
21 before the expiration of the period of 21 days beginning on the
22 day on which the certificate of outcome is issued.

23 **330. Conciliation decisions not reviewable [WCIMA s. 182ZI]**

24 A conciliation decision is not subject to an appeal and is not
25 amenable to judicial review.

26 **331. Recovery of compensation paid under conciliator direction**
27 **[WCIMA s. 182ZK]**

28 If an arbitrator determines that a person was not liable to pay
29 compensation paid in accordance with a direction of a
30 conciliator, the following provisions apply —

- 31 (a) the worker or other person who received the
32 compensation is not required to refund the compensation
33 unless the arbitrator otherwise orders under
34 paragraph (b);

- 1 (b) if the arbitrator is satisfied that the claim for
2 compensation was wholly or partly fraudulent or made
3 without proper justification, the arbitrator may —
- 4 (i) order the worker or other person who received
5 the compensation to refund the whole or a
6 specified part of the compensation; or
- 7 (ii) order any other person determined by the
8 arbitrator to be liable for the whole or any part of
9 the compensation to reimburse the person who
10 paid the compensation;
- 11 (c) the arbitrator's determination does not affect any
12 liability of an insurer to indemnify the employer for
13 payment of the compensation.

14 **Division 4 — Arbitration**

15 **Subdivision 1 — Determination of disputes by arbitration**

16 **332. Application for arbitration [WCIMA s. 182ZT]**

17 If a dispute has not been resolved by conciliation, a party to the
18 dispute may apply to the Registrar in accordance with this Act
19 and the arbitration rules for determination of the dispute by
20 arbitration.

21 **333. Requirements for acceptance of application for arbitration**
22 **[WCIMA s. 182ZU, 182E(2)]**

- 23 (1) An application for determination of a dispute by arbitration
24 cannot be accepted by the Registrar unless it is accompanied
25 by —
- 26 (a) a certificate issued by the Director under section 314 to
27 the effect that the dispute is not suitable for conciliation;
28 or
- 29 (b) a certificate issued by a conciliator under section 320(2)
30 at the end of conciliation of the dispute identifying the
31 matter or matters in dispute that have not been resolved
32 by conciliation.
- 33 (2) Subsection (1) has effect despite any provision of this Act
34 that —
- 35 (a) enables or requires a party to make application for a
36 dispute to be heard and determined by an arbitrator; or
- 37 (b) authorises an arbitrator to determine a dispute.

1 Note for this subsection:

2 A dispute must go to conciliation before going to arbitration even when
3 a provision refers to determination of the dispute by an arbitrator
4 without mention of conciliation.

5 (3) The arbitration rules may —

6 (a) impose requirements that must be satisfied before an
7 application for arbitration can be accepted; and

8 (b) specify grounds on which, or circumstances in which, an
9 application for arbitration must or may be rejected.

10 (4) The onus is on the applicant to satisfy the Registrar as to any
11 matter that is relevant to the acceptance or rejection of an
12 application for arbitration.

13 (5) Arbitration commences when an application for arbitration is
14 accepted by the Registrar.

15 **334. Registrar to allocate dispute [WCIMA s. 182ZV]**

16 (1) When an application for arbitration is accepted, the Registrar
17 must allocate the dispute to which the application relates to an
18 arbitrator for determination.

19 (2) The Registrar may reallocate a dispute to another arbitrator at
20 any time.

21 **335. Information exchange by parties [WCIMA s. 183]**

22 (1) If an application for arbitration is accepted, each party to the
23 dispute must comply with the provisions (the *information*
24 *exchange requirements*) of the arbitration rules as to —

25 (a) the documents, other things and information that the
26 party must provide to other parties and the Registrar;
27 and

28 (b) the time or times at which, and manner in which, the
29 documents, other things and information must be
30 provided.

31 (2) A party to a dispute who fails to comply with the information
32 exchange requirements of the arbitration rules commits an
33 offence unless the failure is excused under section 374(1).

34 Penalty for this subsection: a fine of \$5 000.

35 (3) A statement in writing made by a worker cannot be tendered in
36 evidence or used by the employer or insurer in a proceeding
37 before an arbitrator unless a copy of the statement has been
38 provided to the worker.

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- 1 (4) Any document, other thing or information that a party to a
2 dispute has failed to provide in contravention of the information
3 exchange requirements of the arbitration rules cannot be
4 admitted on behalf of the party in a proceeding on the dispute
5 before an arbitrator.
- 6 (5) A witness cannot appear in a proceeding on a dispute before an
7 arbitrator if a party to the dispute has failed to provide a
8 statement from that witness in contravention of the information
9 exchange requirements of the arbitration rules.
- 10 (6) The information exchange requirements of the arbitration rules
11 do not apply if the party is a worker unless it is established that
12 the worker was represented by a legal practitioner or authorised
13 agent acting for the worker in connection with the dispute at the
14 relevant time.
- 15 (7) The arbitration rules may provide for and may authorise an
16 arbitrator to permit —
- 17 (a) the admission in a proceeding before the arbitrator of
18 any document, other thing or information that would
19 otherwise be inadmissible under this section; and
- 20 (b) the appearance in a proceeding before the arbitrator in
21 specified circumstances of a witness who would
22 otherwise not be permitted to appear under this section.
- 23 (8) If an arbitrator is satisfied that a party has failed without
24 reasonable excuse to comply with a requirement under this
25 section, the arbitrator may do any 1 or more of the following —
- 26 (a) refer the matter to the CEO;
- 27 (b) note the matter in a certificate issued by the arbitrator in
28 respect of the dispute (together with details of the
29 documents, other things or information to which the
30 failure relates);
- 31 (c) order that a specified amount or proportion of the costs
32 that would otherwise be recoverable by the party in
33 connection with a proceeding on the dispute before an
34 arbitrator is not recoverable.

35 **336. Duties of arbitrators [WCIMA s. 185]**

- 36 (1) An arbitrator to whom a dispute is allocated must determine the
37 matter or matters in dispute in accordance with this Act and the
38 arbitration rules.

1 (2) The arbitrator must not attempt to resolve by conciliation any
2 matter in dispute.

3 (3) Subsection (2) applies even if there was no conciliation of any
4 matter in dispute because the Director issued a certificate under
5 section 314 to the effect the dispute is not suitable for
6 conciliation.

7 **Subdivision 2 — Arbitration practice and procedure**

8 **337. General practice and procedure [WCIMA s. 188]**

9 (1) An arbitrator is bound by rules of natural justice except to the
10 extent that this Act authorises, whether expressly or by
11 implication, a departure from those rules.

12 (2) The *Evidence Act 1906* does not apply to proceedings before an
13 arbitrator and an arbitrator —

14 (a) must act according to equity, good conscience and the
15 substantial merits of the case without regard to
16 technicalities and legal forms; and

17 (b) is not bound by the rules of evidence or any practice or
18 procedure applicable to courts of record, except to the
19 extent that the arbitration rules make them apply.

20 (3) An arbitrator may inform themselves on any matter as the
21 arbitrator thinks fit.

22 (4) An arbitrator may —

23 (a) receive in evidence any transcript of evidence in
24 proceedings before a court or other person or body
25 acting judicially and draw any conclusion of fact from
26 the transcript; and

27 (b) adopt, as the arbitrator thinks fit, any finding, decision,
28 or judgment of a court or other person or body acting
29 judicially that is relevant to the proceeding.

30 (5) To the extent that the practice and procedure of an arbitrator are
31 not prescribed under this Act, they are to be as the arbitrator
32 determines.

33 **338. Relief or redress granted need not be restricted to claim**
34 **[WCIMA s. 189]**

35 (1) The granting of relief or redress under this Act is not necessarily
36 to be restricted to the specific claim made nor to the subject
37 matter of the claim.

- 1 (2) Subsection (1) does not prevent an arbitrator from determining
2 that a matter is beyond the scope of the application for
3 conciliation that preceded the application for arbitration and
4 should be the subject of another application for conciliation.

5 **339. Directions by arbitrator [WCIMA s. 190]**

- 6 (1) An arbitrator may give directions at any time in a proceeding
7 and do whatever is necessary for the speedy and fair conduct of
8 the proceeding.
- 9 (2) An arbitrator may give directions on the initiative of the
10 arbitrator or on the application of a party to the proceeding.
- 11 (3) A directions hearing conducted by an arbitrator may be held for
12 the purposes of this section before the hearing of the
13 proceeding.

14 **340. Dismissal of proceeding [new provision]**

- 15 (1) At any stage of a proceeding an arbitrator may dismiss the
16 proceeding, whether generally or in relation to any particular
17 matter in dispute, on any of the following grounds —
- 18 (a) the proceeding is an abuse of process;
- 19 (b) the proceeding ought to be dismissed for want of
20 prosecution;
- 21 (c) any other ground for dismissal specified in the
22 arbitration rules.
- 23 (2) A proceeding may be dismissed under subsection (1) on
24 application by a party to the proceeding or on the arbitrator's
25 own initiative.
- 26 (3) An arbitrator must not dismiss a proceeding under
27 subsection (1) without first affording each of the parties to the
28 proceeding a reasonable opportunity to be heard.

29 **341. Illegal contracts of employment may be treated as valid**
30 **[WCIMA s. 192]**

31 If, in any proceeding for the recovery under this Act of
32 compensation for an injury from employment, it appears to an
33 arbitrator that the contract for that employment was illegal, the
34 arbitrator may, if the arbitrator considers it proper to do so
35 having regard to all the circumstances of the case, deal with the
36 matter as if the injured person had at that time been working
37 under a valid contract.

1 **342. Arbitrator's powers to obtain information [WCIMA s. 193]**

- 2 (1) An arbitrator may order any person (whether or not a party to a
3 dispute before the arbitrator) —
- 4 (a) to produce, at a time and place specified in the order, the
5 documents or other things specified in the order; or
- 6 (b) to provide specified information within a period
7 specified in the order.
- 8 (2) The order may require the documents or other things to be
9 produced or the information to be provided —
- 10 (a) in the case of an order given to a party to a dispute
11 before the arbitrator — to the arbitrator or to another
12 party to the dispute; or
- 13 (b) in the case of an order given to a person who is not a
14 party to a dispute before the arbitrator — to the
15 arbitrator.
- 16 (3) If a person fails without reasonable excuse to produce a
17 document or other thing or provide information in compliance
18 with an order given to the person under this section, the person
19 cannot as a party to a proceeding before the Registrar or an
20 arbitrator have the document, other thing or information
21 admitted in the proceeding.
- 22 (4) An arbitrator may exercise powers under this section at the
23 request of a party to a dispute before an arbitrator or on the
24 arbitrator's own initiative.
- 25 (5) The regulations or arbitration rules may make provision for or
26 with respect to any of the following —
- 27 (a) exempting specified kinds of documents, other things or
28 information from the operation of this section;
- 29 (b) specifying cases and circumstances in which an
30 arbitrator is required to exercise the arbitrator's powers
31 under this section;
- 32 (c) specifying cases and circumstances in which an
33 arbitrator cannot exercise the arbitrator's powers under
34 this section.
- 35 (6) An arbitrator may order a person to produce a document, other
36 thing or information despite any rule of law relating to privilege
37 or the public interest in relation to the production of documents.

1 **343. Use of experts by arbitrators [WCIMA s. 201]**

2 (1) An arbitrator may refer any medical, technical or specialised
3 matter to an expert and accept that expert's report as evidence.

4 (2) An arbitrator who obtains an expert's report must call the expert
5 for examination on the subject matter of the report if a party to
6 the proceeding so requests.

7 **344. Summoning witnesses [WCIMA s. 202]**

8 The Registrar or an arbitrator may issue a summons requiring
9 the attendance of a person before an arbitrator.

10 **345. Arbitrator's powers as to witnesses [WCIMA s. 203]**

11 (1) In any proceeding before an arbitrator, the arbitrator may —

12 (a) call any person to give evidence; and

13 (b) examine any witness on oath or affirmation, or by use of
14 a statutory declaration; and

15 (c) examine or cross-examine any witness to such extent as
16 the arbitrator thinks proper; and

17 (d) require any witness to answer questions put to the
18 witness.

19 (2) This section does not enable an arbitrator to require a witness to
20 answer a question if the witness —

21 (a) is excused from answering the question by
22 section 374(1); or

23 (b) has a reasonable excuse for refusing to answer the
24 question other than an excuse that would not excuse the
25 person because of section 372 or 373.

26 **346. Communication between worker and WorkCover WA
27 employee not admissible [WCIMA s. 204A]**

28 Evidence of any communication between a worker and a person
29 employed by WorkCover WA and acting in the course of that
30 employment is not admissible in a proceeding before an
31 arbitrator unless, during the course of the proceeding, the
32 worker consents to the evidence being admitted.

33 **347. Oaths and affirmations [WCIMA s. 207]**

34 The Registrar or an arbitrator may administer an oath or take an
35 affirmation for the purposes of this Act.

1 **348. Arbitrator may authorise another person to take evidence**
2 **[WCIMA s. 208]**

- 3 (1) An arbitrator may authorise, in writing, a person (whether or not
4 an arbitrator) to take evidence on behalf of the arbitrator for the
5 purposes of any proceeding.
- 6 (2) The arbitrator may authorise evidence to be taken under this
7 section outside the State.
- 8 (3) The arbitrator may give directions as to the taking of evidence
9 under this section.
- 10 (4) If a person other than an arbitrator is authorised to take evidence
11 the person has all the powers of an arbitrator in relation to the
12 taking of evidence.
- 13 (5) Evidence taken under this section must be regarded as having
14 been given to the arbitrator.

15 **Subdivision 3 — Arbitrator decisions**

16 **349. Decisions generally [WCIMA s. 211]**

- 17 (1) Subject to this Act, an arbitrator may make such decisions as the
18 arbitrator thinks fit.
- 19 (2) An arbitrator may confirm, amend or revoke any direction of a
20 conciliator —
- 21 (a) requiring the payment of compensation (an interim
22 compensation direction under section 321(1)); or
- 23 (b) that income compensation payments are to be suspended
24 or reduced (a direction under section 324).

25 Note for this subsection:

26 Sections 322(2) and 324(8) provide for the effect of the revocation by
27 an arbitrator of an interim compensation direction or a direction of a
28 conciliator suspending or reducing income compensation payments.

29 **350. Conditional and ancillary orders and directions**
30 **[WCIMA s. 212]**

31 A power of an arbitrator to make an order or give a direction
32 (the *primary power*) includes the power to make the order
33 subject to conditions and the power to make any ancillary order
34 or direction the arbitrator considers appropriate for achieving
35 the purpose for which the arbitrator may exercise the primary
36 power.

- 1 **351. Form and content of decision and reasons [WCIMA s. 213]**
- 2 (1) A decision of an arbitrator must be given in writing to a party to
- 3 a proceeding if —
- 4 (a) the arbitration rules state that the decision must be given
- 5 in writing to that party; or
- 6 (b) within 14 days after the arbitrator makes the decision,
- 7 the party requests that the decision be given in writing.
- 8 (2) An arbitrator's decision in writing must include information as
- 9 to appeal rights that may be available to the parties under
- 10 this Act.
- 11 (3) The reasons for a decision of an arbitrator must be given in
- 12 writing to a party to a proceeding if —
- 13 (a) the arbitration rules require that the reasons must be
- 14 given in writing to that party; or
- 15 (b) within 14 days after the arbitrator makes the decision,
- 16 the party requests that the reasons for the decision be
- 17 given in writing.
- 18 (4) The reasons for an arbitrator's decision —
- 19 (a) need only identify the facts that the arbitrator has
- 20 accepted in coming to the decision and give the reasons
- 21 for doing so; and
- 22 (b) need only identify the law that the arbitrator has applied
- 23 in coming to the decision and give the reasons for doing
- 24 so; and
- 25 (c) need not canvass all the evidence given in the case; and
- 26 (d) need not canvass all the factual and legal arguments or
- 27 issues arising in the case.
- 28 (5) A written transcript of the part of the proceeding in which a
- 29 decision is given orally or reasons are given orally is sufficient
- 30 compliance with the requirement for the decision or reasons to
- 31 be in writing.
- 32 (6) The fact that a decision is, or reasons are, given orally or in
- 33 accordance with subsection (4) or (5) is not of itself a ground
- 34 for reversing or modifying the decision on an appeal.

1 **352. Validity of decision not affected by contravention of this**
2 **Subdivision [WCIMA s. 214]**

3 A failure of an arbitrator to comply with a requirement under
4 this Subdivision does not affect the validity of a decision of the
5 arbitrator.

6 **353. When decision has effect [WCIMA s. 215]**

- 7 (1) A decision of an arbitrator comes into effect immediately after
8 the decision is made, or at such later time as is specified in it.
- 9 (2) Subsection (1) does not prevent a stay of the operation of the
10 decision from being given by the District Court under
11 section 392 pending the determination of an application for
12 leave to appeal from the decision and of any appeal.

13 **354. Correcting mistakes [WCIMA s. 216]**

14 An arbitrator may correct a decision an arbitrator makes or a
15 statement of the reasons an arbitrator has given for the decision
16 to the extent necessary to rectify —

- 17 (a) a clerical mistake; or
18 (b) an error arising from an accidental slip or omission; or
19 (c) a miscalculation of figures or a mistake in the
20 description of any person, thing or matter referred to in
21 the decision; or
22 (d) a defect of form.

23 **355. Reconsideration of decision on basis of new information**
24 **[WCIMA s. 217A]**

- 25 (1) In this section —
26 *new information* means information relevant to an arbitrator's
27 decision that was not available to the arbitrator at the time the
28 decision was made, whether or not the information was
29 available to, or could have been obtained by, a party at that
30 time.
- 31 (2) A party to a dispute may apply to the Registrar for the
32 reconsideration by an arbitrator of the arbitrator's decision in
33 the dispute on the basis of new information.
- 34 (3) The arbitrator must reconsider the decision on the basis of the
35 new information if of the opinion that the new information
36 justifies reconsideration of the decision.

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- 1 (4) When considering whether new information justifies
2 reconsideration of a decision, an arbitrator may have regard
3 to —
4 (a) the probative value of the new information; and
5 (b) the length of time between the making of the decision
6 and when the new information was obtained by the party
7 applying for reconsideration; and
8 (c) the length of time between the party obtaining the new
9 information and the party making the application for
10 reconsideration; and
11 (d) such other matters as the arbitration rules may specify.
- 12 (5) When an arbitrator reconsiders a decision on the basis of new
13 information, the arbitrator must affirm, amend or revoke the
14 decision, or make any further decision, as the arbitrator
15 considers appropriate having regard to the new information.

16 **356. Arbitration decision not reviewable [WCIMA s. 217B]**

- 17 (1) Except as otherwise provided by this Act, a decision of an
18 arbitrator is final and binding on the parties and is not subject to
19 an appeal.
- 20 (2) A decision of an arbitrator or anything done under this Act in
21 the process of coming to a decision of an arbitrator is not
22 amenable to judicial review.

23 **357. Enforcing decision [WCIMA s. 219]**

- 24 (1) A person to whom money is payable under a decision of an
25 arbitrator may enforce the decision by filing in a court of
26 competent jurisdiction —
27 (a) a copy of the decision that the Registrar has certified to
28 be a true copy; and
29 (b) an affidavit as to the amount not paid under the decision.
- 30 (2) No charge is payable for filing a copy of a decision or affidavit
31 under this section.
- 32 (3) On filing, the decision is taken to be an order of that court, and
33 may be enforced accordingly.

34 **358. Publication of decision and reasons [new provision]**

- 35 (1) The Registrar may cause any decision of an arbitrator and the
36 reasons for the decision to be published in such manner as the
37 Registrar considers appropriate.

- 1 (2) The Registrar may limit publication under this section in such
2 manner as the Registrar considers appropriate.

3 **Subdivision 4 — Interest**

4 **359. Interest on sums to be paid [WCIMA s. 222]**

- 5 (1) In any proceeding before an arbitrator, the arbitrator may order
6 that there must be included, in any sum to be paid, interest on
7 the whole or any part of the sum for the whole or any part of the
8 period before the sum is payable.
- 9 (2) Interest payable must be calculated at a rate prescribed by or
10 determined under the regulations.
- 11 (3) This section does not —
12 (a) authorise the payment of interest on interest; or
13 (b) apply in relation to any debt upon which interest is
14 payable as of right whether by virtue of any agreement
15 or otherwise.

16 **360. Interest on unpaid sums [WCIMA s. 223]**

- 17 (1) Unless an arbitrator orders in any particular case that interest is
18 not payable, interest is payable on so much of the amount of any
19 sum ordered to be paid by an arbitrator as is from time to time
20 unpaid.
- 21 (2) Interest payable in respect of any sum ordered to be paid —
22 (a) must be calculated as from the day on which the order
23 was made or from a later day, if any, fixed by an
24 arbitrator in any particular case; and
25 (b) must be calculated at a rate prescribed by or determined
26 under the regulations; and
27 (c) forms part of the sum ordered to be paid, but not so as to
28 require the payment of interest on interest.
- 29 (3) If an amount ordered to be paid is paid in full within the period
30 prescribed or determined under the regulations, interest is not
31 payable on the amount so paid.

32 **361. Interest on unpaid amount of agreed sum [WCIMA s. 224]**

- 33 (1) An arbitrator may order, in accordance with the regulations, that
34 interest is payable on so much of the amount of any sum agreed
35 to be paid under this Act as is from time to time unpaid.

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- 1 (2) Interest payable under subsection (1) in respect of any sum so
2 agreed to be paid —
- 3 (a) must be calculated as from the day provided by the
4 agreement as the day on which the sum is due to be paid
5 or, if the agreement does not so provide, the day that is
6 21 days after the day on which the agreement was made;
7 and
- 8 (b) must be calculated at a rate prescribed by or determined
9 under the regulations; and
- 10 (c) forms part of the sum agreed to be paid, but not so as to
11 require the payment of interest on interest.

12 **362. Regulations may exclude interest [WCIMA s. 225]**

13 The regulations may prescribe circumstances in which interest
14 is not payable under section 359, 360 or 361.

15 **Division 5 — General provisions about conciliation and**
16 **arbitration procedures**

17 **363. Term used: relevant rules [new provision]**

18 In this Division —

19 *relevant rules* means —

- 20 (a) for matters relating to conciliation — the conciliation
21 rules; or
- 22 (b) for matters relating to arbitration — the arbitration rules.

23 **364. Functions conferred by this Division [new provision]**

24 (1) A provision of this Division that confers a function on both a
25 conciliator and an arbitrator must be read as conferring the
26 function on a conciliator only in respect of conciliation and on
27 an arbitrator only in respect of arbitration.

28 (2) A provision of this Division that authorises the conciliation
29 rules and the arbitration rules to provide for a matter must be
30 read as authorising the conciliation rules to provide for that
31 matter only in respect of conciliation and authorising the
32 arbitration rules to provide for that matter only in respect of
33 arbitration.

1 **365. Provision of information to another party or medical**
2 **practitioner [WCIMA s. 182R, 194]**

- 3 (1) In this section —
4 *information* includes a document or other thing.
- 5 (2) When information is provided to a conciliator or arbitrator by a
6 party to a dispute or another person (whether or not as required
7 by a conciliator or arbitrator), the conciliator or arbitrator may
8 provide the information to —
- 9 (a) any other party to the dispute or to a legal practitioner or
10 authorised agent acting for the party; or
- 11 (b) a health professional.
- 12 (3) A conciliator or arbitrator may, when providing information to
13 another person, prohibit or restrict disclosure of the information
14 by the person.

15 **366. Representation [WCIMA s. 182S, 195]**

- 16 (1) At any conciliation conference or arbitration hearing, a party to
17 the dispute may appear in person or may be represented by —
- 18 (a) a legal practitioner; or
19 (b) an authorised agent; or
20 (c) a person or a member of a class of persons authorised by
21 the relevant rules to represent the party.
- 22 (2) A conciliator or arbitrator may refuse to permit an employer or
23 an insurer to be represented by a legal practitioner or authorised
24 agent if a party who is a worker is not represented by a legal
25 practitioner or authorised agent.
- 26 (3) A person cannot be represented by a prohibited person as
27 defined in the *Legal Profession Act 2008* section 18(1) other
28 than by a person who is a prohibited person only because their
29 name has been removed from an Australian roll (as defined in
30 section 3 of that Act) at their own request.
- 31 (4) A conciliator or arbitrator may refuse to permit a party to be
32 represented by a person if of the opinion that the person does
33 not have sufficient authority to make binding decisions on
34 behalf of the party.
- 35 (5) The relevant rules may prevent specified persons, or persons of
36 a specified class, from representing a party.

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1 **367. Litigation guardians [WCIMA s. 182T, 196]**

- 2 (1) If a child is or is to be a party to a dispute, the conciliator or
3 arbitrator may appoint a litigation guardian to act on the child's
4 behalf.
- 5 (2) If a party to a dispute is under a legal disability otherwise than
6 because of being a child, the conciliator or arbitrator may defer
7 taking action in respect of the dispute until a litigation guardian
8 is appointed to act on the party's behalf, whether under the
9 *Guardianship and Administration Act 1990* or otherwise.
- 10 (3) The relevant rules may provide for the appointment of litigation
11 guardians under this section.
- 12 (4) The deferral of action in respect of a dispute under
13 subsection (2) does not prevent a conciliator from forming a
14 belief that there is minimal chance of an agreement, or further
15 agreement, being reached in relation to the dispute.

16 **368. Interpreters and assistants [WCIMA s. 182U, 197]**

- 17 (1) Unless the conciliator or arbitrator directs otherwise, a party to a
18 dispute or a person representing the party may be assisted in the
19 course of a conciliation conference or arbitration hearing by an
20 interpreter or another person necessary or desirable for the
21 purpose of making the conference or hearing intelligible to the
22 party and enabling the party to communicate adequately.
- 23 (2) A person may present a written submission in a language other
24 than English if it is accompanied by a translation into English
25 and a statutory declaration by the translator to the effect that the
26 translation accurately reproduces in English the contents of the
27 original document.

28 **369. Ways of conducting proceedings [WCIMA s. 182V, 198]**

- 29 (1) In this section —
30 *representative* means a person representing a party at a
31 conciliation conference or arbitration hearing.
- 32 (2) If a conciliator or arbitrator thinks it appropriate, the conciliator
33 or arbitrator may allow the parties, their representatives and any
34 witnesses (or 1 or more of them) to participate in a conciliation
35 conference or arbitration hearing by means of telephone, video
36 link or any other system or method of communication.

- 1 (3) If a conciliator or arbitrator thinks it appropriate, the conciliator
2 or arbitrator may conduct all or part of a conciliation or
3 arbitration proceeding entirely on the basis of documents
4 without the parties, their representatives or any witnesses
5 attending or otherwise participating in the conference or
6 hearing.
- 7 (4) A conciliator or arbitrator may take into account a written
8 submission prepared and submitted by a person on behalf of a
9 party whether or not the party is represented at a conciliation
10 conference or arbitration hearing by the person.
- 11 (5) If all or part of a proceeding is conducted entirely on the basis
12 of documents without the parties, their representatives and any
13 witnesses attending or participating in a conference or
14 hearing —
- 15 (a) the conciliator or arbitrator must take steps to ensure
16 that the public has access to, or is precluded from access
17 to, matters disclosed in the proceeding to the same
18 extent as if it had been heard before the conciliator or
19 arbitrator with the attendance in person of all persons
20 involved in the proceeding; and
- 21 (b) provisions of this Act applying to conferences or
22 hearings apply with any necessary modifications in
23 relation to the proceeding.

24 **370. Proceedings to be in private [WCIMA s. 182W, 199]**

25 A conciliation conference or arbitration hearing must be
26 conducted in private unless —

- 27 (a) the conciliator or arbitrator decides that it should be
28 conducted in public; or
29 (b) the relevant rules otherwise provide.

30 **371. Notice of proceedings and failure to attend [WCIMA**
31 **s. 182X, 200]**

- 32 (1) Notice of the time and place for a conciliation conference or
33 arbitration hearing must be given in accordance with the
34 relevant rules to —
- 35 (a) each party to the dispute; and
36 (b) any other person that the conciliator or arbitrator
37 considers should be given notice.

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Division 5 General provisions about conciliation and arbitration procedures

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1 (2) If a party or other person given notice of a conciliation
2 conference or arbitration hearing in accordance with the
3 relevant rules fails to attend the conference or hearing, the
4 conference or hearing may be held in the absence of the party or
5 other person.

6 (3) The failure of a party or other person to attend a conciliation
7 conference or arbitration hearing does not affect the validity of a
8 decision made in relation to the conference or hearing.

9 **372. Abrogation of privilege against self-incrimination**
10 **[WCIMA s. 182Y, 204]**

11 (1) An individual is not excused from complying with a
12 requirement under this Part to answer a question, provide
13 information or produce a document or other thing on the ground
14 that the answer to the question or the information, document or
15 other thing may tend to incriminate the individual or render the
16 individual liable to a penalty.

17 (2) However neither of the following is admissible in evidence in
18 any criminal proceedings against the individual —

19 (a) an answer given or information provided by the
20 individual in compliance with a requirement under this
21 Part;

22 (b) the fact that a document or other thing produced by the
23 individual in compliance with a requirement under this
24 Part was produced.

25 (3) Subsection (2) does not apply in respect of criminal proceedings
26 arising out of the false or misleading nature of the answer,
27 information, document or other thing.

28 **373. Legal professional privilege in relation to medical reports**
29 **[WCIMA s. 182ZA, 205]**

30 (1) A legal practitioner is not excused from complying with a
31 requirement under this Part to answer a question in relation to a
32 medical report or produce a medical report on the ground that
33 the answer to the question would disclose, or the report
34 contains, a privileged communication made by or to the legal
35 practitioner in their capacity as a legal practitioner.

36 (2) Subsection (1) applies only in respect of a question or report
37 that relates directly to the treatment, nature or extent of
38 impairment, or assessment of degree of impairment, of a
39 worker.

- 1 (3) A legal practitioner required under this Part to produce a
2 medical report complies sufficiently with the requirement by
3 producing the report with the omission of passages that —
4 (a) do not relate directly to the treatment or nature or extent
5 of impairment or assessment of degree of impairment, of
6 a worker; and
7 (b) contain a privileged communication made by or to the
8 legal practitioner in their capacity as a legal practitioner.
- 9 **374. Other claims of privilege [WCIMA s. 182ZB, 206]**
- 10 (1) A person is excused from answering a question, providing
11 information or producing a document or other thing in a
12 proceeding if the person could not be compelled to answer the
13 question, provide the information or produce the document or
14 other thing in proceedings in the Supreme Court, unless it would
15 be contrary to —
16 (a) section 372; or
17 (b) section 373; or
18 (c) an order under section 342(1).
- 19 (2) A conciliator or arbitrator may require a person to produce a
20 document or other thing for the purpose of determining whether
21 or not it is a document or thing that the conciliator or arbitrator
22 has power to require the person to produce in the proceeding.
- 23 **375. Powers in relation to documents produced**
24 **[WCIMA s. 182ZC, 209]**
- 25 (1) A conciliator or arbitrator may —
26 (a) inspect any document or other thing produced before the
27 conciliator or arbitrator; and
28 (b) retain the document or thing for as long as the
29 conciliator or arbitrator reasonably thinks fit; and
30 (c) make copies of the document or any of its contents.
- 31 (2) This section does not apply to a document or thing produced
32 only for the purpose of determining whether or not it is a
33 document or thing that the conciliator or arbitrator has power to
34 require a person to produce.

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Division 5 General provisions about conciliation and arbitration procedures

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1 **376. To whom compensation must be paid [WCIMA s. 182ZN,**
2 **221]**

3 A sum awarded, directed or agreed to be paid as compensation
4 must, in the absence of any order or direction to the contrary, be
5 paid to the person to whom it is payable under the award,
6 direction or agreement unless it is required to be paid to
7 WorkCover WA.

8 **377. Payment of compensation to worker under legal disability**
9 **[WCIMA s. 218]**

10 (1) A question as to the payment of compensation that is payable to
11 a worker under a legal disability to give an effective discharge
12 for payment may be determined by an arbitrator on application
13 under this Part as a dispute.

14 (2) An arbitrator may order that compensation that is payable to a
15 worker under a legal disability to give an effective discharge for
16 payment must be paid to WorkCover WA and applied in the
17 manner specified in the order.

18 (3) If an arbitrator has ordered that compensation be paid to
19 WorkCover WA under subsection (2), a question as to whether
20 the compensation should be applied differently may be
21 determined by an arbitrator on application under this Part as a
22 dispute.

23 (4) An arbitrator may make such orders in the determination of a
24 question arising under this section as the arbitrator thinks fit.

25 **378. Admissibility of statements made to conciliator**
26 **[WCIMA s. 182ZM]**

27 (1) In this section —

28 *subsequent proceeding* means an arbitration hearing or an
29 action brought by a worker for damages independently of this
30 Act.

31 (2) Evidence of a statement made to a conciliator or in a
32 conciliation conference is not admissible in a subsequent
33 proceeding unless the person who made the statement agrees to
34 the evidence being admitted.

35 (3) A conciliator cannot be called as a witness in a subsequent
36 proceeding.

1 **379. Statements to arbitrators not admissible in common law**
2 **proceedings [WCIMA s. 220]**

3 Evidence of a statement made in an arbitration hearing is not
4 admissible in an action brought by a worker for damages
5 independently of this Act unless the person who made the
6 statement agrees to the evidence being admitted.

7 **Division 6 — Regulations, rules and practice notes**

8 **380. Regulations [WCIMA s. 292(1)(b), (c), (e)]**

9 The regulations may make provision for or with respect to —

- 10 (a) regulating the operations of the Conciliation Service and
11 the Arbitration Service; and
12 (b) the allowances to be paid to witnesses at a conciliation
13 conference or arbitration hearing, and the circumstances
14 in which, and the extent to which, they are to be paid
15 from money standing to the credit of the General
16 Account.

17 **381. Conciliation rules [WCIMA s. 293A]**

- 18 (1) The Director may make rules (*conciliation rules*) prescribing all
19 matters that are required or permitted by this Act to be
20 prescribed by conciliation rules, or are necessary or convenient
21 to be prescribed by conciliation rules for giving effect to the
22 purposes of this Act.
- 23 (2) Without limiting subsection (1), conciliation rules may make
24 provision for or with respect to —
- 25 (a) the practice and procedure governing applications for
26 conciliation; and
27 (b) the lodgment of documents in connection with
28 conciliation proceedings; and
29 (c) the disclosure and exchange of information and
30 documents in connection with conciliation proceedings;
31 and
32 (d) the practice and procedure governing the jurisdiction,
33 functions and proceedings of conciliators; and
34 (e) the assessment of, and orders as to, costs as defined in
35 section 394.

36 Note for this section:

37 Section 496 provides for rules as to service and facilitation of electronic
38 processes.

1 **382. Arbitration rules [WCIMA s. 293B]**

2 (1) The Registrar may make rules (*arbitration rules*) prescribing all
3 matters that are required or permitted by this Act to be
4 prescribed by arbitration rules, or are necessary or convenient to
5 be prescribed by arbitration rules for giving effect to the
6 purposes of this Act.

7 (2) Without limiting subsection (1), arbitration rules may make
8 provision for or with respect to —

- 9 (a) the practice and procedure governing applications for
10 arbitration; and
11 (b) the lodgment and service of documents in connection
12 with arbitration proceedings; and
13 (c) the disclosure and exchange of information and
14 documents in connection with arbitration proceedings;
15 and
16 (d) the parties to arbitration proceedings, including the
17 joinder, misjoinder and non-joinder of parties; and
18 (e) requiring the attendance by the parties at a
19 pre-arbitration conference to establish readiness for
20 arbitration; and
21 (f) the practice and procedure governing the jurisdiction,
22 functions and proceedings of arbitrators; and
23 (g) the assessment of, and orders as to, costs as defined in
24 section 394; and
25 (h) limiting the number of medical reports that may be
26 admitted in evidence in an arbitration hearing; and
27 (i) limiting the number of expert witnesses that may be
28 called by any party in an arbitration hearing and
29 otherwise restricting the calling of expert witnesses by a
30 party.

31 Note for this section:

32 Section 496 provides for rules as to service and facilitation of electronic
33 processes.

34 **383. General provisions about rules [WCIMA s. 293]**

35 (1) In this section —

36 *rule* means a conciliation rule or an arbitration rule.

37 (2) A rule may require any matter or thing to be verified by
38 statutory declaration.

- 1 (3) Rules —
2 (a) are rules of court under the *Interpretation Act 1984*; and
3 (b) come into operation on the day of publication in the
4 *Gazette* or on such later day or days as may be specified
5 in the rules.

6 **384. Practice notes [WCIMA s. 294]**

- 7 (1) The Director may issue conciliation practice notes about the
8 practice and procedure of the Conciliation Service.
9 (2) A conciliation practice note is not a conciliation rule and does
10 not form part of the conciliation rules.
11 (3) The Registrar may issue arbitration practice notes about the
12 practice and procedure of the Arbitration Service.
13 (4) An arbitration practice note is not an arbitration rule and does
14 not form part of the arbitration rules.

15 **Division 7 — Offences**

16 **385. Failure to comply with decision of dispute resolution**
17 **authority [WCIMA s. 255]**

- 18 (1) A person who fails to comply with a decision of a dispute
19 resolution authority commits an offence.
20 Penalty for this subsection: a fine of \$15 000.
21 (2) A reference in subsection (1) to a decision of a dispute
22 resolution authority includes a reference to —
23 (a) a requirement made by a conciliator under section 318
24 (which provides for the general powers of conciliators)
25 other than a requirement to which section 386 applies;
26 and
27 (b) a direction given by a conciliator under section 321
28 or 324 (which provide for directions requiring the
29 payment of compensation to a worker or the suspension
30 or reduction of income compensation payments); and
31 (c) an order issued by a conciliator under section 319
32 (which provides for the issue of an order of the kind that
33 an arbitrator could issue setting out matters that have
34 been agreed during conciliation).

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Division 7 Offences

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- 1 (3) Subsection (1) does not apply if, or to the extent that —
- 2 (a) the person is excused by section 374 (which allows
- 3 certain claims of privilege) from complying with the
- 4 decision; or
- 5 (b) the person has a reasonable excuse for failing to comply
- 6 with the decision, other than an excuse mentioned in
- 7 section 372, 373 or 374 (which limit claims of privilege
- 8 against self-incrimination and legal professional
- 9 privilege in relation to medical reports).
- 10 (4) If the dispute resolution authority made the decision without
- 11 giving a person an opportunity to be heard, subsection (1) only
- 12 applies to that person on the person being given personally or as
- 13 otherwise specified under subsection (5) —
- 14 (a) a copy of the decision that the Director or Registrar has
- 15 certified to be a true copy; and
- 16 (b) a copy of this section.
- 17 (5) If a dispute resolution authority is satisfied that it is not possible
- 18 or appropriate for a person to be personally given the documents
- 19 referred to in subsection (4), the dispute resolution authority
- 20 may specify another method for service of the documents on the
- 21 person under that subsection.

22 **386. Failure to comply with summons or requirement to attend**
23 **[WCIMA s. 256]**

24 A person must not, without reasonable excuse, fail to comply
25 with —

- 26 (a) a summons issued by the Registrar or an arbitrator; or
- 27 (b) a requirement made by a conciliator under
- 28 section 318(a) to attend at a conciliation conference.

29 Penalty: a fine of \$5 000.

30 **387. Failure to give evidence as required [WCIMA s. 257]**

31 A person appearing before the Registrar or an arbitrator
32 commits an offence if the person —

- 33 (a) refuses to swear an oath or make an affirmation or
- 34 statutory declaration when required by the Registrar or
- 35 an arbitrator to do so; or

- 1 (b) when required by the Registrar or an arbitrator to give
2 evidence that the person is competent and compellable
3 to give, does not do so.

4 Penalty: a fine of \$5 000.

5 **388. Giving false or misleading information [WCIMA s. 258]**

6 A person who gives a dispute resolution authority information
7 that the person knows to be false or misleading in a material
8 particular commits an offence.

9 Penalty: a fine of \$15 000.

10 **389. Misbehaviour and other conduct [WCIMA s. 259]**

11 A person commits an offence if the person —

- 12 (a) insults, or obstructs or hinders the performance of the
13 functions of, a dispute resolution authority; or
14 (b) insults, obstructs or hinders a person attending a
15 conciliation conference or arbitration hearing; or
16 (c) misbehaves at a conciliation conference or arbitration
17 hearing; or
18 (d) interrupts a conciliation conference or arbitration
19 hearing; or
20 (e) obstructs or hinders a person from complying with an
21 order or direction of a dispute resolution authority or a
22 summons or requirement to attend before a dispute
23 resolution authority.

24 Penalty: a fine of \$15 000.

25 **390. Referral of offence to CEO [New provision]**

26 If a dispute resolution authority is of the opinion that a person
27 may have committed an offence under this Division, the dispute
28 resolution authority may refer the matter to the CEO.

29 **Division 8 — Appeals to District Court**

30 **391. Appeal against arbitrator's decision [WCIMA s. 247]**

31 (1) If written reasons for an arbitrator's decision under this Act in
32 respect of a dispute are given to a party to the dispute, the party
33 may, with the leave of the District Court, appeal to the District
34 Court against the decision.

35 (2) The District Court must not grant leave to appeal unless a
36 question of law is involved.

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Division 8 Appeals to District Court

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- 1 (3) In addition to the requirement that a question of law is involved,
2 the District Court must not grant leave to appeal when an
3 amount of compensation is at issue unless —
4 (a) the amount at issue in the appeal is —
5 (i) at least \$5 000 (or a greater amount, if any,
6 prescribed by the regulations); and
7 (ii) at least 20% of the amount awarded in the
8 decision appealed against;
9 or
10 (b) the District Court is of the opinion that the matter is of
11 such importance that, in the public interest, an appeal
12 should lie.
- 13 (4) An application for leave to appeal cannot be made later than
14 28 days after the day on which the written reasons for the
15 decision appealed against were given to the party making the
16 application.
- 17 (5) An appeal under this section is by way of review of the decision
18 appealed against and, except as provided by this Part, must be
19 conducted in accordance with the rules of court of the District
20 Court.
- 21 (6) Evidence that is fresh evidence or evidence in addition to or in
22 substitution for the evidence received in relation to the decision
23 appealed against cannot be given on an appeal to the District
24 Court except with the leave of the District Court.
- 25 (7) On hearing an appeal made under this section, the District Court
26 may —
27 (a) affirm, amend or quash the decision appealed against, or
28 substitute, or make in addition, any decision that should
29 have been made in the first instance; and
30 (b) subject to the limitations on an award of costs imposed
31 by section 400, make any further or other decision, as to
32 costs or otherwise, as the District Court thinks fit.

33 **392. Effect of appeal on decision under appeal [WCIMA s. 250]**

- 34 (1) The District Court may, by order, stay the operation of a
35 decision of an arbitrator pending the determination of an
36 application for leave to appeal from the decision and of any
37 appeal.

1 (2) Subject to any order made by the District Court, an appeal does
2 not affect the operation of the decision appealed against or
3 prevent the taking of action to implement the decision.

4 (3) This section does not limit the powers of the District Court
5 under other written laws.

6 **393. Appeal from District Court to Court of Appeal**
7 **[WCIMA s. 254]**

8 An appeal to the Court of Appeal under the *District Court of*
9 *Western Australia Act 1969* section 79 in respect of a judgment,
10 order or determination in proceedings in the District Court
11 under this Part is available only if —

- 12 (a) the appeal relates to a question of law; and
13 (b) the Court of Appeal grants leave to appeal.

14 **Division 9 — Costs**

15 **Subdivision 1 — General**

16 **394. Terms used [WCIMA s. 261]**

17 In this Division —

18 ***approved costs determination*** means a costs determination
19 approved and published under section 407;

20 ***costs*** means —

- 21 (a) costs of a party (including fees, charges and
22 disbursements); and
23 (b) costs of a proceeding; and
24 (c) other costs, if any, prescribed by the regulations;

25 ***costs determination*** means a determination under section 405;

26 ***costs of a proceeding*** means costs of, or incidental to, a
27 proceeding of a dispute resolution authority other than costs of a
28 party;

29 ***legal service*** means any service performed by a person —

- 30 (a) in the person's capacity as a legal practitioner; and
31 (b) in or for the purposes of a proceeding before a dispute
32 resolution authority.

33 **395. Costs to which Division applies [WCIMA s. 262]**

34 (1) This Division applies to and in respect of costs payable on a
35 party and party basis, on a practitioner and client basis or on any

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Division 9 Costs

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1 other basis, unless this Division or the regulations otherwise
2 provide.

3 (2) The regulations may make provision for or with respect to
4 excluding any class of matters from any or all of the provisions
5 of this Division.

6 **396. Division prevails over *Legal Profession Act 2008***
7 **[WCIMA s. 263]**

8 This Division and any regulations under this Division prevail to
9 the extent of any inconsistency with the *Legal Profession*
10 *Act 2008*, and in particular Part 10 of that Act.

11 **Subdivision 2 — Determination, assessment and limitations as to**
12 **costs**

13 **397. Costs to be determined by dispute resolution authority**
14 **[WCIMA s. 264]**

15 (1) Subject to this Division, costs are at the discretion of the
16 relevant dispute resolution authority.

17 (2) A dispute resolution authority may determine by whom, to
18 whom and to what extent costs are to be paid.

19 (3) A dispute resolution authority may order costs to be assessed on
20 the basis set out in the *Legal Profession Act 2008* Part 10
21 Division 8 (or in relevant regulations under section 401) or on
22 an indemnity basis.

23 (4) Any party to a proceeding may apply to a dispute resolution
24 authority for an order as to costs.

25 (5) A dispute resolution authority must not order the payment of
26 costs by a worker unless the dispute resolution authority is
27 satisfied that the costs relate to an application made by the
28 worker that was frivolous or vexatious, fraudulent or made
29 without proper justification.

30 (6) If a dispute resolution authority is satisfied that a part only of
31 the application was frivolous or vexatious, fraudulent or made
32 without proper justification, the dispute resolution authority
33 may order the worker to pay the costs relating to that part of the
34 application.

- 1 (7) Without limiting section 398, the regulations may make
2 provision for or with respect to the making of orders for the
3 payment by a party of the costs of another party so as to —
4 (a) promote the early resolution of issues and disputes by
5 agreement; and
6 (b) discourage unnecessary delay, excessive attendances
7 and excessive preparation of documentation.

8 **398. Costs unreasonably incurred by representative**
9 **[WCIMA s. 265]**

- 10 (1) If in any proceeding before a dispute resolution authority or in
11 any matter under this Act that is resolved by agreement, a legal
12 practitioner or authorised agent (the *representative*)
13 representing a party (the *client*) incurs costs improperly or
14 without reasonable cause or costs are wasted by undue delay or
15 any other misconduct or default of the representative, a dispute
16 resolution authority may make an order —
17 (a) disallowing the costs, as between the representative and
18 the client; and
19 (b) directing the representative to repay the client costs
20 which the client has been ordered to pay to any other
21 party to the proceeding; and
22 (c) directing the representative personally to indemnify any
23 person other than the client against costs payable by the
24 person indemnified.
25 (2) A dispute resolution authority must not make an order as to
26 costs under this section if of the opinion that it would be unjust
27 to make the order because the representative concerned made all
28 reasonable efforts to avoid unnecessary litigation in the
29 proceeding or for any other reason should not be held
30 responsible for the incurring of the costs concerned.

31 **399. Agent's costs [WCIMA s. 266]**

32 A person is not entitled to be paid or recover any amount for an
33 agent service performed by the person unless the person is an
34 authorised agent.

35 **400. Appeal costs [WCIMA s. 267]**

- 36 (1) The District Court must not make an order for costs against a
37 worker on the ground that an appeal under this Part to the
38 District Court was successful.

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1 (2) If the appellant in an appeal under this Part to the District Court
2 is a worker and is unsuccessful on the appeal, the District Court
3 must not make an order for the payment of the appellant's costs
4 on the appeal by any other party to the appeal.

5 **401. Regulations for assessment of costs [WCIMA s. 268]**

- 6 (1) If a dispute resolution authority makes an order for the payment
7 of costs and does not fix the amount of costs, that amount must
8 be assessed or settled in accordance with the regulations.
- 9 (2) Without limiting subsection (1), the regulations may —
- 10 (a) make provision for or with respect to any matter for or
11 in connection with which provision is made by the *Legal*
12 *Profession Act 2008* Part 10 Division 8; and
- 13 (b) adopt, with or without modification, any of the
14 provisions of the *Legal Profession Act 2008* Part 10
15 Division 8; and
- 16 (c) make provision for or with respect to the assessment of
17 costs by a conciliator or an arbitrator.
- 18 (3) To the extent that regulations under this section make provision
19 for the costs payable to a legal practitioner, those regulations
20 displace the provisions of the *Legal Profession Act 2008*.

21 **Subdivision 3 — Maximum costs**

22 **402. Costs Committee established [WCIMA s. 269]**

- 23 (1) In this section —
- 24 *Legal Costs Committee* means the Legal Costs Committee
25 established under the *Legal Profession Act 2008* section 310.
- 26 (2) A committee called the Costs Committee is established.
- 27 (3) The Costs Committee is constituted by the following
28 members —
- 29 (a) the CEO;
- 30 (b) 1 or more other members of the Board nominated by the
31 Board;
- 32 (c) 2 members of the Legal Costs Committee nominated by
33 the chairperson of that Committee.
- 34 (4) If the chairperson of the Legal Costs Committee fails to
35 nominate a member under subsection (3)(c) within 30 days after
36 receiving a written request from the CEO, the CEO may appoint

1 a person as a member for the purposes of subsection (3)(c) in
2 place of a member of the Legal Costs Committee.

3 **403. Remuneration and allowances of Costs Committee members**
4 **[WCIMA s. 270A]**

5 A member of the Costs Committee is entitled to be paid from
6 the General Account any remuneration and allowances that the
7 Minister may determine on the recommendation of the Public
8 Sector Commissioner.

9 **404. Constitution and procedure of Costs Committee**
10 **[WCIMA s. 270]**

11 (1) Except to the extent that section 402 provides for the
12 membership of the Costs Committee, the constitution and
13 procedure of, and other matters relating to, the Costs
14 Committee —

- 15 (a) may be prescribed by the regulations; or
16 (b) if not prescribed by the regulations — may be as
17 directed in writing by WorkCover WA.

18 (2) To the extent that the procedure of the Costs Committee is not
19 prescribed by the regulations or directed by WorkCover WA,
20 the procedure is as the Costs Committee determines.

21 **405. Determinations as to maximum costs [WCIMA s. 271]**

22 (1) The Costs Committee may make a determination (a *costs*
23 *determination*) fixing maximum costs that may be charged
24 for —

- 25 (a) legal services and agent services; and
26 (b) matters that are not legal services or agent services but
27 are related to a claim for compensation (for example,
28 expenses for witnesses or medical reports).

29 (2) A provision of the determination may —

- 30 (a) authorise any matter or thing to be determined, applied
31 or regulated by a specified person or body; and
32 (b) fix a cost or amount by reference to a cost or amount
33 fixed by a costs determination (as defined in the *Legal*
34 *Profession Act 2008* section 252).

35 (3) The power under this section to make a costs determination for
36 services or matters includes power to make a determination that
37 no amount may be charged for a particular service or matter or

1 class of services or matters, with the result that a legal
2 practitioner or authorised agent is not entitled to be paid or
3 recover any amount for the service or matter concerned.

4 (4) A costs determination may be amended or revoked by a
5 subsequent costs determination.

6 **406. Making a costs determination [WCIMA s. 272]**

7 (1) Before making a costs determination the Costs Committee
8 may —

- 9 (a) publish notice of a proposed determination and consider
10 any submissions made to it in respect of the proposed
11 determination; and
12 (b) make such other inquiries as it considers necessary to
13 facilitate the making of the determination.

14 (2) In making a costs determination the Costs Committee —

- 15 (a) is not bound by the rules of evidence and may inform
16 itself as it thinks fit; and
17 (b) is not required to conduct any proceeding in a formal
18 manner.

19 **407. Approval and publication of costs determinations**
20 **[WCIMA s. 273]**

21 (1) The Costs Committee must report to the Minister —

- 22 (a) a costs determination of the Costs Committee; and
23 (b) the reasons for its decisions in respect of the costs
24 determination.

25 (2) If the Minister approves a costs determination, the
26 determination must be published in the *Gazette*.

27 (3) An approved costs determination takes effect on and from —

- 28 (a) the day on which it is published in the *Gazette*; or
29 (b) if a later day is specified in the determination — the
30 later day.

31 (4) Judicial notice must be taken of —

- 32 (a) an approved costs determination published in the
33 *Gazette*; and
34 (b) the day of publication of the determination.

1 **408. Effect of approved costs determination [WCIMA s. 274]**

2 (1) A legal practitioner is not entitled to be paid or recover for a
3 legal service or other matter an amount that exceeds any amount
4 fixed by an approved costs determination as the maximum costs
5 that may be charged for the service or matter.

6 (2) An authorised agent is not entitled to be paid or recover for an
7 agent service or other matter an amount that exceeds any
8 amount fixed by an approved costs determination as the
9 maximum costs that may be charged for the service or matter.

10 (3) This section does not entitle a legal practitioner or authorised
11 agent to recover costs for a legal service or matter in
12 contravention of an order of a dispute resolution authority under
13 section 398.

14 **409. Limit on agreement as to costs [WCIMA s. 275]**

15 (1) An agreement must not be made for a legal practitioner or
16 authorised agent to receive, for any legal service or agent
17 service, any greater amount than is provided for in an approved
18 costs determination as the maximum costs that may be charged
19 for the service.

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

21 **410. Costs in relation to actions for damages [WCIMA s. 276]**

22 Nothing in this Division affects the operation of section 427
23 (which deals with agreements as to solicitor-client costs in
24 actions for damages independently of this Act).

1

Part 7 — Common law

2

Division 1 — General

3

411. Terms used [WCIMA s. 93A, 159]

4

(1) In this Part —

5

damages —

6

(a) means damages due or payable to, or claimed by, a worker for an injury caused to that worker by the tort of another person; but

7

8

9

(b) does not include —

10

(i) any sum required or authorised to be paid under an award or industrial agreement as those terms are defined in the *Industrial Relations Act 1979* section 7(1); or

11

12

13

14

(ii) any sum payable under a superannuation scheme or any life or other insurance policy; or

15

16

(iii) any amount paid in respect of costs incurred in connection with legal proceedings;

17

18

third party means a person other than the employer;

19

tort means negligence or other tort or breach of statutory duty.

20

(2) This Part applies to damages for a tort even if the damages are sought to be recovered in an action for breach of contract or other action.

21

22

23

412. References to employer include persons vicariously liable [WCIMA s. 93B(4)]

24

25

A reference in this Part to a worker's employer includes a reference to —

26

27

(a) a person who is vicariously liable for the acts of the employer; and

28

29

(b) a person for whose acts the employer is vicariously liable.

30

31

413. Liability independent of this Act not affected [WCIMA s. 86]

32

33

Except as expressly provided by this Act, nothing in this Act affects any liability that exists independently of this Act.

34

1 **414. Requirements for motor vehicle claims not affected**
2 **[WCIMA s. 85]**

3 This Part does not affect the operation of the *Motor Vehicle*
4 *(Third Party Insurance) Act 1943* sections 29 and 29A, and this
5 Part must be read subject to those sections.

6 **Division 2 — Constraints on common law proceedings and**
7 **damages: actions against employer**

8 **415. Application of Division [WCIMA s. 93B]**

9 This Division applies to an award of damages against a
10 worker's employer independently of this Act in respect of an
11 injury suffered by the worker if —

- 12 (a) the injury was caused by the tort of the employer; and
13 (b) compensation for the injury has been paid or is payable,
14 or would have been paid or be payable but for
15 section 21.

16 Note for this subsection:

17 Section 412 extends references in this Division to an employer to a
18 person who is vicariously liable for the acts of the employer and a
19 person for whose acts the employer is vicariously liable.

20 **416. Damages to which this Division does not apply**

21 This Division does not apply to —

- 22 (a) an award of damages in respect of an injury that results
23 in the death of the worker; or
24 (b) an award of damages to which the *Motor Vehicle (Third*
25 *Party Insurance) Act 1943* applies; or
26 (c) an award of exemplary or punitive damages; or
27 (d) an award of damages against a person who is a worker's
28 employer (a *deemed employer*) only because of
29 section 218 or 228; or
30 (e) an award of damages against a person for whose actions
31 a deemed employer is vicariously liable; or
32 (f) an award of damages of a class that is excluded by the
33 regulations from the application of this Division.

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Part 7 Common law

Division 2 Constraints on common law proceedings and damages:
actions against employer

s. 417

1 **417. Application of Division depends on when cause of action**
2 **accrues [WCIMA s. 93I]**

3 This Division applies in respect of a cause of action that accrued
4 before or after the day on which this section comes into
5 operation but does not apply in respect of a cause of action that
6 accrued before 14 November 2005.

7 Note for this section:

8 14 November 2005 is the day on which the *Workers' Compensation*
9 *Reform Act 2004* section 79 came into operation.

10 **418. Limit on powers of courts to award damages against**
11 **employer [WCIMA s. 93C]**

12 A court must not award damages against a worker's employer
13 contrary to this Division.

14 **419. No damages for noise-induced hearing loss [WCIMA s. 93J]**

15 Damages must not be awarded against a worker's employer in
16 respect of noise-induced hearing loss.

17 **420. No damages if compensation settlement agreement**
18 **registered [WCIMA s. 93K(1)]**

19 (1) Damages must not be awarded against a worker's employer in
20 respect of an injury if a settlement agreement has been
21 registered under Part 2 Division 11 in respect of the injury.

22 (2) This section does not apply if the settlement agreement applies
23 only in respect of dust disease impairment compensation.

24 **421. Threshold requirements for commencement of proceedings**
25 **and award of damages [WCIMA s. 93K(4), 93L(5)-(8)]**

26 (1) Court proceedings for an award of damages in respect of an
27 injury must not be commenced against the worker's employer
28 unless —

29 (a) the worker's degree of permanent whole of person
30 impairment resulting from the injury has been assessed
31 to be at least 15% and that assessment has been recorded
32 by the Director as the supporting assessment for the
33 worker's election referred to in paragraph (b); and

34 Note for this paragraph:

35 An assessment of the worker's degree of permanent whole of person
36 impairment must be made as required by Part 4 Division 3.

- 1 (b) the worker has elected in accordance with the
2 regulations to retain the right to seek the damages and
3 the Director has —
- 4 (i) registered the election in accordance with the
5 regulations; and
- 6 (ii) notified the worker in writing that the election
7 has been registered.
- 8 (2) The Director may refuse to register an election if not satisfied
9 that the worker has been properly advised as to the
10 consequences of the election.
- 11 (3) A court must not award damages against a worker's employer in
12 respect of an injury unless proceedings in the court have been
13 commenced in compliance with subsection (1) and the court is
14 satisfied that the worker's degree of permanent whole of person
15 impairment resulting from the injury is at least 15%.
- 16 (4) In determining the worker's degree of permanent whole of
17 person impairment, the court is not bound by the supporting
18 assessment recorded for the worker's election but may admit the
19 assessment as evidence relevant to the worker's degree of
20 permanent whole of person impairment.
- 21 (5) An election that the Director has registered under this section
22 cannot be withdrawn and, after the election has been registered,
23 another election in respect of the same injury cannot be
24 registered.
- 25 (6) Subsection (5) does not prevent another assessment as to the
26 worker's degree of permanent whole of person impairment from
27 being made (before or after the commencement of court
28 proceedings) after the Director has registered the election and
29 does not prevent another assessment from being used in court
30 proceedings.
- 31 (7) The Director may at any time rectify an error that was made in
32 registering an election.
- 33 (8) This section extends to an award of damages by way of consent
34 judgment or settlement of an action.
- 35 (9) An election lodged for registration by the Director and evidence
36 of a supporting assessment to be recorded by the Director must
37 be in an approved form.

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Part 7 Common law

Division 2 Constraints on common law proceedings and damages:
actions against employer

s. 422

1 **422. Effect of election to retain right to seek damages on**
2 **entitlement to compensation [WCIMA s. 93P]**

3 (1) If a worker's election to retain the right to seek damages has
4 been registered by the Director as referred to in
5 section 421(1)(b)(i) and the worker's degree of permanent
6 whole of person impairment as assessed by an approved
7 permanent impairment assessor is less than 25% —

8 (a) the amount of any income compensation payments to
9 which the worker is entitled under this Act in respect of
10 the injury for any time during the first 6 months after the
11 day on which the election is registered (the *registration*
12 *day*) is the reduced amount provided for by
13 subsection (2); and

14 (b) the worker is not entitled to any income compensation
15 payment in respect of the injury to the extent that the
16 payment would be for any time that is more than
17 6 months after the registration day; and

18 (c) the worker is not entitled to any permanent impairment
19 compensation in respect of the injury; and

20 (d) the worker is not entitled to any medical and health
21 expenses compensation or miscellaneous expenses
22 compensation in respect of the injury for expenses
23 incurred after the registration day.

24 (2) The *reduced amount* is —

25 (a) to the extent that it is for any time during the first
26 3 months after the registration day — 70% of the
27 amount to which the worker would have been entitled if
28 this section had not applied; and

29 (b) to the extent that it is for any other time during the first
30 6 months after the registration day — 50% of the
31 amount to which the worker would have been entitled if
32 this section had not applied.

33 **423. Maximum damages award for less than 25% impairment**
34 **[WCIMA s. 93K(5)-(7)]**

35 (1) In this section —

36 *maximum damages amount for less than 25% impairment*
37 means the amount prescribed by the regulations as the
38 maximum damages amount for less than 25% impairment.

- 1 (2) Unless the court is satisfied that the worker's degree of
2 permanent whole of person impairment is at least 25% —
- 3 (a) the maximum amount of damages that may be awarded
4 against the worker's employer in respect of the injury is
5 the amount that is the maximum damages amount for
6 less than 25% impairment; and
- 7 (b) the maximum amount may be awarded only in a most
8 extreme case; and
- 9 (c) in any other case the amount of damages to be awarded
10 must be a proportion, determined according to the
11 severity of the injury or injuries, of the maximum
12 amount that may be awarded.
- 13 (3) A determination of the amount of damages that may be awarded
14 must be made on the basis of the maximum damages amount for
15 less than 25% impairment at the time the award is made.
- 16 (4) This section has effect in respect of the amount of a judgment
17 before any reduction required by operation of section 431.
- 18 (5) This section imposes no maximum amount for an award of
19 damages against a worker's employer if the court is satisfied
20 that the worker's degree of permanent whole of person
21 impairment is at least 25%.
- 22 (6) This section does not create an entitlement to damages and is
23 subject to any other law that prevents or limits the awarding of
24 damages.
- 25 (7) This section extends to an award of damages by way of consent
26 judgment or settlement of an action.

27 **424. Special provision for HIV and AIDS [WCIMA s. 93Q]**

- 28 (1) Damages must not be awarded against a worker's employer in
29 respect of the infection of a worker with HIV but damages may
30 be awarded in respect of the worker's contraction of AIDS.
- 31 (2) A worker who has contracted AIDS has, for the purposes of this
32 Division, a degree of permanent whole of person impairment
33 resulting from the disease of at least 25%.
- 34 (3) A certificate in writing by a medical practitioner to the effect
35 that the worker has contracted AIDS must be recorded by the
36 Director, and otherwise treated for the purposes of this Division,
37 as if it were an assessment by an approved permanent
38 impairment assessor that the worker's degree of permanent

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Part 7 Common law

Division 2 Constraints on common law proceedings and damages:
actions against employer

s. 425

1 whole of person impairment resulting from the disease was at
2 least 25%.

3 (4) The regulations may make provision for or with respect to the
4 methods for determining for the purposes of this section
5 whether a worker has contracted AIDS.

6 (5) Part 4 Division 3 does not apply to the degree of permanent
7 impairment of a worker resulting from the contraction of AIDS.

8 (6) The cause of action of a worker who has contracted AIDS is
9 taken to have accrued, for the purposes of this Division and any
10 limitation on the period within which proceedings may be
11 commenced to recover damages for that cause, when a
12 certificate is first given in writing by a medical practitioner to
13 the effect that the worker has contracted AIDS.

14 **425. Special provisions for dust disease damages claims**
15 **[WCIMA s. 93R]**

16 (1) For the purposes of this Division, a worker's degree of
17 permanent whole of person impairment resulting from a dust
18 disease is —

- 19 (a) as assessed by a Dust Disease Medical Panel; or
20 (b) as agreed by the worker and the employer under this
21 section.

22 (2) If the worker has made a claim for compensation for the dust
23 disease, the Panel to which the worker's claim was referred
24 under section 120 is the Panel that assesses the worker's degree
25 of permanent whole of person impairment for the purposes of
26 this Division.

27 (3) If the worker has not made a claim for compensation for the
28 dust disease, the CEO must constitute a Dust Disease Medical
29 Panel to determine the following questions and Part 2
30 Division 8 Subdivision 3 applies accordingly —

- 31 (a) Is or was the worker suffering from diffuse pleural
32 fibrosis, lung cancer, mesothelioma, pneumoconiosis or
33 silicosis?
34 (b) What is assessed to be the degree of permanent whole of
35 person impairment resulting from the disease?

36 (4) The Panel determining a question for the purposes of this
37 section is not bound by a previous assessment of a Dust Disease
38 Medical Panel if the previous assessment has not been recorded

- 1 by the Director as the supporting assessment for the worker's
2 election to retain the right to seek damages as referred to in
3 section 421(1)(b).
- 4 (5) As an alternative to an assessment by a Dust Disease Medical
5 Panel of a worker's degree of permanent whole of person
6 impairment resulting from a dust disease, the worker and the
7 employer can agree —
- 8 (a) that the worker's degree of permanent whole of person
9 impairment resulting from a dust disease is at least 15%;
10 and
- 11 (b) as to whether or not the worker's degree of permanent
12 whole of person impairment resulting from a dust
13 disease is at least 25%.
- 14 (6) Such an agreement must be accepted by the Director, and
15 otherwise treated for the purposes of this Division, as if it were
16 an assessment by a Dust Disease Medical Panel as to the
17 worker's degree of permanent whole of person impairment
18 resulting from the dust disease.
- 19 (7) If a Dust Disease Medical Panel determines that a worker is or
20 was suffering from mesothelioma, the worker is for the
21 purposes of this Division taken to have a degree of permanent
22 whole of person impairment resulting from that disease of at
23 least 25%.
- 24 **426. Effect of this Division on contribution required from**
25 **employer [WCIMA s. 93K(8)-(10)]**
- 26 (1) An employer is not liable to make any contribution under the
27 *Law Reform (Contributory Negligence and Tortfeasors'*
28 *Contribution) Act 1947* (the **Contribution Act**) in respect of
29 damages awarded against a third party in relation to an injury
30 if —
- 31 (a) section 421 prevents an award of damages against the
32 employer in respect of the injury; or
- 33 (b) damages in respect of the injury have been awarded
34 against the employer in accordance with section 423.
- 35 (2) If section 423 limits the damages that could have been awarded
36 against an employer in respect of an injury —
- 37 (a) the contributions that the employer may be liable to
38 make under the Contribution Act in respect of damages
39 awarded against third parties in relation to the injury are

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Part 7 Common law

Division 3 Prevention of double recovery

s. 427

1 not to exceed the damages that could have been awarded
2 against the employer in accordance with section 423;
3 and

4 (b) if the employer has made or been directed to make a
5 contribution under the Contribution Act in respect of
6 damages awarded against a third party in relation to the
7 injury, the amount of damages that may be awarded
8 against the employer in accordance with section 423 is
9 reduced by the amount of that contribution.

10 (3) This section applies regardless of whether the damages are
11 awarded against 1 or several employers.

12 **427. Limits on agreements as to solicitor-client costs**
13 **[WCIMA s. 87]**

14 (1) This section applies to an action for damages independently of
15 this Act if this Division applies to the awarding of damages in
16 the action (whether or not an award of damages is actually
17 affected by this Division).

18 (2) An agreement must not be made for a legal practitioner to
19 receive, for appearing for or acting on behalf of a person in an
20 action to which this section applies, any greater reward than is
21 provided for by any costs determination (as defined in the *Legal*
22 *Profession Act 2008* section 252).

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

24 **428. Regulations [WCIMA s. 93S]**

25 The regulations may provide for notification to be given to
26 workers and employers —

27 (a) of the effect of provisions of this Division; and

28 (b) of things done under this Division.

29 **Division 3 — Prevention of double recovery**

30 **429. Application of Division [WCIMA s 92]**

31 This Division applies to an action for damages brought by a
32 worker against —

33 (a) the worker's employer; or

34 (b) a third party; or

35 (c) both the worker's employer and a third party.

1 **430. Worker to be given opportunity to discontinue action for**
2 **damages [WCIMA s. 92(a), (d)]**

3 (1) If the court decides that an action for damages should succeed,
4 the worker must be given a reasonable opportunity after
5 damages have been ascertained but before judgment is entered
6 to elect whether to have judgment or to discontinue.

7 (2) If the action is discontinued, the worker must pay the costs of
8 the employer or any third party or of each of them or such part
9 of those costs as the court thinks fit.

10 **431. Deduction or repayment of compensation if action for**
11 **damages proceeds to judgment [WCIMA s. 92(b) and (c)]**

12 (1) If an action for damages in respect of an injury proceeds to
13 judgment (including the acceptance of an offer to consent to
14 judgment) against the employer alone or against the employer
15 and a third party —

16 (a) the amount of the damages payable to the worker under
17 the judgment is reduced by the amount of any
18 compensation paid under Part 2 for the injury; and

19 (b) any apportionment of the damages between the
20 employer and the third party must be on the basis of the
21 amount of the damages as so reduced.

22 (2) If an action for damages in respect of an injury proceeds to
23 judgment (including the acceptance of an offer to consent to
24 judgment) against a third party alone —

25 (a) the amount of any compensation for the injury recovered
26 by the worker must be a first charge on the judgment;
27 and

28 (b) the third party is required to pay that amount to the
29 employer; and

30 (c) the judgment is, to the extent of any such payment,
31 discharged by the payment.

32 (3) If the damages recoverable by a worker are reduced by reason
33 of the contributory negligence of the worker, the amount of the
34 compensation paid under Part 2 for the injury is notionally
35 reduced by the proportion by which the worker's damages were
36 reduced, and that notionally reduced amount is the amount of
37 the reduction in damages under subsection (1) or of the first
38 charge on the judgment under subsection (2).

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Division 4 Remedies against third parties

s. 432

- 1 (4) There is no reduction under subsection (1) in the amount of the
2 damages payable to the extent that the employer has recovered
3 from the worker any amount of the compensation concerned
4 under section 23.

5 **432. Compensation proceedings not permitted if action for**
6 **damages succeeds [WCIMA s. 92(e), (f)]**

- 7 (1) If an action for damages brought by a worker in respect of an
8 injury is successful, the worker must not commence or continue
9 proceedings for or in relation to compensation for the injury.
- 10 (2) For the purposes of this section, an action for damages is
11 successful if —
- 12 (a) the action proceeds to judgment (including the
13 acceptance of an offer to consent to judgment); or
- 14 (b) the action is settled by agreement or acceptance of an
15 offer of compromise.
- 16 (3) If an action for damages is settled by agreement otherwise than
17 by acceptance of an offer to consent to judgment or an offer of
18 compromise, the employer or third party with whom the
19 agreement is made must file a memorandum of the terms of the
20 settlement with the Director in a form approved by the Director
21 within 3 months after the date of execution of the agreement by
22 the worker.
- 23 (4) A failure to comply with subsection (3) does not affect the
24 validity of the settlement.

25 **Division 4 — Remedies against third parties**

26 **433. Worker entitled to proceed against third party for damages**
27 **[WCIMA s. 93(1)(a)]**

- 28 (1) When a third party is liable to pay damages in respect of an
29 injury for which compensation is payable, the worker may take
30 proceedings both against the third party to recover damages and
31 against any person liable to pay compensation to recover that
32 compensation.
- 33 (2) In any such proceedings, the worker is not entitled to recover
34 both damages and compensation and must bring to account in
35 reduction of the worker's entitlement to compensation any
36 amount recovered by way of damages.
- 37 (3) In a case to which section 431 applies, the requirement under
38 subsection (2) to bring to account in reduction of the worker's

1 entitlement to compensation any amount recovered by way of
2 damages is satisfied by the operation of that section.

3 **434. Employer's right to be indemnified by third party**
4 **[WCIMA s. 93(1)(b), (2), (3)]**

5 (1) An employer is entitled to be indemnified by a third party
6 whose tort caused an injury to a worker to the full extent of the
7 employer's liability to pay compensation for the injury, whether
8 or not the third party has discharged their liability to pay
9 damages to the worker by judgment, settlement or otherwise.

10 (2) If negligence of the employer caused or contributed to the
11 worker's injury, the extent of the indemnity of the employer by
12 the third party is reduced by the degree of the employer's
13 negligence.

14 (3) If negligence of the worker caused or contributed to the
15 worker's injury, the extent of the indemnity of the employer by
16 the third party is reduced by the degree of the worker's
17 negligence.

18 (4) The extent of the indemnity of the employer by the third party is
19 reduced to the extent of any payment to the employer by the
20 third party under section 431 or to the extent that under that
21 section damages payable by the employer have been reduced by
22 an amount of compensation paid by the employer.

23 (5) All questions as to the right to or amount of any indemnity
24 under this section may, in default of agreement between the
25 employer and the third party, be determined by a court of
26 competent jurisdiction.

27 **435. Recovery of third party indemnity payment from worker**
28 **[WCIMA s. 93(4)]**

29 (1) If a third party has paid the whole or any part of the damages
30 payable to a worker in respect of an injury caused or contributed
31 to by the third party and the third party has also indemnified the
32 employer for the payment of any compensation for the injury,
33 the third party may recover from the worker the amount so paid
34 to the employer.

35 (2) The amount that may be recovered by the third party cannot
36 exceed the amount of damages paid to the worker by the third
37 party.

1 **436. Employer's right to recover unpaid damages from third**
2 **party [WCIMA s. 93(5)]**

- 3 (1) If some of the damages payable to a worker by a third party for
4 an injury have not been paid to the worker (the *unpaid*
5 *damages*), the employer can recover the unpaid damages from
6 the third party as a debt due to the employer if some of the
7 compensation paid by the employer for the injury has not been
8 refunded to the employer.
- 9 (2) The amount of compensation refunded to the employer includes
10 the amount of any reduction in damages paid by the employer
11 resulting from the operation of section 431 on account of
12 compensation paid by the employer.
- 13 (3) Proceedings to recover the unpaid damages are to be taken by
14 the employer in the name of the worker and at the expense of
15 the employer.
- 16 (4) Any damages recovered by the employer from the third party in
17 excess of the amount of compensation not refunded to the
18 employer must be paid to the worker.
- 19 (5) The employer must indemnify the worker against all costs and
20 expenses incurred in respect of proceedings taken in the name
21 of the worker.

22 **Division 5 — Choice of law**

23 **437. Terms used [WCIMA s. 93AE]**

24 In this Division —

25 *State's legislation about damages for an injury from*
26 *employment* means —

- 27 (a) for this State — Division 2;
- 28 (b) for another State — any provision of a law of that State
29 that is declared by the regulations to be the State's
30 legislation about damages for an injury from
31 employment;

32 *substantive law* does not include a law prescribing rules for
33 choice of law but includes the following —

- 34 (a) a law that establishes, modifies or extinguishes a cause
35 of action or a defence to a cause of action;
- 36 (b) a law prescribing the period within which an action must
37 be brought (including a law providing for the extension
38 or abridgment of that period);

- 1 (c) a law that provides for the limitation or exclusion of
2 liability or the barring of a right of action if a proceeding
3 on, or arbitration of, a claim is not commenced within a
4 particular time limit;
- 5 (d) a law that limits the kinds of injury, loss or damage for
6 which damages or compensation may be recovered;
- 7 (e) a law that precludes the recovery of damages or
8 compensation or limits the amount of damages or
9 compensation that can be recovered;
- 10 (f) a law expressed as a presumption, or rule of evidence,
11 that affects substantive rights;
- 12 (g) a provision of a State's legislation about damages for an
13 injury from employment, whether or not it would be
14 otherwise regarded as procedural in nature.

15 **438. Extended meaning: injury, employer and worker**
16 **[WCIMA s. 93AC]**

17 For the purposes of this Division —

- 18 (a) a reference to *injury*, *employer* and *worker* includes
19 anything that is within the scope of a corresponding
20 term in the statutory workers compensation scheme of
21 another State; and
- 22 (b) the determination of what constitutes employment or
23 whether or not a person is a worker or a worker's
24 employer must be made on the basis that those concepts
25 include anything that is within the scope of a
26 corresponding concept in the statutory workers
27 compensation scheme of another State.

28 **439. Applicable substantive law for work injury claims**
29 **[WCIMA s. 93AA]**

30 (1) If there is an entitlement to compensation under the statutory
31 workers compensation scheme of a State in respect of an injury
32 to a worker (whether or not compensation has been paid), the
33 substantive law of that State is the substantive law that
34 governs —

- 35 (a) whether or not a claim to which this Division applies in
36 respect of the injury can be made; and
- 37 (b) if it can be made, the determination of the claim.

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Part 7 Common law

Division 5 Choice of law

s. 440

- 1 (2) This Division does not apply if there is an entitlement to
2 compensation in respect of the injury under the statutory
3 workers compensation scheme of more than 1 State.
- 4 (3) For the purposes of this section, there is considered to be an
5 entitlement to compensation under a statutory workers
6 compensation scheme of a State in respect of an injury if
7 compensation in respect of the injury —
- 8 (a) would have been payable but for a provision of the
9 scheme that excludes the worker's right to compensation
10 because the injury is attributable to any conduct or
11 failure of the worker that is specified in that provision;
12 or
- 13 (b) would have been payable if a claim for that
14 compensation had been duly made, and (where
15 applicable) an election to claim that compensation
16 (instead of damages) had been duly made; or
- 17 (c) would have been payable if the worker had not been a
18 participant in a scheme for the benefit of
19 catastrophically injured workers.
- 20 (4) A reference in this section to compensation payable in respect
21 of an injury does not include a reference to compensation
22 payable on the basis of the provisional acceptance of liability.

23 **440. Claims to which Division applies [WCIMA s. 93AB]**

- 24 (1) This Division applies to a claim for damages or recovery of
25 contribution brought against a worker's employer in respect of
26 an injury that was caused by —
- 27 (a) a tort of the worker's employer; or
28 (b) a breach of contract by the worker's employer.
- 29 (2) This Division also applies to a claim for damages or recovery of
30 contribution brought against a person other than a worker's
31 employer in respect of an injury that was caused by a tort or
32 breach of contract of the person if the tort or breach of contract
33 on which the claim is founded occurred in this State.
- 34 (3) This section applies even if the damages or recovery of
35 contribution in respect of an injury that was caused by a tort are
36 claimed in an action for breach of contract or other action.

1 **441. Claim in respect of death included [WCIMA s. 93AD]**

2 For the purposes of this Division, a claim for damages in respect
3 of death resulting from an injury must be considered as a claim
4 for damages in respect of the injury.

5 **442. Availability of action in another State not relevant**
6 **[WCIMA s. 93AF]**

7 (1) For the purposes of this Division it makes no difference that,
8 under the substantive law of another State —

9 (a) the nature of the circumstances is such that they would
10 not have given rise to a cause of action had they
11 occurred in that State; or

12 (b) the circumstances on which the claim is based do not
13 give rise to a cause of action.

14 (2) In subsection (1) —

15 *another State* means a State other than the State with which the
16 worker's employment is connected.

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Part 8 — Administration

Division 1 — General

443. Terms used [New provision]

In this Part —

appointed member means a member of the Board appointed under section 452(1)(a) or (d);

chairperson means the person appointed under section 452(1)(a) as chairperson of the Board;

committee means a committee established under section 467(1);

workers compensation scheme means the scheme for workers compensation and injury management established under this Act.

Division 2 — WorkCover WA

444. WorkCover WA established [WCIMA s. 94]

- (1) WorkCover WA is established.
- (2) WorkCover WA is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against WorkCover WA in its corporate name.
- (4) WorkCover WA may use, and operate under, the name WorkCover.
- (5) WorkCover WA is an SES organisation under the *Public Sector Management Act 1994*.

Note for this section:

It is an offence under section 523 for a person other than WorkCover WA to use or operate under the name WorkCover WA or a similar name.

445. Status [WCIMA s. 94(2a)]

WorkCover WA is an agent of the Crown and has the status, immunities and privileges of the Crown.

446. Objective [WCIMA s. 100]

The objective of WorkCover WA is to ensure the efficient and effective operation of the workers compensation scheme.

1 **447. Functions [WCIMA s. 100]**

2 (1) In this section —

3 *service provider* means an insurer, self-insurer or other person
4 who participates in or provides services in connection with the
5 workers compensation scheme.

6 (2) WorkCover WA has the following functions —

- 7 (a) to promote understanding of the workers compensation
8 scheme through education and information;
- 9 (b) to promote and support the return to work of injured
10 workers;
- 11 (c) to license, approve and regulate service providers that
12 perform functions under this Act;
- 13 (d) to monitor compliance by workers, employers and
14 service providers affected by the workers compensation
15 scheme;
- 16 (e) to issue guidelines to assist service providers to perform
17 their obligations under this Act;
- 18 (f) to promote the resolution of disputes in a manner that is
19 fair, just, economical, informal and quick;
- 20 (g) to fix recommended premium rates for workers
21 compensation policies;
- 22 (h) to control and administer the General Account, the Trust
23 Account and the DI Fund;
- 24 (i) to collect data from service providers and compile and
25 publish information and reports as WorkCover WA
26 considers necessary and desirable;
- 27 (j) to undertake and participate in research to advance or
28 support the purposes of the workers compensation
29 scheme and this Act;
- 30 (k) to promote the prevention of injuries from employment;
- 31 (l) to advise the Minister on the operation and effectiveness
32 of the workers compensation scheme and any matter the
33 Minister refers to WorkCover WA;
- 34 (m) any other function given to WorkCover WA under this
35 or another Act.

1 **448. Powers generally [WCIMA s. 94(2)(b), 101 and 102]**

2 (1) In this section —

3 *acquire* includes taking on lease or licence or in any other
4 manner in which an interest in property may be acquired;

5 *dispose of* includes disposing of by way of lease or licence or in
6 any other manner in which an interest in property may be
7 disposed of.

8 (2) WorkCover WA has all the powers it needs to perform its
9 functions.

10 (3) WorkCover WA may, for the purposes of performing any of its
11 functions —

12 (a) determine and charge fees for the provision of any
13 services related to the performance of its functions; and

14 (b) effect contracts of insurance providing indemnity
15 against liability to make payments out of moneys
16 standing to the credit of the General Account or the
17 DI Fund; and

18 (c) acquire, dispose of or otherwise deal in real or personal
19 property; and

20 (d) alter, improve, maintain, manage or develop real or
21 personal property; and

22 (e) enter into any contract or arrangement, including a
23 contract or arrangement for the provision of services to
24 WorkCover WA.

25 (4) Subsection (3) does not limit subsection (2) or any of
26 WorkCover WA's other powers.

27 **449. Delegation [WCIMA s. 101AA]**

28 (1) WorkCover WA may delegate any power or duty of WorkCover
29 WA under another provision of this Act to —

30 (a) a Board member; or

31 (b) the CEO or another WorkCover WA officer.

32 (2) The delegation must be in writing executed by WorkCover WA.

33 (3) A person to whom a power or duty is delegated under this
34 section cannot delegate the power or duty.

35 (4) A person exercising or performing a power or duty that has been
36 delegated to the person under this section is taken to do so in

1 accordance with the terms of the delegation unless the contrary
2 is shown.

3 (5) Nothing in this section limits the ability of WorkCover WA to
4 perform a function through a staff member or agent.

5 (6) This section does not apply to the execution of documents but
6 authority to execute documents on behalf of WorkCover WA
7 can be given under section 450(5).

8 **450. Execution of documents [new provision]**

9 (1) WorkCover WA must have a common seal.

10 (2) A document is duly executed by WorkCover WA if —

11 (a) the common seal of WorkCover WA is applied to it in
12 accordance with subsections (3) and (4); or

13 (b) it is signed on behalf of WorkCover WA by a person or
14 persons authorised to do so under subsection (5).

15 (3) The common seal of WorkCover WA must not be applied to
16 any document except as authorised by WorkCover WA.

17 (4) The common seal of WorkCover WA must be applied to a
18 document in the presence of any 2 Board members, each of
19 whom must sign the document to attest that the common seal
20 was so applied.

21 (5) WorkCover WA may, by writing under its common seal,
22 authorise any of the following persons to sign documents on
23 behalf of WorkCover WA, either generally or subject to the
24 conditions that are specified in the authorisation —

25 (a) a Board member or Board members;

26 (b) a staff member or staff members.

27 (6) A document purporting to be executed in accordance with this
28 section must be presumed to be duly executed unless the
29 contrary is shown.

30 (7) When a document is produced bearing a seal purporting to be
31 the common seal of WorkCover WA, it must be presumed that
32 the seal is the common seal of WorkCover WA unless the
33 contrary is shown.

1 **Division 3 — Administration of WorkCover WA**

2 **Subdivision 1 — The Board**

3 **451. Board is governing body [WCIMA s. 95]**

4 (1) WorkCover WA must have a board.

5 (2) The Board is the governing body of WorkCover WA and, in the
6 name of WorkCover WA, performs WorkCover WA's functions
7 under this Act or any other written law.

8 **452. Board membership [WCIMA s. 95]**

9 (1) The Board consists of the following members —

10 (a) 1 person appointed by the Minister as a member and
11 chairperson of the Board;

12 (b) the CEO;

13 (c) the chief executive officer of the department principally
14 assisting in the administration of the *Occupational*
15 *Safety and Health Act 1984*;

16 (d) 4 persons appointed by the Minister of whom —

17 (i) 1 is a person experienced in employers' interests;
18 and

19 (ii) 1 is a person experienced in workers' interests;
20 and

21 (iii) 1 is a person experienced in insurance matters;
22 and

23 (iv) 1 is a person experienced in accounting and
24 financial management.

25 (2) The person appointed as chairperson must not be a public
26 service officer.

27 (3) Before making an appointment under subsection (1)(d)(i) the
28 Minister may, in writing, request the Chamber of Commerce
29 and Industry of Western Australia (Inc.) to submit the name of a
30 person, or the names of such number of persons as is specified
31 in the request, who, or each of whom, has the required
32 experience and is willing to act as a member under
33 subsection (1)(d)(i).

34 (4) Before making an appointment under subsection (1)(d)(ii) the
35 Minister may, in writing, request UnionsWA to submit the name
36 of a person, or the names of such number of persons as is
37 specified in the request, who, or each of whom, has the required

1 experience and is willing to act as a member under
2 subsection (1)(d)(ii).

3 **453. Term of office of appointed members [WCIMA s. 96(1)]**

4 (1) An appointed member holds office for the period, not exceeding
5 3 years, that is specified in the member's instrument of
6 appointment.

7 (2) An appointed member is eligible for reappointment.

8 **454. Casual vacancies, resignation and removal from office**
9 **[WCIMA s. 96(3)(4)(5)]**

10 (1) In this section —

11 *misconduct* includes conduct that —

- 12 (a) brings WorkCover WA into disrepute; or
13 (b) otherwise renders the person unfit to hold office even
14 though the conduct does not relate to a duty of the
15 office.

16 (2) The office of an appointed member becomes vacant if the
17 appointed member —

- 18 (a) dies, resigns or is removed from office under this
19 section; or
20 (b) is, according to the *Interpretation Act 1984* section 13D,
21 a bankrupt or a person whose affairs are under
22 insolvency laws; or
23 (c) is convicted of an offence punishable by imprisonment
24 for more than 12 months; or
25 (d) is convicted of an offence under section 471(1) or (2)
26 or 503(1).

27 (3) An appointed member may at any time resign from office by
28 written notice given to the Minister.

29 (4) Subject to subsection (5), the resignation takes effect on the day
30 on which the notice of resignation is received by the Minister.

31 (5) If the notice of resignation specifies a day on which it is to take
32 effect that is later than the day on which the notice of
33 resignation is received by the Minister, the resignation takes
34 effect on the day specified in the notice of resignation.

35 (6) The Minister may remove an appointed member from office —

- 36 (a) on the grounds of neglect of duty; or

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- 1 (b) on the grounds of misconduct or incompetence; or
2 (c) on the grounds of mental or physical incapacity, other
3 than temporary illness, impairing the performance of the
4 member's duties; or
5 (d) on the grounds of absence without leave from
6 3 consecutive meetings of the Board of which the
7 member has had notice; or
8 (e) for any other reasonable cause, regardless of when the
9 events or circumstances giving rise to that cause
10 occurred.

11 **455. Extension of term of office during vacancy [new provision]**

- 12 (1) If the office of an appointed member becomes vacant because
13 the member's term of office expires by effluxion of time, the
14 appointed member continues to be an appointed member during
15 that vacancy until the day on which the vacancy is filled
16 (whether by reappointment of the member or appointment of a
17 successor to the member).
18 (2) Subsection (1) ceases to apply if the member resigns or is
19 removed from office under section 454(6).
20 (3) The maximum period for which an appointed member continues
21 to be an appointed member under this section after the
22 member's term expires is 3 months.

23 **456. Leave of absence [WCIMA s. 96(2)]**

24 The Minister may grant leave of absence to an appointed
25 member on any terms and conditions the Minister thinks fit.

26 **457. Alternate appointed members [new provision]**

- 27 (1) If an appointed member is unable to act because of illness,
28 absence or other cause the Minister may appoint another person
29 as an alternate appointed member to act temporarily in the
30 appointed member's place.
31 (2) Section 452(3) and (4) apply to the appointment of an alternate
32 appointed member as if the appointment of the alternate
33 appointed member were the appointment of the appointed
34 member.
35 (3) While acting in accordance with the appointment, the alternate
36 appointed member is taken to be, and to have any entitlement
37 of, an appointed member.

- 1 (4) An act or omission of an alternate appointed member cannot be
2 questioned on the ground that the occasion for the appointment
3 or acting had not arisen or had ceased.

4 **458. Remuneration and allowances of appointed members**
5 **[WCIMA s. 99(2)]**

6 An appointed member is entitled to be paid from the General
7 Account any remuneration and allowances that the Minister
8 may determine on the recommendation of the Public Sector
9 Commissioner.

10 **Subdivision 2 — Meetings**

11 **459. Meetings [WCIMA s. 97(1)]**

- 12 (1) Meetings of the Board must be held at times and places
13 determined by the Board.
14 (2) The Minister may at any time require the chairperson to
15 convene a meeting of the Board to consider a matter specified
16 by the Minister.
17 (3) A special meeting of the Board may at any time be convened by
18 the chairperson.

19 **460. Quorum [WCIMA s. 97(3)]**

20 A quorum for a meeting of the Board is 4 members of the
21 Board.

22 **461. Presiding member [WCIMA s. 97(2)]**

- 23 (1) The chairperson, if present, must preside at a meeting of the
24 Board.
25 (2) If neither the chairperson nor an alternate appointed member for
26 the chairperson is present at a meeting of the Board, the Board
27 members present must elect 1 of their number to preside.

28 **462. Procedure at meetings [WCIMA s. 97(7)]**

29 To the extent that the meeting procedures of the Board are not
30 fixed under this Act, they are to be as the Board determines.

31 **463. Voting [WCIMA s. 97(4), (5)]**

- 32 (1) At a meeting of the Board each member present has a
33 deliberative vote unless section 472 prevents the member from
34 voting.

1 (2) In the case of an equality of votes, the member presiding has a
2 casting vote in addition to a deliberative vote.

3 (3) A question is resolved by a majority of the votes cast.

4 **464. Holding meetings remotely [new provision]**

5 The presence of a member at a meeting of the Board need not be
6 by attendance in person but may be by that member and each
7 other member at the meeting being simultaneously in contact by
8 telephone or audio-visual or other means of instantaneous
9 communication.

10 **465. Decision without meeting [new provision]**

11 (1) The purpose of this section is to enable the Board to make a
12 decision on a matter (the *matter*) without a meeting of the Board
13 being held.

14 (2) A notice setting out the matter at issue and a draft decision on
15 the matter may be sent by the chairperson to each other Board
16 member for consideration.

17 (3) A Board member may, by notice sent to each other Board
18 member, cast a vote on whether or not the decision should be
19 made.

20 (4) If at least 4 Board members cast a vote under subsection (3) and
21 a majority of the votes are in favour of the decision being made,
22 the decision is taken to have been made and is as effectual as if
23 it had been made at a meeting of the Board.

24 (5) The Board must cause a record to be kept of each decision
25 under subsection (4).

26 **466. Minutes [WCIMA s. 97(6)]**

27 The Board must cause accurate minutes to be kept of the
28 proceedings at each of its meetings.

29 **Subdivision 3 — Committees**

30 **467. Committees [WCIMA s. 100A(1), (2), (6)]**

31 (1) The Board may establish committees to assist WorkCover WA
32 in the performance of its functions.

33 (2) The Board may discharge, alter or reconstitute a committee.

34 (3) A committee may include persons who are not Board members
35 but must include at least 1 Board member.

- 1 (4) In appointing members of committees the Board must, as far as
2 practicable, appoint —
- 3 (a) persons experienced in employers' interests; and
4 (b) persons experienced in workers' interests; and
5 (c) persons with experience relevant to the kinds of matters
6 to be considered by the committee concerned; and
7 (d) other persons the Board considers appropriate.

8 **468. Directions to committee [WCIMA s. 100A(3)]**

- 9 (1) The Board may give directions to a committee with respect to
10 its functions and procedures.
- 11 (2) A committee must comply with a direction given to it by the
12 Board.

13 **469. Committee procedures [WCIMA s. 100A(3)]**

- 14 (1) The member of a committee who is a Board member or, if there
15 are 2 or more of them, whichever of them is specified in their
16 appointment as the person who is to preside, presides at
17 meetings of the committee.
- 18 (2) Subject to subsection (1) and any directions of the Board, a
19 committee may determine its own procedures.

20 **470. Remuneration and allowances of committee members**
21 **[WCIMA s. 100A(4) and (5)]**

22 A member of a committee is entitled to be paid any
23 remuneration and allowances that the Minister may determine
24 on the recommendation of the Public Sector Commissioner.

25 **Subdivision 4 — Disclosure of interests**

26 **471. Disclosure of material personal interest [WCIMA s. 104AA]**

- 27 (1) A Board member who has a material personal interest in a
28 matter being considered or about to be considered by the Board
29 must, as soon as possible after the relevant facts have come to
30 the Board member's knowledge, disclose the nature of the
31 interest at a meeting of the Board.

32 Penalty for this subsection: a fine of \$10 000.

- 33 (2) A member of a committee who has a material personal interest
34 in a matter being considered or about to be considered by the
35 committee must, as soon as possible after the relevant facts have

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1 come to the member's knowledge, disclose the nature of the
2 interest at a meeting of the committee.

3 Penalty for this subsection: a fine of \$10 000.

4 (3) Subsection (2) applies to a person who is a member of a
5 committee and also a Board member even though the person has
6 already disclosed the nature of the interest at a meeting of the
7 Board.

8 (4) A disclosure under subsection (1) or (2) must be recorded in the
9 minutes of the meeting.

10 **472. Interested member cannot participate [WCIMA s. 104AB]**

11 (1) A Board member or a member of a committee who has a
12 material personal interest in a matter being considered or about
13 to be considered by the Board or the committee —

14 (a) must not vote, whether at a meeting or otherwise, on the
15 matter; and

16 (b) must not be present while the matter is being considered
17 at a meeting.

18 (2) A reference in subsection (1)(a) or (b) to a matter includes a
19 reference to a proposed resolution under section 473 in respect
20 of the matter, whether relating to that member or a different
21 member.

22 **473. Board may resolve s. 472 is inapplicable [WCIMA s. 104AC]**

23 Section 472 does not apply if —

24 (a) a member has disclosed under section 471 an interest in
25 a matter; and

26 (b) the Board has at any time passed a resolution that —

27 (i) specifies the member, the interest and the matter;
28 and

29 (ii) states that the members voting for the resolution
30 are satisfied that the interest is so trivial or
31 insignificant as to be unlikely to influence the
32 disclosing member's conduct and should not
33 disqualify the member from considering or
34 voting on the matter.

35 **474. Quorum if s. 472 applies [WCIMA s. 104AD]**

36 (1) Despite section 460, if a member is disqualified under
37 section 472(1) in relation to a matter, a quorum is present during

1 the consideration of the matter if at least 3 members of the
2 Board who are entitled to vote on any motion that may be
3 moved at the meeting in relation to the matter are present.

4 (2) The Minister may deal with a matter to the extent that the Board
5 cannot deal with it because of subsection (1).

6 **475. Minister may declare s. 472 and 474 inapplicable**
7 **[WCIMA s. 104AE]**

8 (1) The Minister may in writing declare that section 472 or 474 or
9 both of them do not apply in relation to a specified matter either
10 generally or in voting on particular resolutions.

11 (2) The Minister must cause a copy of a declaration made under
12 subsection (1) to be laid before each House of Parliament within
13 14 sitting days of the House after the declaration is made.

14 **Division 4 — Staff of WorkCover WA**

15 **476. Chief executive officer [WCIMA s. 295(2)]**

16 (1) The CEO is appointed under the *Public Sector Management*
17 *Act 1994* Part 3.

18 (2) The CEO administers the day-to-day operations of WorkCover
19 WA subject to the control of the Board.

20 **477. Delegation by CEO [WCIMA s. 296]**

21 (1) The CEO may delegate to another WorkCover WA officer any
22 power or duty of the CEO under another provision of this Act,
23 other than a power or duty delegated to the CEO under
24 section 449(1).

25 (2) The delegation must be in writing signed by the CEO.

26 (3) A person to whom a power or duty is delegated under this
27 section cannot delegate that power or duty.

28 (4) A person exercising or performing a power or duty that has been
29 delegated to the person under this section is taken to do so in
30 accordance with the terms of the delegation unless the contrary
31 is shown.

32 (5) Nothing in this section limits the ability of the CEO to perform
33 a function through a staff member or agent.

1 **478. Other staff [WCIMA s. 295(2)]**

2 (1) Public service officers may be appointed under the *Public*
3 *Sector Management Act 1994* Part 3 to enable WorkCover WA
4 to perform its functions.

5 (2) This section does not detract from the power that the *Public*
6 *Sector Management Act 1994* section 100 gives
7 WorkCover WA to engage a person under a contract for
8 services or appoint a person on a casual employment basis.

9 **479. Use of other government staff [WCCMA s. 295(1)]**

10 (1) WorkCover WA may, by arrangement with the relevant
11 employing authority, make use, either full-time or part-time, of
12 the services of any officer or employee —

- 13 (a) in the Public Service; or
14 (b) in a State agency; or
15 (c) otherwise in the service of the State.

16 (2) WorkCover WA may, by arrangement with a department of the
17 Public Service or a State agency or instrumentality, make use of
18 any facilities of the department, agency or instrumentality.

19 (3) An arrangement under subsection (1) or (2) must be made on
20 terms agreed to by the parties.

21 **Division 5 — Ministerial directions**

22 **480. Minister may give directions [WCIMA s. 111]**

23 (1) The Minister may give written directions to WorkCover WA
24 with respect to the performance of its functions, either generally
25 or in relation to a particular matter, and WorkCover WA must
26 give effect to the directions.

27 (2) However, the Minister cannot give a direction under
28 subsection (1) about the performance of a function under
29 section 256.

30 (3) The text of a direction under this section must be included in the
31 annual report submitted by the accountable authority of
32 WorkCover WA under the *Financial Management Act 2006*
33 Part 5.

1 **481. Protection for disclosure or compliance with directions [new**
2 **provision]**

3 WorkCover WA or another person performing a function under
4 this Act is not liable —

- 5 (a) in respect of any claim arising as a consequence of the
6 disclosure of information or documents under
7 section 480 or 497 or a duty imposed under the
8 *Financial Management Act 2006* or the *Auditor General*
9 *Act 2006*; or
10 (b) for the fact of having done or omitted a thing that is
11 required to be done or omitted by a direction given
12 under this Act.

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Part 9 — Financial provisions

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Division 1 — General provisions

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482. Application of *Financial Management Act 2006* and *Auditor General Act 2006* [WCIMA s. 105]

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The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of WorkCover WA and its operations.

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483. Borrowing powers [WCIMA s. 101A]

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WorkCover WA may, with the Treasurer's prior approval —

11

(a) borrow or re-borrow money; or

12

(b) otherwise arrange for financial accommodation to be extended to WorkCover WA.

13

14

484. Guarantee by Treasurer [WCIMA s. 101B]

15

(1) The Treasurer, on the Minister's recommendation, may, in the name and on behalf of the State, guarantee the payment of any money payable by WorkCover WA in respect of money borrowed by it under section 483.

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(2) A guarantee must be in a form, and contain terms and conditions, determined by the Treasurer.

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(3) Before a guarantee is given, WorkCover WA must —

22

(a) give the Treasurer any security the Treasurer requires; and

23

24

(b) execute all instruments that are necessary for the purpose.

25

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(4) The Treasurer may fix charges to be paid by WorkCover WA to the credit of the Consolidated Account in respect of a guarantee given under subsection (1).

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485. Effect of guarantee [WCIMA s. 101B(3)]

30

(1) The due payment of money under a guarantee given under section 484(1) must be —

31

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(a) made by the Treasurer; and

33

(b) charged to, and paid out of, the Consolidated Account, which this subsection appropriates accordingly.

34

- 1 (2) The Treasurer must cause to be credited to the Consolidated
2 Account any amounts received or recovered from
3 WorkCover WA or otherwise in respect of any payment made
4 by the Treasurer under a guarantee given under section 484(1).

5 **Division 2 — General Account**

6 **486. Terms used [New provision]**

- 7 (1) In this Division —
8 **notional premium income**, of a self-insurer for a financial year,
9 means the amount estimated by WorkCover WA as the amount
10 that the self-insurer would have been liable to pay as the
11 premium for a workers compensation policy that would have
12 been required under this Act for the financial year had the
13 self-insurer not been a self-insurer;

14 **premium income**, of a licensed insurer for a financial year,
15 means the total amount of the premium income of the insurer
16 (whether received by or owing to the insurer) in respect of
17 workers compensation policies issued or renewed during the
18 financial year excluding any part of those premiums paid by
19 way of reinsurance to any other licensed insurer;

20 **total annual contribution**, for a financial year, means an
21 amount equal to the estimate approved under section 488 for the
22 financial year.

- 23 (2) WorkCover WA's estimate of the notional premium income of a
24 self-insurer for a period must be made on the basis of the
25 recommended premium rate applicable to the industry
26 classification appropriate to the self-insurer and the
27 remuneration of workers of the self-insurer for that period.

- 28 (3) If an employer is a self-insurer for only part of a financial year,
29 the notional premium income of the self-insurer for the financial
30 year is the amount estimated by WorkCover WA as the amount
31 that the employer would have been liable to pay as the premium
32 for a workers compensation policy that would have been
33 required under this Act for that part of the financial year had the
34 employer not been a self-insurer.

35 **487. WorkCover WA General Account established**
36 **[WCIMA s. 106]**

- 37 (1) An account called the WorkCover WA General Account is
38 established as an agency special purpose account under the
39 *Financial Management Act 2006* section 16.

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Part 9 Financial provisions

Division 2 General Account

s. 487

- 1 (2) The following must be credited to the General Account —
- 2 (a) all contributions received or recovered under this
- 3 Division;
- 4 (b) money received by or for WorkCover WA, other than
- 5 money required to be credited to the Trust Account or
- 6 the DI Fund;
- 7 (c) money required to be transferred to the General Account
- 8 under section 139(8) or 261(1);
- 9 (d) any income derived from the investment of money
- 10 standing to the credit of the General Account;
- 11 (e) any other amount required under this or any other Act to
- 12 be paid or credited to the General Account.
- 13 (3) The following must be charged to the General Account —
- 14 (a) money paid by WorkCover WA and any other money
- 15 required for the administration of this Act and the
- 16 carrying out of WorkCover WA's functions, other than
- 17 money required to be charged to the Trust Account or
- 18 the DI Fund;
- 19 (b) money required to be transferred to the DI Fund under
- 20 section 261(1);
- 21 (c) the costs and expenses incurred in the operation and
- 22 administration of the District Court in dealing with
- 23 appeals under Part 6 Division 8;
- 24 (d) any other money required under this or any other Act to
- 25 be paid from or charged to the General Account;
- 26 (e) any other money paid by WorkCover WA, other than
- 27 money required to be charged to the Trust Account or
- 28 the DI Fund.
- 29 (4) In subsection (3)(a) the reference to money required for the
- 30 administration of this Act includes —
- 31 (a) money required for the remuneration and allowances of
- 32 members of the Board, members of committees and staff
- 33 members; and
- 34 (b) the costs of and incidental to the administration of the
- 35 General Account, the Trust Account and the DI Fund.
- 36 (5) The amount of the costs and expenses referred to in
- 37 subsection (3)(c) must be —
- 38 (a) determined in the manner approved by the Treasurer
- 39 after consultation with the CEO and the chief executive
- 40 officer of the department principally assisting in the

1 administration of the *District Court of Western Australia*
2 *Act 1969*; and

3 (b) credited to the Consolidated Account.

4 (6) All amounts required under this or any other Act to be paid to or
5 from the General Account are credited or charged to the General
6 Account.

7 **488. Estimate of funds needed for General Account**
8 **[WCIMA s. 107(1)]**

9 (1) WorkCover WA must, before the commencement of each
10 financial year —

11 (a) prepare an estimate of the total annual contribution
12 necessary to be credited to the General Account for the
13 purposes of this Act for that financial year; and

14 (b) as soon as practicable after the estimate is prepared,
15 submit it to the Minister for approval.

16 (2) The estimate does not have any force or effect unless and until it
17 is approved by the Minister.

18 (3) This section applies despite the provisions of the *Financial*
19 *Management Act 2006*.

20 **489. Calculation of estimate [WCIMA s. 107(2), (3) and (4)]**

21 (1) In this section —

22 *estimate* means an estimate prepared under section 488(1)(a) for
23 a financial year;

24 *preceding financial year* means the financial year immediately
25 before the financial year for which an estimate is prepared.

26 (2) If the General Account is in surplus at the commencement of the
27 preceding financial year, the estimate must be calculated by
28 deducting from the estimated expenditure the sum of —

29 (a) the estimated receipts of the General Account arising
30 from all sources other than contributions under this
31 Division; and

32 (b) the balance of the General Account at the
33 commencement of the preceding financial year.

34 (3) If the General Account is in deficit at the commencement of the
35 preceding financial year, the estimate must be calculated by
36 deducting the estimated receipts of the General Account arising

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1 from all sources other than contributions under this Division,
2 from the sum of —

- 3 (a) the estimated expenditure; and
4 (b) the balance of the General Account at the
5 commencement of the preceding financial year.

6 (4) In calculating the estimate for a financial year, both the
7 estimated increase required in reserves over the financial year
8 and depreciation may be included in the estimated expenditure
9 of the General Account.

10 **490. Required contributions by insurers and self-insurers to**
11 **General Account [WCIMA s. 108, 109(1), (4), (4a), (4b)]**

12 (1) WorkCover WA must make the following calculations and
13 determinations for the purpose of calculating the contributions
14 to the General Account to be required from licensed insurers
15 and self-insurers to yield an amount equal to the total annual
16 contribution for a financial year (the *current year*) —

17 (a) add the total premium income of all licensed insurers to
18 the total notional premium income of all self-insurers for
19 the financial year preceding the current year to arrive at
20 an amount that is the *total premium income* for that
21 preceding financial year;

22 (b) determine the percentage (the *contribution percentage*)
23 of the total premium income for the preceding financial
24 year that yields the total annual contribution for the
25 current year;

26 (c) calculate a contribution (the *required contribution*) for
27 each licensed insurer and each self-insurer for the
28 current year by applying the contribution percentage to
29 the premium income of the licensed insurer, or the
30 notional premium income of the self-insurer, for the
31 preceding financial year.

32 (2) WorkCover WA may set a minimum required contribution for a
33 financial year (which may be a different minimum for licensed
34 insurers and self-insurers).

35 (3) If a minimum required contribution is set for a financial year,
36 the determination of the contribution percentage for that
37 financial year must make due allowance for the effect that the
38 minimum required contribution will have on the percentage of
39 total premium income required to yield an amount equal to the
40 total annual contribution for the current year.

- 1 (4) Each licensed insurer and self-insurer must pay to
2 WorkCover WA, to be credited to the General Account —
- 3 (a) the required contribution for the current year calculated
4 under this section; or
- 5 (b) if a minimum required contribution has been set that is
6 greater than the calculated contribution referred to in
7 paragraph (a) — the minimum required contribution for
8 that year.
- 9 (5) In the case of a group of related self-insurers comprised of the
10 holder of a self-insurer licence and each of the related entities of
11 the holder to which the licence extends —
- 12 (a) the required contribution for the self-insurers of the
13 group must be calculated as a single contribution for the
14 group; and
- 15 (b) a minimum required contribution set by WorkCover
16 WA applies to the contribution calculated for the group;
17 and
- 18 (c) each self-insurer of the group is jointly and severally
19 liable for payment of the required contribution.
- 20 (6) When an insurer becomes a licensed insurer during the current
21 year (a *new licensed insurer*) or an employer becomes a
22 self-insurer during the current year (a *new self-insurer*) —
- 23 (a) no contribution to the General Account for the current
24 year is required from the new licensed insurer or new
25 self-insurer; and
- 26 (b) the calculation under this section of the required
27 contribution must not include any amount in respect of a
28 new licensed insurer or new self-insurer.

29 **491. Arrangements for payment of contributions**
30 **[WCIMA s. 109(2) and (3)]**

31 Section 265 applies to and in relation to the payment of
32 contributions to the General Account under this Division as if
33 the contributions were DI Fund contributions.

34 **492. Provision of information by licensed insurers and**
35 **self-insurers [WCIMA s. 109(4)]**

36 WorkCover WA may give a direction under section 267(1) for
37 the purposes of this Division.

1

Division 3 — Trust account

2

493. WorkCover WA Trust Account established

3

[WCIMA s. 110(1), (2), (7) and (8)]

4

(1) An account called the WorkCover WA Trust Account is established —

5

6

(a) as an agency special purpose account under the *Financial Management Act 2006* section 16; or

7

8

(b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.

9

10

(2) The following must be credited to the Trust Account —

11

(a) money paid to WorkCover WA under section 138(1)(a);

12

(b) money paid to WorkCover WA under section 139(2) or (6);

13

14

(c) money paid to WorkCover WA under section 377;

15

(d) any income derived from the investment of money standing to the credit of the Trust Account.

16

17

(3) There must be paid from money standing to the credit of the Trust Account to or on behalf of the respective persons entitled to money standing to the credit of the Trust Account, the amount apportioned to them respectively in accordance with an order of a dispute resolution authority, plus interest payable.

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(4) WorkCover WA must, with the approval of the Treasurer, fix the rate of interest payable to a person entitled to money standing to the credit of the Trust Account in accordance with an order of a dispute resolution authority.

23

24

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26

494. Investment of money standing to credit of Trust Account

27

[WCIMA s. 110(3)-(6)]

28

(1) Money standing to the credit of the Trust Account becomes 1 common fund to be invested by WorkCover WA.

29

30

(2) Investments made from money standing to the credit of the Trust Account must not be made on account of or belong to any particular person.

31

32

33

(3) Interest or income earned by the investments must be credited to the Trust Account.

34

35

(4) WorkCover WA may invest any money standing to the credit of the Trust Account in a manner approved by the Treasurer.

36

1 **Part 10 — Management and disclosure of information**

2 **Division 1 — Approved forms and electronic processes**

3 **495. Approved forms [WCIMA s. 292(1)(a)]**

- 4 (1) The CEO may approve forms for use under this Act.
- 5 (2) For any notice, information or other document that this Act
6 requires to be in an approved form, the power of the CEO to
7 approve the form extends to —
- 8 (a) the form in which the document must be created or
9 recorded and provided or exchanged which may include
10 an electronic, paper or other form or use of an electronic
11 database or document system; and
- 12 (b) the manner in which it must be conveyed or transmitted
13 to a recipient.
- 14 (3) Subsection (2) does not limit the other matters that may be dealt
15 with in approving the form, such as layout, content and
16 accompanying documents and information.
- 17 (4) An approved form may require a matter stated in the form to be
18 verified by statutory declaration.
- 19 (5) Regulations and rules made for the purposes of section 496(3)
20 apply to an approved form unless the CEO specifies otherwise.

21 **496. Service and facilitation of electronic processes [New**
22 **provision, WCIMA s. 314]**

- 23 (1) In this section —
24 *give* includes serve, send, transmit, notify, provide, make
25 available or any other similar word or expression;
26 *lodge* includes file or register.
- 27 (2) In this section a reference to *document* includes —
28 (a) a copy of an original, certified or sealed document; and
29 (b) any information, statement or other matter required to be
30 endorsed on or attached to a document;
- 31 (3) The arbitration rules, conciliation rules and regulations may
32 provide for the following —
33 (a) the means by which documents and information given
34 under this Act may or must be created, recorded, given,
35 exchanged, accessed or obtained;

- 1 (b) the creation, recording, giving, lodging and exchange of
2 documents and information by electronic means for, or
3 related to, the purposes of this Act, including the use of
4 an electronic database or document system;
- 5 (c) when the giving, lodgment or exchange of documents
6 and information as mentioned in paragraph (b) is taken
7 to have been effected;
- 8 (d) the authentication of documents and information given,
9 lodged or exchanged as mentioned in paragraph (b);
- 10 (e) the production of documents and information kept
11 electronically;
- 12 (f) the status and effect of things done electronically under
13 the rules or regulations.

14 **Division 2 — Disclosure of information**

15 **497. Minister to have access to information [WCIMA s. 111A]**

- 16 (1) In this section —
17 *information* means information specified, or of a description
18 specified, by the Minister that relates to WorkCover WA's
19 functions.
- 20 (2) The Minister is entitled —
21 (a) to have information in the possession of
22 WorkCover WA; and
23 (b) if the information is in or on a document — to have, and
24 make and retain copies of, that document.
- 25 (3) For the purposes of subsection (2), the Minister may —
26 (a) request WorkCover WA to give information to the
27 Minister; and
28 (b) request WorkCover WA to give the Minister access to
29 information; and
30 (c) request the use of a staff member to obtain the
31 information and give it to the Minister.
- 32 (4) WorkCover WA must comply with a request given under
33 subsection (3).

34 **498. Information held by Conciliation Service or Arbitration**
35 **Service [New provision]**

36 Any information held by the Conciliation Service or the
37 Arbitration Service is available, on the request of the CEO, to

1 WorkCover WA to enable it to perform its functions and
2 compile and record statistics, records and reports for the
3 purposes of this Act.

4 **499. Licensed insurers and self-insurers must provide**
5 **information to WorkCover WA [WCIMA s. 57C, 103A, 171**
6 **and 314]**

7 (1) A licensed insurer or self-insurer must provide to
8 WorkCover WA the following information in accordance with
9 directions published under subsection (2) and the approved
10 form —

- 11 (a) information about claims for compensation made by
12 workers, including —
 - 13 (i) the status of any liability decisions in respect of
14 the claims; and
 - 15 (ii) forms of compensation claimed; and
 - 16 (iii) estimated and actual payments of compensation
17 made;
- 18 (b) information about injury management, including
19 implementation and progression of any return to work
20 program or workplace rehabilitation;
- 21 (c) information about common law claims for damages
22 resulting from an injury;
- 23 (d) information about workers compensation policies —
 - 24 (i) issued, renewed or cancelled by the insurer; or
 - 25 (ii) that have lapsed;
- 26 (e) information that WorkCover WA requires to fix
27 recommended premium rates;
- 28 (f) any other information that WorkCover WA specifies by
29 directions published under subsection (2)(b).

30 (2) WorkCover WA may publish on the WorkCover WA website
31 directions as to —

- 32 (a) details of the information required under subsection (1);
33 and
- 34 (b) any information, in addition to the information required
35 under subsection (1)(a) to (e), that the licensed insurer or
36 self-insurer must provide to WorkCover WA; and
- 37 (c) the period within which, or frequency with which,
38 information must be provided or updated under
39 subsection (1).

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Division 2 Disclosure of information

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1 (3) A licensed insurer or self-insurer who fails to comply with
2 subsection (1) commits an offence.

3 Penalty for this subsection: a fine of \$10 000.

4 **500. Direction to provide WorkCover WA with information**
5 **[WCIMA s. 103A, 314]**

6 (1) In this section —

7 *relevant person* means any of the following —

8 (a) a licensed insurer, former licensed insurer, self-insurer
9 or former self-insurer;

10 (b) an employer;

11 (c) a health professional;

12 (d) a workplace rehabilitation provider.

13 (2) The CEO may direct a relevant person to provide
14 WorkCover WA with any information that the CEO thinks
15 necessary to enable WorkCover WA to perform its functions
16 and compile and record statistics, records and reports for the
17 purposes of this Act.

18 (3) The direction must be in writing and specify the time within
19 which the information must be provided.

20 (4) A relevant person given a direction under subsection (2) must
21 provide the information to WorkCover WA in the approved
22 form.

23 (5) A relevant person given a direction under subsection (2) who
24 fails to comply with that direction commits an offence.

25 Penalty for this subsection: a fine of \$10 000.

26 **501. Disclosure of information to occupational safety and health**
27 **officials [WCIMA s. 100B]**

28 (1) If the chief executive officer of the department principally
29 assisting in the administration of the *Occupational Safety and*
30 *Health Act 1984* or the WorkSafe Western Australia
31 Commissioner makes a written request to WorkCover WA to
32 disclose information or data (including information and data
33 about accidents, injuries and diseases) relevant to occupational
34 safety and health that is in the possession of WorkCover WA,
35 WorkCover WA must comply with the request.

36 (2) This section has effect despite any other provision of this Act.

1 **502. WorkCover WA may disclose information [New provision]**

2 (1) In this section —

3 *relevant information* means information required for the
4 purposes of ascertaining potential liability on a claim for
5 compensation or damages, or any potential contribution or
6 recovery in relation to a claim for compensation or damages.

7 (2) WorkCover WA may, on application in an approved form,
8 disclose to the applicant relevant information held in its records
9 relating to the following —

- 10 (a) the identity of a worker's employer at a specified time or
11 during a specified period;
- 12 (b) whether an employer was insured at a specified time or
13 during a specified period, and the identity of the insurer,
14 if any;
- 15 (c) any other matter prescribed by the regulations.

16 (3) In any proceedings, a document provided by WorkCover WA
17 under subsection (2) is, in the absence of proof to the contrary,
18 proof of the relevant information in the document.

19 **503. Confidentiality [WCIMA s. 57D]**

20 (1) A person must not, directly or indirectly, use or disclose any
21 information obtained by the person because of —

- 22 (a) the person's office, position, employment or
23 engagement under or for the purposes of this Act; or
- 24 (b) any disclosure made to the person under or for the
25 purposes of this Act.

26 Penalty for this subsection: a fine of \$10 000.

27 (2) Subsection (1) does not apply in relation to the use or disclosure
28 of information that is —

- 29 (a) already in the public domain; or
- 30 (b) statistical or other information that could not reasonably
31 be expected to lead to the identification of any person to
32 whom it relates.

33 (3) A person does not commit an offence under subsection (1) if the
34 use or disclosure of the information is authorised under
35 section 504(1).

1 **504. Authorised use or disclosure of information [New provision]**

2 (1) For the purposes of this Act, the use or disclosure of
3 information is authorised if the information is used or disclosed
4 in good faith —

- 5 (a) for the purposes of, or in connection with, performing a
6 function under this Act or another law; or
7 (b) as required or authorised under this Act or another law;
8 or
9 (c) for the purposes of any legal proceedings arising under
10 this Act or another law; or
11 (d) under an order of a court or other person or body acting
12 judicially; or
13 (e) with the consent of the person to whom the information
14 relates; or
15 (f) in other circumstances prescribed by the regulations.

16 (2) If the use or disclosure of information is authorised under
17 subsection (1) —

- 18 (a) no civil or criminal liability is incurred in respect of the
19 use or disclosure; and
20 (b) the disclosure or use is not to be regarded as a breach of
21 any duty of confidentiality or secrecy imposed by law;
22 and
23 (c) the disclosure or use is not to be regarded as a breach of
24 professional ethics or standards or as unprofessional
25 conduct.

26 **505. Disclosure of claim information for pre-employment**
27 **screening [New provision]**

28 (1) A person must not disclose information about a worker's claim
29 for compensation to another person for the purpose of providing
30 information to that person about the worker's suitability for
31 employment with a prospective employer.

32 Penalty for this subsection: a fine of \$10 000.

33 (2) Subsection (1) does not apply if the information is disclosed in
34 relation to a return to work program or for the purpose of
35 providing information about the worker in relation to suitable
36 employment for the worker.

37 (3) A person cannot, for the purpose of selection for employment,
38 be required to disclose information about any claim for
39 compensation by the person.

1 **Part 11 — Regulation and enforcement**

2 **Division 1 — General**

3 **506. Term used: compliance purposes [New provision]**

4 In this Part —

5 *compliance purposes* has the meaning given in section 509(1).

6 **Division 2 — Inspectors**

7 **507. Inspectors [WCIMA s. 175A(1)]**

- 8 (1) The CEO may, in writing, designate a staff member as an
9 inspector.
- 10 (2) A person may be designated as an inspector for a fixed or
11 indefinite period.
- 12 (3) The CEO may, in writing, revoke a designation at any time.

13 **508. Identification of inspectors [WCIMA s. 175A(4)]**

- 14 (1) The CEO must give each inspector an identity card.
- 15 (2) The identity card must —
- 16 (a) identify the person as an inspector; and
- 17 (b) include any other matter prescribed by the regulations.
- 18 (3) An inspector must —
- 19 (a) carry the inspector's identity card when exercising a
20 power under this Act; and
- 21 (b) if it is practicable to do so — produce the identity card
22 before exercising a power under this Act.
- 23 (4) However, if for any reason it is not practicable to comply with
24 subsection (3)(b) before exercising the power, the inspector may
25 exercise the power and then produce the identity card at the first
26 reasonable opportunity.
- 27 (5) In any proceedings, the production of an identity card is
28 evidence of the designation of the inspector to whom the
29 identity card relates.
- 30 (6) A person must not, without reasonable excuse, fail to return
31 their identity card to the CEO within 14 days after ceasing to be
32 an inspector.

33 Penalty for this subsection: a fine of \$5 000.

1 **Division 3 — Inspections and investigations**

2 **509. Compliance inspections [New provision]**

- 3 (1) An inspector may carry out an inspection for all or any of the
4 following purposes (*compliance purposes*) —
- 5 (a) monitoring whether this Act has been, or is being,
6 complied with;
 - 7 (b) without limiting paragraph (a), monitoring whether a
8 person is complying with the conditions, if any, of that
9 person's licence, registration or approval under this Act;
 - 10 (c) monitoring whether a person who is licensed, registered
11 or approved under this Act continues to meet the criteria
12 for the grant of that licence, registration or approval;
 - 13 (d) investigating a suspected contravention of this Act;
 - 14 (e) assisting in the determination of an application or other
15 matter before WorkCover WA.
- 16 (2) Nothing in subsection (1) limits the functions of other staff
17 members under this Act.

18 **510. Entry powers [WCIMA s. 175B(1)(a), (b)]**

- 19 (1) An inspector may, for compliance purposes, at any time enter a
20 place where, or where the inspector reasonably suspects —
- 21 (a) workers are employed; or
 - 22 (b) records that are relevant to the compliance purposes are
23 kept.
- 24 (2) An inspector may enter a place under subsection (1) with or
25 without the consent of the person with management or control
26 of the place and without prior notice to any person.
- 27 (3) An inspector must, as soon as practicable after entering a place
28 under subsection (1), take all reasonable steps to notify the
29 person with management or control of the place of the entry and
30 the purpose of the entry.
- 31 (4) However, an inspector is not required to notify any person if to
32 do so would defeat the purpose for which the place was entered
33 or cause unreasonable delay.

1 **511. General powers on entry [WCIMA s. 175B(1)(a), (b) and (h)**
2 **and 175D(1)(b)]**

3 (1) An inspector who enters a place under section 510(1) may do all
4 or any of the following —

- 5 (a) inspect, examine and make enquiries at the place;
6 (b) inspect and examine any thing (including a document) at
7 the place;
8 (c) bring to the place and use any equipment or other thing
9 that may be required;
10 (d) take recordings (including photographs, films, audio,
11 video, digital or other recordings);
12 (e) require a person who is at the place to give the inspector
13 reasonable help to exercise the inspector's powers under
14 paragraphs (a) to (d);
15 (f) require a person who is at the place to state the person's
16 full name, date of birth, the address of where the person
17 is living and the address of where the person usually
18 lives;
19 (g) seize any thing at the place that is or may afford
20 evidence of a contravention of this Act;
21 (h) exercise any other power of an inspector that is
22 reasonably necessary.

23 (2) If an inspector takes any thing away from the place, the
24 inspector must give the person with management or control of
25 the place a receipt for the thing.

26 (3) A person must not refuse or fail to comply with a requirement
27 made by an inspector under subsection (1)(e) or (f).

28 Penalty for this subsection: a fine of \$15 000.

29 **512. Persons assisting inspectors [WCIMA s. 175B(3), 175C]**

30 (1) A person (the *assistant*) may accompany an inspector entering a
31 workplace under section 510(1) to assist the inspector if the
32 inspector considers the assistance is necessary.

33 (2) The reference to a person in subsection (1) includes an
34 interpreter.

35 (3) The assistant —

- 36 (a) may do the things at the place and in the manner that the
37 inspector reasonably requires to assist the inspector to
38 exercise the inspector's powers; but

1 (b) must not do anything that the inspector does not have
2 power to do.

3 (4) Anything done lawfully by the assistant is taken to have been
4 done by the inspector.

5 **Division 4 — Powers relating to documents and information**

6 **513. Power to require auditor's certificate [WCIMA s. 175B(1)(f)
7 and (2)]**

8 (1) An inspector may, by written notice given to an employer,
9 require the employer to provide to the inspector a certificate
10 from an auditor containing a statement as to —

11 (a) the number of workers employed by the employer
12 during a specified period; and

13 (b) the amount of remuneration paid by the employer to
14 each worker during that period.

15 (2) In subsection (1) —

16 *auditor* means a person registered as an auditor under the
17 *Corporations Act 2001* (Commonwealth) Part 9.2.

18 (3) The certificate must be provided within the period (being not
19 less than 28 days) specified in the notice.

20 (4) An employer must not, without reasonable excuse, refuse or fail
21 to comply with a requirement under subsection (1).

22 Penalty for this subsection: a fine of \$15 000.

23 (5) If a court convicts a person, or finds a person guilty, of an
24 offence against subsection (4), the court may order the person to
25 give to WorkCover WA the certificate required under
26 subsection (1) within 14 days after the order is made.

27 (6) An order may be made under subsection (5) in addition to any
28 penalty that may be imposed or any other action that may be
29 taken in relation to the offence.

30 **514. Power to require documents and answers to questions
31 [WCIMA s. 175B(1)(c) to (e), (g), 175D(1)(b)]**

32 (1) An inspector may, for compliance purposes, do the following
33 (after entering a place under section 510(1) or at any other
34 time) —

35 (a) require a person to tell an inspector who has custody of,
36 or access to, a document;

- 1 (b) require a person who has custody of, or access to, a
2 document to provide that document, or a copy or
3 reproduction of that document, to an inspector —
4 (i) while the inspector is at a place entered under
5 section 510(1); or
6 (ii) within a specified period;
- 7 (c) require a person —
8 (i) to submit to an interview with an inspector at a
9 reasonable time and place, and in the way,
10 determined by that inspector; and
11 (ii) to answer any questions put by that inspector
12 during the interview; and
13 (iii) if and as directed by that inspector — to verify
14 any answers given by statutory declaration;
- 15 (d) require a person —
16 (i) to answer, within a specified period and in a
17 specified way, any questions put by an inspector
18 otherwise than by way of an interview; and
19 (ii) if and as directed by that inspector — to verify
20 any answers given by statutory declaration;
- 21 (e) require a person to state the person's name and address.
- 22 (2) An interview conducted under subsection (1)(c)(i) —
23 (a) may be conducted in private or otherwise, as the
24 inspector considers appropriate; and
25 (b) may be recorded in any way the inspector considers
26 appropriate.
- 27 (3) Subsection (2)(a) does not prevent a person, including an
28 interpreter, being present at the interview to assist the inspector
29 conducting the interview if the inspector considers the
30 assistance is necessary.
- 31 (4) If an interview is to be recorded under subsection (2)(b), the
32 inspector conducting the interview must, before the interview,
33 inform the person being interviewed —
34 (a) that the interview will be recorded; and
35 (b) of the way in which the interview will be recorded.
- 36 (5) A person must not, without reasonable excuse, refuse or fail to
37 comply with a requirement under subsection (1).
38 Penalty for this subsection: a fine of \$15 000.

1 **515. Abrogation of privilege against self-incrimination**
2 **[WCIMA s. 175D(2)]**

3 (1) An individual is not excused from complying with a
4 requirement under this Act to answer a question on the ground
5 that the answer to the question may tend to incriminate the
6 individual or render the individual liable to a penalty.

7 (2) However, the answer to a question given by an individual in
8 compliance with a requirement under this Act is not admissible
9 as evidence against the individual in civil or criminal
10 proceedings other than proceedings arising out of the false or
11 misleading nature of the answer.

12 (3) This section does not apply to a requirement under Part 6.

13 Note for this section:

14 Section 372 applies to the privilege against self-incrimination in respect
15 of a requirement under Part 6.

16 **516. Power to copy and retain documents [WCIMA s. 175B(1)(c)]**

17 (1) An inspector may —

18 (a) make copies or reproductions of, or take extracts from, a
19 document (an *original document*) provided to, or
20 otherwise obtained, accessed or recovered by, an
21 inspector under this Act; and

22 (b) keep the original document for the period that the
23 inspector considers necessary.

24 (2) While an inspector retains custody of an original document, the
25 inspector must permit the following persons to inspect, or make
26 copies of, the original document at all reasonable times —

27 (a) the person who provided the original document or from
28 whom it was obtained;

29 (b) the owner of the original document;

30 (c) a person authorised in writing by a person referred to in
31 paragraph (a) or (b) on the production of the written
32 authorisation to WorkCover WA.

33 **Division 5 — Contravention of Act**

34 **517. Who can prosecute offences [WCIMA s. 101(d) and 309]**

35 (1) Proceedings for an offence against this Act may be taken in the
36 name of WorkCover WA by a person authorised by the CEO to
37 do so.

1 (2) An authorisation under subsection (1) may be given generally or
2 in relation to a specified offence or specified offences.

3 (3) If a prosecution notice alleging an offence against this Act
4 purports to be made or sworn by a person authorised by the
5 CEO to take proceedings for offences of that kind, it must be
6 presumed, in the absence of proof to the contrary, that the
7 prosecution notice was made or sworn by such a person.

8 **518. Time limit for prosecutions [WCIMA s. 310]**

9 A prosecution for an offence against this Act must be
10 commenced within 2 years after the day on which the offence
11 was allegedly committed.

12 **519. Application of fines [WCIMA s. 312]**

13 A penalty imposed for an offence against this Act must be
14 credited to the General Account for use by WorkCover WA.

15 **520. Offences under Acts about work health and safety not
16 affected [WCIMA s. 313]**

17 Nothing in this Act affects any proceedings for a fine or penalty
18 under an enactment relating to work health and safety or the
19 application of the fine or penalty.

20 **521. Infringement notices and the *Criminal Procedure Act 2004*
21 [WCIMA s. 175G(2)]**

22 (1) If this Act is a prescribed Act for the purposes of the *Criminal*
23 *Procedure Act 2004* Part 2, this section applies in relation to the
24 service of an infringement notice under that Part by an
25 authorised officer in relation to an alleged offence under this
26 Act.

27 (2) The infringement notice must be served within —

28 (a) 21 days after the authorised officer forms the opinion
29 that there is sufficient evidence to support the allegation
30 of the offence; and

31 (b) 12 months after the alleged offence is believed to have
32 been committed.

33 (3) The *Criminal Procedure Act 2004* Part 2 is modified to the
34 extent necessary to give effect to this section.

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Division 6 — Offences

522. Hindering or obstructing inspector [WCIMA s. 175D(1)(a)]

A person must not intentionally hinder or obstruct an inspector in exercising the inspector’s powers, or induce or attempt to induce any other person to do so.

Penalty: a fine of \$15 000.

523. Using name WorkCover WA [WCIMA s. 94(4)]

A person other than WorkCover WA who uses or operates under the name WorkCover WA, or any name that is so similar that it is likely to be misunderstood as referring to WorkCover WA, commits an offence.

Penalty: a fine of \$10 000.

524. False or misleading information [WCIMA s. 175D(1)(c), (d)]

(1) A person must not provide false or misleading information —

- (a) in, or in connection with, an application made or a notice or other document given under this Act; or
- (b) in compliance, or purported compliance, with a requirement under this Act; or
- (c) for any other purpose under this Act.

Penalty for this subsection: a fine of \$15 000.

(2) For the purposes of subsection (1), a person provides false or misleading information if the person —

- (a) makes a statement that the person knows is false or misleading in a material particular; or
- (b) omits from a statement made by the person anything without which the statement is, to the person’s knowledge, misleading in a material particular; or
- (c) gives information that —
 - (i) the person knows is false or misleading in a material particular; or
 - (ii) omits anything without which the information, to the person’s knowledge, is misleading in a material particular.

1 **525. Fraud [WCIMA s. 308]**

2 A person who fraudulently obtains or fraudulently attempts to
3 obtain any benefit under this Act by malingering or by making a
4 false claim or statement commits an offence.

5 Penalty: a fine of \$15 000.

6 **526. Preventing another person from complying with Act**
7 **[WCIMA s. 175D(1)(e)]**

8 A person must not directly or indirectly prevent another person
9 from complying with a requirement under this Act.

10 Penalty: a fine of \$15 000.

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1 **Part 12 — State with which employment connected**

2 **527. Terms used [WCIMA s. 20(1), 23A and 23E]**

3 In this Part —

4 *court* includes a tribunal constituted by a judicial officer;

5 *determination*, in relation to a court proceeding, includes a
6 determination made by the court with the consent of the parties
7 to the proceeding;

8 *State*, in a geographical sense, includes any area or space
9 prescribed by the regulations as a State's adjacent area.

10 **528. Connection of employment with a State [WCIMA s. 20]**

11 (1) A worker's employment is connected with —

12 (a) the State in which the worker usually works in that
13 employment; or

14 (b) if no State or no 1 State is identified by paragraph (a) —
15 the State in which the worker is usually based for the
16 purposes of that employment; or

17 (c) if no State or no 1 State is identified by paragraph (a)
18 or (b) — the State in which the employer's principal
19 place of business in Australia is located.

20 (2) In the case of a worker working on a ship, if no State or no
21 1 State is identified by subsection (1), a worker's employment
22 is, while working on a ship, connected with the State in which
23 the ship is registered or (if the ship is registered in more than
24 one State) the State in which the ship most recently became
25 registered.

26 (3) If no State is identified by subsection (1) or (if applicable) (2), a
27 worker's employment is connected with this State if —

28 (a) the worker is in this State when the injury occurs; and

29 (b) there is no place outside Australia under the legislation
30 of which the worker may be entitled to compensation for
31 the same matter.

32 (4) In deciding whether a worker usually works in a State —

33 (a) regard must be had to the worker's work history with the
34 employer over the preceding period of 12 months and
35 the intentions of the worker and employer; and

36 (b) regard must not be had to any temporary arrangement
37 under which the worker works in a State for a period not
38 longer than 6 months.

- 1 (5) Without limiting subsection (4), in deciding whether a worker
2 usually works in a State or is usually based in a State for the
3 purposes of employment, regard must be had to any period
4 during which a worker works in a State or is in a State for the
5 purposes of employment whether or not, under the statutory
6 workers compensation scheme of that State, the person is
7 regarded as a worker, or as working or employed, in that State.

8 Note for this section:

9 Section 19(3) provides that there is no liability for compensation in
10 respect of an injury suffered by a worker outside Australia if the
11 worker —

- 12 (a) has never resided in Australia; or
13 (b) has been continuously resident outside Australia for more than
14 24 months when the injury occurs.

15 **529. Determining if employment is connected with this State**
16 **[WCIMA s. 23B]**

- 17 (1) This section applies to proceedings before a court in relation to
18 a claim for compensation.
- 19 (2) If in the proceedings the question of whether a worker's
20 employment is connected with this State arises, the court must
21 determine, in accordance with section 528, the State with which
22 the worker's employment is connected unless section 531
23 requires a previous determination of the question to be
24 recognised.
- 25 (3) The court must cause a determination under subsection (2) to be
26 entered in the records of the court.

27 **530. Applying to District Court to determine connection**
28 **[WCIMA s. 23C]**

- 29 (1) A party to a claim for compensation made under this Act may
30 apply to the District Court for the court to determine the State
31 with which the worker's employment is connected unless
32 section 531 requires a previous determination of the question to
33 be recognised.
- 34 (2) The District Court must determine an application under
35 subsection (1) in accordance with section 528 and cause the
36 determination to be entered in the records of the court.

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- 1 **531. Recognition of previous determination by court**
2 **[WCIMA s. 23D]**
- 3 (1) When the question of the State with which a worker's
4 employment is connected arises, a previous determination of the
5 question must be recognised if it was made —
- 6 (a) by a court of this State under section 529(2) or 530(2);
7 or
- 8 (b) by a court of another State under a provision of a law
9 that corresponds with section 529(2) or 530(2); or
- 10 (c) by a court of this State or another State in the course of
11 proceedings on a claim for damages to which the
12 provisions of Part 7 Division 5 or corresponding
13 provisions of the law of another State apply.
- 14 (2) This section does not prevent an appeal relating to the
15 determination.
- 16 (3) If the determination is altered on appeal, the altered
17 determination must be recognised under subsection (1).

Part 13 — Miscellaneous**532. Judicial notice [WCIMA s. 299]**

- (1) All courts and persons acting judicially are required to take judicial notice of —
- (a) the signature of a person who is, or was, the Director, the Registrar, a conciliator or an arbitrator; and
 - (b) the fact that a person referred to in paragraph (a) is or was the Director, the Registrar, a conciliator or an arbitrator, as the case requires; and
 - (c) the common seal of WorkCover WA affixed to a document.
- (2) If the common seal of WorkCover WA is affixed to a document, a court or person acting judicially must presume that it was properly affixed unless the contrary is proved.

533. Protection from liability for performance of functions [WCIMA s. 304]

- (1) An action in tort does not lie against a person for anything that the person has done in good faith in the performance or purported performance of a function under this Act.
- (2) The Minister and the State are also relieved of any liability that either of them might otherwise have had for a person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

534. Protection and immunity of conciliators, arbitrators and persons involved in proceedings [WCIMA s. 305]

- (1) A dispute resolution authority has, in the performance of their functions of a dispute resolution authority, the same protection and immunity as a judge of the Supreme Court has in the performance of the functions of a judge.
- (2) A person representing a party in a proceeding before a dispute resolution authority has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Supreme Court.

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- 1 (3) A party to a proceeding before a dispute resolution authority has
2 the same protection and immunity as a party to proceedings in
3 the Supreme Court.
- 4 (4) A person appearing as a witness in a proceeding before a
5 dispute resolution authority has the same protection and
6 immunity as a witness has in proceedings in the Supreme Court.
- 7 (5) To the extent that this section is inconsistent with anything
8 expressly stated in another provision of this Act, this section
9 does not apply.

10 **535. Protection for compliance with this Act [WCIMA s. 306]**

- 11 (1) No civil or criminal liability attaches to a person for
12 compliance, or purported compliance, in good faith, with a
13 requirement of this Act.
- 14 (2) In particular, if a person produces a document or other thing as
15 required under this Act, no civil liability attaches to the person
16 for producing the document or thing, whether the liability would
17 arise under a contract or otherwise.

18 **536. Protection from liability for publishing decision**
19 **[WCIMA s. 307]**

20 No action or proceeding, civil or criminal, lies against the State,
21 against a Minister or against a person employed or engaged by
22 the State, in respect of the printing or publishing of a transcript
23 of a proceeding before a dispute resolution authority or a
24 decision, or reasons for a decision, of a dispute resolution
25 authority.

26 **537. General maximum and other adjustable amounts**
27 **[WCIMA s. 5(1) def. *prescribed amount*, s. 5A, Sch. 1**
28 **cl. 11(2) *Amount C*, Sch. 1A]**

- 29 (1) For the purposes of this Act the *general maximum amount* is
30 \$239 179.

31 Note for this subsection:

32 \$239 179 is the prescribed amount under the *Workers' Compensation*
33 *and Injury Management Act 1981* on the date of introduction into
34 Parliament of the Bill for this Act. The amount may be updated under
35 section 562.

- 36 (2) For the purposes of this section each of the following amounts is
37 an *adjustable amount* —
38 (a) the general maximum amount;

- 1 (b) the maximum weekly rate of income compensation
2 prescribed for the purposes of section 54;
- 3 (c) the maximum board and lodging daily amount
4 prescribed for the purposes of section 59;
- 5 (d) the maximum amount for provision of a wheelchair or
6 similar appliance prescribed for the purposes of
7 section 87;
- 8 (e) a rate specified by the regulations under section 91(4)
9 for an expense referred to in section 91;
- 10 (f) the eligible dependent child allowance prescribed for the
11 purposes of section 131;
- 12 (g) the funeral expenses maximum amount prescribed for
13 the purposes of section 132;
- 14 (h) the maximum damages amount for less than 25%
15 impairment prescribed for the purposes of section 423.
- 16 (3) The regulations may vary an adjustable amount, including by
17 providing for the periodic variation of an adjustable amount in
18 accordance with a specified methodology (an *adjustment*
19 *methodology*).
- 20 (4) The regulations may provide for different adjustment
21 methodologies for different adjustable amounts.
- 22 (5) If, for a particular period, variation under the regulations of an
23 adjustable amount would reduce the amount, the amount must
24 not be varied for the period.

25 **538. Regulations [WCIMA s. 292]**

- 26 (1) The Governor may make regulations prescribing matters —
27 (a) required or permitted by this Act to be prescribed; or
28 (b) necessary or convenient to be prescribed for giving
29 effect to this Act.
- 30 (2) Without limiting subsection (1), the regulations may provide for
31 the following —
32 (a) matters of general or special application, which may
33 apply to both employers and workers, for the prevention
34 or minimising of occurrences of injuries in employment
35 or places of employment;
- 36 (b) the imposition, payment and recovery of fees and
37 charges.

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- 1 (3) The regulations may provide —
2 (a) that contravention of a regulation is an offence; and
3 (b) for the offence to be punishable on conviction by a
4 penalty not exceeding a fine of \$5 000.
- 5 (4) A regulation may require any matter or thing to be verified by
6 statutory declaration.

7 **539. Regulations may adopt codes or legislation**
8 **[WCIMA s. 292(7)]**

- 9 (1) In this section —
10 *code* means a code, standard, rule, specification or other
11 document, published in or outside Australia, that does not by
12 itself have legislative effect in this State;
13 *subsidiary legislation* includes rules, regulations, instructions,
14 local laws and by-laws.
- 15 (2) The regulations may adopt, either wholly or in part or with
16 modifications —
17 (a) any code; or
18 (b) any subsidiary legislation made, determined or issued
19 under any other Act or under any Act of the
20 Commonwealth or a State.
- 21 (3) The adoption may be by —
22 (a) incorporating the code or subsidiary legislation in the
23 regulations; or
24 (b) incorporating the code or subsidiary legislation by
25 reference.
- 26 (4) If the regulations adopt a code or subsidiary legislation by
27 reference, then, unless the regulations specify that a particular
28 text is adopted the code or subsidiary legislation is adopted as
29 amended from time to time.
- 30 (5) If the regulations adopt a code or subsidiary legislation by
31 reference, the CEO must ensure that a copy of the code or
32 subsidiary legislation, including any amendments made to it
33 from time to time that have been adopted, is published on the
34 WorkCover WA website.

1 **540. Review of Act [WCIMA s. 314B]**

2 (1) The Minister must review the operation and effectiveness of this
3 Act, and prepare a report based on the review —

4 (a) as soon as practicable after the 5th anniversary of the day
5 on which this section comes into operation; and

6 (b) after that, at intervals of not more than 5 years.

7 (2) The Minister must cause the report to be laid before each House
8 of Parliament as soon as practicable after it is prepared, but not
9 later than 12 months after the 5th anniversary or the expiry of the
10 period of 5 years, as the case may be.

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1 **Part 14 — Savings and transitional provisions**

2 **Division 1 — General**

3 **541. Terms used**

4 In this Part —

5 *commencement day* means the day on which section 603 comes
6 into operation;

7 *former Act* means the *Workers' Compensation and Injury*
8 *Management Act 1981*;

9 *pending matter* means a claim, assessment, proceeding, dispute
10 or other matter commenced or arising under the former Act
11 before commencement day that is pending, current or
12 continuing under the former Act immediately before
13 commencement day.

14 **542. Expressions used in former Act**

15 An expression used in this Part, to the extent that the expression
16 is referable to a liability for compensation or damages that
17 arose before commencement day, has the meaning that the
18 expression had in the former Act.

19 **543. Transitional regulations**

20 (1) In this section —

21 *publication day*, for regulations made under subsection (2),
22 means the day on which those regulations are published in the
23 *Gazette*;

24 *specified* means specified or described in regulations made
25 under subsection (2);

26 *transitional matter* —

27 (a) means a matter that needs to be dealt with for the
28 purpose of effecting the transition required because of
29 the enactment of this Act; and

30 (b) includes a saving or application matter.

31 (2) If there is no sufficient provision in this Division for dealing
32 with a transitional matter, the Governor may make regulations
33 prescribing matters —

34 (a) required to be prescribed for the purpose of dealing with
35 the transitional matter; or

- 1 (b) necessary or convenient to be prescribed for the purpose
2 of dealing with the transitional matter.
- 3 (3) Regulations made under subsection (2) may provide that
4 specified provisions of this Act —
- 5 (a) do not apply to or in relation to a specified matter; or
6 (b) apply with specified modifications to or in relation to a
7 specified matter.
- 8 (4) If regulations made under subsection (2) provide that a specified
9 state of affairs is taken to have existed, or not to have existed,
10 on and after a day that is earlier than publication day for those
11 regulations but not earlier than the day on which the relevant
12 provision of this Act came into operation, the regulations have
13 effect according to their terms.
- 14 (5) If regulations made under subsection (2) contain a provision
15 referred to in subsection (4), the provision does not operate so
16 as —
- 17 (a) to affect in a manner prejudicial to a person (other than
18 the State or an authority of the State) the rights of that
19 person existing before publication day for those
20 regulations; or
- 21 (b) to impose liabilities on a person (other than the State or
22 an authority of the State) in respect of an act done or
23 omission made before publication day for those
24 regulations.

25 **544. Interpretation Act 1984 not affected**

26 This Part is in addition to the provisions of the *Interpretation*
27 *Act 1984* and, unless the contrary intention appears, does not
28 limit or otherwise affect the operation of those provisions.

29 **545. Act operates as continuation of former Act**

- 30 (1) This Act operates as a continuation of the former Act and a
31 pending matter continues and must be dealt with under this Act
32 as if it arose under this Act.
- 33 (2) Anything commenced under a provision of the former Act for
34 the purposes of or in connection with a pending matter is taken
35 to have been commenced, and is to continue, under the
36 corresponding provision of this Act.
- 37 (3) Any act, matter or thing done or omitted to be done under or for
38 the purposes of a provision of the former Act before

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1 commencement day, to the extent that it has any current or
2 continuing force, significance or effect in connection with a
3 pending matter, is taken to have been done or omitted to be
4 done under or for the purposes of the corresponding provision
5 of this Act.

6 (4) A reference in this Act to something done or omitted to be done
7 under or for the purposes of a provision of this Act includes a
8 reference to something done or omitted to be done under or for
9 the purposes of the corresponding provision of the former Act.

10 **546. Directions about corresponding provisions and pending**
11 **matters**

12 The CEO may give directions that —

- 13 (a) determine any question as to which provision of an Act
14 corresponds to a provision of another Act for the
15 purposes of this Part;
- 16 (b) determine that a reference in this Part to the
17 corresponding provision of an Act is to be read as a
18 reference to a specified provision of the Act;
- 19 (c) modify the operation of a provision of this Act in respect
20 of a pending matter to make appropriate provision for
21 differences between this Act and the former Act;
- 22 (d) modify the effect of anything done or commenced under
23 the former Act in respect of a pending matter to ensure
24 that it has an appropriate effect under this Act.

25 **547. Effect of Act on validity of past acts**

26 This Act does not affect the validity of anything done or omitted
27 to be done under the former Act and in particular does not —

- 28 (a) affect the validity of any reduction, suspension or
29 cessation of compensation payments under the former
30 Act; or
- 31 (b) operate to revive any liability for or entitlement to the
32 payment of compensation reduced, suspended, ceased,
33 redeemed or extinguished under the former Act.

34 **548. Application of Act to existing injuries and other matters**

35 Subject to this Part, this Act extends to —

- 36 (a) an injury suffered by a worker before commencement
37 day; and

- 1 (b) an employer's liability to pay compensation or damages
2 to a worker who suffers an injury where that liability
3 arises before commencement day; and
4 (c) the death of a worker before commencement day; and
5 (d) an insurance policy issued before commencement day.

6 **549. Pending claims under former Act**

- 7 (1) A claim for weekly payments of compensation made under the
8 former Act (a *former Act claim*) that was not decided under the
9 former Act before commencement day must be dealt with as a
10 claim for income compensation under this Act as if made under
11 this Act.
- 12 (2) A former Act claim is considered to have been decided under
13 the former Act when —
- 14 (a) liability for the weekly payments claimed was accepted
15 under the former Act by the insurer or employer; or
16 (b) an arbitrator determined under the former Act that the
17 worker is entitled to the weekly payments claimed; or
18 (c) the worker became entitled under section 57A(5)
19 or 57B(4) of the former Act to the weekly payments
20 claimed (as a result of a failure by the insurer to comply
21 with section 57A(3) or 57B(2) of the former Act).
- 22 (3) If a former Act claim was decided under the former Act in the
23 circumstances described in subsection (2)(c), liability for the
24 weekly payments claimed is taken to have been accepted under
25 the former Act by the insurer or employer and any application
26 for a determination under section 57A(6) or 57B(5) of the
27 former Act in respect of the claim that is pending immediately
28 before commencement day is terminated.
- 29 (4) If liability for a former Act claim that must be dealt with under
30 this Act was disputed by the insurer or employer in respect of
31 all or any of the weekly payments claimed (other than a dispute
32 the subject of a determination to which subsection (3) applies)
33 and the dispute was not determined under the former Act before
34 commencement day, the dispute must be dealt with under this
35 Act.
- 36 (5) If a liability decision on a former Act claim that must be dealt
37 with under this Act was deferred before commencement day,
38 this Act applies to the claim as if a deferred decision notice for
39 the claim had been given on commencement day.

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1 (6) For the purposes of subsection (5), a liability decision on a
2 former Act claim is considered to have been deferred before
3 commencement day if notice was given under section 57A(3)(c)
4 or 57B(2)(c) of the former Act before commencement day that a
5 decision as to whether or not liability is to be accepted is not
6 able to be made within the time allowed by the relevant
7 subsection.

8 (7) This section does not affect any entitlement to compensation
9 that arises under the former Act before commencement day.

10 **550. Firefighters**

11 Section 11 does not apply to an injury by a firefighter disease
12 suffered before 13 November 2013.

13 Note for this section:

14 13 November 2013 is the day on which the *Workers' Compensation*
15 *and Injury Management Amendment Act 2013* section 4 came into
16 operation.

17 **551. Jockeys**

18 For the purposes of section 15, if the injury occurred before
19 14 December 2012, the employer in the circumstances to which
20 section 15(3)(b) applies is Racing and Wagering Western
21 Australia and not the licensed trainer for whom the person was
22 engaged.

23 Note for this section:

24 14 December 2012 is the day on which the *Workers' Compensation*
25 *and Injury Management Amendment (Jockeys) Act 2012* section 4
26 came into operation.

27 **Division 2 — Compensation**

28 **552. Continuation of entitlement to compensation**

29 (1) An entitlement to compensation under the former Act (being an
30 entitlement that a person has immediately before
31 commencement day) becomes an entitlement to compensation
32 under this Act.

33 (2) Compensation payable on or after commencement day in
34 respect of an injury suffered before commencement day is
35 payable in accordance with this Act and not the former Act.

36 (3) Compensation paid under the former Act is taken to have been
37 paid under this Act.

1 **553. Calculation of income compensation commenced as weekly**
2 **payments under former Act**

3 (1) If weekly payments to an injured worker had commenced under
4 the former Act before commencement day, the amount of any
5 payments to the worker of income compensation for any period
6 of incapacity on or after commencement day must be calculated
7 in the manner provided by the former Act for the calculation of
8 weekly payments.

9 (2) This section applies only if liability to pay weekly payments
10 was accepted by the insurer or employer or determined by an
11 arbitrator before commencement day.

12 **554. Caps on compensation**

13 (1) In this section —

14 *compensation cap* means any limit on the amount of
15 compensation payable or of a particular form of compensation
16 payable.

17 (2) If a compensation cap under the former Act was applicable to an
18 entitlement to compensation under the former Act and the
19 entitlement had been exhausted before commencement day —

20 (a) the entitlement remains subject to the compensation cap
21 under the former Act; and

22 (b) the entitlement is not subject to a compensation cap
23 under this Act; and

24 (c) this Act does not renew, revive or increase the
25 entitlement to compensation.

26 (3) If a compensation cap under the former Act was applicable to an
27 entitlement to compensation under the former Act but the
28 entitlement had not been exhausted before commencement
29 day —

30 (a) the entitlement becomes subject to the corresponding
31 compensation cap under this Act with compensation
32 paid under the former Act counted as compensation paid
33 under this Act; and

34 (b) the entitlement is not subject to the compensation cap
35 under the former Act.

36 (4) An entitlement to compensation under the former Act to which
37 a compensation cap under the former Act was applicable is
38 considered to have been exhausted when the amount of
39 compensation paid in respect of the entitlement before

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1 commencement day equals or exceeds the amount of that
2 compensation cap under the former Act (without regard to any
3 amount of compensation that may have become payable but that
4 was unpaid immediately before commencement day).

5 (5) For the purposes of this section, the compensation cap under the
6 former Act for compensation under clause 17(1) of Schedule 1
7 to the former Act is the amount that is 30% of the prescribed
8 amount under the former Act and does not include any increase
9 in that amount resulting from an order of an arbitrator or an
10 agreement by the insurer or employer to increase that amount.

11 (6) For the purposes of the application of this section to the
12 compensation cap in respect of compensation under
13 clause 17(1) of Schedule 1 to the former Act, compensation paid
14 under the former Act for expenses incurred in respect of first aid
15 and ambulance or other services to carry the worker to hospital
16 or another place for medical treatment must not be counted as
17 compensation paid under this Act.

18 Note for this subsection:

19 Compensation under section 86 for first aid and emergency transport
20 expenses (which under the former Act was subject to a compensation
21 cap as part of medical and related expenses) is not subject to a
22 compensation cap under this Act.

23 (7) This Act does not renew or revive a liability for compensation
24 under the former Act that was discharged under the former Act
25 and does not renew or revive an entitlement to compensation
26 under the former Act that was extinguished under the former
27 Act.

28 **555. Compensation paid or payable under former Act**

29 A reference in this Act to compensation paid or payable under
30 this Act includes a reference to compensation paid or payable
31 under the former Act.

32 **556. Provisional payments of compensation**

33 An employer is not required to make provisional payments of
34 compensation in respect of a claim for compensation made
35 before commencement day unless the claim is required by
36 section 549 to be dealt with under this Act as if made under this
37 Act.

38 **557. Lump sum compensation for permanent impairment**

39 A reference in section 99 to compensable injury includes a
40 personal injury by accident in respect of which compensation

1 for permanent impairment under Part III Division 2 or 2A of the
2 former Act has been paid or is payable to the worker.

3 **558. Noise-induced hearing loss**

4 (1) A reference in Part 2 Division 7 to noise-induced hearing loss
5 compensation paid to a worker includes a reference to
6 compensation received by the worker under the former Act or
7 the *Workers' Compensation Act 1912* for noise-induced hearing
8 loss.

9 (2) A reference in Part 2 Division 7 to hearing loss and assessed
10 NIHL of a worker includes a reference to hearing loss and
11 noise-induced hearing loss that the worker has suffered as
12 ascertained and measured in accordance with Schedule 7 to the
13 former Act.

14 **559. Compensation for death of worker before 1 July 2018**

15 If the death of a worker occurred before 1 July 2018 —

- 16 (a) Part 2 Division 9 does not apply in respect of the death
17 of the worker; and
18 (b) the former provisions (as defined in clause 9 of
19 Schedule 8 to the former Act) apply in respect of the
20 death as if those provisions were still in force; and
21 (c) the child's allowance that a person is entitled to receive
22 under the former provisions as applied by paragraph (b)
23 is the eligible dependent child allowance under
24 section 131 of this Act.

25 Note for this section:

26 1 July 2018 is the day on which the *Workers' Compensation and Injury*
27 *Management Amendment Act 2018* section 6 came into operation.

28 **560. When entitlement to income compensation ceases due to age**
29 **[WCIMA s. 56, 57]**

30 (1) This section applies to the entitlement of a worker to income
31 compensation for an injury if —

- 32 (a) the injury occurred before 1 October 2011; and
33 (b) the worker's entitlement to weekly payments of
34 compensation under the former Act had not ceased
35 under section 56 of the former Act before
36 commencement day.

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1 Note for this subsection:

2 1 October 2011 is the day on which the *Workers' Compensation and*
3 *Injury Management Amendment Act 2011* section 88 came into
4 operation.

5 (2) The entitlement of the worker to income compensation in
6 respect of the injury ceases on the worker attaining the age
7 of 65 years.

8 **561. Compensation for AIDS**

9 Section 101 does not apply in respect of the contraction of
10 AIDS by a worker if the accident by which the worker became
11 infected with HIV occurred before 14 November 2005.

12 Note for this section:

13 14 November 2005 is the day on which the *Workers' Compensation*
14 *Reform Act 2004* section 21 came into operation.

15 **562. Updating of general maximum amount**

16 If the prescribed amount under the former Act that applies
17 immediately before commencement day (the *prescribed amount*
18 *before commencement*) is different from the amount of
19 \$239 179 specified as the general maximum amount in
20 section 537, the prescribed amount before commencement
21 replaces the amount of \$239 179 as the amount specified as the
22 general maximum amount in section 537.

23 Note for this section:

24 \$239 179 is the prescribed amount under the former Act on the date of
25 introduction into Parliament of the Bill for this Act. This section provides
26 for that amount to be updated to reflect any change in the prescribed
27 amount under the former Act that occurs between introduction of the
28 Bill for this Act and commencement day. This section does not prevent
29 subsequent variation by regulation of the general maximum amount as
30 provided by section 537.

31 **Division 3 — Injury management**

32 **563. Return to work programs established under s. 155C of**
33 **former Act**

34 A return to work program established in accordance with
35 section 155C of the former Act and in operation immediately
36 before commencement day is taken to have been established in
37 accordance with section 159 of this Act.

1 **564. Employer's obligation to make position or suitable duties**
2 **available**

3 (1) Sections 166, 167 and 168 do not apply in respect of an injury
4 occurring before commencement day.

5 (2) Sections 84AA and 84AB of the former Act continue to apply in
6 respect of an injury occurring before commencement day as if
7 those sections were still in force.

8 **565. Approved workplace rehabilitation providers**

9 (1) A person who holds an approval as a vocational rehabilitation
10 provider that is in force under section 156 of the former Act
11 immediately before commencement day is taken to have been
12 granted an approval as a workplace rehabilitation provider
13 under section 174(1) of this Act and is subject to this Act
14 accordingly.

15 (2) The approval is taken to have been granted to remain in force
16 indefinitely unless WorkCover WA converts the approval by a
17 direction under section 176(4) to an approval granted for a fixed
18 period specified in the direction.

19 **566. Vocational rehabilitation programs**

20 A vocational rehabilitation program established for an injured
21 worker under the former Act and in operation immediately
22 before commencement day is taken to have been established
23 under this Act and continues in operation under this Act.

24 **Division 4 — Dispute resolution**

25 **567. Terms used**

26 In this Division —

27 *appropriate official* means —

- 28 (a) the Director in relation to matters concerning
29 conciliation or any function of the Director under this
30 Act or the former Act; or
31 (b) the Registrar in relation to matters concerning
32 arbitration;

33 *dispute proceedings* means proceedings before a conciliator,
34 arbitrator or the District Court commenced before
35 commencement day in respect of a dispute under the former
36 Act;

1 *pending dispute decision* means an order or direction under the
2 former Act in connection with pending dispute proceedings;

3 *pending dispute proceedings* means dispute proceedings that
4 are pending immediately before commencement day;

5 *transitional direction* means a direction under section 571.

6 **568. Disputes to which Act applies**

7 This Act applies to a dispute arising before, on or after
8 commencement day, including a dispute arising on or after
9 commencement day about a matter arising under the former
10 Act.

11 **569. Continuity of conciliation and arbitration services**

12 (1) The Conciliation Service under this Act is a continuation of the
13 Conciliation Service under the former Act.

14 (2) The Arbitration Service under this Act is a continuation of the
15 Arbitration Service under the former Act.

16 (3) The person holding office as Director under the former Act
17 immediately before commencement day is taken to have been
18 designated as the Director under this Act on commencement
19 day.

20 (4) The person holding office as Registrar under the former Act
21 immediately before commencement day is taken to have been
22 designated as the Registrar under this Act on commencement
23 day.

24 (5) A person who is a conciliation officer under the former Act
25 immediately before commencement day is taken to have been
26 designated as a conciliator under this Act on commencement
27 day.

28 (6) A person who is an arbitrator under the former Act immediately
29 before commencement day is taken to have been designated as
30 an arbitrator under this Act on commencement day.

31 **570. Pending dispute proceedings**

32 (1) Pending dispute proceedings must continue and be dealt with as
33 dispute proceedings under this Act.

34 (2) Pending dispute proceedings must be dealt with under this Act
35 in accordance with the conciliation rules, arbitration rules and
36 regulations in force under the former Act immediately before

1 commencement day unless a transitional direction otherwise
2 provides.

3 **571. Transitional directions**

4 (1) The appropriate official may give directions (*transitional*
5 *directions*) for or with respect to any of the following —

- 6 (a) the modification of provisions of this Act in their
7 application to pending dispute proceedings to facilitate
8 the appropriate resolution of the disputes concerned;
- 9 (b) varying the terms or effect of a pending dispute decision
10 to ensure that the pending dispute decision has
11 appropriate operation and effect for the purposes of this
12 Act;
- 13 (c) varying the operation of the conciliation rules,
14 arbitration rules and regulations in force under the
15 former Act in their application to pending dispute
16 proceedings dealt with under this Act;
- 17 (d) quashing a pending dispute decision that has no
18 appropriate operation or effect for the purposes of this
19 Act;
- 20 (e) terminating a pending dispute proceeding if resolution
21 of the dispute concerned will have no appropriate
22 operation or effect for the purposes of this Act.

23 (2) Transitional directions may be given to operate generally or in a
24 particular case.

25 **572. Dispute decisions under former Act**

26 An order or direction of an arbitrator or conciliation officer
27 made or given under a provision of the former Act and in force
28 immediately before commencement day is taken to have been
29 made or given by the arbitrator or conciliator under the
30 corresponding provision of this Act.

31 **573. Registration of independent agents [WCIMA s. 277]**

32 (1) In this section —

33 *transitioned independent agent* means a person who,
34 immediately before commencement day, was registered as an
35 agent as provided by section 277 of the former Act on the sole
36 basis that the person acts or proposes to act as an independent
37 agent.

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- 1 (2) Regulations must provide for a scheme for the registration of
2 independent agents that is in force for a period of 2 years after
3 commencement day (the *transition period*).
- 4 (3) On commencement day, a transitioned independent agent
5 becomes registered as an independent agent under the
6 regulations and is subject to this Act accordingly.
- 7 (4) A person is not entitled to registration as an independent agent
8 under the regulations unless the person is a transitioned
9 independent agent.
- 10 (5) At the end of the transition period —
- 11 (a) the scheme for the registration of independent agents is
12 terminated; and
- 13 (b) each person who was registered under the regulations as
14 an independent agent immediately before the end of the
15 transition period ceases to be so registered.
- 16 (6) Regulations for the purposes of this section may include
17 provision for or with respect to —
- 18 (a) regulating the conduct of registered independent agents
19 in the provision of agent services (including by setting
20 standards of conduct and limiting the agent services that
21 are authorised to be provided by registered independent
22 agents); and
- 23 (b) imposing conditions on the registration of independent
24 agents, either generally or in a particular case; and
- 25 (c) authorising the doing of legal work by registered
26 independent agents in the course of providing agent
27 services subject to any limitations imposed by the
28 regulations; and
- 29 (d) the circumstances in which, and the procedures by
30 which, a person's registration as an independent agent
31 may be suspended or cancelled; and
- 32 (e) applications for review by the State Administrative
33 Tribunal of decisions suspending or cancelling
34 registration or imposing conditions on registration as an
35 independent agent; and
- 36 (f) authorising WorkCover WA to conduct audits and
37 investigations (*compliance audits and investigations*)
38 for the purpose of ensuring compliance by registered
39 independent agents with this Act, the regulations, the
40 conditions of registration, the conciliation rules and the

- 1 arbitration rules, including standards of conduct set by
2 the regulations; and
- 3 (g) requiring a registered independent agent to provide
4 information or documents to WorkCover WA for the
5 purposes of any compliance audit or investigation by
6 WorkCover WA; and
- 7 (h) requiring a registered independent agent to obtain any
8 release or consent from any client of the agent to
9 authorise the provision of information or documents to
10 WorkCover WA for the purposes of any compliance
11 audit or investigation by WorkCover WA; and
- 12 (i) requiring registered independent agents to have
13 professional indemnity insurance; and
- 14 (j) transitional arrangements for the operation of this Act in
15 respect of the provision by a transitioned independent
16 agent after the end of the transition period of agent
17 services commenced to be provided before the end of
18 the transition period; and
- 19 (k) any other matter necessary or convenient to be
20 prescribed for or in connection with the registration of
21 independent agents for the purposes of this Act.
- 22 (7) The doing of legal work by a registered independent agent in the
23 course of providing agent services and as authorised by the
24 regulations does not constitute engaging in legal practice for the
25 purposes of the *Legal Profession Act 2008*.

26 **Division 5 — Medical assessment**

27 **574. Approved permanent impairment assessors**

- 28 (1) A medical practitioner who was an approved medical specialist
29 under the former Act immediately before commencement day is
30 taken to have been approved under section 196(1) of this Act as
31 an approved permanent impairment assessor and is subject to
32 this Act accordingly.
- 33 (2) The approval is taken to have been granted to remain in force
34 indefinitely unless WorkCover WA converts the approval by a
35 direction under section 199(4) to an approval granted for a fixed
36 period specified in the direction.

37 **575. Medical assessments under former Act**

- 38 (1) An assessment under a provision of the former Act by an
39 approved medical specialist of a worker's degree of impairment

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1 is taken to be an assessment under the corresponding provision
2 of this Act by an approved permanent impairment assessor of
3 the worker's degree of permanent impairment.

4 (2) A determination of a question by a medical panel under
5 section 38 or 93R of the former Act is taken to be a
6 determination of that question by a Dust Disease Medical Panel
7 under this Act.

8 **Division 6 — Insurer and self-insurer insolvency and uninsured**
9 **liabilities**

10 **576. Claims for uninsured liabilities**

11 Section 270 does not apply if —

- 12 (a) the action resulting in the award of damages was
13 brought before 1 October 2011; or
14 (b) before 1 October 2011 a claim for compensation under
15 the former Act was made in respect of the same injury.

16 Note for this section:

17 1 October 2011 is the day on which the *Workers' Compensation and*
18 *Injury Management Amendment Act 2011* section 113 came into
19 operation.

20 **577. Amounts payable from DI Fund for uninsured liabilities**

21 (1) Any amount payable from the General Account under
22 section 174 of the former Act that is unpaid immediately before
23 commencement day is payable from the DI Fund under the
24 corresponding provision of this Act.

25 (2) Any amount paid from the General Account under Part X of the
26 former Act that is recoverable under a provision of the former
27 Act but not recovered immediately before commencement day
28 is recoverable under the corresponding provision of this Act for
29 crediting to the DI Fund.

30 **578. Insurer and self-insurer insolvency**

31 In Part 5 Division 8 —

- 32 (a) a reference to a workers compensation policy includes a
33 reference to an employer's policy as defined in the
34 *Employers' Indemnity Supplementation Fund Act 1980*
35 section 3; and
36 (b) a reference to a self-insurer includes a reference to an
37 employer or a member of a group of employers
38 exempted under section 164 of the former Act; and

- 1 (c) a reference to a licensed insurer includes a reference to
2 an approved insurance office under the former Act; and
- 3 (d) a reference to a requirement to hold a workers
4 compensation policy includes a reference to a
5 requirement to hold a policy of insurance under the
6 former Act.

7 **579. EIS Fund**

- 8 (1) In this section —
9 **EIS Fund** means the Fund under the *Employers' Indemnity*
10 *Supplementation Fund Act 1980*;
11 **relevant Act** means the *Employers' Indemnity Supplementation*
12 *Fund Act 1980* or the *Workers' Compensation and Injury*
13 *Management (Acts of Terrorism) Act 2001*.
- 14 (2) Any amount standing to the credit of the EIS Fund immediately
15 before commencement day must be credited to the DI Fund.
- 16 (3) Any amount payable from the EIS Fund under a provision of a
17 relevant Act that is unpaid immediately before commencement
18 day is payable from the DI Fund under the corresponding
19 provision of this Act.
- 20 (4) Any amount paid from the EIS Fund under a relevant Act that is
21 recoverable under a provision of the relevant Act but not
22 recovered immediately before commencement day is
23 recoverable under the corresponding provision of this Act for
24 crediting to the DI Fund.

25 **580. Claims under EISF Act**

- 26 (1) In this section —
27 **EISF Act** means the *Employers' Indemnity Supplementation*
28 *Fund Act 1980*.
- 29 (2) A claim under the EISF Act that is pending under that Act
30 immediately before commencement day (a **pending claim**) must
31 continue to be dealt with under that Act as if that Act were still
32 in force.
- 33 (3) Any amount payable after commencement day in respect of a
34 pending claim must be paid from the DI Fund.
- 35 (4) Section 283 extends to a payment made by the Insurance
36 Commission in satisfaction of a claim under the EISF Act
37 (including but not limited to a pending claim) as if the payment

1 were a payment by WorkCover WA in satisfaction of a claim
2 under Part 5 Division 8.

3 **Division 7 — Settlement agreements**

4 **581. Settlement agreements under former Act**

- 5 (1) Part III Division 7 of the former Act continues to apply to and in
6 respect of a memorandum of an agreement received for
7 registration as referred to in section 76 of the former Act but not
8 registered under that section before commencement day.
- 9 (2) An agreement registered under section 76 of the former Act
10 (including an agreement so registered pursuant to
11 subsection (1)) is taken to have been registered under Part 2
12 Division 11 of this Act.
- 13 (3) Section 146 of this Act extends to an agreement entered into
14 before commencement day.

15 **Division 8 — Common law damages proceedings**

16 **582. Terms used**

17 In this Division —
18 *election* means an election to retain the right to seek damages;
19 *former common law provisions* means Part IV of the former
20 Act;
21 *new common law provisions* means Part 7 Divisions 1 to 4;
22 *permanent impairment agreement* means an agreement
23 referred to in section 93L(2)(a) of the former Act;
24 *permanent impairment assessment* means an assessment
25 referred to in section 93L(2)(b) of the former Act;
26 *registered* means registered by the Director.

27 **583. Application of new common law provisions to existing**
28 **claims**

- 29 (1) The new common law provisions —
30 (a) extend to a cause of action that accrued before
31 commencement day; but
32 (b) do not apply to proceedings for damages that were
33 validly commenced before commencement day, except
34 as provided by this section.

- 1 (2) The former common law provisions continue to apply to
2 proceedings for damages that were validly commenced before
3 commencement day, except as provided by this section.
- 4 (3) Part 7 Divisions 3 and 4 extend to proceedings for damages that
5 were validly commenced before commencement day but that
6 had not been finalised (by judgment, settlement or otherwise)
7 before that day.
- 8 (4) Section 421 extends to a cause of action that accrued before
9 commencement day even if the worker had not elected to retain
10 the right to seek damages as referred to in section 93E of the
11 former Act.
- 12 (5) Section 432 extends to an action for damages that was
13 successful within the meaning of that section before
14 commencement day.
- 15 (6) The *Civil Liability Act 2002* section 13A, as in force
16 immediately before section 609 of this Act comes into
17 operation, continues to apply in respect of proceedings for
18 damages to which the former common law provisions continue
19 to apply as provided by this section.
- 20 (7) The *Motor Vehicle (Third Party Insurance) Act 1943*
21 section 3C, as in force immediately before section 647 of this
22 Act comes into operation, continues to apply in respect of
23 proceedings for damages to which the former common law
24 provisions continue to apply as provided by this section.

25 **584. Transitional arrangements for application of new common**
26 **law provisions to existing claims**

- 27 (1) The following provisions apply for the purposes of the
28 application of Part 7 Division 2 in respect of a cause of action
29 accruing before commencement day if proceedings on the cause
30 of action had not been validly commenced before that day —
- 31 (a) an election made under the former common law
32 provisions is taken to have been made under the new
33 common law provisions;
- 34 (b) an election registered by the Director under the former
35 common law provisions is taken to have been registered
36 by the Director under the new common law provisions;
- 37 (c) a permanent impairment agreement or permanent
38 impairment assessment as to a worker's degree of
39 permanent impairment that was made under the former
40 common law provisions before commencement day is

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1 taken to be an assessment under the new common law
2 provisions by an approved permanent impairment
3 assessor or Dust Disease Medical Panel (whichever is
4 appropriate) of the worker's degree of permanent
5 impairment;

6 (d) a permanent impairment agreement or permanent
7 impairment assessment as to a worker's degree of
8 permanent impairment that was recorded by the Director
9 under the former common law provisions before
10 commencement day is taken to have been recorded by
11 the Director under the new common law provisions as
12 the supporting assessment for the worker's election to
13 retain the right to seek damages.

14 (2) For the purposes of the application of section 422 in respect of
15 an election registered before commencement day, a reference in
16 that section to the registration day is a reference to the day on
17 which the election was registered under the former common law
18 provisions.

19 **585. Continuation of 1993 Scheme**

20 Part IV Division 2 Subdivision 2 (1993 Scheme) of the former
21 Act continues to apply despite its repeal to a cause of action to
22 which that Subdivision applied pursuant to section 93CC of the
23 former Act.

24 **586. Dust disease actions accruing before 14 November 2005**

25 Part 7 Division 2 extends to a cause of action that accrued
26 before 14 November 2005 if the worker claims to be suffering a
27 dust disease and on or after that date the worker's degree of
28 permanent impairment resulting from the dust disease was
29 assessed as provided by section 93R of the former Act or settled
30 by agreement.

31 **Division 9 — Insurance**

32 **587. Insurance policies under former Act**

33 (1) In this section —
34 *former Act policy*, in relation to an employer, means an
35 insurance policy issued to the employer before commencement
36 day for the purposes of, and in compliance with the
37 requirements of, section 160 of the former Act when the policy
38 was issued.

- 1 (2) A former Act policy is taken to insure the employer for the full
2 amount of the following liabilities of the employer that arise in
3 respect of employment during the period of insurance of the
4 former Act policy —
- 5 (a) any liability of the employer that arises under this Act or
6 the former Act to pay compensation or make any other
7 payment in respect of an injury to or the death of a
8 worker;
- 9 (b) any liability of the employer to pay damages in respect
10 of an injury to or the death of a worker if the employer
11 is liable to pay compensation under this Act or the
12 former Act in respect of the injury or death, other than
13 an injury to or the death of a deemed worker (as defined
14 in section 203) of the employer.
- 15 (3) A reference in this Act to a workers compensation policy is, in
16 relation to insurance at a time before commencement day, to be
17 read as a reference to a former Act policy in force at that time.
- 18 (4) The repeal of the former Act does not affect the validity or
19 operation of a former Act policy.
- 20 (5) Section 244 (which limits the circumstances in which an insurer
21 is entitled to refuse indemnity under a workers compensation
22 policy) extends to a refusal of indemnity under a former Act
23 policy on or after commencement day, and for that purpose —
- 24 (a) a reference in that section to a workers compensation
25 policy is taken to include a reference to a former Act
26 policy; and
- 27 (b) a reference in that section to a licensed insurer includes
28 a reference to an insurer under a former Act policy.

29 **588. Failure to insure under former Act**

30 Section 170 of the former Act continues to apply to and in
31 respect of a failure referred to in that section that occurs before
32 commencement day.

33 **589. Underpaid premiums**

34 Section 213 extends to the provision of information before
35 commencement day that is relevant to calculation of the
36 premium payable by an employer for a policy of insurance
37 issued or renewed before commencement day.

1 **590. Operation of policies issued by Insurance Commission**

2 (1) A policy of insurance issued or renewed by the Insurance
3 Commission as referred to in section 162 of the former Act and
4 in force immediately before commencement day —

- 5 (a) continues in force on and from commencement day; but
6 (b) does not apply to a liability arising in respect of
7 employment on or after commencement day.

8 Note for this subsection:

9 A policy issued by the Insurance Commission under section 162 of the
10 former Act covered liability for compensation for a disease of a kind
11 referred to in section 151(a)(iii) of the former Act. For employment on
12 or after commencement day liability for compensation for such a
13 disease is covered by a workers compensation policy issued by a
14 licensed insurer.

15 (2) The operation of subsection (1) does not entitle the holder of a
16 policy of insurance referred to in that subsection to any refund
17 of premium paid in respect of the policy.

18 **591. Licensed insurers**

19 (1) An insurer that was an approved insurer under the former Act
20 immediately before commencement day is taken to be a licensed
21 insurer under this Act and is subject to this Act accordingly.

22 (2) The insurer is taken to have been granted an insurer licence to
23 remain in force indefinitely unless WorkCover WA converts the
24 licence by a direction under section 233(4) to an insurer licence
25 granted for a fixed period specified in the direction.

26 (3) Sections 264(7) and 490(6) do not apply to an insurer who
27 becomes a licensed insurer under this Act pursuant to this
28 section.

29 Note for this subsection:

30 Sections 264(7) and 490(6) provide that a licensed insurer is not
31 required to pay a contribution to the DI Fund or the General Account
32 for the financial year in which the insurer becomes a licensed insurer.
33 This does not apply to approved insurers under the former Act who
34 become licensed insurers under this section.

35 **592. Self-insurers**

36 (1) An employer that is an employer or a member of a group of
37 employers exempted under section 164 of the former Act
38 immediately before commencement day is taken to be a
39 self-insurer under this Act and is subject to this Act accordingly.

- 1 (2) The employer is taken to have been granted a self-insurer
2 licence to remain in force indefinitely unless WorkCover WA
3 converts the licence by a direction under section 233(4) to a
4 self-insurer licence granted for a fixed period specified in the
5 direction.
- 6 (3) If an employer was a self-insurer under the former Act because
7 the employer belonged to a group of employers exempted under
8 section 164 of the former Act —
- 9 (a) only 1 of the employers of the group is taken to have
10 been granted a self-insurer licence as provided by this
11 section (being the employer chosen by
12 WorkCover WA); and
- 13 (b) the self-insurer licence is taken to have been granted on
14 terms that extend the licence to the other employers of
15 the group.
- 16 (4) Sections 264(7) and 490(6) do not apply to an employer who
17 becomes a self-insurer under this Act pursuant to this section.
- 18 Note for this subsection:
- 19 Sections 264(7) and 490(6) provide that a self-insurer is not required to
20 pay a contribution to the DI Fund or the General Account for the
21 financial year in which the self-insurer became a self-insurer. This does
22 not apply to self-insurers under the former Act who become
23 self-insurers under this section.
- 24 (5) Securities given to the State by a self-insurer for the purposes of
25 section 164 of the former Act and in force immediately before
26 commencement day are taken to be a self-insurer security
27 provided by the self-insurer for the purposes of section 253 of
28 this Act.

29 **593. Recommended premium rates**

30 A recommended premium rate fixed under section 151 of the
31 former Act and in force immediately before commencement day
32 is taken to have been fixed under section 256 of this Act.

33 **594. Appeals by employers**

34 An appeal under section 154 of the former Act that is pending
35 immediately before commencement day must continue and be
36 dealt with as a review under section 258 of this Act.

1 **595. Permission for insurer to exceed 75% premium loading**

2 A request for permission under section 152 of the former Act
3 that was not determined by WorkCover WA before
4 commencement day lapses on commencement day.

5 **Division 10 — Administration**

6 **596. Continuation of WorkCover Western Australia Authority**

7 WorkCover WA established under section 444(1) is the same
8 legal person as, and a continuation of, the WorkCover Western
9 Australia Authority referred to in section 94 of the former Act.

10 **597. Board is continuation of governing body**

11 (1) In this section —

12 *governing body* means the governing body established under
13 section 95(1) of the former Act.

14 (2) The Board is a continuation of the governing body.

15 (3) A person who immediately before commencement day was a
16 nominee member of the governing body continues in office
17 under and subject to this Act as an appointed member of the
18 Board and for that purpose is taken to have been appointed as a
19 member of the Board for a term of office that is the remainder
20 of the term of office for which the person was appointed as a
21 nominee member of the governing body.

22 **598. Continuation of accounts**

23 (1) The WorkCover WA General Account referred to in section 487
24 is a continuation of the Workers' Compensation and Injury
25 Management General Account established under the former
26 Act.

27 (2) The WorkCover WA Trust Account referred to in section 493 is
28 a continuation of the Workers' Compensation and Injury
29 Management Trust Account established under the former Act.

30 **599. Inspectors**

31 (1) A person who was an inspector under the former Act
32 immediately before commencement day is taken to be an
33 inspector under this Act.

34 (2) A certificate issued under section 175A(4) of the former Act
35 and held by an inspector referred to in subsection (1)

1 immediately before commencement day is taken to be an
2 identity card issued to that person under section 508(1).

3 **600. Delegations [WCIMA s. 101AA]**

4 A delegation in force under a provision of the former Act
5 immediately before commencement day is taken to be a
6 delegation under the corresponding provision of this Act.

7 **601. Guarantees of borrowings [WCIMA s. 101B]**

8 The repeal of section 101B of the former Act does not affect the
9 validity or continued operation of —

- 10 (a) any guarantee given by the Treasurer pursuant to the
11 authority conferred by that section; or
12 (b) any security given by WorkCover WA in connection
13 with any such guarantee.

14 **602. General Account**

15 (1) Any amount payable to the General Account under the former
16 Act that was unpaid immediately before commencement day is
17 payable to the General Account under this Act.

18 (2) Any amount payable from the General Account under the
19 former Act that was unpaid immediately before commencement
20 day is payable from the General Account under this Act.

21 (3) Any amount that is recoverable under the former Act for
22 payment into the General Account that was not recovered before
23 commencement day is recoverable under this Act for payment
24 into the General Account under this Act.

25 (4) There is authorised to be paid from the General Account to the
26 DI Fund such amount as WorkCover WA may determine to be
27 the amount representing the total amount of the liabilities of the
28 General Account under the former Act that remain unsatisfied
29 immediately before commencement day in respect of payments
30 that will be required to be made from the DI Fund after
31 commencement day.

32 (5) This section is subject to section 577.

Workers Compensation and Injury Management Bill 2021

Part 15 Acts repealed or amended

Division 1 Acts repealed

s. 603

1 **Part 15 — Acts repealed or amended**

2 **Division 1 — Acts repealed**

3 **603. *Workers' Compensation and Injury Management Act 1981***
4 **repealed**

5 The *Workers' Compensation and Injury Management Act 1981*
6 is repealed.

7 **604. *Workers' Compensation and Injury Management (Acts of***
8 ***Terrorism) Act 2001* repealed**

9 The *Workers' Compensation and Injury Management (Acts of*
10 *Terrorism) Act 2001* is repealed.

11 **605. *Employers Indemnity Policies (Premium Rates) Act 1990***
12 **repealed**

13 The *Employers Indemnity Policies (Premium Rates) Act 1990* is
14 repealed.

15 **606. *Employers' Indemnity Supplementation Fund Act 1980***
16 **repealed**

17 The *Employers' Indemnity Supplementation Fund Act 1980* is
18 repealed.

19 **607. *Waterfront Workers (Compensation for Asbestos Related***
20 ***Diseases) Act 1986* repealed**

21 The *Waterfront Workers (Compensation for Asbestos Related*
22 *Diseases) Act 1986* is repealed.

23 **Division 2 — Acts amended**

24 **Subdivision 1 — *Civil Liability Act 2002* amended**

25 **608. Act amended**

26 This Subdivision amends the *Civil Liability Act 2002*.

1 **609. Section 13A replaced**

2 Delete section 13A and insert:

3

4 **13A. Restrictions on damages if payments received under**
5 **CISS**

6 (1) In this Act —

7 *CISS* means the scheme provided for in the
8 MVWA(CI) Act for the lifetime care and support of
9 certain people catastrophically injured in motor vehicle
10 accidents or workplace accidents;

11 *interim participant* means a person who under the
12 MVWA(CI) Act is an interim participant in the CISS;

13 *lifetime participant* means a person who under the
14 MVWA(CI) Act is a lifetime participant in the CISS;

15 *MVWA(CI) Act* means the *Motor Vehicle and*
16 *Workplace Accidents (Catastrophic Injuries) Act 2016*;

17 *treatment, care and support needs* means —

18 (a) treatment, care and support needs as defined in
19 the MVWA(CI) Act section 3(1); and

20 (b) excluded treatment, care and support needs as
21 defined in that section.

22 (2) If a term used in this section (other than a term defined
23 in subsection (1)) is given a meaning in the
24 MVWA(CI) Act section 3(1), it has the same meaning
25 in this section.

26 (3) Without limiting the definition of *treatment, care and*
27 *support needs* in subsection (1), it includes gratuitous
28 services of a domestic nature or gratuitous services
29 relating to nursing and attendance provided, or to be
30 provided, to a person by a member of the same
31 household or family as the person.

32 (4) Subsection (5) applies to the awarding of damages in
33 respect of a motor vehicle injury or workplace injury
34 suffered by a person if the person is a participant in the
35 CISS in respect of the injury.

36 (5) No damages can be awarded to the person in respect of
37 any treatment, care and support needs of the person

Workers Compensation and Injury Management Bill 2021

Part 15 Acts repealed or amended

Division 2 Acts amended

s. 610

- 1 that relate to the motor vehicle injury or workplace
2 injury and that —
- 3 (a) have arisen during the period in respect of
4 which the person is a participant in the CISS; or
- 5 (b) will or may arise in future.
- 6 (6) If the person is an interim participant, it must be
7 assumed for the purposes of subsection (5) that the
8 person will become a lifetime participant in respect of
9 the injury.
- 10 (7) Subsection (8) applies to the awarding of damages in
11 respect of a motor vehicle injury or workplace injury
12 suffered by a person if the person —
- 13 (a) has ceased to be an interim participant in
14 respect of the injury; and
- 15 (b) has not become a lifetime participant in respect
16 of the injury.
- 17 (8) No damages can be awarded to the person in respect of
18 any treatment, care and support needs of the person
19 that relate to the motor vehicle injury or workplace
20 injury and that arose during the period in respect of
21 which the person was an interim participant.
- 22 (9) Subsections (5) and (8) apply —
- 23 (a) whether or not the treatment, care and support
24 needs are assessed treatment, care and support
25 needs (as defined in the MVWA(CI) Act
26 section 3(1)); and
- 27 (b) whether or not the Commission is required to
28 make a payment in respect of the treatment,
29 care and support needs; and
- 30 (c) whether or not any treatment, care, support or
31 service is provided on a gratuitous basis.
- 32 (10) This section has effect despite section 12.
- 33

34 **Subdivision 2 — *Fire and Emergency Services Act 1998* amended**

35 **610. Act amended**

36 This Subdivision amends the *Fire and Emergency Services*
37 *Act 1998*.

1 **611. Section 36ZM amended**

2 (1) In section 36ZM delete the following definitions:

3 *compensable injury*

4 *date of injury*

5 *specified disease*

6 *WC&IM Act*

7 (2) In section 36ZM insert in alphabetical order:

8
9 *date of injury* has the meaning given in
10 section 36ZN(4);

11 *firefighter disease* has the meaning given in the WCIM
12 Act section 11(1);

13 *WCIM Act* means the *Workers Compensation and*
14 *Injury Management Act 2021.*

15
16 (3) In section 36ZM in the definition of *injury* delete “WC&IM Act
17 section 5(1);” and insert:

18
19 WCIM Act section 6;

20
21 (4) In section 36ZM in the definition of *medical practitioner* delete
22 “WC&IM Act section 5(1);” and insert:

23
24 WCIM Act section 5;

25
26 **612. Section 36ZN replaced**

27 Delete section 36ZN and insert:

28
29 **36ZN. When firefighter disease taken to be injury caused**
30 **while engaged in volunteer activities**

31 (1) In this section —

32 *firefighting employment* has the meaning given in the
33 WCIM Act section 11(1);

34 *firefighting service* means —

35 (a) firefighting employment; or

36 (b) volunteer service;

Workers Compensation and Injury Management Bill 2021

Part 15 Acts repealed or amended

Division 2 Acts amended

s. 612

- 1 ***hazardous fire*** has the meaning given in the WCIM
2 Act section 11(1);
- 3 ***hazardous firefighting employment*** has the meaning
4 given in the WCIM Act section 11(1);
- 5 ***hazardous firefighting service*** means —
- 6 (a) hazardous firefighting employment; or
- 7 (b) volunteer service during which the volunteer
8 attends hazardous fires at a rate at least
9 equivalent to the rate of 5 hazardous fires per
10 year;
- 11 ***qualifying period*** has the meaning given in the WCIM
12 Act section 11(1);
- 13 ***volunteer service*** means service as a registered
14 volunteer whose duties involve or involved responding
15 to hazardous fires.
- 16 (2) An injury by a firefighter disease suffered by a
17 volunteer is, for the purposes of this Part, taken to be
18 caused to the volunteer while engaged in volunteer
19 activities if all of the requirements for the application
20 of this section to the injury as specified in
21 subsection (3) are satisfied, unless the responsible
22 agency proves that the injury was not caused to the
23 volunteer while engaged in volunteer activities.
- 24 (3) The requirements for the application of this section to
25 an injury by a firefighter disease suffered by a
26 volunteer are as follows —
- 27 (a) when the injury is suffered the volunteer
28 (whether or not still in firefighting service) has
29 been in firefighting service for at least a period
30 of, or periods in aggregate amounting to, the
31 qualifying period for the disease;
- 32 (b) the responsible agency is satisfied that when the
33 injury is suffered the volunteer has been in
34 hazardous firefighting service for at least a
35 period of, or periods in aggregate amounting to,
36 the lesser of the following —
- 37 (i) 5 years;
- 38 (ii) the qualifying period for the disease;
- 39 (c) in the case of a cancer prescribed by regulations
40 under the WCIM Act to be a firefighter disease,

1 the conditions, if any, prescribed by the
2 regulations for the cancer are satisfied.

3 (4) An injury by a firefighter disease is taken to have been
4 suffered on whichever is the earlier of the following
5 (the *date of injury*) —

6 (a) the day on which the injured person becomes
7 totally or partially incapacitated for work by
8 reason of the firefighter disease;

9 (b) the day on which the injured person is first
10 diagnosed by a medical practitioner as having
11 contracted the firefighter disease.
12

13 **613. Section 36ZR amended**

14 (1) In section 36ZR(2):

15 (a) delete “the WC&IM Act, an” and insert:

16

17 the WCIM Act, an
18

19 (b) delete paragraph (b)(ii) and insert:

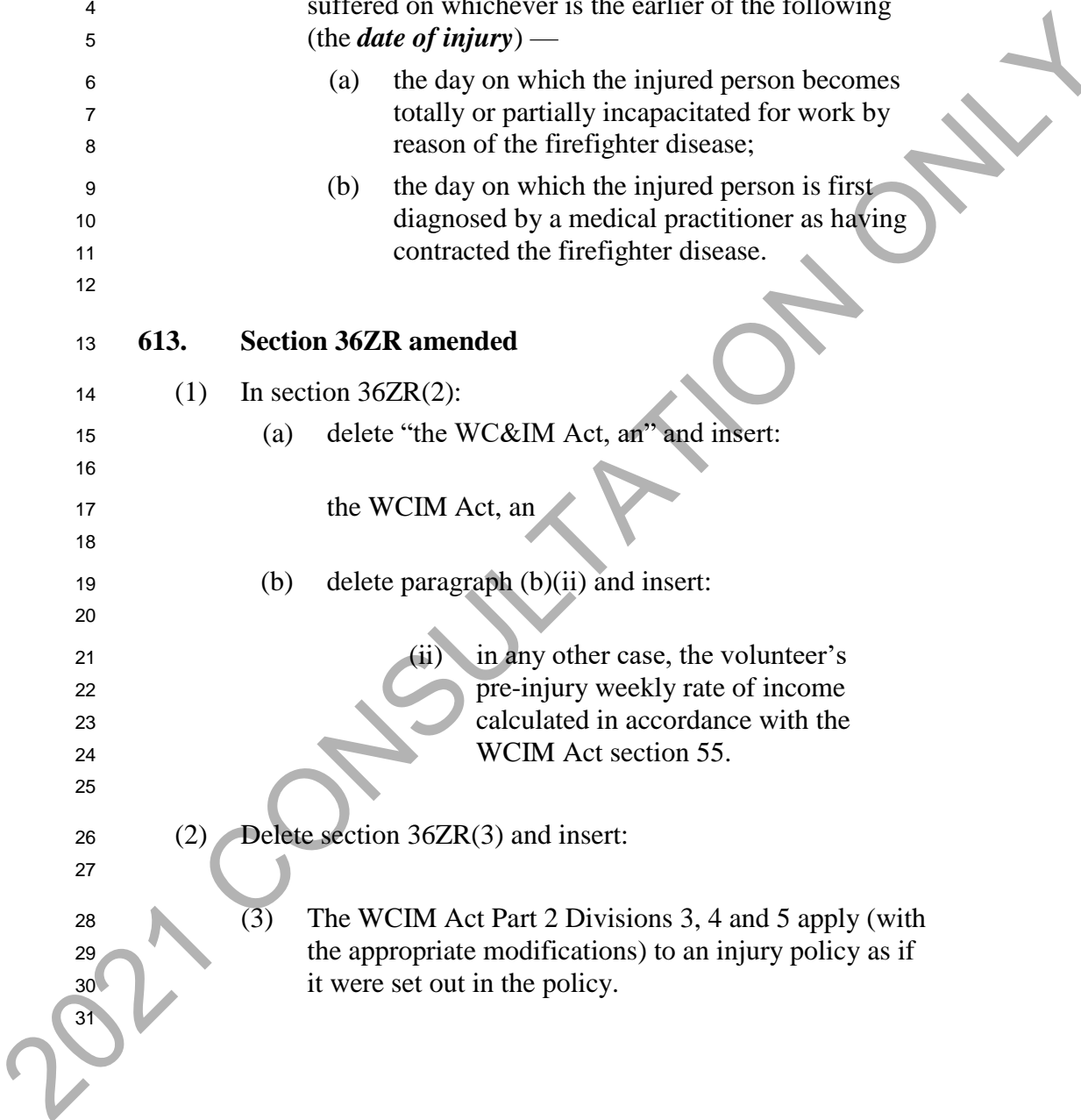
20

21 (ii) in any other case, the volunteer’s
22 pre-injury weekly rate of income
23 calculated in accordance with the
24 WCIM Act section 55.
25

26 (2) Delete section 36ZR(3) and insert:

27

28 (3) The WCIM Act Part 2 Divisions 3, 4 and 5 apply (with
29 the appropriate modifications) to an injury policy as if
30 it were set out in the policy.
31



Workers Compensation and Injury Management Bill 2021

Part 15 Acts repealed or amended

Division 2 Acts amended

s. 614

1 **614. Section 36ZS amended**

2 In section 36ZS(1)(a) delete “WC&IM Act if the injured
3 volunteer were a worker and had suffered a compensable injury;
4 and” and insert:

5

6 WCIM Act if the injured volunteer were a worker and had
7 suffered an injury compensable under the WCIM Act; and
8

9 **615. Section 36ZT amended**

10 In section 36ZT(1):

11 (a) in paragraph (a) delete “specified disease; and” and
12 insert:

13

14 firefighter disease; and
15

16 (b) in paragraph (b) delete “specified disease” and insert:

17

18 firefighter disease
19

20 **616. Section 36ZU amended**

21 (1) In section 36ZU(1) delete the definition of *prescribed amount*.

22 (2) In section 36ZU(1) insert in alphabetical order:

23

24 *general maximum amount* has the meaning given in
25 the WCIM Act section 5;
26

27 (3) In section 36ZU(2) delete “prescribed amount” and insert:

28

29 general maximum amount
30

31 **617. Section 36ZW amended**

32 Delete section 36ZW(1) and insert:

33

34 (1) Subject to subsection (2), an amount payable under an
35 injury policy or under section 36ZT or 36ZU is payable
36 to the person or persons who would be entitled under

1 the WCIM Act to receive it if the injured volunteer
2 were a worker and had suffered an injury compensable
3 under the WCIM Act, and that Act (with the
4 appropriate modifications) applies accordingly.
5

6 **618. Section 36ZX replaced**

7 Delete section 36ZX and insert:
8

9 **36ZX. Firefighter disease disputes**

10 (1) In this section —

11 *firefighter disease dispute* means a dispute in
12 connection with the application or operation of
13 section 36ZN or 36ZT.

14 (2) The WCIM Act Part 6 applies (with the appropriate
15 modifications) in relation to a firefighter disease
16 dispute as if the firefighter disease dispute were a
17 dispute as defined in the WCIM Act section 304.

18 (3) Despite the WCIM Act section 356, for the purposes of
19 an action for damages brought independently of this
20 Act, a decision of an arbitrator in relation to a
21 firefighter disease dispute is not final or binding on the
22 parties to the dispute.
23

24 **619. Other references to WC&IM Act replaced**

25 In the provisions listed in the Table delete “WC&IM Act” (each
26 occurrence) and insert:
27

28 WCIM Act
29

30 **Table**

s. 36ZM (def. of <i>appropriate changes</i>)	s. 36ZO
s. 36ZP	s. 36ZQ(2)
s. 36ZR(1)	

Workers Compensation and Injury Management Bill 2021

Part 15 Acts repealed or amended

Division 2 Acts amended

s. 620

1 Note: The heading to amended section 36ZO is to read:

2 **Application of provisions of WCIM Act under this Part**

3 Note: The heading to amended section 36ZP is to read:

4 **Appropriate changes to WCIM Act**

5 **Subdivision 3 — Insurance Commission of Western Australia**
6 **Act 1986 amended**

7 **620. Act amended**

8 This Subdivision amends the *Insurance Commission of Western*
9 *Australia Act 1986*.

10 **621. Section 6 amended**

11 In section 6:

12 (a) in paragraph (aa) delete “*Motor Vehicle (Catastrophic*
13 *Injuries) Act 2016*” and insert:

14
15 *Motor Vehicle and Workplace Accidents (Catastrophic*
16 *Injuries) Act 2016*

17
18 (b) delete paragraph (b) and insert:

19
20 (b) to undertake liability under policies of
21 insurance issued by the Commission as
22 required by the *Workers’ Compensation and*
23 *Injury Management Act 1981* section 163,
24 being liabilities arising in respect of
25 employment before the *Workers Compensation*
26 *and Injury Management Act 2021* section 603
27 comes into operation; and

28
29 (c) in paragraph (e) delete “or (b)”.

30 **622. Section 7 amended**

31 Delete section 7(3) and insert:

32
33 (3) For the purposes of section 6(b) the Commission is
34 taken to be a licensed insurer under the *Workers*
35 *Compensation and Injury Management Act 2021*.
36

1 **623. Section 15 amended**

2 After section 15(2)(b) insert:

3

- 4 (ba) contributions credited to the Motor Vehicle and
5 Workplace Accidents (Catastrophic Injuries)
6 Fund as required under the *Workers*
7 *Compensation and Injury Management*
8 *Act 2021* Part 5 Division 11; and
9

10 **624. Section 16 amended**

- 11 (1) In section 16(1)(b) delete ““Motor Vehicle (Catastrophic
12 Injuries) Fund”; and” and insert:

13

14 “Motor Vehicle and Workplace Accidents (Catastrophic
15 Injuries) Fund”; and
16

- 17 (2) In section 16(3) delete “Motor Vehicle (Catastrophic Injuries)
18 Fund” and insert:

19

20 Motor Vehicle and Workplace Accidents (Catastrophic Injuries)
21 Fund
22

23 **625. Section 18 amended**

24 In section 18(2) delete “Motor Vehicle (Catastrophic Injuries)
25 Fund,” and insert:

26

27 Motor Vehicle and Workplace Accidents (Catastrophic Injuries)
28 Fund,
29

30 **626. Section 44 deleted**

31 Delete section 44.

Workers Compensation and Injury Management Bill 2021

Part 15 Acts repealed or amended

Division 2 Acts amended

s. 627

1 **627. Section 49 inserted**

2 At the end of Part V insert:

3

4 **49. Transitional**

5 The Motor Vehicle and Workplace Accidents
6 (Catastrophic Injuries) Fund is a continuation of the
7 Motor Vehicle (Catastrophic Injuries) Fund established
8 and maintained under section 16(1)(b) before the day
9 on which the *Workers Compensation and Injury*
10 *Management Act 2021* section 627 comes into
11 operation.
12

13 **Subdivision 4 — *Motor Vehicle (Catastrophic Injuries) Act 2016***
14 **amended**

15 **628. Act amended**

16 This Subdivision amends the *Motor Vehicle (Catastrophic*
17 *Injuries) Act 2016*.

18 **629. Long title amended**

19 In the long title after “**motor vehicle**” insert:

20

21 **or workplace**

22

23 **630. Section 1 amended**

24 In section 1 delete “*Motor Vehicle (Catastrophic Injuries)*
25 *Act 2016*.” and insert:

26

27 *Motor Vehicle and Workplace Accidents (Catastrophic Injuries)*
28 *Act 2016*.

29

30 **631. Section 3 amended**

31 (1) In section 3(1) insert in alphabetical order:

32

33 ***worker*** has the meaning given in the *Workers*
34 *Compensation and Injury Management Act 2021*
35 section 5;

1 **workplace accident** means an incident that results in a
2 worker suffering a workplace injury;

3 **workplace injury** means an injury to a worker in
4 respect of which compensation under the *Workers*
5 *Compensation and Injury Management Act 2021* is
6 payable.
7

8 (2) In section 3(1) in the definition of ***catastrophic injuries support***
9 ***scheme (CISS)*** delete “accidents;” and insert:

10
11 accidents or workplace accidents;

12
13 (3) In section 3(1) in the definition of ***catastrophic injury*** after
14 “injury” insert:

15
16 or workplace injury
17

18 (4) In section 3(1) in the definition of ***treatment, care and support***
19 ***assessment*** delete “injury;” and insert:

20
21 injury or workplace injury;
22

23 (5) In section 3(1) in the definition of ***treatment, care and support***
24 ***needs*** delete “section 6.” and insert:

25
26 section 6;
27

28 **632. Section 5A inserted**

29 After section 5 insert:
30

31 **5A. Workplace injury to which Act applies**

32 (1) This Act applies to a workplace injury resulting from a
33 workplace accident that occurs on or after the day on
34 which the *Workers Compensation and Injury*
35 *Management Act 2021* section 632 comes into
36 operation.

Workers Compensation and Injury Management Bill 2021

Part 15 Acts repealed or amended

Division 2 Acts amended

s. 633

- 1 (2) This Act does not apply to a workplace injury unless
2 there is an established entitlement to compensation in
3 respect of the injury.
- 4 (3) There is an established entitlement to compensation in
5 respect of a workplace injury if, and only if —
6 (a) the injured person has made a claim under the
7 *Workers Compensation and Injury*
8 *Management Act 2021* for compensation under
9 that Act in respect of the injury; and
10 (b) liability to pay that compensation has been
11 accepted (or is taken to have been accepted) by
12 a licensed insurer or self-insurer under that Act
13 or has been determined by an arbitrator under
14 that Act.
- 15 (4) A workplace injury that is also a motor vehicle injury
16 to which this Act applies must be treated as a motor
17 vehicle injury to which this Act applies and not as a
18 workplace injury to which this Act applies.

19 Note for this section:

20 A person is not eligible to apply to become a participant in
21 the CISS in respect of a workplace injury unless the person
22 resides in Australia at the time of the application. The
23 participation of a person in the CISS in respect of a
24 workplace injury is suspended while the person is absent
25 from Australia. See sections 9(1A) and 14(1A).
26

27 **633. Section 8 amended**

28 (1) Delete section 8(1) and insert:
29

- 30 (1) A person is eligible to be a participant in the CISS if
31 the person suffers a catastrophic injury that is —
32 (a) a motor vehicle injury to which this Act
33 applies; or
34 (b) a workplace injury to which this Act applies.
35

36 (2) In section 8(3) after “motor vehicle injury” insert:
37

38 or workplace injury
39

1 **634. Section 9 amended**

2 (1) In section 9(1) delete “injury.” and insert:

3
4 injury or workplace injury.

5
6 (2) After section 9(1) insert:

7
8 (1A) A person is not eligible to apply to become a
9 participant in the CISS in respect of a workplace injury
10 unless the person resides in Australia at the time of the
11 application.

12 Note for this subsection:

13 Participation in the CISS in respect of a workplace injury is
14 suspended while the person is absent from Australia. See
15 section 14(1A).
16

17 **635. Section 13 amended**

18 In section 13:

19 (a) after “a motor vehicle injury” insert:

20
21 or workplace injury

22
23 (b) delete “same motor vehicle injury.” and insert:

24
25 same injury.
26

27 **636. Section 14 amended**

28 (1) In section 14(1) delete “Australia.” and insert:

29
30 Australia, if the person is a participant in respect of a motor
31 vehicle injury.
32

Workers Compensation and Injury Management Bill 2021

Part 15 Acts repealed or amended

Division 2 Acts amended

s. 637

1 (2) After section 14(1) insert:

2

3 (1A) The participation of a person in the CISS is suspended
4 while the person is absent from Australia if the person
5 is a participant in respect of a workplace injury.
6

7 **637. Section 15 amended**

8 In section 15(2)(b) after “injury” insert:

9

10 or workplace injury
11

12 **638. Section 18 amended**

13 (1) In section 18(2)(b) after “injury” insert:

14

15 or workplace injury
16

17 (2) In section 18(4)(a)(ii) after “injury” insert:

18

19 or workplace injury
20

21 **639. Section 19 amended**

22 In section 19(1) in the definition of *ordinary costs of raising a*
23 *child* after “injury” insert:

24

25 or workplace injury
26

27 **640. Section 22 deleted**

28 Delete section 22.

1 **641. Section 24 amended**

2 In section 24 in the definition of *eligibility decision*:

3 (a) delete paragraph (a)(ii) and insert:

4

5 (ii) whether an injury is a motor vehicle
6 injury or workplace injury to which this
7 Act applies; or

8

9 (b) in paragraph (a)(iv) after “injury” insert:

10

11 or workplace injury

12

13 **642. Section 27 amended**

14 Delete section 27(2)(b) and insert:

15

16 (b) whether an injury is a motor vehicle injury or
17 workplace injury to which this Act applies.

18

19 **643. Section 30A inserted**

20 After section 30 insert:

21

22 **30A. Notification and disclosure of information about**
23 **injured worker**

24 (1) In this section —

25 *relevant information*, about an injured worker, means
26 information about the worker’s injury or about a claim
27 for compensation or damages in respect of the worker’s
28 injury that is relevant to —

29 (a) the worker’s eligibility to be a participant in the
30 CISS; or

31 (b) the worker’s participation in the CISS.

32 (2) Words and expressions used in this section that have a
33 defined meaning in the *Workers Compensation and*
34 *Injury Management Act 2021* have the same meaning
35 in this section as they have in that Act.

36 (3) WorkCover WA, a licensed insurer or self-insurer may
37 disclose relevant information about an injured worker

Workers Compensation and Injury Management Bill 2021

Part 15 Acts repealed or amended

Division 2 Acts amended

s. 644

- 1 to the Commission if the worker's injury is or appears
2 likely to be a catastrophic injury.
- 3 (4) An insurer or self-insurer who has received a claim for
4 compensation made by an injured worker in respect of
5 an injury that is or appears likely to be a catastrophic
6 injury must —
- 7 (a) provide to the Commission details of the
8 worker's claim and copies of any medical
9 report or certificate of capacity obtained by or
10 provided to the insurer or self-insurer in
11 connection with the claim; and
- 12 (b) notify the Commission within 7 days after
13 liability to pay compensation has been accepted
14 (or is taken to have been accepted) by the
15 licensed insurer or self-insurer or has been
16 determined by an arbitrator.
- 17 (5) A worker who has suffered an injury that is a
18 catastrophic injury must notify the Commission within
19 7 days after —
- 20 (a) an election is made by the worker to retain the
21 right to seek damages in respect of the injury
22 for the purposes of the *Workers Compensation
23 and Injury Management Act 2021* section 421;
- 24 (b) any payment of damages in respect of the
25 injury is received by the worker, or any claim
26 for damages by the worker in respect of the
27 injury is settled, if the damages include an
28 amount for expenses in relation to future
29 treatment, care and support needs.
- 30

31 **644. Section 31 replaced**

32 Delete section 31 and insert:

33
34 **31. False or misleading information**

- 35 (1) A person must not provide false or misleading
36 information —
- 37 (a) in, or in connection with, an application made
38 or a notice or other document given under this
39 Act; or

1 (b) in compliance, or purported compliance, with a
2 requirement under this Act; or

3 (c) for any other purpose under this Act.

4 Penalty for this subsection: a fine of \$10 000.

5 (2) For the purposes of subsection (1), a person provides
6 false or misleading information if the person —

7 (a) makes a statement that the person knows is
8 false or misleading in a material particular; or

9 (b) omits from a statement made by the person
10 anything without which the statement is, to the
11 person's knowledge, misleading in a material
12 particular; or

13 (c) gives information that —

14 (i) the person knows is false or misleading
15 in a material particular; or

16 (ii) omits anything without which the
17 information, to the person's knowledge,
18 is misleading in a material particular.
19

20 **Subdivision 5 — Motor Vehicle (Third Party Insurance) Act 1943**
21 **amended**

22 **645. Act amended**

23 This Subdivision amends the *Motor Vehicle (Third Party*
24 *Insurance) Act 1943*.

25 **646. Section 3 amended**

26 (1) In section 3(1) delete the definitions of:

27 ***CISS***

28 ***MV(CI) Act***

29 (2) In section 3(1) insert in alphabetical order:
30

31 ***CISS*** means the scheme provided for in the
32 ***MVWA(CI) Act*** for the lifetime care and support of
33 certain people catastrophically injured in motor vehicle
34 accidents and workplace accidents;

35 ***MVWA(CI) Act*** means the *Motor Vehicle and*
36 *Workplace Accidents (Catastrophic Injuries) Act 2016*;
37

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Part 15 Acts repealed or amended

Division 2 Acts amended

s. 647

1 (3) In section 3(1) in the definitions of *assessed treatment, care*
2 *and support needs* and *catastrophic injury* delete “MV(CI)
3 Act” and insert:

4
5 MVWA(CI) Act
6

7 **647. Section 3C amended**

8 In section 3C(7) delete “law (other than Division 2 of Part IV of
9 the *Workers’ Compensation and Injury Management Act 1981*)”
10 and insert:

11
12 law (other than the *Workers Compensation and Injury*
13 *Management Act 2021* Part 7 Division 2)
14

15 **648. Section 3EA amended**

16 (1) In section 3EA(1) in the definitions of *interim participant* and
17 *lifetime participant*:

18 (a) delete “MV(CI) Act” and insert:

19
20 MVWA(CI) Act
21

22 (b) delete “CISS;” and insert:

23
24 CISS in respect of a motor vehicle injury to which that
25 Act applies;
26

27 (2) In section 3EA(1) in the definition of *treatment, care and*
28 *support needs* paragraph (a) delete “MV(CI) Act” and insert:

29
30 MVWA(CI) Act
31

32 **649. Section 3FB amended**

33 In section 3FB(1) delete “MV(CI) Act” and insert:

34
35 MVWA(CI) Act
36

1 **650. Section 3G amended**

2 In section 3G(1) delete “compensation under the *Workers’*
3 *Compensation and Injury Management Act 1981* in respect of
4 that death or bodily injury or which would have given rise to
5 liability of that kind but for section 22 of that Act.” and insert:

6
7 compensation under the *Workers Compensation and Injury*
8 *Management Act 2021* in respect of that death or bodily injury
9 or which would have given rise to liability of that kind but for
10 section 21 of that Act.
11

12 **651. Section 3T amended**

13 (1) In section 3T(1):

14 (a) delete “MV(CI) Act by” and insert:

15
16 MVWA(CI) Act by

17
18 (b) delete “MV(CI) Act.” and insert:

19
20 MVWA(CI) Act.
21

22 (2) After section 3T(1) insert:

23
24 (1A) The reference in subsection (1) to other income
25 expected to be received under, and to claims,
26 payments, costs and other expenses anticipated to arise
27 or to be incurred under, the MVWA(CI) Act is limited
28 to that income and to those claims, payments, costs and
29 other expenses that relate to motor vehicle injuries to
30 which that Act applies.
31

32 (3) In section 3T(2) delete “Motor Vehicle (Catastrophic Injuries)
33 Fund” and insert:

34
35 Motor Vehicle and Workplace Accidents (Catastrophic Injuries)
36 Fund
37

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Part 15 Acts repealed or amended

Division 2 Acts amended

s. 652

1 **652. Section 6A amended**

2 (1) In section 6A(1) in the definition of *motor vehicle accident*
3 delete “MV(CI) Act” and insert:

4

5 MVWA(CI) Act

6

7 (2) In section 6A(2)(a) delete “MV(CI) Act” and insert:

8

9 MVWA(CI) Act

10

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2021 CONSULTATION ONLY

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

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