

# WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023

## EXPLANATORY MEMORANDUM

### OVERVIEW

The *Workers' Compensation and Injury Management Act 1981* (the 1981 Act or WCIMA 1981 or current Act) provides a framework for every aspect of the workers compensation and injury management scheme in Western Australia. This includes:

- workers and employers covered by the scheme
- forms of compensation
- how the claim process works
- injury management and returning injured workers to work
- dispute resolution
- mandatory insurance by employers and self-insurance
- constraints on common law damages for negligence
- scheme administration by WorkCover WA
- licensing, approval and regulation of service providers.

The 1981 Act has served the State well but over time has become complex, unwieldy and now fails to provide sufficient clarity on fundamental concepts and processes.

Some provisions can be traced back well before the 1981 Act and a plethora of successive amendments to the 1981 Act have rendered it disjointed and confusing.

The rigidity of the Act has failed in some cases to respond to industrial, technological and commercial developments including changes to the way workers are engaged and the way we communicate in a digital world.

The *Workers Compensation and Injury Management Bill 2023* modernises WA's workers compensation laws while preserving the fundamental aspects of the scheme that has served Western Australians well.

The Bill is the culmination of an extensive review and consultation process dating back to WorkCover WA's legislative review in 2009 which recommended redrafting of the Act, and the 171 recommendations in WorkCover WA's 2014 *Review of the Workers' Compensation and Injury Management Act 1981: Final Report*.

### **Approach to a modern Act and key changes**

The Bill is a complete rewrite of the workers compensation legislation. The following principles have guided the drafting process and the journey to a modern Act:

- restructure and reorder parts in a logical sequence commencing with the most fundamental aspects of the workers compensation scheme (coverage, compensation, injury management)
- group related concepts together by Part or Division
- renumber all sections with no gaps between numbers or letter references in section numbers
- improve readability with the use of a modernised drafting style
- provide clarity in wording of provisions to ensure they are legally sound and easily understood
- provide clarity and consistency in usage of fundamental terms – worker, injury, injury from employment, incapacity
- use notes to convey important information about a provision, particularly where the provision is referencing another provision or another Act
- provide an appropriate balance of matters provided for in the Act and regulations
- repeal the principal and all related Act(s) and make use of savings and transitional provisions to make a seamless transition to a single new Act.

Key policy, technical or administrative changes from the current Act to the modern Act include:

- clarifying the status of contractors in the definition of 'worker' and providing flexibility for regulations to extend cover to persons doing work in the gig economy and other non-conventional employment arrangements if the circumstances justify it in the future
- clarifying the presumption of work-related injury for workers suffering dust disease, including silicosis, and streamlining provisions for how dust disease compensation and common law claims are made and determined
- amending the *Limitation Act 2005* to ensure workers with silicosis are on the same footing as workers with asbestosis
- facilitating the updating of the list of diseases presumed to be work related through regulations
- providing for catastrophically injured workers to receive lifetime care and support under the Catastrophic Injuries Support Scheme administered by the Insurance Commission of Western Australia
- simplifying the method for calculating income compensation payments

- extending the period, from 13 to 26 weeks, before income (weekly) compensation payments step down, and increasing the cap on medical and health expenses compensation from 30% to 60% of the general maximum amount (both of which are 2021 State Government election commitments)
- improving insurer liability decision timeframes including the requirement to make provisional payments to workers where a liability decision is not given in time
- clarifying and providing more flexibility in settlement pathways
- clear provisions and processes for discontinuing, reducing or suspending compensation payments
- recognising the role and functions of the worker's treating medical practitioner and the right of workers to choose their treating medical practitioner
- prohibiting employer attendance when a worker is being physically or clinically examined by their treating medical practitioner (2021 State Government election commitment)
- consolidating safety net funds for claims associated with uninsured employers, insolvent insurers and self-insurers, and terrorism events
- providing modernised frameworks for WorkCover WA to licence, approve and regulate service providers
- discontinuing the regulatory framework for registered agents representing parties in WorkCover WA's Conciliation and Arbitration Services
- updating fines and penalties for offences under the Act.

## CLAUSE NOTES

The Bill comprises 15 parts:

- a) Part 1 - Preliminary
- b) Part 2 - Compensation for injury
- c) Part 3 - Injury management
- d) Part 4 - Medical assessment
- e) Part 5 - Insurance
- f) Part 6 - Dispute resolution
- g) Part 7 - Common law
- h) Part 8 - Administration
- i) Part 9 - Financial provisions
- j) Part 10 - Management and disclosure of information
- k) Part 11 - Regulation and enforcement
- l) Part 12 - State with which employment connected
- m) Part 13 - Miscellaneous
- n) Part 14 - Savings and transitional provisions
- o) Part 15 - Repeals and consequential amendments

References to 'the current Act' throughout this explanatory memorandum are to the 1981 Act as amended.

The bracketed references under clause headings in this explanatory memorandum are intended to assist in identifying the corresponding section numbers of the current Act that the relevant clause is replacing. Where the bracketed reference says 'new' or 'new provision' this indicates a new provision for which there is no comparable provision in the current Act.

A reference guide to clauses of the Bill and comparable provisions of the current Act(s) is also appended to this explanatory memorandum.

## **PART 1 - PRELIMINARY**

### **Clause 1. Short title**

Clause 1 provides that the title of the Bill when enacted is the *Workers Compensation and Injury Management Act 2023*.

### **Clause 2. Commencement**

Clause 2 provides for most of the Act to commence on a day fixed by proclamation as regulations and administrative instruments must be developed before the Act can commence. Part 14 commences on the day after Assent as this enables the Minister, WorkCover WA Board, WorkCover WA CEO and Costs Committee to develop legislative and administrative instruments after Assent in preparation for the commencement of the new Act.

### **Clause 3. Act binds Crown**

Clause 3 provides that the 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.

### **Clause 4. No contracting out**

[WCIMA 1981 s.301]

Clause 4 provides the application of the Act or any of its provisions cannot be excluded, restricted or modified by contract, agreement or other arrangement, except as provided by the Act. This clause is intended to deter claim suppression or from alternative compensation arrangements being entered into that circumvent the rights, entitlements and obligations in the Act.

### **Clause 5. Terms used**

[WCIMA 1981 s.5]

Clause 5 defines terms that are used in multiple places in the Bill.

### **Clause 6. Injury**

[WCIMA 1981 s.5(1)]

Clause 6 defines 'injury' as an injury from employment, which is the legislative construct for work related injury. The requirements for determining whether an injury arose from employment are different for personal injury by accident, and personal injury by disease, as they are under the current Act.

### **Clause 7. Exclusion of injury: reasonable administrative action**

[WCIMA 1981 s.5(1) and (4)]

Clause 7 provides that a psychological or psychiatric disorder is not an injury from employment if it results from reasonable administrative action taken by an employer.

The main change from the current Act is that the psychological injury exclusion for any reasonable administrative action taken by an employer will apply to formal appraisal of a worker's performance in addition to formal disciplinary actions.

Subclause 7(1)(a) to (c) refer to the kinds of formal actions an employer may take. Subclause 7(1)(d) refers to 'anything done in connection with an action described in paragraph (a), (b) or (c)' and only operates if any of the actions in subclauses (1)(a) to (c) are taken. For example, an employer might have informal discussions or give informal warnings about performance or conduct but no appraisal is done and no disciplinary action is taken. In these circumstances the exclusion does not apply because none of the actions in paragraphs 7(1)(a) to (c) have occurred.

It is only when the actions listed in clause 7(1)(a) to (c) have occurred that anything done in connection with them can be considered.

The existing protections in the Act are retained in that the psychological or psychiatric disorder must result wholly or predominantly from the administration action and the action cannot be unreasonable or harsh on the part of the employer.

### **Clause 8. Injury from employment: work related attendances**

[WCIMA 1981 s.19(1)]

Clause 8 provides that a personal injury by accident is taken to be an injury from employment if the injury occurs while the worker is attending certain places for work related educational purposes, attending any place for treatment of a compensable injury, or attending a place to participate in a return to work program or to undertake workplace rehabilitation. Clause 8 is similar to section 19(1) of the current Act but extends the deeming arrangement to injuries that occur when the worker is participating in return to work activities.

### **Clause 9. Journeys**

[WCIMA 1981 s.19(2)]

Clause 9 provides a personal injury by accident that occurs during a journey to or from work and a place of residence is not an injury from employment and therefore not compensable. This is the position under the current Act.

Clause 9 also provides a personal injury by accident that occurs during a work journey is not an injury from employment if the journey has been substantially interrupted or where there has been a substantial deviation from a work journey (the reference to a 'prima facie period of more than one hour' in the current Act is not replicated).

### **Clause 10. Prescribed diseases taken to be from certain employment**

[WCIMA 1981 s.32,44,45,49F and Sch.3]

Clause 10 provides for regulations to be made which establish a presumption of injury from employment for prescribed diseases contracted by workers in prescribed employment.

Addressing presumptive diseases through regulations is necessary to ensure the list of presumptive diseases remains current and that new occupational diseases and classes of employment can be accommodated quickly if the circumstances justify it in the future. The COVID-19 pandemic illustrated this need clearly as it required

amendments to the current Act to authorise regulations to make COVID-19 a presumptive work-related disease for health care workers.

The clause replaces, but is consistent with, section 49F of the current Act that was inserted by the *Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020*.

### **Clause 11. Diseases of firefighters taken to be from employment**

[WCIMA 1981 s.49A to 49E and Sch.4A]

Clause 11 provides for a presumption of injury from employment for firefighters suffering any of the 12 specified cancers and who meet the qualifying period for the relevant cancer. Clause 11 also provides for additional cancers and any applicable qualifying period(s) to be prescribed in regulations. The qualifying periods for each cancer are unchanged relative to the current Act save for oesophageal cancer in item 12 of the table of firefighter cancers which is reduced from 25 years to 15 years. This aligns with a recommendation from a 2020 review of the firefighter provisions in the *Safety, Rehabilitation and Compensation Act 1988* by the Commonwealth Attorney General's Department.

### **Clause 12. Meaning of "worker" and "employer"**

[New provision, cf WCIMA 1981 s.5(1) *worker, employer*, s.14]

Clause 12 provides for the meaning of 'worker' and 'employer'.

A worker is an individual who has entered into or works under a contract of service, or an individual who has entered into a work and training contract as an apprentice. There is no material change for contract of service workers or apprentices who are also covered in the definition of 'worker' in the current Act.

However, clause 12(2)(c) applies to contractors differently relative to the current Act. The definition of 'worker' in the current Act covers persons who are engaged by another person to work for the purpose of the other person's trade or business under a contract for service, the remuneration by whatever means being in substance for personal manual labour or services.

The *Review of the Workers' Compensation and Injury Management Act 1981 Final Report* highlighted that one of the biggest problems in the current definition of 'worker' is that neither an employer, insurer or a worker can be sure as to whether a person is working under a contract for service in the way it is described in the current Act, or whether the person is an independent contractor working for themselves.

Under the current Act a three-step process is required to determine whether someone is 'remunerated in substance for personal manual labour or services'. This can only be properly determined in dispute proceedings when all of the relevant details are considered retrospectively including the terms of the contract, the factual circumstances regarding the work the person did, whether the person engaged others, how the person was paid, and how the payments were used. Only after detailed consideration can it be determined whether or not the person was remunerated in substance for personal manual labour or services alone.

Clause 12(2)(c) will cover contractors doing work that is not work in the course of or incidental to a trade or business regularly carried out by the contractor in their own name or a business or firm name. This is a more contemporary test for contractors and clarifies the Act does not apply to contractors running their own business. Clause 12(2)(c) is easy to understand, apply and consistent with many other jurisdictions.

### **Clause 13. Prescribed workers and excluded workers**

[New provision, cf WCIMA 1981 s.8-11, 14(2)(a)]

Clause 13 provides for regulations to provide that an individual of a specified class or description is a 'worker' if the individual would otherwise not be, or might not be, a worker under clause 12(2). The regulations will also identify the employer of the worker.

Clause 13 is necessary for regulations to respond should there be a need to cover non-conventional working arrangements in the future. For example, the legal status of gig workers is currently unclear with various state and territory governments and courts considering the issue. Regulations can provide for gig workers to be covered as workers if the legal position becomes settled or protection under workers compensation laws is considered necessary.

There is also provision for regulations to exclude workers of a specified class or description from the operation of the Act. This is intended to apply to those working arrangements that are currently excluded under the Act including serving police officers and professional sporting contestants who are covered under alternative industrial and insurance arrangements.

### **Clause 14. Labour hire arrangements**

[New provision, cf WCIMA 1981 s.5(1) *employer*]

Clause 14 provides for when a person is taken to be a worker and a person or entity is taken to be the worker's employer in relation to labour hire arrangements. This clause ensures businesses that engage workers who are temporarily lent or let on hire to another person (a host employer), are liable as an employer of the worker for any injury that arises from work done by the worker for the host employer.

### **Clause 15. Jockeys**

[WCIMA 1981 s.11A]

Clause 15 provides for jockeys suffering an injury when racing, doing riding work or performing the usual duties of a jockey for a licensed trainer to be covered under the Act as workers.

### **Clause 16. Working directors**

[WCIMA 1981 s.10A]

Clause 16 provides for working directors to be covered under the Act as workers and removes the constraint in the current Act which excludes working directors of public companies (the new definition of *company director* does not exclude a director of a public company).

## **PART 2 - COMPENSATION FOR INJURY**

### **Part 2 Division 1 – General principles**

#### **Clause 17. Employer liable for compensation**

[WCIMA 1981 s.18]

Clause 17 provides that an employer is liable to pay compensation if a worker suffers an injury from employment, and obligates the employer to pay compensation if liability is accepted (or is taken to be accepted) or determined by an arbitrator. Non-compliance with this obligation is an offence.

#### **Clause 18. Forms of compensation**

[New provision]

Clause 18 consolidates in one list the forms of compensation provided for in the Act. Some forms of compensation are only payable for certain kinds of injury or in specific circumstances (e.g. income compensation for injury that results in incapacity for work, lump sum compensation for permanent impairment).

#### **Clause 19. Employment must be connected with this State**

[WCIMA 1981 s.20]

Clause 19 provides that liability for compensation arises only if a worker's employment is connected with this State. The lengthy provisions for determining a worker's state of connection are located in Part 12.

Subclause 19(3) clarifies there is no liability for compensation in respect of an injury suffered outside Australia if the worker has never resided in Australia or has been continually resident outside Australia for more than 2 years when the injury occurs (not applicable to dust disease and prescribed disease). This reinstates the 2-year exclusion provision that applied before the current Act was amended in 2004.

#### **Clause 20. Compensation excluded: serious and wilful misconduct**

[WCIMA 1981 s.22]

Clause 20 excludes liability for compensation arising from serious and wilful misconduct by a worker.

#### **Clause 21. Compensation excluded: certain employment on ship**

[WCIMA 1981 s.20(9)]

Clause 21 excludes liability for compensation if the worker's injury is from employment on a ship and the *Seafarers Rehabilitation and Compensation Act 1992* (Commonwealth) applies to the worker's employment.

## **Clause 22. Person not to be paid twice**

[WCIMA 1981 s.23]

Clause 22 prevents compensation being paid if a worker has received or obtained recompense for the same matter (i.e. compensation in another State or a common law award of damages).

## **Part 2 Division 2 - Claiming compensation**

### **Clause 23. Terms used**

[New provision]

Clause 23 defines terms 'deferred decision notice', 'incapacity claim' and 'liability decision notice' referred to in Part 2 Division 2.

### **Clause 24. Application of Division**

[New provision]

Clause 24 provides Part 2 Division 2 on claiming compensation applies to any one or more of the following kinds of compensation – (a) income compensation; (b) medical and health expenses compensation; (c) miscellaneous expenses compensation; (d) dust disease impairment compensation.

### **Clause 25. Making claim for compensation**

[WCIMA 1981 s.178]

Clause 25 requires a worker to make a claim for compensation within 12 months after the injury occurs (as is required under section 178 of the current Act). A claim is made when the worker has given to the employer a completed claim form and certificate of capacity for the claim.

The failure to make a claim within 12 months or a defect or inaccuracy in the claim form or certificate of capacity will not invalidate the claim if it results from mistake, absence from the State or other reasonable cause, or would not otherwise prejudice the employer's defence in proceedings. This protects a worker against claims being declined based on minor errors in claim documents or not making a claim within 12 months when it was not possible to do so.

There is flexibility for different claim forms to be used for different types of claims. For example, the claim form for dust disease will be designed to capture information specific to dust disease including employment history to assist in identifying which employer(s) are liable for the injury if exposure to dust occurred over many years and/ or over periods of employment with more than one employer.

Clause 25(4) requires the claim form to include an authority to be given by a worker (at the worker's discretion) for the collection and disclosure of the worker's medical, health and personal information relevant to a compensable injury or managing the worker's injury. The claim form under the current Act includes a consent authority in similar terms to clause 25(4).

### **Clause 26. Insured employer must give claim to insurer**

[WCIMA 1981 s.57A]

Clause 26 requires an employer to give a worker's claim to their insurer for a liability decision to be made.

### **Clause 27. Worker may give claim to insurer if employer defaults**

[New provision]

Clause 27 provides for a worker to give their claim directly to the employer's insurer if the employer failed to do so. This provision is necessary to ensure a liability decision can be made in the event an employer cannot or does not provide the claim to the insurer.

### **Clause 28. Insurer or self-insurer to make decision on liability**

[WCIMA 1981 s.57A, 57B, 57BA]

It is important insurers and self-insurers respond to workers compensation claims in a timely manner and workers are notified about the status of their claim as soon as possible. After receiving a workers compensation claim from an employer clause 28 requires insurers and self-insurers, within 14 days, to issue a liability decision notice accepting or declining the claim, or to issue a deferred decision notice indicating more time is required to issue a liability decision notice (such as where further medical and factual investigations need to be undertaken). The liability decision timeframe is the same as the current Act.

The liability decision notice must clearly indicate whether liability is accepted for the injury generally and any incapacity for work, the latter of which gives rise to the income compensation entitlement.

If an insurer or self-insurer fails to give a liability decision notice or deferred decision notice as and when required, the insurer or self-insurer is taken to have accepted liability. Clause 28 imposes default liability for non-compliance by the insurer or self-insurer meaning compensation will become payable under clauses 47 and 70.

### **Clause 29. Requirements when decision on liability deferred**

[WCIMA 1981 s.57A, 57B, 57BA]

If an insurer or self-insurer gives a worker a deferred decision notice under clause 28 they are still required to give a liability decision notice as soon as practicable under clause 29.

If an insurer or self-insurer fails to give a liability decision notice before the day prescribed in regulations (the *deemed liability acceptance day*) the insurer or self-insurer is taken to have accepted liability.

Like clause 28, clause 29 imposes default liability for non-compliance by the insurer or self-insurer meaning compensation will become payable under clauses 47 and 70.

### **Clause 30. Determination by arbitrator of question about liability for compensation**

[WCIMA 1981 s.58]

If an insurer or self-insurer notifies a worker that liability is not accepted, clause 30 provides that the worker may apply to an arbitrator to determine the question of liability, on a similar basis to section 58 of the current Act.

### **Clause 31. Claims on uninsured employers**

[WCIMA 1981 s.57B, 57BA]

Clause 31 requires uninsured employers to respond to workers compensation claims as if the employer was a self-insurer. Uninsured employers must notify WorkCover WA so that WorkCover WA can investigate the employer's compliance with the requirement to insure, and WorkCover WA is made aware of any potential claim on the Default Insurance Fund under Part 5 Division 7 if the uninsured employer cannot or does not pay compensation to the worker for which the employer is liable.

### **Clause 32. Worker to provide information about other employment**

[WCIMA 1981 s.59]

Clause 32 requires workers to inform their employer or the employer's insurer of any remunerated work the worker does for any other employer after the claim is made.

An employer or insurer cannot unilaterally discontinue or cease income compensation if the worker does not comply with the obligation.

### **Clause 33. Incapacity after claim made**

[New provision]

Clause 33 provides for regulations to make provision for a claim to be properly dealt with if a subsequent certificate of capacity indicates a worker has an incapacity for work.

This would apply where the claim was initially accepted for medical and health expenses only due to the worker not having any certified incapacity for work. The regulations will clarify the obligations and timeframes for insurers and self-insurers in responding to the worker's claim and the change in status to an incapacity claim.

### **Clause 34. Claiming compensation when question as to liability or apportionment between employers**

[WCIMA 1981 s.73, 74]

Clause 34 applies when an insurer or self-insurer accepts the last employer is partly or totally liable to pay compensation for an injury from employment, but there is a question as to whether another employer might be wholly or partly liable.

This would be applicable in cases where the injury is claimed to result from employment with the last employer but the insurer of the last employer believes the injury may have been suffered during a period spanning employment with the last employer and other employer(s). The last employer (in which it is claimed the injury occurred) will be liable to deal with the claim.

The provisions provide for other potentially liable employers to be brought into proceedings for determination of liability or apportionment without prejudice to the worker. The provisions also provide for indemnity by insurers and reimbursement if the liable employer was insured by more than one insurer over the period the injury occurred.

### **Clause 35. Claiming compensation for certain diseases when more than 1 employer liable**

[WCIMA 1981 s.41]

Clause 35 addresses the situation of a worker claiming compensation for a dust disease or a prescribed disease where more than one employer is (or might be) liable and how to address liability and apportionment between employers.

The main difference between clause 34 and clause 35 is that a dust disease and a prescribed disease are taken to be (i.e. deemed to be) an injury from employment under clause 116 and clause 10 respectively. The burden of proof shifts to the employer/ insurer who must prove the disease was not from employment in order to rebut the presumption under clauses 116 and 10. This limits the capacity of an insurer to decline the claim without having the required proof the disease was not from employment.

While insurers are still required to issue a liability decision notice for a dust disease or a prescribed disease in circumstances when another employer might be partially or totally liable, the last employer must deal with the claim and compensation must be paid. This applies irrespective whether the insurer accepts the last employer is liable or not, or while the insurer is investigating whether other employers might be totally or partially liable and therefore whether there is evidence to rebut the presumption or seek orders for apportionment.

Like clause 34, clause 35 also provides for other potentially liable employers to be brought into proceedings for determination of liability or apportionment without prejudice to the worker. The provision also provides for indemnity by insurers and reimbursement if the liable employer for a dust disease or a prescribed disease was insured by more than one insurer over the period the injury occurred.

### **Clause 36. Requirement for provisional payments**

[New provision]

Part 2 Division 2 Subdivision 3 provides for provisional payments of income compensation and medical and health expenses compensation to be made to workers if claim liability decisions are not made within a regulated period. The provisional payment obligations implement a key recommendation of WorkCover WA's *Review of the Workers' Compensation and Injury Management Act 1981 Final Report*.

Clause 36 imposes a new requirement for insurers and self-insurers to make provisional payments to workers if a deferred decision notice is given but the insurer or self-insurer has not given a liability decision notice before the day prescribed by regulations as the provisional payments day.

### **Clause 37. Compensation for which provisional payments are required**

[New provision]

Clause 37 provides for provisional payments to be made for any income compensation and medical and health expenses compensation to which the worker would be entitled had the insurer or self-insurer accepted liability. These two forms of provisional payments ensure workers are financially supported for lost income and medical expenses whilst medical and factual investigations are continuing.

### **Clause 38. Calculating the amount of a provisional payment**

[New provision]

Clause 38 requires the amount of a provisional payment of compensation to be calculated as if the payment were the kind of compensation for which the provisional payment is required. For example, the amount of a provisional payment of income compensation must be in accordance with Part 2 Division 3 Subdivision 3.

### **Clause 39. How and when provisional payments are to be made**

[New provision]

Clause 39 requires a provisional payment of compensation to be paid at the time and in the manner in which a payment of that kind of compensation would be payable if the worker were entitled to that kind of compensation. For example, a provisional payment of income compensation must be paid at the time and in the manner that clause 47 requires income compensation to be paid.

### **Clause 40. Provisional payments of medical and health expenses compensation**

[New provision]

Clause 40 provides for when provisional payments of medical and health expenses compensation begin and end, and caps the total amount payable to 5% of the medical and health expenses general limit. This provides a worker with access to a range of medical and health services while liability for the claim is being assessed.

Provisional payments of medical and health expenses compensation begin on the day the injury occurred and end on the day on which the insurer or self-insurer gives a liability decision notice for the claim (or is taken to accept liability because the liability decision notice was not given before the deemed liability acceptance day).

### **Clause 41. Provisional payments of income compensation**

[New provision]

Clause 41 provides for when provisional payments of income compensation must be paid.

Provisional payments of income compensation begin on the day the worker first has an incapacity for work and ends on the earliest of the following days -

- (a) the day on which a certificate of capacity is issued that specifies that the worker no longer has any incapacity for work

(b) the day on which the insurer or self-insurer gives a liability decision notice for the claim (or is taken to accept liability because the liability decision notice was not given before the deemed liability acceptance day).

#### **Clause 42. Insurer required to indemnify for provisional payments**

[New provision]

Clause 42 requires insurers to indemnify employers for provisional payments required to be paid to workers.

#### **Clause 43. Status and effect of provisional payments**

[New provision]

Clause 43 requires provisional payments to be taken into account as if they were a payment of compensation in calculating the total amount of compensation payable to a worker over the life of a claim (e.g. the income compensation general limit under clause 51) or discharging a liability of the employer (i.e. a settlement agreement under clause 149).

Clause 43 also provides that provisional payments are not recoverable from a worker even if an employer is found not to be liable, unless the worker's claim involved fraud.

#### **Clause 44. Other employer or insurer liable**

[New provision]

Clause 44 provides for provisional payments to be recovered from another employer if that other employer is found to be liable to pay compensation to the worker.

### **Part 2 Division 3 – Income compensation**

#### **Clause 45. Terms used**

[New provision, WCIMA 1981 Sch. 1 cl.11]

Clause 45 defines terms referred to in Part 2 Division 3 relating to components of earnings used to calculate a worker's pre-injury weekly rate of income and the amount of income compensation.

#### **Clause 46. Entitlement to income compensation for incapacity for work**

[WCIMA 1981 s.21, Sch.1 cl.7]

Clause 46 provides for an entitlement to income compensation if the injury results in total or partial incapacity for work, consistent with the current Act.

#### **Clause 47. Obligation to pay income compensation**

[WCIMA 1981 s.57A(5),(7),(8A)]

Clause 47 clarifies when the obligation to pay income compensation arises and when the first and subsequent payments must be made.

### **Clause 48. Total or partial incapacity for work**

[WCIMA 1981 Sch.1 cl. 7(1) and (2)]

Clause 48 provides how the amount of income compensation is to be calculated for total incapacity for work and partial incapacity for work.

### **Clause 49. Worker not to be prejudiced by resuming work**

[WCIMA 1981 s.84]

Clause 49 protects a worker's entitlement in the event the worker resumes or attempts to resume work but is unable, on account of the injury, to perform or continue to perform the work.

### **Clause 50. Order that worker is taken to be totally incapacitated**

[WCIMA 1981 Sch.1 cl. 8]

Clause 50 provides for an arbitrator to order that a worker who has a partial incapacity for work and has been unable to obtain suitable employment is taken to be totally incapacitated. An order cannot be made unless the arbitrator is satisfied the worker has taken all reasonable steps to obtain, and has failed to obtain, suitable employment, and the failure to obtain suitable employment is wholly or mainly a result of the injury.

### **Clause 51. General limit on total income compensation**

[WCIMA 1981 Sch.1 cl. 7(3)]

Clause 51 provides for a limit on a worker's entitlement to income compensation (the income compensation general limit amount).

The income compensation general limit amount is equal to the general maximum amount of compensation under clause 538. Both the general maximum amount and income compensation general limit are the same as the prescribed amount for weekly payments in the current Act.

### **Clause 52. Additional income compensation**

[WCIMA 1981 s.217]

Clause 52 provides discretion for an arbitrator to order a worker be paid additional income compensation beyond the income compensation general limit in specific circumstances. An arbitrator must be satisfied that the worker's injury resulted in the permanent total incapacity of the worker for work, and that additional income compensation should be allowed having regard to the social and financial circumstances and reasonable financial needs of the worker.

The total amount of additional income compensation that can be awarded is capped at 75% of the income compensation general limit, as it is under the current Act.

### **Clause 53. Terms used**

[New provision]

Clause 53 defines terms used in Part 2 Division 3 Subdivision 3 relating to the calculation of income compensation.

## **Clause 54. Worker's pre-injury weekly rate of income**

[WCIMA 1981 s.42, 52, Sch.1 cl.11(2) Amount B par (c), cl. 14,15]

Clause 54 provides for the calculation of a worker's pre-injury weekly rate of income with reference to the worker's average weekly rate of earnings in the position the worker held on the day on which the injury occurred. The weekly rate of earnings is averaged over the period of one year ending on the day before the injury occurred (or period employed if less than one year). This method of calculation is currently applied to workers who are not covered by an industrial award under the current Act and will now apply to all workers irrespective of whether an industrial award applies to a worker.

Clause 54(5) provides that any period of leave without pay is not included in the calculation of a worker's pre-injury average rate of earnings, because if it was it would unfairly reduce the average amount due to nil earnings over the period of leave. Leave without pay means 'time off work without pay on leave that is authorised or consented to by an employer for a period the worker would otherwise be required to work'.

Schedule 1 clause 14 of the current Act, which applies to the calculation of weekly earnings for casual or seasonal workers who are ordinarily employed for only part of the year, is not replicated in the Bill. A casual or seasonal worker's pre-injury average rate of earnings will be calculated in the same way as any other worker whose earnings are calculated over the previous one year or relevant period employed in the position (whether or not the worker is a permanent employee, a casual, a seasonal worker, or on a fixed or short-term contract).

## **Clause 55. Amount of income compensation**

[WCIMA 1981 Sch.1 cl.11(3), (4), (6)]

Clause 55 clarifies and simplifies, relative to the current Act, the method of calculating the amount of income compensation a worker with an incapacity for work will receive for the first 26 weeks and thereafter. Clause 55 also delivers on a 2021 election commitment by the McGowan Government to extend the point at which income compensation payments step down from 13 to 26 weeks.

For the first 26 weeks the amount of income compensation is calculated at the worker's pre-injury weekly rate of income subject to the maximum or minimum amounts in clauses 56 or 57 respectively.

For any period after the first 26 weeks the amount of income compensation is calculated at 85% of the worker's pre-injury weekly rate of income subject to the maximum or minimum amounts in clauses 56 or 57 respectively.

Clause 55(4) clarifies what a 'week' means in the context of calculating 26 weeks of income compensation payments.

## **Clause 56. Maximum weekly rate of income compensation**

[WCIMA 1981 Sch.1 cl.11(2), Amount C, 11(3) and (4)]

Clause 56 provides for a cap on the maximum weekly rate of income compensation. The maximum weekly rate of income compensation means the amount prescribed by regulations [as under the current Act, section 5A(1A) Amount C].

### **Clause 57. Minimum weekly rate of income compensation**

[WCIMA 1981 Sch.1 cl.11(2), Amounts Aa, D and E, 11(3) and (4)]

Clause 57 provides for a safety net minimum weekly rate of income compensation if the step down to 85% of a worker's pre-injury weekly rate of income calculated under clause 55 would otherwise result in income compensation falling below:

- 1) the base award rate component of earnings under provisions of an industrial instrument to which the worker would be entitled to be paid in a week, plus any *regular additional earnings* (as defined); or
- 2) the minimum amount to which the worker would be entitled under the *Minimum Conditions of Employment Act 1993* to be paid in a week (the safety net for non-award workers under the current Act).

The effect of point 1) is to apply the same safety net minimum weekly rate of income compensation that award workers whose earnings comprise regular over award payments, overtime and allowances have under the current Act after the step down (Schedule 1, clause 11 'Amount Aa').

However, the regular additional earnings will be averaged over the same period calculated in clause 54 (not limited to 13 weeks under the current Act). This is to ensure the 'regular additional earnings' above the base award rate is calculated over the same period which a worker's average weekly rate of earnings is initially calculated under clause 54.

No minimum weekly rate of income compensation applies to certain workers (working directors, jockeys, and workers whose pre-injury weekly rate of income comprises board and lodging only). This is because these workers are not covered by an industrial instrument that specifies a base award rate of pay or minimum amount, and the *Minimum Conditions of Employment Act 1993* does not apply to them.

### **Clause 58. Monetary value of board and lodging**

[WCIMA 1981 Sch.1 cl.15]

Clause 58 provides for ascertaining the value of board and lodging as payment for work for the purpose of calculating the worker's average weekly rate of earnings under clause 54(2), and the amount of any board and lodging provided to the worker by the employer during any period for which the worker is entitled to receive income compensation.

It is intended regulations will set a maximum board and lodging daily amount consistent with regulations under the current Act.

### **Clause 59. Working directors**

[WCIMA 1981 Sch.1 cl.11(2) Amount B par (a) and (b), cl. 11(2a), (2b), (2c)]

Clause 59 provides for calculating a working director's pre-injury weekly rate of earnings with reference to the declared remuneration of the working director in the statement required to be given to the licensed insurer at inception and renewal of the workers' compensation policy.

## **Clause 60. Public holidays**

[WCIMA 1981 s.81]

Clause 60 provides payment for a public holiday is not payable if the day falls within a period when a worker is receiving income compensation payments for the same day.

## **Clause 61. Leave while entitled to income compensation**

[WCIMA 1981 s.80]

Clause 61 provides for the status of sick leave, annual leave and long service leave (and leave accrual) while a worker is entitled to income compensation.

For any period for which a worker is entitled to receive income compensation:

- the worker is entitled to take annual leave and long service leave
- the worker's entitlement to receive income compensation is not affected by the worker being entitled to, or taking, leave of that kind – these leave entitlements are concurrent entitlements to the worker's entitlement to income compensation (reflects the current legal position)
- the worker accrues entitlements to annual leave, long service leave and sick leave that the worker would have accrued if the worker had not been entitled to receive income compensation for that period (reflects the current legal position).
- the worker is not entitled to take sick leave [this reflects section 130(1) of the *Fair Work Act 2009*].

Sometimes workers take sick leave while a workers compensation claim is being processed and before the relevant insurer or self-insurer has made a liability decision. If sick leave is taken in these circumstances and the worker subsequently receives income compensation clause 62(3) requires:

- the amount paid as sick leave to be taken as being paid towards income compensation
- any period of sick leave to which the sick leave entitlement relates to be reinstated.

## **Clause 62. Restrictions on reduction, suspension or discontinuation of income compensation**

[WCIMA 1981 s.61]

Part 2 Division 3 Subdivision 4 sets out the circumstances for reducing, suspending and discontinuing income compensation payments.

Clause 62 provides that once an entitlement to income compensation is established and payments commence the payments cannot be reduced, suspended or discontinued, except:

- to give effect to any provision of the Act (e.g. where a limit on compensation applies)
- to give effect to a direction of a conciliator or order of an arbitrator
- with the consent of the worker given in the approved form

- in accordance with other sections of the Act that address specific circumstances where payments may be reduced, suspended or discontinued (e.g. imprisonment of the worker).

### **Clause 63. Reducing or discontinuing of income compensation on basis of worker's return to work**

[WCIMA 1981 s.61]

Clause 63 provides that an employer cannot reduce or discontinue income compensation payments based on a worker's return to work, unless the employer has informed the worker in accordance with the regulations of:

- the basis for the reduction or discontinuance with reference to the earnings of the worker in the position to which the worker has returned
- the amount, if any, of income compensation that will be paid to the worker for any partial incapacity for work.

Workers must be informed as to the basis for the reduction or discontinuation of income compensation payments and the amount of any compensation payable. This will clearly inform the worker as to whether they are receiving wages only (return to work with full capacity) or a combination of wages and income compensation (return to work with some residual incapacity). A worker may dispute the reduction or discontinuance of income compensation in WorkCover WA's Conciliation and Arbitration Services if the requirements of clause 63 are not complied with.

### **Clause 64. Reducing or discontinuing of income compensation on basis of medical evidence**

[WCIMA 1981 s.61]

Clause 64 provides for reducing or discontinuing income compensation payments to a worker based on medical evidence about capacity for work.

Clause 64 is similar to the provisions and processes in section 61 of the current Act for discontinuing or reducing weekly payments on the basis of a medical certificate (evidence) indicating a worker has total or partial capacity for work, or the incapacity is no longer a result of the injury.

An employer who intends to reduce or discontinue income compensation payments on the basis of medical evidence must give the worker written notice in accordance with the regulations. A copy of the medical evidence the employer is basing their decision on must also be given to the worker.

After receiving the required documents, a worker may, within 21 days, make a dispute resolution application if they do not agree with the proposed reduction or discontinuing of income compensation payments by the employer.

If a worker makes application within 21 days an employer cannot reduce or discontinue income compensation payments until the dispute is finalised.

If a worker does not make a dispute resolution application within 21 days the employer may proceed to reduce or discontinue income compensation payments.

### **Clause 65. Worker not residing in State: failure to provide declaration**

[WCIMA 1981 s.69]

Clause 65 provides regulations may require a worker who is not residing in WA to provide a declaration about their incapacity for work to the relevant licensed insurer or self-insurer at prescribed intervals (it is intended the regulations will require the same 3-monthly declaration as the current Act and regulations).

Clause 65 provides for the suspension (rather than discontinuation in the current Act) of income compensation payments to a worker not residing in WA if the worker fails to provide a required declaration about their incapacity at the prescribed intervals.

Unlike the current Act, income compensation will not cease if a worker fails to provide the declaration in time. Instead, clause 65 sets out a process that must be followed by the relevant licensed insurer or self-insurer before income compensation payments can be suspended.

Before taking any action clause 65 requires the insurer or self-insurer to give the worker a written warning notice reminding the worker of their obligations to provide the required declaration before the due date. The notice must also warn the worker that the payment of income compensation will be suspended from a specified date if the worker fails to provide the declaration.

Payments of income compensation will be suspended from the specified date until the worker provides the required declaration to the insurer or self-insurer.

The worker's entitlement does not cease and income compensation payments must recommence from the date the worker provides the required declaration.

### **Clause 66. Suspension of income compensation while worker in custody**

[WCIMA 1981 s.72]

Clause 66 provides income compensation payments are suspended if a worker is in custody or serving a term of imprisonment. Unlike the current Act (which requires an order of an arbitrator) payments can be suspended if the employer has written confirmation of the factual circumstances from the relevant government authority.

### **Clause 67. Effect of suspension of income compensation**

[WCIMA 1981 s.63]

Clause 67 provides for the effect of suspension of income compensation for a period, in that it does not affect any entitlement to income compensation for any period after the period of suspension.

### **Clause 68. Power of arbitrator to review disputed income compensation payments**

[WCIMA 1981 s.62]

Clause 68 provides for an arbitrator to review income compensation payments on application of the worker or employer.

All disputes about a worker's right to ongoing compensation would be brought under clause 68 (including erroneous acceptance of liability) unless the Act provides otherwise.

## **Part 2 Division 4 – Compensation for medical and health expenses**

### **Clause 69. Terms used**

[New provision]

Clause 69 defines terms used in Part 2 Division 3 Subdivision 4 relating to compensation for medical and health expenses.

### **Clause 70. Medical and health expenses compensation under this Division**

[WCIMA 1981 s.18, Sch. 1 cl.17(1)]

Clause 70 establishes a worker's entitlement to medical and health expenses incurred or to be incurred as a result of the worker's injury, and when an employer's liability and obligation to pay for these expenses arises.

### **Clause 71. Expenses that are medical and health expenses**

[WCIMA 1981 s.5(1) *approved treatment*, Sch. 1 cl.17(1)]

Clause 71 provides for the types of medical and health expenses covered as a compensable expense. The medical and hospital services listed in clause 71 are the same as those listed in schedule 1 clause 17(1) of the current Act.

Regulations will prescribe all other types of health services that are covered as medical and health expenses compensation. The intention is to consolidate in one place:

- the allied health services currently listed in schedule 1 clause 17(1) of the current Act (physiotherapy, chiropractic)
- the allied health services currently listed under the definition 'approved treatment' in section 5(1) of the current Act (occupational therapy, clinical psychology, speech pathology)
- the allied health services currently approved by the Minister and published in the Gazette as 'approved treatment' (osteopathy, counselling psychology, exercise programs by exercise physiologists and physiotherapists, acupuncture).

Experience indicates that new forms of health service emerge and treatment modalities change over time and sometimes the skills, qualifications or registration status of the persons or class of persons providing the service also changes.

For example, acupuncture was included as an approved treatment under the current Act in 2015 in response to acupuncture becoming a protected health service for Chinese Medicine Practitioners under the *Health Practitioner Regulation National Law (Western Australia 2010)*.

Flexibility is therefore required for regulations to prescribe additional health services in the future if there is a need to do so.

## **Clause 72. Requirement that medical and health expenses be reasonable**

[WCIMA 1981 s.292(2), Sch. 1 cl.17(1)]

Clause 72 requires that compensable medical and health services be reasonable. It must be reasonably necessary for the worker to incur the expense and the amount and charging of the expense must be in accordance with a scale of fees and charges fixed by order under clause 73.

Regulations may provide for the principles to be applied in determining whether it is reasonably necessary for a worker to incur a medical and health expense.

## **Clause 73. Medical and health expenses order**

[WCIMA 1981 s. 292(2)]

Clause 73 provides that fees payable for medical and health expenses will be fixed by Ministerial order on the recommendation of WorkCover WA, rather than by regulations as required under the current Act.

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

Clause 73 also provides for periodic indexation of medical and health fees without the need for further orders when the only change is to adjust the amounts by a prescribed indexation method.

## **Clause 74. Eligibility to provide compensable medical and health services**

[WCIMA 1981 s.5(1) *approved treatment*, 292(2), Sch. 1 cl. 17(1)]

Clause 74 supports clause 71(1)(h) and 71(2) by providing for regulations to prescribe provider eligibility requirements for a provider of a medical and health service.

It is intended the health provider eligibility requirements will link to the appropriate registration title for the profession under the *Health Practitioner Regulation National Law (Western Australia) Act 2010* as under the current Act and regulations, or to the eligibility requirements that apply to non-registered health service providers (exercise physiologists, speech pathologists) under the current Act and regulations.

Flexibility is required as provider eligibility requirements may change over time. For example, while registered clinical and counselling psychologists are the only recognised psychology providers under the current Act, other professions and psychology sub-specialty groups have sought similar recognition to provide mental health services to injured workers (including registered general psychologists, and non-registered mental health social workers and counsellors).

Flexibility is also required if there is a need to set out provider eligibility requirements if multi-disciplinary health services are recognised in regulations (e.g. pain management programs provided jointly by pain specialists, physiotherapists, clinical psychologists or exercise physiologists).

### **Clause 75. General limit on compensation for medical and health expenses**

[WCIMA 1981 Sch. 1 cl. 17(1)]

Clause 75 limits compensation for medical and health expenses to the medical and health expenses general limit amount.

The medical and health expenses general limit amount is defined in clause 69 and means the amount that is 60% or greater percentage, if any, prescribed by the regulations, of the general maximum amount.

Clause 75 implements a 2021 election commitment by the McGowan Government to increase the cap on medical expenses from 30% to 60% of the general maximum amount ('prescribed amount' under the current Act).

### **Clause 76. Notice to worker that 60% of general limit reached**

[WCIMA 1981 Sch. 1 cl. 18A(4)]

Clause 76 requires licensed insurers to notify workers when they have reached 60% of the medical and health expenses general limit amount. This gives workers sufficient time to consider making an application under clause 77 to increase the medical and health expenses general limit amount.

### **Clause 77. Standard increase in compensation limit**

[WCIMA 1981 Sch. 1 cl. 18A(1b), 18(1CA), (2)]

Clause 77 provides for workers to apply to an arbitrator to seek additional amounts for medical and health expenses beyond the general limit.

There is a *standard increase limit amount* defined in clause 69 which means the amount that is 40%, or a greater percentage, if any, prescribed by regulations of the medical and health expenses general limit amount. The *standard increase limit amount* is marginally higher than the limit on the additional amounts that can be ordered under the current Act which has been capped at \$50,000 for many years.

### **Clause 78. Increase for special expenses in the medical and health expenses general limit amount**

[WCIMA 1981 Sch. 1 cls. 18A(1C), (1d), (2), (2aa), 18B]

Clause 78 provides for workers to apply to an arbitrator to seek further additional amounts for medical and health expenses beyond the general limit and the first standard increase.

There is a *special increase limit amount* defined in clause 69 which means the amount that is 190%, or a greater percentage, if any, prescribed by regulations of the medical and health expenses general limit amount.

The *special increase limit amount* is marginally higher than the limit on the further additional amount that can be ordered under the current Act which has been capped at \$250,000 for many years.

### **Clause 79. Assessment of degree of permanent impairment for special increase**

[WCIMA 1981 Sch. 1 cl. 18A(2aa)]

Clause 79 provides for the process for determining a worker's degree of permanent impairment is at least 15%. The 15% impairment level is a threshold requirement that must be satisfied before an arbitrator can order a special increase beyond the standard increase in the medical and health expenses general limit.

### **Clause 80. Effect of participation in catastrophic injuries support scheme**

[New provision]

Clause 80 provides that the employer ceases to be liable for medical and health expenses compensation incurred or to be incurred after the worker becomes a participant in the catastrophic injuries support scheme under the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*, as that Act is amended by this Bill (see Part 15).

Clause 80 is necessary to avoid double compensation, as enhanced medical and health support services will be provided to the worker under the catastrophic injuries support scheme.

## **Part 2 Division 5 – Compensation for miscellaneous expenses**

### **Clause 81. Term used: miscellaneous expense**

[New provision]

Clause 81 defines the term 'miscellaneous expense' used in Part 2 Division 5.

There is no aggregate limit on miscellaneous expenses (as there is for medical and health expenses). Miscellaneous expenses must be reasonable.

### **Clause 82. Compensation for reasonable miscellaneous expenses**

[WCIMA 1981 Sch. 1 cl. 17]

Clause 82 establishes a worker's entitlement to miscellaneous expenses incurred or to be incurred by a worker as a result of the worker's injury, and when an employer's liability and obligation to pay for these expenses arises.

### **Clause 83. Expenses that are miscellaneous expenses**

[WCIMA 1981 Sch. 1 cl. 17(1aa), (3)-(6)]

Miscellaneous expenses cover the same small number of expenses included in the current Act (wheelchair, surgical appliances or artificial limb etc).

Miscellaneous expenses also include ambulance or air transportation services which are currently covered as a medical entitlement under the current Act.

This is to ensure the sometimes high cost incurred for ambulance or air transportation services does not erode a worker's capped medical and health expenses entitlement.

#### **Clause 84. Requirement that miscellaneous expenses be reasonable**

[WCIMA 1981 Sch. 1 cl.17]

Clause 84 requires that miscellaneous expenses be reasonable and clarifies the meaning of 'reasonable'. It must be reasonably necessary for the worker to incur the expense and the amount of the expense must be reasonable.

Regulations may provide for the principles to be applied in determining whether it is reasonably necessary for a worker to incur a miscellaneous expense.

#### **Clause 85. First aid and emergency transport**

[WCIMA 1981 Sch. 1 cl.17(1)]

Clause 85 provides as a miscellaneous expense the costs of first aid and emergency transportation for the worker to attend a hospital or other place for medical treatment.

As explained above, the cost of emergency transportation of a worker currently forms part of a worker's capped medical entitlement and can erode quickly if a worker is transported by air ambulance. Emergency transportation expenses will no longer factor into (or erode) a worker's medical and health expenses general limit but the expense must be reasonable.

#### **Clause 86. Wheelchair**

[WCIMA 1981 Sch. 1 cl.17(4)]

Clause 86 provides as a miscellaneous expense the costs of a wheelchair or similar appliance and for regulations to limit the amount payable.

#### **Clause 87. Surgical appliance or artificial limb**

[WCIMA 1981 Sch. 1 cl.17(5)]

Clause 87 provides as a miscellaneous expense the costs of a suitable surgical appliance or artificial limb.

#### **Clause 88. Clothing**

[WCIMA 1981 Sch. 1 cl.17(6)]

Clause 88 provides as a miscellaneous expense the costs of the repair or replacement of clothing damaged or destroyed in the accident that results in a worker's injury.

#### **Clause 89. Repair or replacement of artificial aids**

[WCIMA 1981 Sch. 1 cl.17(3)]

Clause 89 provides as a miscellaneous expense the costs of the repair or replacement of any artificial aid (hearing aid, artificial limb, artificial teeth, artificial eyes, spectacles or contact lenses) damaged or destroyed in a work accident even if the worker did not suffer any injury.

## **Clause 90. Travel**

[WCIMA 1981 Sch. 1 cl.19]

Clause 90 provides as a miscellaneous expense:

- the running costs of the use of the worker' vehicle for approved travel
- any fare or other cost of approved travel
- meals and accommodation reasonably required in connection with approved travel

Clause 90 provides for the meaning of 'approved travel' by reference to:

- being required by the employer (e.g. to attend a medical review initiated by the employer or insurer, to attend a place for medical or health treatment or to participate in a return to work program)
- being required by a medical practitioner (e.g. if required to attend a place nominated by them or referred for further tests or associated with an assessment by an approved permanent impairment assessor)
- the worker establishing the travel is necessary (e.g. associated with a purpose, obligation or entitlement under the Act including medical and health attendance and treatment, injury management activities, attendance for assessment by an approved permanent impairment assessor).

Regulations may specify the rates at which approved travel expenses are taken to be reasonable, which is substantively the same as the current Act which provides for regulations to set the rates for travel expenses.

## **Clause 91. Assessment of permanent impairment**

[WCIMA 1981 Sch. 1 cl.17(1aa)]

Clause 91 provides as a miscellaneous expense the cost of the first assessment of a worker's degree of permanent impairment requested by the worker for each allowable purpose. The allowable purposes are assessments required for the lump sum compensation for permanent impairment, the special increase in the medical and health expenses general limit and to satisfy the impairment threshold requirement for commencing common law proceedings.

Clause 91 extends the current Act provision which only covers the first impairment assessment for common law purposes.

Clause 91 also clarifies the cost of the assessment is a miscellaneous expense of the worker if the assessment is requested by the worker. It is common practice for employers or insurers to arrange for a permanent impairment assessment of the worker as part of the management of the worker's claim. Where this is done the cost is not a miscellaneous expense of the worker but a claim expense of the employer/insurer.

## **Clause 92. Effect of participation in catastrophic injuries support scheme**

[New provision]

Clause 92 provides that the employer ceases to be liable for miscellaneous expenses compensation incurred or to be incurred after the worker becomes a participant in the catastrophic injuries support scheme under the *Motor Vehicle and Workplace*

*Accidents (Catastrophic Injuries) Act 2016*, as that Act is amended by this Bill (see Part 15).

Clause 92 is necessary to avoid double compensation as miscellaneous expenses relating to the worker's injury (e.g. wheelchair, surgical appliance or artificial limb) will be provided to the worker under the catastrophic injuries support scheme.

## **Part 2 Division 6 – Compensation for workplace rehabilitation expenses**

### **Clause 93. Compensation for workplace rehabilitation expenses**

[WCIMA 1981 s.5(1) def. *vocational rehabilitation*, Sch.1 cl.17(1a)]

Clause 93 establishes a worker's entitlement to payment of the amount of workplace rehabilitation expenses incurred or to be incurred as a result of a worker's injury, and when an employer's liability and obligation to pay for these expenses arises.

The entitlement is substantively the same as the current Act which provides for vocational rehabilitation expenses prescribed in regulations as a form of compensation. Clause 93 provides for regulations to also clarify the circumstances in which it is reasonably necessary for an approved workplace rehabilitation provider to provide a workplace rehabilitation service, the services that can be provided, who can request the services and the process for selecting, engaging and changing providers.

### **Clause 94. Minister may fix workplace rehabilitation fees and charges**

[WCIMA 1981 s.156A(2), 292(2)(b), Sch.1 cl. 17(1a)]

Clause 94 provides scales of fees and charges for workplace rehabilitation services provided by approved workplace rehabilitation providers may be fixed by Ministerial order on the recommendation of WorkCover WA, rather than by regulations as required under the current Act.

This is a more flexible and contemporary approach to setting fees for workplace rehabilitation services and allows for the order to adopt provisions of other publications as they relate to workplace rehabilitation services.

Clause 94 provides that fees and charges may be set for workplace rehabilitation services by service provided, time spent providing the service, outcome, or other criteria (or some combination of these).

Clause 94 also provides for periodic indexation of workplace rehabilitation fees and charges without the need for further orders when the only change is to adjust the amounts by an accepted indexation method.

### **Clause 95. General limit on compensation for workplace rehabilitation expenses**

[WCIMA 1981 Sch.1 cl. 17(1a)]

Clause 95 provides for a limit on a worker's entitlement to workplace rehabilitation expenses (the workplace rehabilitation expenses limit).

The workplace rehabilitation expenses limit is 7%, or greater percentage, if any, prescribed by regulations, of the general maximum amount (clause 538).

This equates to the same amount payable under the current Act (currently 7% of the prescribed amount).

### **Clause 96. Effect of participation in catastrophic injuries support scheme**

[New provision]

Clause 96 provides the employer ceases to be liable for workplace rehabilitation expenses compensation incurred or to be incurred after the worker becomes a participant in the catastrophic injuries support scheme under the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*, as that Act is amended by this Bill (see Part 15).

Clause 96 is necessary to avoid double compensation as workplace rehabilitation will be provided to the worker under the catastrophic injuries support scheme.

## **Part 2 Division 7 – Lump sum compensation for permanent impairment from personal injury by accident**

### **Clause 97. Entitlement to lump sum permanent impairment compensation**

[WCIMA 1981 s. 31C]

Clause 97 establishes a worker's entitlement to lump sum compensation for permanent impairment suffered as a result of an injury that is a personal injury by accident, and provides that any amount is only payable when the employer's liability is commuted by a settlement agreement. This is consistent with the current Act and legal precedent in that the taking of a permanent impairment lump sum commutes (i.e. extinguishes) the worker's claim.

### **Clause 98. Amount of permanent impairment compensation based on degree of permanent impairment**

[WCIMA 1981 s. 31C]

Clause 98 provides the amount of permanent impairment compensation payable is the amount calculated under clause 101 on the basis of the worker's degree of permanent impairment resulting from the injury.

### **Clause 99. Worker's degree of permanent impairment**

[New provision]

Clause 99 provides for working out the worker's degree of permanent impairment with reference to the degree of permanent impairment agreed by the worker and employer under clause 105 (following assessment by a permanent impairment assessor) or determined by an arbitrator if no agreement is reached.

This ensures the question of the degree of permanent impairment is resolved before the worker registers a settlement agreement to receive lump sum compensation for permanent impairment.

### **Clause 100. Limit on permanent impairment compensation**

[WCIMA 1981 s. 31J]

Clause 100 provides for a total limit on permanent impairment compensation resulting from an injury, which is equal to the general maximum amount (clause 538).

Where more than one impairment is suffered the limit applies to the aggregate of the amount of permanent impairment compensation for each of those impairments.

The limit equates to the same amount payable under the current Act for permanent impairment(s) mentioned in Schedule 2 of the current Act (currently 100% of the prescribed amount, regardless of the number of impairments resulting from the injury).

### **Clause 101. Calculating permanent impairment compensation**

[WCIMA 1981 s. 31C, 31D, Sch.2]

Clause 101 provides for the method of calculating the amount of permanent impairment compensation being the percentage of the lump sum limit indicated for the impairment in column two of the Table. If the degree of permanent impairment is less than 100% the amount is 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 two of the Table.

The 45 impairment items in column one of the Table and the corresponding percentage values of the lump sum limit for each of those impairments are the same as the current Act.

### **Clause 102. Further permanent impairment from subsequent injury**

[WCIMA 1981 s. 31G]

Clause 102 provides for the amount of permanent impairment compensation if a worker suffers a subsequent personal injury by accident resulting in further permanent impairment. The amount of permanent impairment compensation payable for that further impairment is the amount that is proportionate to any increase in the degree of permanent impairment.

### **Clause 103. Compensable impairment not to exceed 100%**

[WCIMA 1981 s. 31G]

Clause 103 provides a worker is not entitled to any further permanent impairment compensation if the worker has received permanent impairment compensation in respect of body part or faculty for a degree of permanent impairment of 100%.

### **Clause 104. Special provisions for AIDS**

[WCIMA 1981 s. 31F]

Clause 104 provides for determining the permanent impairment entitlement of a worker with AIDS that resulted from an HIV infection by accident arising out of or in the course of employment.

### **Clause 105. Agreement as to degree of permanent impairment**

[WCIMA 1981 s. 31D]

Clause 105 provides for a procedure for reaching agreement or determination of a worker's degree of permanent impairment. The steps are:

- The worker must be assessed by an approved permanent impairment assessor (formerly approved medical specialist)
- The worker gives the assessment and a permanent impairment notice to the employer requesting agreement with the assessed degree of permanent impairment
- The employer must within 28 days indicate agreement with the worker's assessment or, if there is no agreement, the employer must request a further assessment (with the cost paid by the employer).
- If the employer has requested a further assessment the further assessment must be provided to the worker within 14 days after the further assessment is received. The worker and employer may agree on the degree of permanent impairment in the original or further assessment (or any percentage within the range of the original or further assessment).
- If agreement cannot be reached the worker may apply for an arbitrator to determine the worker's degree of permanent impairment (cl. 106).

The above process provides more transparency and clear timeframes for the resolution of issues about the degree of permanent impairment relative to the current Act.

In Part 2 Division 11 (Settlement of compensation claim) the permanent impairment notice indicating the worker and employer's agreement on the degree of permanent impairment (or determination) will be lodged with the settlement application under clause 152. There will no longer be a separate election process for permanent impairment compensation.

### **Clause 106. Determination by arbitrator when worker and employer fail to agree degree of permanent impairment**

[WCIMA 1981 s. 31D]

Clause 106 provides for an arbitrator to determine the worker's degree of permanent impairment if the procedure in clause 105 does not result in agreement as to the worker's degree of permanent impairment.

## **Part 2 Division 8 – Lump sum compensation for noise-induced hearing loss**

### **Clause 107. Terms used**

[New provision]

Clause 107 defines terms relating to the assessment of hearing loss and noise-induced hearing loss.

### **Clause 108. Lump sum compensation for noise-induced hearing loss**

[WCIMA 1981 s.5(1) def. *noise-induced hearing loss*, s. 31E]

Clause 108(1) provides compensation is payable as a lump sum amount for noise-induced hearing loss (NIHL) suffered by a worker. Noise-induced hearing loss suffered by a worker that is due to the nature of employment with an employer is taken to be an injury from employment with the employer.

Clauses 108(2) and (3) provide compensation for noise-induced hearing loss is payable only under Part 2 Division 8 in the form of a lump sum and as assessed by an NIHL assessment (as defined).

A claim for noise-induced hearing loss compensation must be made in accordance with the regulations, which will specify requirements for the worker's work history to be provided and for the necessary tests to be undertaken.

### **Clause 109. Minimum compensable hearing loss**

[WCIMA 1981 s.31E]

Clause 109 provides for the same minimum noise-induced hearing loss thresholds for accessing the entitlement as the current Act:

- initial noise-induced hearing loss of at least 10%
- further noise-induced hearing loss of at least 5%.

### **Clause 110. Calculation of amount of compensation**

[WCIMA 1981 s.31E]

Clause 110 provides for the calculation of the amount of noise-induced hearing loss compensation to which a worker is entitled (for both initial and subsequent noise-induced hearing loss) by multiplying the worker's assessed noise-induced hearing loss by the NIHL maximum compensation amount applying on the date of the assessment.

The NIHL maximum compensation amount and method of calculating a worker's entitlement are the same as the current Act.

### **Clause 111. Assessment and evidence of noise-induced hearing loss**

[New provision]

Clause 111(1) defines a 'NIHL assessment' as an assessment made in accordance with the regulations of the hearing loss suffered by a worker during a period (the assessment period) and of whether and to what extent that hearing loss is noise-induced hearing loss (the assessed NIHL of the worker).

The assessment is made in accordance with the regulations because there are detailed technical testing requirements for assessing NIHL including who can undertake tests, the methods and equipment to be used, how to work out the work-related noise exposure, and how to assess NIHL when exposure to noise in the workplace occurs in employment with more than one employer.

Clause 111(3) establishes the NIHL assessment as *prima facie* evidence that the worker's hearing loss is noise-induced and due to the worker's employment during the assessment period.

## **Clause 112. Apportionment of NIHL compensation between employers**

[New provision]

Clause 112 provides for noise-induced hearing loss compensation to be apportioned in accordance with the regulations in circumstances where the noise-induced hearing loss is due to employment with more than one employer.

The regulations will provide for the method of apportionment so that it is clear and replicable in all NIHL assessments and in apportioning compensation between contributing employers.

## **Clause 113. Disputes about hearing loss**

[New provision]

Clause 113 provides that an arbitrator may determine a dispute about the results of an NIHL assessment, the extent of hearing loss, and whether and to what extent hearing loss suffered by a worker is noise-induced hearing loss.

The clause provides a mechanism for an employer or insurer to dispute, for example, the *prima facie* evidence of noise-induced hearing loss in the worker's NIHL assessment. However, a hearing loss matter cannot be disputed except on the basis of evidence provided by a further NIHL assessment arranged and paid for by the disputing party.

## **Clause 114. Regulations**

[New provision]

There are many technical aspects to testing for hearing loss and assessing the percentage of noise-induced hearing loss. Under the current Act WorkCover WA currently has an extensive level of oversight over the audiometric testing process, procedures, approval or registration of audiometric officers and audiologists, and equipment used in testing.

WorkCover WA has also played a central role in the assessment and claim process including holding records of baseline and subsequent audiometric tests, full audiological and ENT assessments, identifying workers of potential claims, arranging hearing tests and assessments, and apportioning liability when noise-induced hearing loss is due to employment with more than one employer.

The various elements of the current noise-induced hearing loss scheme are spread across the current Act, regulations, approved procedures, custom and practice.

Clause 114 provides for all technical aspects and procedures associated with the noise-induced hearing loss scheme to be prescribed in regulations as a single legislative source. Regulations made under this clause would not affect a worker's eligibility for noise-induced hearing loss compensation, or any amount payable.

## **Part 2 Division 9 – Compensation for dust disease**

### **Clause 115. Terms used**

[New provision]

Clause 115 defines terms used in Part 2 Division 9.

### **Clause 116. Dust disease taken to be from certain employment**

[WCIMA 1981 s.33, 44, Sch. 3]

Clause 116 provides for a presumption of injury from employment for specified dust diseases contracted from exposure to asbestos or, in the case of pneumoconiosis or silicosis, mineral dust harmful to the lungs. The diseases and exposure causes are the same as the current Act.

The causation test that applies under clause 6(3) to disease generally does not apply in determining whether a dust disease is an injury from employment. Clause 116 establishes the presumption of injury from employment for the four dust diseases and the test for how an employer may rebut the presumption.

Subclause 116(2) requires an employer to prove the disease was not suffered in the course of employment with that employer, or by proving any relevant exposure of the worker in the course of employment was trivial or minimal. The test for rebutting the presumption is consistent with the current legal position.

### **Clause 117. Day on which dust disease injury is suffered**

[New provision]

Clause 117 provides for the day on which an injury by dust disease is taken to have been suffered. The date is relevant to the commencement of compensation.

### **Clause 118. Dust disease taken to be single injury**

[WCIMA 1981 s.46, Sch. 5 cl.1A]

Clause 118 provides that if a worker suffers more than one dust disease either concurrently or successively the disease is to be treated as a single injury for the purposes of a claim for compensation under the Act. This ensures the compensation entitlement and limits apply to the injury from employment where exposure is taken to have occurred and not to each disease from that same exposure. This affects compensation only and does not affect the operation of Part 7 of the Act relating to common law damages for dust disease.

### **Clause 119. Entitlement to lump sum compensation for permanent impairment from dust disease**

[WCIMA 1981 Sch. 5 cl.1 and 4]

Clause 119 provides for the entitlement to lump sum compensation for permanent impairment from dust disease. There is no minimum degree of permanent impairment limiting access to the entitlement.

The compensation payable is comparable to the lump sum for dust disease under the current Act.

### **Clause 120. No entitlement to compensation until Panel determination**

[WCIMA 1981 s.36,38]

Clause 120 provides that a worker is not entitled to compensation in respect of a dust disease until the Dust Disease Panel has made a determination in respect of the worker's claim.

### **Clause 121. Claiming dust disease compensation**

[New provision]

Clause 121 provides for a dust disease compensation claim, the time within which a liability decision notice must be given under section 28 is 14 days after the insurer or self-insurer is notified under clause 127(5) of the determination of a Panel in respect of the claim. This ensures the claim liability decision is based on the Panel determination and is made in a timely manner.

### **Clause 122. Compensation claims to be referred to CEO**

[WCIMA 1981 s.36]

Clause 122 requires an employer to give a copy of the dust disease compensation claim to the WorkCover WA CEO within 7 days of receiving it. This is so the WorkCover WA CEO can refer the claim to the Panel for determination.

### **Clause 123. Referral of claim to Panel**

[WCIMA 1981 s.36 and 38]

Clause 123 provides for a dust disease claim to be referred to a Panel for determination of the diagnosis of the dust disease, the extent of incapacity for work and the assessment of the worker's degree of permanent whole of person impairment resulting from the dust disease. The Panel determination on these matters is relevant to establishing a worker's entitlement to certain kinds of compensation and eligibility for pursuing common law damages.

### **Clause 124. Constitution of Panel**

[WCIMA 1981 s.36]

Clause 124 deals with the constitution of the Dust Disease Medical Panel and provides at least one member must be a specialist in respiratory medicine and other members must be specialists in either respiratory medicine or occupational medicine.

### **Clause 125. Panel practice and procedure**

[WCIMA 1981 s.145D]

Clause 125 sets out Panel practice and procedures. Subsection 125(4) provides the Panel may give the employer concerned the opportunity to produce documents or provide information for consideration by the Panel. This is a discretionary power as it may not be appropriate or practicable to delay proceedings while an employer gathers information or documents, particularly if the worker's disease is life threatening.

### **Clause 126. Panel powers**

[WCIMA 1981 s.145D, 37,38]

Clause 126 sets out the Panel's powers for the purpose of assisting it to make its determination.

### **Clause 127. Determination of Panel**

[WCIMA 1981 s.145E]

Clause 127 specifies certain requirements for the Panel's determination including the decision and reasons are in the approved form, and that the determination is made as soon as practicable within 28 days after the Panel has obtained all necessary documents.

Subclause 127(2) provides that a Panel can make a determination without any physical examination of the worker concerned or the worker's attendance before the Panel if the chairperson considers it appropriate to do so in a particular case. This is sometimes necessary if the worker is hospitalised or too ill to attend and documents about the worker's condition have already been provided.

### **Clause 128. Effect of determination**

[WCIMA 1981 s. 38(4), 145E(6) and (8)]

Clause 128 provides for the final and binding nature of the Panel's determination on the worker, employer and any court or tribunal hearing a matter in which the determination is relevant.

### **Clause 129. Variation or remaking of determination**

[WCIMA 1981 s.145F]

Clause 129 provides a Panel may vary or rescind and remake a determination made by the Panel or another Panel if the Panel considers it necessary or desirable to do so because of a change in the worker's condition or degree of permanent whole of person impairment or in the extent of the worker's incapacity for work. This provision is needed as some workers with dust disease such as silicosis may have low impairment initially that significantly worsens over time. This clause enables the Panel to vary or rescind and remake the determination in these circumstances.

### **Clause 130. Remuneration and allowances of Panel members**

[WCIMA 1981 s.145G]

Clause 130 provides that a member of a Panel is entitled to be paid from the General Account any remuneration and allowances that the Minister may determine.

## **Part 2 Division 10 — Compensation for death of worker**

### **Clause 131. Terms Used**

[WCIMA s. 72C, Sch. 1A cl. 2 to 5]

Clause 131 defines terms used in Part 2 Division 10 relating to compensation for death of a worker.

The only substantive difference in this Division from the current Act is to clarify the status of unborn children of the worker at the time of the worker's death. The definition of 'child' and 'dependant' in clause 131 ensures a child of a worker conceived before but born after a worker's death is eligible to receive compensation if they would have been dependent on the worker at the time of birth had the death not occurred.

### **Clause 132. Compensation only payable as provided by compensation order**

[WCIMA s. 72H(2)]

Clause 132 provides compensation under Part 2 Division 10 is payable only as specified in a compensation order of an arbitrator.

### **Clause 133. Lump sum compensation for death resulting from injury**

[WCIMA Sch. 1A cl.7]

Clause 133 provides for the dependant lump sum entitlement. The maximum amount payable to dependants and the proportion of the entitlement payable to partners and children is the same as the current Act.

### **Clause 134. Allowance for eligible dependent children**

[WCIMA Sch. 1A cl.8]

Clause 134 provides for the dependent child allowance. The amount payable to dependent children and the eligibility criteria are the same as the current Act.

### **Clause 135. Funeral and medical expenses**

[WCIMA Sch. 1A cl.9]

Clause 135 provides for funeral expenses, and medical and health expenses of a worker prior to their death, to be payable as a compensation entitlement.

### **Clause 136. Lump sum compensation for death not resulting from injury**

[WCIMA Sch. 1A cl.10,11]

Clause 136 provides for lump sum compensation to be payable to a dependent partner or child for death not resulting from injury. The maximum amount of compensation and eligibility criteria are the same as the current Act.

### **Clause 137. Claim for compensation under this Division**

[WCIMA s. 72E]

Clause 137 provides for claiming compensation following a worker's death is to be made within 12 months after the worker's death.

**Clause 138. Claims procedure: insured employer**

[WCIMA s. 72F]

Clause 138 provides for insurers to deal with claims and provide liability decision notices as quickly as possible.

**Clause 139. Claims procedure: self-insurer or uninsured employer**

[WCIMA s. 72G]

Clause 139 provides for self-insurers to deal with claims and provide liability decision notices as quickly as possible.

**Clause 140. Determination of claim by arbitrator**

[WCIMA s. 72H]

Clause 140 provides for an application to be made for determination of the claim by order of an arbitrator, and requires an arbitrator to make an order determining the claim and to specify the amount of compensation to which the claimant is entitled.

**Clause 141. Manner of payment: lump sum compensation**

[WCIMA s. 72I]

Clause 141 requires a compensation order to specify whether the lump sum compensation is to be paid to WorkCover WA or directly to the dependant. Orders relating to a dependent child's entitlement will often direct the entitlement to be held in trust by WorkCover WA until the worker reaches 18 years of age.

**Clause 142. Manner of payment: child's allowance**

[WCIMA s. 72J]

Clause 142 provides for the manner of the child's allowance payment.

**Clause 143. Effect of recovery of damages on applying trust money**

[WCIMA s. 72K]

Clause 143 provides for the effect of a damages award on trust money a dependant is receiving.

**Clause 144. Application procedure**

[WCIMA s. 72L]

Clause 144 provides that an application for determination of a claim under Part 2 Division 10 can be received and an order made whether or not there is a dispute. All applications bypass conciliation and are dealt with exclusively in the arbitration process with special rules to fast-track cases that are not disputed.

**Clause 145. Inconsistency with other provisions**

[WCIMA s. 72D]

Clause 145 provides the special provisions (in Part 2 Division 10) applying to compensation for death resulting from injury prevail over provisions of the Act in the event of any inconsistency. It is an avoidance of doubt provision as Part 2 Division 10

extends the jurisdiction of arbitrators enabling them to make orders even in the absence of a dispute, and modifies arbitration rules that otherwise apply to disputed matters.

## **Part 2 Division 11 — Other matters to do with compensation**

### **Clause 146. Recovery of erroneous payments of compensation**

[WCIMA s. 71]

Clause 146 provides for recovery of erroneous payments of compensation.

### **Clause 147. Deductions from wages towards compensation not lawful**

[WCIMA s. 302]

Clause 147 makes it an offence for an employer or insurer or any person acting on behalf of an employer or insurer to, directly or indirectly, take or receive any money from a worker whether by way of deduction from wages or otherwise in respect of any liability of an employer to pay compensation under this Act.

### **Clause 148. Recovery of cost of services provided to worker**

[WCIMA s. 82]

Clause 148 provides for an employer to discharge the whole or any part of the outstanding cost of a medical and health expense, or a miscellaneous expense, by paying that amount to the provider of the service.

## **Part 2 Division 12 — Settlement of compensation claim**

### **Clause 149. Commuting compensation liabilities by settlement agreement**

[WCIMA s. 67, 76(1), 77]

Clause 149 provides for settlement of a workers compensation claim to commute to a lump sum the liability of the employer to pay compensation to the worker in respect of the injury and permanently discharge that liability. A settlement agreement must be in the approved form and has no effect unless registered.

### **Clause 150. Lump sum compensation required to be included in settlement agreement**

[WCIMA s. 76(1) and (6), 31H]

Clause 150 requires a settlement agreement to include provision for permanent impairment compensation or dust disease impairment compensation if there is an entitlement to such compensation. This is because these forms of compensation are only payable via a settlement agreement for the whole claim.

### **Clause 151. Effect on settlement of participation in catastrophic injuries support scheme**

[New provision]

Clause 151 provides a settlement agreement must not provide for compensation in respect of medical and health expenses compensation, miscellaneous expenses compensation or workplace rehabilitation expenses compensation for which the employer has ceased to be liable for as a result of the worker becoming a participant in the catastrophic injuries support scheme under the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*.

Clause 151 is necessary to avoid double compensation as each of the three forms of compensation referred to will be provided to the worker under the catastrophic injuries support scheme.

### **Clause 152. Applying for registration of settlement agreement**

[WCIMA s. 76(1), 31H]

Clause 152 provides for the application and registration of a settlement agreement.

### **Clause 153. Settlement agreement cannot apply to common law damages**

[WCIMA s. 92(h)]

Clause 153 provides a settlement agreement must not be registered if it provides for the liability of the employer to pay damages for an injury suffered by a worker to be commuted or otherwise discharged.

This ensures the statutory settlement pathway cannot be used to pay for common law damages for a liability that arises outside the workers' compensation scheme. Settlement of common law damages is limited to actions commenced in compliance with clause 421 and settled under clause 433.

### **Clause 154. Scrutiny by Director of settlement agreement**

[WCIMA s. 76]

There are minimal barriers to settlement compared to the current Act. Clause 154 requires the Director, Conciliation must refuse to register a settlement agreement unless the Director is given a statement by the worker in the approved form acknowledging that the worker is aware of the consequences of registering the settlement agreement. The Director is also required to scrutinise the settlement for genuineness and to be satisfied of the correct amount of any permanent impairment compensation.

The reference to the 'correct amount of permanent impairment compensation' refers to the calculation of permanent impairment compensation under clause 101 based on the degree of permanent impairment agreed under clause 105 or determined under clause 106.

Once a worker's degree of permanent impairment for the relevant item(s) in the Table to clause 101 has been assessed, and then agreed or determined, the amount of permanent impairment compensation is a mathematical calculation expressed as a percentage of the lump sum limit for the relevant item.

The Director's role is to ensure the correct amount is paid based on the method set out in the legislation and not to question the degree of permanent impairment unless the degree of permanent impairment has not been assessed and agreed or determined in accordance with the legislation.

**Clause 155. Cancellation of registration of settlement agreement**

[WCIMA s. 76(8)]

Clause 155 provides for the cancellation of the registration of a settlement agreement if an arbitrator is satisfied the agreement was obtained by fraud or undue influence or by other improper means.

**Clause 156. Implementation of settlement agreement**

[WCIMA s. 67(5) and (7)]

Clause 156 provides the entitlement of a worker to compensation in respect of an injury to which a registered settlement agreement relates ceases on the date of registration of the agreement.

Clause 156(2) also provides an employer who is liable to pay an amount under a registered settlement agreement must pay the amount within 14 days after the agreement is registered or, if another law (including a Commonwealth law) prevents payment within that period, within 7 days after payment is permitted under that other law. This clause is needed because Commonwealth social security laws prevent payment to workers until clearance is given by the relevant Commonwealth department to ensure no debt is owed by a worker who has received social security payments.

**Clause 157. Limit on lump sum compensation included in settlement agreement**

[WCIMA s. 31J]

Clause 157 provides for a maximum amount on the combined income compensation and permanent impairment compensation entitlements, which is the same as the combined limit under the current Act.

## **PART 3 - INJURY MANAGEMENT**

### **Part 3 Division 1 – General**

#### **Clause 158. Term used: treating medical practitioner**

[New Provision]

Clause 158 defines the term *treating medical practitioner* used in Part 3.

#### **Clause 159. Employer must establish injury management system**

[WCIMA 1981 s.155B]

Clause 159 requires employers to establish an injury management system for their workers. The injury management system must be established and implemented in accordance with the regulations and be described in a document available to workers.

### **Part 3 Division 2 – Return to work**

#### **Clause 160. Duty of employer to establish and implement return to work program**

[WCIMA 1981 s.155C]

Clause 160 defines the term *return to work program* and requires a return to work program be established and implemented on the same basis as the current Act.

#### **Clause 161. Employer may be ordered to establish and implement return to work program**

[WCIMA 1981 s.156B]

Clause 161 provides for an injured worker to apply to an arbitrator to require an employer to establish a return to work program or alter the terms of a return to work program, and sets out the circumstances in which an arbitrator is able to exercise the power to do so. Clause 161 clarifies a worker's rights and the powers of an arbitrator relative to the current Act.

#### **Clause 162. Duties of insurer**

[WCIMA 1981 s.155D]

Clause 162 provides for an insurer's obligation to advise insured employers about the obligation to establish and implement a return to work program if required by the Act. Clause 162 also requires an insurer to assist an employer to comply with those obligations where requested, and to discharge any of those obligations if requested by an employer.

### **Clause 163. Duties of worker**

[New provision, WCIMA 1981 s.156B]

Clause 163 consolidates in one place a worker's return to work duties.

It is a worker duty to cooperate with their employer in the return to work process and make reasonable efforts to return to work. This includes actively participating in the development of return to work programs and complying with reasonable obligations of a return to work program or workplace rehabilitation, and new requirements to attend a return to work case conference, and promptly provide certificates of capacity to the employer's insurer.

### **Clause 164. Consequences of refusal or failure to comply with s.163 duty**

[WCIMA 1981 s.72B, 156B]

Clause 164 provides for the consequences of a worker's refusal or failure to comply with the duties in clause 163. Clause 164 consolidates similar provisions in the current Act including powers of an arbitrator to make orders for the worker to comply with the duty, suspend income compensation payments, or cease the entitlement to income compensation after repeated non-compliance following an earlier order.

An insurer or self-insurer cannot unilaterally suspend or cease income compensation for failure of the worker to comply with their return to work duties.

### **Clause 165. Attendance at return to work case conference**

[New provision]

Clause 165 requires a worker to attend a return to work case conference arranged by the employer, employer's insurer, the worker's treating medical practitioner or a workplace rehabilitation provider to support a worker's recovery and facilitate return to work.

Clause 165 also provides for regulations to address the conduct of, and procedural requirements associated with, return to work case conferences.

Any breach of a worker's duty to attend a return to work case conference must be dealt with in the Conciliation and Arbitration Services where the matter will be objectively and impartially determined by an arbitrator.

### **Clause 166. Employer must provide position during incapacity**

[WCIMA 1981 s.84AA]

Clause 166 requires that during the 12-month period starting from the date a worker has incapacity for work, an employer must provide the worker with the position they held prior to the injury, or where that is not reasonable or the worker does not have capacity, provide another suitable position comparable in status and pay.

### **Clause 167. Host must cooperate with labour hirer**

[New provision]

Clause 167 requires host employers to cooperate with labour hirers to assist labour hirers comply with their return to work obligations.

Clause 167 affects parties to a labour hire arrangement, in recognition of the fact that labour hire arrangements with host employers can be long term and the host may be well placed to provide return to work opportunities for a labour hire worker that was injured working for them.

#### **Clause 168. Dismissal of injured worker**

[WCIMA s.84AB]

Clause 168 provides an employer must not dismiss a worker during the first 12-months since incapacity solely or mainly because of the worker's incapacity. An employer may dismiss a worker for any other lawful reason, but only where the employer has provided the worker with notice in the approved form providing 28-days' notice.

Clause 168 clarifies the obligations of an employer relative to section 84AB of the current Act and removes an administrative burden in the current Act that requires the employer to inform WorkCover WA of its intentions to dismiss a worker.

### **Part 3 Division 3 – Certificates of capacity**

#### **Clause 169. Issue of certificate of capacity**

[WCIMA 1981 s.57A(1)(b), 57B(1)(b), 61(1)]

Clause 169 provides for what must be specified in a certificate of capacity. The certificate of capacity conveys important information about injury, incapacity and medical management, which supports a worker's claim and informs return to work planning.

Clause 169 also provides for regulations to allow health professionals other than the worker's treating medical practitioner to issue certificates of capacity in specified circumstances.

#### **Clause 170. Treating medical practitioner**

[New provision]

Clause 170 provides workers have the right of choice of treating medical practitioner and cannot be required to be treated by a medical practitioner of the employer's choosing, as well as setting out the functions of a treating medical practitioner.

#### **Clause 171. Employer, insurer and agent of insurer must not be present at examination or treatment**

[New provision]

Clause 171 prohibits a worker's employer, or the employer's insurer or agent, being present whilst the worker is being physically or clinically examined or treated by the worker's treating medical practitioner. Clause 171 implements a 2021 election commitment.

Clause 171 does not constrain an employer from communicating with the treating medical practitioner about return to work issues, which can be facilitated with the

worker's consent after the examination is concluded or as part of a return to work case conference.

### **Part 3 Division 4 – Workplace rehabilitation providers**

#### **Clause 172. Approval of workplace rehabilitation providers**

[WCIMA 1981 s.156(1)(a)]

Clause 172 requires workplace rehabilitation providers to apply, in the approved form, to WorkCover WA for approval to operate in the scheme.

#### **Clause 173. Determination of application for approval**

[WCIMA 1981 s.156(2)]

Clause 173 requires WorkCover WA must consider an application of a workplace rehabilitation provider and grant, or refuse to grant, approval. The regulations may specify criteria to be satisfied for approval to be granted.

The use of regulations with respect to criteria is appropriate due to the need for flexibility when considering the appropriate criteria a workplace rehabilitation provider needs to satisfy.

#### **Clause 174. Conditions of approval**

[WCIMA 1981 s.156(1)(a), (3)]

Clause 174 provides for conditions of an approval granted under clause 173, which will primarily be set out by regulations. Clause 174 also provides WorkCover WA with the power to impose conditions and vary conditions on an approval.

Clause 173 clarifies and condenses the requirements relative to sections 156(1)(a) and (3) of the current Act.

#### **Clause 175. Duration of approval**

[New provision]

Clause 175 provides for an approval under clause 173 to be granted for a fixed period or to remain in force indefinitely and sets out how such approvals come to an end.

Clause 175 provides WorkCover WA with greater discretion and flexibility in its regulatory role as part of a modernised framework.

#### **Clause 176. Suspension or cancellation of approval**

[WCIMA 1981 s.156(1)(b)]

Clause 176 provides for WorkCover WA to suspend or cancel an approval given under clause 173 where the workplace rehabilitation provider does not satisfy criteria for approval, fails to comply with the Act or regulations or fails to comply with a condition of approval.

Clause 176 also allows a workplace rehabilitation provider to cancel their approval of their own volition.

### **Clause 177. Register of approved workplace rehabilitation providers**

[WCIMA 1981 s.156A(1)]

Clause 177 requires WorkCover WA to maintain and make available for inspection, a register of the names and contact details of approved workplace rehabilitation providers.

### **Clause 178. Performance monitoring and review of approved workplace rehabilitation providers**

[WCIMA 1981 s.156]

Clause 179 provides WorkCover WA with the regulatory power to monitor and review the activities of approved workplace rehabilitation providers. WorkCover WA may inspect financial and other documents to ensure the activities of the workplace rehabilitation provider are being carried out judiciously. An approved workplace rehabilitation provider must assist WorkCover WA in its investigation and a penalty provision requires a person cannot hinder or obstruct a WorkCover WA investigation.

This clause expands and clarifies the powers relative to section 156 of the current Act and provides WorkCover WA with greater capacity to exercise its regulatory role and regulate the conduct of workplace rehabilitation providers under a modernised framework.

## **PART 4 - MEDICAL ASSESSMENT**

### **Part 4 Division 1 – Preliminary**

#### **Clause 179. Term used: Permanent Impairment Guidelines**

[WCIMA s.146]

Clause 179 defines the term *Permanent Impairment Guidelines* used in Part 4.

### **Part 4 Division 2 – Medical examination of worker**

#### **Clause 180. Power to require medical examination of worker**

[WCIMA s.64, 65, 66, 70]

Clause 180 provides for a worker to be required to undergo a medical examination if required by an insurer or self-insurer. A medical examination and report of the worker's condition is usually requested when an insurer or self-insurer is assessing liability for the claim or reviewing a worker's ongoing entitlement, and a medical opinion is sought. Clause 180 also requires the written report be shared with the worker and provides for procedural matters to be dealt with by regulations.

#### **Clause 181. Worker contravening requirement for medical examination**

[WCIMA 1981 s.72A]

Clause 181 provides for the consequences of a worker failing to comply with an obligation to attend a medical examination without reasonable excuse.

Where a worker contravenes a requirement for a medical examination, an arbitrator may suspend compensation payments and suspend the worker's capacity to prosecute proceedings, which can be revoked when the arbitrator is satisfied the worker is no longer contravening the requirement for medical examination. Should a worker contravene the requirement for medical examination for more than one month, an arbitrator may cease the worker's entitlements entirely.

An insurer or self-insurer cannot unilaterally suspend or cease income compensation for contravening a medical examination requirement.

## **Part 4 Division 3 – Assessing degree of permanent impairment**

### **Clause 182. Assessments to which Division applies**

[WCIMA 1981 s.146, 146B to 146E]

Clause 182 provides that Part 4 Division 3 applies to the assessment of the worker's degree of permanent impairment for the purposes of permanent impairment or dust disease compensation entitlements, threshold requirement for commencing common law proceedings, or a special increase the medical and health expense general limit amount.

### **Clause 183. Method of assessment**

[WCIMA 1981 s.146A(1)]

Clause 183 requires a worker's degree of permanent impairment be assessed as a percentage, in accordance with Permanent Impairment Guidelines published by WorkCover WA.

### **Clause 184. Assessing degree of permanent impairment when multiple injuries arise from single event**

[WCIMA 1981 s.93H]

Clause 184 defines the term *event* used in Part 4 relating to how permanent impairment is to be assessed where a worker suffers from multiple injuries from a single event.

### **Clause 185. Secondary conditions disregarded in certain cases**

[WCIMA 1981 s.146C to 146E]

Clause 185 defines the term *secondary condition* used in Part 4 and requires that, when assessing permanent impairment, certain secondary conditions must be disregarded.

### **Clause 186. Assessment by approved permanent impairment assessor or Dust Disease Medical Panel**

[WCIMA 1981 s.146A(2)]

Clause 186 requires a worker's degree of permanent impairment be determined by an approved permanent impairment assessor, unless the permanent impairment relates to a dust disease, in which case the assessment must be made by a Dust Disease Medical Panel.

Clause 186 changes the terminology relative to the current Act (i.e. 'approved permanent impairment assessor' in place of 'approved medical specialist').

### **Clause 187. Permanent Impairment Guidelines**

[WCIMA 1981 s.146R]

Clause 187 requires WorkCover WA to publish Permanent Impairment Guidelines to be used by approved assessors to evaluate a worker's degree of permanent impairment. Clause 187 permits WorkCover WA to adopt other publications with or without modification for use as the Permanent Impairment Guidelines.

### **Clause 188. Requirement for injury to have stabilised**

[WCIMA 1981 s.146B to 146E]

Clause 188 requires an injury to have stabilised before an assessment of degree of permanent impairment can be made. Clause 188 allows the Permanent Impairment Guidelines to provide for circumstances where an assessment of degree of permanent impairment can be made before an injury has stabilised.

### **Clause 189. Asymptomatic pre-existing disease**

[WCIMA 1981 s.146A(4)]

Clause 189 provides when dealing with a recurrence, aggravation or acceleration of an asymptomatic pre-existing disease, the Permanent Impairment Guidelines must not provide for a deduction with respect to the asymptomatic pre-existing disease before a worker's injury occurred.

### **Clause 190. Request for assessment of permanent impairment**

[WCIMA 1981 s.146A(3)]

Clause 190 provides for a request for assessment of permanent impairment to be made in the approved form according to circumstances set out in regulations.

### **Clause 191. Powers of approved permanent impairment assessors**

[WCIMA 1981 s.146G]

Clause 191 provides for the powers of approved permanent impairment assessors when conducting assessments on injured workers. The powers primarily relate to requiring a worker to attend for assessment, conduct of assessments, and requiring the production of documents or information of a worker, employer or insurer to assist the permanent impairment assessor make an assessment.

Clause 191 authorises regulations to be made to set the period within which requests must be complied with and permits WorkCover WA to disclose relevant information to an assessor.

### **Clause 192. Report on results of assessment**

[WCIMA 1981 s.146H]

Clause 192 requires an approved permanent impairment assessor to provide a report in the approved form including a certificate, statement of reasons to justify the assessment and other information as required. Clause 192 also empowers the Director to require an error be corrected by an assessor and requires an assessor to notify the worker, employer and insurer if a worker's condition has not stabilised.

## **Part 4 Division 4 – Permanent impairment assessors**

### **Clause 193. Approval of permanent impairment assessors**

[WCIMA 1981 s.146F]

Clause 193 permits WorkCover WA to approve medical practitioners as permanent impairment assessors and to establish criteria for approval.

Clause 193 modernises, strengthens and clarifies the approval and regulation of permanent impairment assessors relative to the current Act.

#### **Clause 194. Conditions of approval**

[WCIMA 1981 s.146F]

Clause 194 provides for conditions to which an approved permanent impairment assessor is subject whilst approved to conduct permanent impairment assessments.

WorkCover WA is empowered, by written notice, to impose conditions or impose further conditions on an individual assessor and vary those conditions.

Clause 194 strengthens the capacity for WorkCover WA to effectively regulate permanent impairment assessors compared to the current Act.

#### **Clause 195. Minister may fix scale of fees and charges for permanent impairment assessment**

[WCIMA 1981 s.292(3)]

Clause 195 provides for the Minister, on WorkCover WA's recommendation, to fix scales of fees and charges for services provided by approved permanent impairment assessors. An order under clause 195 may adopt another publication with or without modification and is to be treated as subsidiary legislation.

#### **Clause 196. Duration of approval**

[New provision]

Clause 196 provides for WorkCover WA to grant approval to permanent impairment assessors for fixed periods or indefinitely and deals with how approvals may come to an end.

#### **Clause 197. Suspension or cancellation of approval**

[WCIMA 1981 s.146F]

Clause 197 empowers WorkCover WA, by written notice, to suspend or cancel a permanent impairment assessor's approval for not satisfying criteria or conditions of approval or for compliance issues. An approved permanent impairment assessor may also request cancellation of their own volition.

#### **Clause 198. Compliance audits and investigations**

[WCIMA 1981 s.146F]

Clause 198 empowers WorkCover WA to conduct audits and investigations of approved permanent impairment assessors to determine compliance with legislation, regulations, conditions of approval and the Permanent Impairment Guidelines. An approved permanent impairment assessor must provide information and documents on request to assist WorkCover WA assess compliance.

Clause 198 expands and clarifies powers relative to the current Act and provides WorkCover WA with greater capacity to exercise its regulatory role and regulate the conduct of approved permanent impairment assessors under a modernised framework.

**Clause 199. Register of approved permanent impairment assessors**

[WCIMA 1981 s.146F(6) and (7)]

Clause 199 requires WorkCover WA to maintain a register of the names, contact details and other pertinent information of approved permanent impairment assessors, to be available for inspection on the WorkCover WA website. Clause 199 provides for how the register is to be made available and allows the names of assessors to be removed from the register once their approval has been cancelled.

## **PART 5 – INSURANCE**

### **Part 5 Division 1 — General**

#### **Clause 200. Terms used**

[New provision, WCIMA 1981 s. 159]

Clause 200 defines terms that are used in Part 5.

#### **Clause 201. Agency arrangements**

[New provision]

Clause 201 provides for WorkCover WA to enter into an agency arrangement for the appointment of a person to act as agent for Workcover WA in connection with the performance of insurance functions under Part 5, (for example to manage claims payable from the Default Insurance Fund). Any appointed agent is subject to control and direction of WorkCover WA.

### **Part 5 Division 2 — Employer obligations**

#### **Clause 202. Requirement for employers to be insured**

[WCIMA 1981 s.160(1)]

Clause 202 establishes the obligation of an employer to have a current workers compensation policy for the full amount of the employer's liability to pay compensation and damages to the employer's workers.

#### **Clause 203. Information to be provided by employer to insurer**

[WCIMA 1981 s.160(2),(2b)]

Clause 203 provides for employers to provide a statement of estimated remuneration when applying for the issue or renewal of a workers compensation policy and a statement of actual remuneration paid over the previous policy period.

An employer applying for the issue or renewal of a workers compensation policy must also provide to the licensed insurer any other information required by the regulations. This is to enable the insurer to have sufficient information about the risk profile of the employer in order to issue or renew the policy or provide a quote of the premium payable.

#### **Clause 204. Offences**

[WCIMA 1981 s.170(1)]

Clause 204 provides for offence provisions applying to the failure of an employer to insure, the failure of an employer to provide the information required for the issue or renewal of a workers compensation policy, and an employer providing information or a statement that is false or misleading.

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

In practice only a small proportion of offences progress to prosecution. Most offences for failing to effect or renew a workers compensation policy are dealt with via an infringement notice and modified penalty. The increase in the maximum penalty is required as a deterrent and to ensure it can be applied when the courts consider it necessary for high risk, recidivous offenders.

#### **Clause 205. Evidence of non-compliance with insurance requirements**

[WCIMA 1981 s.170(4)]

Clause 205 provides that in any prosecution for an offence of failing to comply with the requirement of clause 202 to be insured, proof that the employer failed to comply with an inspector's request to produce a workers compensation policy issued to the employer is, in the absence of evidence proving the contrary, sufficient evidence that the employer failed to comply with the requirement.

#### **Clause 206. Defence: employment not connected with this State**

[WCIMA 1981 s.170(3a),(3b)]

Clause 206 provides it is a defence to a prosecution for an offence of failing to comply with a requirement to be insured or to provide statements at policy inception or renewal if the court is satisfied that at the time of the alleged offence the employer believed on reasonable grounds that the worker's employment was not connected with this State.

#### **Clause 207. Recovery of premiums avoided by employer**

[WCIMA 1981 s.170(2),(2a)]

Clause 207 provides for a court to make a premium reimbursement order (i.e. order to pay avoided premium) when convicting an employer for an offence under clause 204.

Subclause 207(3) provides for WorkCover WA's certificate of the amount of avoided premium – following investigation – to be admissible as evidence in proceedings. Subclause 207(4) provides for WorkCover WA to make an estimate of avoided premium based on information available to WorkCover WA and for that estimate to be presumed accurate. Subclause 207(4) is required where an employer seeks to frustrate investigations by not disclosing information such as wage records to enable an assessment of avoided premium to be made. If subclause 207(4) applies WorkCover WA's estimate cannot be challenged on the basis that insufficient information was available to the making of an accurate assessment but can be challenged by the provision of information that enables a more accurate estimate to be made.

### **Clause 208. Liability of responsible officers of corporations**

[WCIMA 1981 s. 170(2b), (2c), (2d), (5), (6)]

Clause 207 provides for a responsible officer of a corporation to be liable for an offence committed by the corporation under clause 204 if the officer failed to take all reasonable steps to prevent the commission of the offence. Subclause 208(3) clarifies what the court must have regard to in determining whether things done or omitted to be done by a responsible officer constitute reasonable steps, based on changes in corporations law.

### **Clause 209. Records to be kept by employer**

[New provision]

Clause 209 provides for an employer's record keeping obligations relating to the numbers of workers employed and the total remuneration paid to workers for each period of insurance, and any other matter relating to information required to be provided by the employer to the insurer required by the regulations.

This ensures records are maintained relevant to an employer's insurance obligations to assist with insurance matters and compliance activities by WorkCover WA.

### **Clause 210. Insurer may recover underpaid premiums from employer**

[WCIMA 1981 s. 172]

Clause 210 provides for recovery of underpaid premiums from employers if the employer provided false or misleading remuneration statements, though the power to recover underpaid premiums is given to the insurer, rather than WorkCover WA as in the current Act.

### **Clause 211. Recovery of costs of audit of employer**

[New provision]

Clause 211 provides for an insurer to recover the reasonable costs of auditing an employer's records under a workers compensation policy if the audit discloses false or misleading information relevant to the calculation of premium (and as a result the employer has been charged premium that is at least 25% less than the premium that would otherwise have been payable).

### **Clause 212. Certificate of currency**

[WCIMA 1981 s. 160(7),(8)]

Clause 212 provides for an employer to make available for inspection by WorkCover WA a certificate of currency issued by a licensed insurer.

### **Clause 213. Workers compensation insurance brokers**

[WCIMA 1981 s. 292(1)(l), new provision]

Insurance brokers play an important part as agents of employers in connection with workers compensation insurance and, claim and injury management. Despite this role brokers are not recognised or regulated under the current Act, other than a power for regulations to set maximum commission or brokerage fees.

Currently, a system of self-regulation applies which is supported by a Brokers Code of Practice, developed collaboratively by WorkCover WA and the National Insurance Brokers Association, which provides clear guidelines for insurance brokers operating within the workers compensation system. This is supported by ongoing industry engagement and training on issues affecting brokers.

Clause 213 provides for a scheme for the registration of workers compensation insurance brokers if the current method of self-regulation, engagement and training is insufficient in dealing with potential conduct or service delivery risks specific to workers compensation in the future.

Statutory based licensing or registration systems apply to most service providers in the workers compensation scheme setting out eligibility for registration, activities that can be undertaken, and compliance obligations with respect to service standards. Clause 213 is comparable with the licensing and registration frameworks that apply to other service providers operating in the workers compensation scheme.

#### **Clause 214. Terms used**

[New provision]

Clause 214 defines ‘*contractor*’ and ‘*principal*’ used in Part 5 Division 2 Subdivision 2.

#### **Clause 215. Both principal and contractor taken to be employers**

[WCIMA 1981 s.175(1), (3)-(7)]

Clause 215 deems both the principal and contractor as ‘employers’ of a worker employed by the contractor in circumstances where:

- the worker suffers an injury doing work that is directly a part of or process in the trade or business of the principal; and
- the injury arises in respect of premises on which the principal has undertaken to do the work or that otherwise are under the control or management of the principal.

#### **Clause 216. Claim or proceedings against principal**

[WCIMA 1981 s.175(5)]

Clause 216 provides that in any claim against a principal, for the purpose of calculating the amount of a worker’s entitlement to income compensation, a reference to the earnings of the worker in the employment concerned must be read as a reference to the earnings of the worker under the contractor.

#### **Clause 217. Indemnity**

[WCIMA 1981 s.175(2),(3A),(3B)]

Clause 217 provides a principal is entitled to indemnity from a contractor for any liability to pay compensation to a contractor’s workers. The right of indemnity does not allow recovery by the principal from the worker for any amount the worker receives from the contractor, or any amount the worker receives from WorkCover WA (under the Default Insurance Fund) or recovery of any amount from WorkCover WA.

### **Clause 218. Effect of judgment against principal or contractor**

[WCIMA 1981 s.175(4)]

Clause 218 provides where a principal and a contractor are jointly and severally liable, a judgment obtained against one is not a bar to proceedings against the other except to the extent that the judgment has been satisfied.

### **Clause 219. Application of Subdivision to subcontractors**

[WCIMA 1981 s.175(6)]

Clause 219 provides the provisions relating to principals and contractors extend to subcontracts for the execution of work down the contract chain (i.e. subcontractors).

### **Clause 220. Subdivision does not extend right to damages**

[WCIMA 1981 s.175(8)]

Clause 220 provides the deeming effect of making both the principal and contractor as employers for statutory compensation purposes does not deem them as employers for common law purposes. Neither does it make them liable to pay any damages that, but for Part 5 Division 2 Subdivision 2, the principal or contractor would not be liable to pay.

### **Clause 221. Contractor remuneration information**

[New provision]

Clause 221 provides even though a principal contractor is deemed an employer of a contractor's worker under Part 5 Division 2 Subdivision 2, the principal contractor is not required to comply with requirements to make remuneration statements for the contract worker.

This only applies if the principal shows when applying for the issue or renewal of a workers compensation policy the contractor who employs the worker holds a workers compensation policy that extends to indemnifying the principal in respect of any liability that arises in respect of the worker during the relevant insurance period.

### **Clause 222. What constitutes an avoidance arrangement**

[WCIMA 1981 s. 175AA(1), (2)]

Clause 222 describes a workers compensation avoidance arrangement (i.e. a sham contract).

### **Clause 223. Offence if work done under avoidance arrangement**

[WCIMA 1981 s. 303A]

Clause 223 establishes an offence provision for engaging a person to do work under an avoidance arrangement. The penalty has increased to \$15,000 as recommended in WorkCover WA's 2014 Final Report.

### **Clause 224. Arbitrator's determination about avoidance arrangement**

[WCIMA 1981 s. 175AA(3),(4)]

Clause 224 enables a person to apply to an arbitrator for a determination as to whether a person was, at a particular time or during a particular period, doing work for another person under an avoidance arrangement.

### **Clause 225. Effect of avoidance arrangement on compensation and insurance**

[WCIMA 1981 s. 175AA(5)-(9)]

Clause 225 addresses the effect of an avoidance arrangement on compensation and insurance.

## **Part 5 Division 3 — Licensed insurers**

### **Clause 226. Offence: unlicensed insurers**

[WCIMA 1981 s. 161A]

Clause 226 provides a person must not issue or renew an insurance policy that is or that purports to be a workers compensation policy unless the person is a licensed insurer. The penalty has increased to \$15,000 as recommended in WorkCover WA's 2014 Final Report.

### **Clause 227. Application for licence**

[WCIMA 1981 s. 161(4)]

Clause 227 provides a body corporate authorised under the Insurance Act 1973 (Commonwealth) to carry on insurance business in Australia may apply to WorkCover WA for the grant of an insurer licence. An application must be made in the form and manner determined by WorkCover WA.

### **Clause 228. Determination of licence application**

[WCIMA 1981 s. 161(2)-(4)]

Clause 228 provides for WorkCover WA to determine the licence application having regard to criteria for the grant of an insurer licence in the regulations, and for WorkCover WA to issue guidelines relating to matters taken into consideration in determining an application for an insurer licence.

### **Clause 229. Conditions of licence**

[WCIMA 1981 s. 161(3),(4)]

Clause 229 provides an insurer license is subject to any conditions prescribed by the Act or regulations and any conditions (not inconsistent with this Act or the regulations) imposed by WorkCover WA when the licence is granted or at any time during the currency of the licence.

It is a requirement for a licensed insurer to comply with any condition to which the insurer licence is subject with a penalty of \$10,000 for non-compliance.

### **Clause 230. Duration of licence**

[WCIMA 1981 s. 161(5)]

Clause 230 provides flexibility for an insurer licence to be granted for a fixed period or to be granted to remain in force indefinitely.

### **Clause 231. Suspension, cancellation or surrender of licence**

[WCIMA 1981 s. 161(3),(7)]

Clause 231 provides WorkCover WA may, by notice served on the licensed insurer, suspend or cancel an insurer licence if of the opinion that the insurer —

- does not satisfy any of the criteria that must be satisfied for the grant of a licence
- has failed to comply with any provision of the Act or the regulations
- has failed to comply with any condition of the licence.

### **Clause 232. Performance monitoring and review of insurers**

[New provision]

Clause 232 provides authority for WorkCover WA to monitor and review the workers compensation functions of licensed insurers to determine whether those functions are being carried out effectively, economically and efficiently and in compliance with the Act, the regulations and any conditions of the insurer's licence. In order to carry out this function WorkCover WA may inspect the financial and other records of a licensed insurer.

### **Clause 233. Improvement notice to licensed insurer**

[New provision]

Clause 233 provides for WorkCover WA to issue an improvement notice to a licensed insurer if WorkCover WA is satisfied that a licensed insurer has contravened a provision of the Act, the regulations, or a condition of its insurer licence. An improvement notice may be as an alternative to or in addition to any other action that may be taken.

Improvement notices are utilised by regulators in other workers compensation jurisdictions as a more effective method to improve service provider performance and compliance than formal suspension or cancellation of a licence.

### **Clause 234. Specialised insurers**

[New provision]

Clause 234 provides for WorkCover WA to grant an insurer licence subject to a condition (a specialised insurer condition) that limits the insurance business carried on pursuant to the licence to a particular industry or class of business or employer. This will provide transparency for the small number of insurers intending to only issue workers compensation insurance policies to a specific industry sector or class of employer.

### **Clause 235. Special arrangements for Insurance Commission and public authorities**

[New provision, s 44 of ICWA Act]

Clause 235 provides the Insurance Commission of Western Australia (ICWA) is to be taken to be a licenced insurer and the licence will be subject to a specialised insurer condition that limits ICWA to the insurance of public authorities under the *Insurance Commission of Western Australia Act 1986*.

Clause 235 provides various provisions in the Bill impacting on insurers or insured employers are modified or not applicable to ICWA and public authorities (for example, provisions relating to premium assessment based on an industry classification order, as ICWA has a different methodology for determining premium contributions by public authorities).

### **Clause 236. Obligation of licensed insurers to insure employers**

[WCIMA 1981 s. 154A, 160(3)]

Clause 236 provides for the existing obligation that requires insurers to issue or renew a workers compensation policy to any employer who makes a request. The obligation extends to providing a quote of the premium to be demanded for the issue or renewal of a workers compensation policy.

In order to issue or renew a policy, or provide a quote of the premium, insurers require information about the risk profile, safety performance and claims experience of the employer. If the information required is not provided insurers are unable to assess and price the risk appropriately. Subclause 236(2) modifies the insurer's obligation to issue or renew a policy, or provide a quote, if the employer has failed to comply with a request to provide the information.

### **Clause 237. Terms of insurance and form of policies**

[WCIMA 1981 s. 169]

Clause 237 provides for regulations to limit, modify or exclude any requirement for employers to have a workers compensation policy in respect of certain liabilities (e.g. to pay damages in respect of a claim brought in respect of an injury occurring outside of Australia), or to limit the amount insured (e.g. aggregate amount of damages arising out of all claims in respect of a single event).

The provision also provides for the form, content, terms and conditions of a workers compensation policy to be prescribed in regulations. This will ensure workers compensation policy key terms are standardised in regulations, rather than as contractual conditions made by an insurer at its discretion.

### **Clause 238. Adjustable premium policies**

[New provision]

Clause 238 provides a framework for adjustable premium policies (also known as burning cost policies).

An adjustable premium policy means a workers compensation policy that provides for the adjustment of the premium for the policy during the period of insurance under the

policy with adjustments determined on the basis of the claims experience of the employer during the period of insurance.

Where there is agreement to an adjustable premium policy between an insurer and an employer the right to have the premium reviewed under clause 255 is not available.

Regulations may modify the requirements of employers to provide remuneration statements as otherwise required under clause 203 and require insurers to provide reports to WorkCover WA in respect of the issue of adjustable premium policies.

### **Clause 239. Insurer to indemnify employer for compensation payments**

[WCIMA 1981 s. 57A(5)]

Clause 239 requires insurers to indemnify employers for payments of compensation by the employer if the insurer has accepted (or is taken to have accepted) or an arbitrator has determined that the employer is liable to make the payments of compensation.

### **Clause 240. Coverage of insurance policy not limited by employer representations**

[New provision]

Clause 240 provides the indemnity provided by a workers compensation policy issued by a licensed insurer extends to apply in respect of all workers employed by the employer during the period of insurance under the policy. The indemnity is not limited by any information provided or representation made to the insurer by the employer as to —

- the nature of the work engaged in by the employer's workers
- the industry classification of the employer's business
- the remuneration of workers employed by the employer
- any other matter relevant to the determination of the premium payable for the policy

### **Clause 241. Refusal of indemnity**

[WCIMA 1981 s. 174A]

Clause 241 provides for regulations to set out the permitted circumstances in which a licensed insurer may refuse to indemnify an employer against liability to pay compensation or damages in respect of an injury to the employer's workers. Where indemnity is lawfully refused the Default Insurance Fund is liable to pay compensation to the worker and may seek recovery from the employer (Part 5 Division 7).

There are likely to be very limited (possibly none at all) circumstances prescribed permitting insurers to refuse indemnity to the employer, however this issue will be canvassed further in the development of regulations and the standard form workers compensation policy.

In the event indemnity refusal is permitted, clause 241 provides for notification to WorkCover WA, the employer and worker within 5 days after the decision to refuse indemnity. Clauses 241(4) – (6) address what happens to the claim if the notice is sent before or after the insurer is required to make a liability decision, and how disputes about the indemnity refusal and the employer’s liability for compensation are dealt with.

**Clause 242. Cancellation of insurance policy**

[WCIMA 1981 s. 160(3a)]

Clause 242 requires licensed insurers to obtain WorkCover WA permission to cancel a workers compensation policy. A new provision clarifies that a licensed insurer cannot cancel a workers compensation policy for non-payment of premium unless WorkCover WA is satisfied that the insurer has given the employer adequate notice of the amount of premium due and the premium has remained unpaid for the period prescribed in regulations.

**Clause 243. Lapsing of insurance policy**

[WCIMA 1981 s. 160(4)-(6)]

Clause 243 clarifies when a workers compensation policy is taken to have lapsed. Like the current Act, clause 243 provides the licensed insurer remains liable to indemnify the employer in respect of a liability incurred after the end of a period of insurance where a liability is incurred within 7 days of WorkCover WA being notified of the policy lapsing.

**Clause 244. Worker’s rights against insurer when employer cannot be proceeded against**

[WCIMA 1981 s. 173]

Clause 244 deals with when an employer has commenced to be or is wound up, cannot be found, or has ceased to carry on business to which a workers compensation policy related.

A licensed insurer has the same liability to the worker and the same rights and remedies in respect of that liability that the employer otherwise would have. A worker of the employer may proceed against and recover from the insurer on the basis of the liability that the insurer has under this clause.

**Part 5 Division 4 — Self-insurance**

**Clause 245. Application for self-insurer licence**

[WCIMA 1981 s. 164(1)]

Clause 245 provides an employer may apply to WorkCover WA for a self-insurer licence. An application must be made in the approved form and accompanied by documents determined by the CEO.

### **Clause 246. Coverage of related entities by group self-insurer licence**

[WCIMA 1981 s. 164(1)]

The current Act does not expressly address the status of self-insurance arrangements covering liabilities of related employers or entities (such as subsidiaries).

Clause 246 defines a 'related entity' and provides a self-insurer licence may be granted on terms that extend the licence to one or more specified related entities of the holder of the licence. The licence is then a group self-insurer licence with each of the related entities to which the licence extends constituting a group of related self-insurers covered by the licence.

WorkCover WA may, at any time by notice in writing to the holder of a self-insurer licence, amend the terms of the licence to change the related entities to which the licence extends (by adding, removing or changing the name of a related entity).

### **Clause 247. Liability of holder of group self-insurer licence**

[WCIMA 1981 s. 164(1)]

Clause 247 provides the holder (or former holder) of a group self-insurer licence is jointly and severally liable for self-insurer liabilities of an employer that arose while the employer was a self-insurer covered by the group self-insurer licence.

### **Clause 248. Application of licensed insurer provisions to self-insurers**

[WCIMA 1981 s. 164-168]

Clause 248 provides for a new framework for WorkCover WA to licence and regulate self-insurers by applying various clauses of the Bill to self-insurers in the same manner as the clauses apply to licensed insurers. These include:

- self-insurers must hold a self-insurer licence
- self-insurer licences will be granted by WorkCover WA - rather than the Governor required in the current Act
- regulations may specify criteria that must be satisfied for the grant of a self-insurer licence
- a self-insurer licence is subject to conditions prescribed by the Act, regulations or WorkCover WA
- self-insurer licences may be fixed term or granted to remain in force indefinitely
- WorkCover WA may monitor and review self-insurers to determine compliance with the Act, regulations and licence conditions
- WorkCover WA may suspend or cancel a self-insurer licence (and/ or issue an improvement notice) if a self-insurer fails to satisfy the criteria for the grant of a licence, or fails to comply with any provision of the Act or regulations, or a licence condition.

Clause 248 also provides WorkCover WA must not approve of the surrender of a self-insurer licence unless satisfied that after the licence is surrendered the employer and each employer to which the licence extends —

- will not employ any workers, or
- will hold a workers compensation policy

#### **Clause 249. Terms used**

[New provision]

Clause 249 defines terms that are used in Part 5 Division 4 Subdivision 2 of the Bill.

#### **Clause 250. Requirement for security**

[WCIMA 1981 s. 164(1)]

Clause 250 requires self-insurers to provide security for payment of all self-insurer liabilities of each employer to which the licence extends in the event the self-insurer is insolvent or cannot meet its compensation liabilities. The security is provided by means of a guarantee by a financial institution approved by WorkCover WA that guarantees payment of the required security amount to WorkCover WA on demand by WorkCover WA. There is flexibility for WorkCover WA to approve a self-insurer security being provided by means of a bond, indemnity or undertaking to pay or by other means WorkCover WA considers acceptable.

#### **Clause 251. Review and variation of required security amount**

[WCIMA 1981 s. 165]

Clause 251 provides for the self-insurer security amount to be reviewed and varied from time to time.

#### **Clause 252. Calling on security**

[New provision]

Clause 252 provides for WorkCover WA to demand payment under a self-insurer security for crediting to the Default Insurance Fund, if WorkCover WA is required to make payments in satisfaction of a claim in respect of a self-insurer liability to which the security relates.

### **Part 5 Division 5 — Insurance premiums**

#### **Clause 253. Fixing of recommended premium rates**

[WCIMA 1981 s. 151]

Clause 253 provides for the making of an industry classification order and the fixing of recommended premium rates by WorkCover WA, and is substantively the same as the current Act. An industry classification order classifies all industries for the purposes of recommending a premium rate for each industry class.

#### **Clause 254. Reports as to recommended premium rates**

[WCIMA 1981 s. 151A]

Clause 254 requires WorkCover WA to publish a report as to the actuarial basis of any recommended premium rate fixed, and the comparative claims experience of the different industry classifications concerned.

#### **Clause 255. Review of premium charged**

[WCIMA 1981 s. 152, 154]

Clause 255 enables an employer to seek a WorkCover WA review of the industry classification and/or the premium proposed to be applied by an insurer. A premium review can only be undertaken if the premium charged is at least 75% greater than the relevant recommended premium rate. Provisions for the review process have also been streamlined to ensure parties have made reasonable efforts to resolve the issue.

Existing provisions prohibiting an insurer from charging a loading on a recommended premium rate of more than 75%, unless permitted by WorkCover WA, are not replicated in the Bill.

### **Part 5 Division 6 — Default Insurance Fund**

#### **Clause 256. Establishment of Default Insurance Fund**

[New provision, EISFA s. 5, 11]

Clause 256 establishes a new Default Insurance Fund which consolidates into one fund the administrative and funding arrangements for liabilities associated with uninsured employers, insolvent insurers and self-insurers, and acts of terrorism.

The current safety net arrangements associated with these liabilities have evolved over time and are currently provided for in four separate Acts which contain distinct and overlapping governance arrangements and funding sources.

The Default Insurance Fund is to be a special purpose account under the *Financial Management Act 2006* and WorkCover WA is to have direction, control and management of the fund.

#### **Clause 257. Payments to and from DI Fund**

[EISFA s. 5, WCIMA s. 106(3)(b)]

Clause 257 provides for the various sources of payments into the Default Insurance Fund and provides that all amounts required under the Act to be paid from the Default Insurance Fund are charged to the Fund.

#### **Clause 258. Payments to and from General Account**

[EISFA s. 6A]

Clause 258 provides the Treasurer may direct WorkCover WA to transfer the whole or any part of excess funds in the Default Insurance Fund to the General Account for use in accordance with the Act. The Treasurer may also direct payments previously

transferred back to the Default Insurance Fund to make up, or partially make up, any insufficiency in the Default Insurance Fund.

#### **Clause 259. Advances to DI Fund**

[EISFA s. 7]

Clause 259 provides for the Treasurer to advance funds to WorkCover WA to meet an insufficiency in the Default Insurance Fund and for the repayment of any advance with interest. If possible, a transfer from the General Account must be made before an advance from the Treasurer can be considered and made.

#### **Clause 260. Terms used**

[New provision]

Clause 260 defines terms that are used in Part 5 Division 6 Subdivision 2 of the Bill relating to the calculation of contributions to the Default Insurance Fund.

#### **Clause 261. Required contributions by insurers and self-insurers to DI Fund**

[New provision, WCIMA 1981 s.109]

Clause 261 requires WorkCover WA each financial year to determine the amount (if any) that is required to be paid into the Default Insurance Fund to ensure its sustainable functioning.

Regard must be given to the amount standing to the credit of the Fund and the amount required to provide for existing and expected liabilities of the Fund, determined having regard to independent actuarial advice obtained by WorkCover WA.

Clause 261 also provides for the method of calculating contributions required from licensed insurers and self-insurers to yield the total annual Fund contribution for a financial year. The method is based on premium income for insurers and notional premium income for self-insurers and is substantively the same as the method of calculating the contributions to the WorkCover WA General Account under the current Act.

To the extent that a contribution payable under clause 261 includes an amount that is a tax the accompanying *Workers Compensation and Injury Management Amendment Bill 2023* provides for the imposition of a tax.

#### **Clause 262. Arrangements for payment of contributions**

[New provision, WCIMA 1981 s.109]

Clause 262 requires licensed insurers and self-insurers to pay contributions to WorkCover WA at the times and in accordance with the arrangements WorkCover WA determines and notifies to the licensed insurer or self-insurer. If a payment is not made an offence is committed and the debt may be recovered.

#### **Clause 263. Additional insurer contribution for unexpected claims**

[New provision, WCIMA 1981 s.109]

Clause 263 provides for WorkCover WA to collect an additional contribution from licensed insurers and self-insurers for payment into the Default Insurance Fund to

meet the cost of unexpected claims in the financial year where the initial contribution is inadequate.

To the extent that an additional contribution payable under clause 263 includes an amount that is a tax the accompanying *Workers Compensation and Injury Management Amendment Bill 2023* provides for the imposition of a tax.

#### **Clause 264. Provision of information by licensed insurers and self-insurers**

[New provision, WCIMA 1981 s.109]

Clause 264 requires licensed insurers and self-insurers to provide WorkCover WA with information WorkCover WA may reasonably require to determine the premium income of the licensed insurer or the notional premium income of the self-insurer.

### **Part 5 Division 7 — Uninsured employers**

#### **Clause 265. Uninsured employer**

[WCIMA s. 174(1)(b), (1AA)(d)]

Clause 265 defines *uninsured employer* for the purposes of Part 5 Division 7.

#### **Clause 266. Payment of compensation when employer uninsured**

[WCIMA s. 174(1), (5AA)]

Clause 266 requires WorkCover WA to pay a worker from the Default Insurance Fund the amount of compensation required to satisfy the liability of an uninsured employer and any award for costs. The obligation applies if an employer is uninsured 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. The obligation is substantively the same as the current Act.

#### **Clause 267. Payment of damages when employer uninsured**

[WCIMA s. 174(1AA), (5AA)]

Clause 267 requires WorkCover WA to pay a worker from the Default Insurance Fund the amount of damages required to satisfy a judgment against an uninsured employer and any award for costs. The obligation applies if an employer is uninsured, the damages are insurable damages under the Act, and the employer fails to pay the damages within 30 days after the due date for payment.

The reference to a judgment includes a reference to the acceptance of an offer to consent to judgment and to settlement by agreement made with WorkCover WA in the performance by WorkCover WA of the rights of an uninsured employer. A reference to damages awarded includes a reference to damages agreed.

#### **Clause 268. Payment of compensation for dust disease or prescribed disease when insurer unknown or has ceased operation**

[WCIMA s. 174(3), (4),(5)]

Clause 268 provides an arbitrator may order WorkCover WA to pay a worker compensation from the Default Insurance Fund if a worker is entitled to

compensation from an employer in respect of a dust disease or prescribed disease but the identity of the employer's insurer, if any, is not known or the employer's insurer has ceased to operate in Australia.

#### **Clause 269. Recovery of compensation or damages paid for uninsured employer**

[WCIMA s. 174(6), (7), (8), (9)]

Clause 269 provides for WorkCover WA to file a certificate in a court of competent jurisdiction to certify the amount of any payment of compensation or damages from the Default Insurance Fund. The certificate when filed is taken to be a judgment of the court for a debt payable by the uninsured employer to WorkCover WA of the amount stated in the certificate, and may be enforced accordingly.

#### **Clause 270. Setting aside certain judgments and agreements**

[WCIMA s. 174AAA]

Clause 270 provides for WorkCover WA to apply to the Supreme Court for an order setting aside a judgment or agreement that is the basis for a claim against the Default Insurance Fund for the payment of insurable damages by an employer who is uninsured in respect of the liability to pay the damages.

The Supreme Court may set aside the judgment or agreement if satisfied that there are reasonable grounds for believing that the employer has not taken all reasonable steps to protect the employer's own interests.

#### **Clause 271. Recovery of uninsured employer payment from officer of body corporate**

[WCIMA s. 174AA]

Clause 271 provides for WorkCover WA to sue and recover from the responsible officers of an uninsured body corporate the amount of compensation or damages that is not recoverable from the body corporate.

#### **Clause 272. Exercise by WorkCover WA of rights of uninsured**

[WCIMA s. 174(1a), 174AB]

Clause 272 provides for WorkCover WA to exercise the rights of an uninsured employer as the party against whom the claim or action is brought in place of the employer. The rights include becoming a party to proceedings, consenting to an award or order being made in a dispute proceeding or a judgment being given in a court proceeding, entering into a settlement, exercising rights in relation to injury management and return to work, and requiring workers to submit to medical examination.

#### **Clause 273. WorkCover WA's rights of indemnity and subrogation**

[WCIMA s.174AC]

Clause 273 provides for WorkCover WA to have rights of indemnity and subrogation in respect of payments made for compensation and damages liabilities of an uninsured employer. This includes rights of indemnity from an insurer, and the right

of an employer, or insurer of an employer, for contribution, apportionment of liability or otherwise.

**Clause 274. Employer’s duty to assist WorkCover WA**

[WCIMA s.174AD]

Clause 274 requires an uninsured employer to assist WorkCover WA if WorkCover WA is exercising, or likely to exercise, the rights of an employer.

**Clause 275. Liability of employer if employment believed to be not connected with this State**

[WCIMA s.174(5a)]

Clause 275 provides an uninsured employer is not liable to WorkCover WA for any payment for compensation or damages, if WorkCover WA is satisfied that the reason for an employer being uninsured is that the employer believed on reasonable grounds that the worker’s employment was not connected with this State.

**Clause 276. Payment to employer not required**

[WCIMA s.174(5AB)]

Clause 276 provides WorkCover WA is not required to make any payments to the employer of a worker including a deemed employer, for example, a principal who under clause 215 is taken to be the employer of a worker employed by a contractor.

**Part 5 Division 8 — Insurer and self-insurer insolvency**

**Clause 277. Terms used**

[New provision]

Clause 277 defines terms used in Part 5 Division 8 of the Bill relating to insurer and self-insurer insolvency.

**Clause 278. Claims against WorkCover WA for insolvent insurer and self-insurer liabilities**

[EISFA s.19]

Clause 278 provides for a claim for compensation or damages to be made against WorkCover WA relating to insolvent insurer or self-insurer liabilities. The provision deals with different claim scenarios including whether or not an order or award of compensation or damages has been given. The clause provides for a claim for payment of compensation or damages to a worker and a claim for reimbursement to an employer for compensation or damages already paid.

**Clause 279. Payment of claims**

[EISFA s.22,24,25]

Clause 279 requires WorkCover WA to pay a claimant the amount necessary to satisfy a claim for an insolvent insurer or self-insurer liability, which when paid discharges the liability of WorkCover WA.

**Clause 280. Recovery by WorkCover WA of payment made in satisfaction of claims**

[EISFA s.37]

Clause 280 provides for WorkCover WA to recover as a debt, amounts paid to satisfy insolvent insurer or self-insurer claims. The debt may be recovered from the insolvent insurer or self-insurer, or any person against whom the insolvent insurer or self-insurer has, or had at any time, a right of indemnity or contribution in respect of the injury to or death of the worker to which the claim relates.

**Clause 281. Control of powers of liquidator of insurer or self-insurer**

[EISFA s.35]

Clause 281 applies to the exercise by the liquidator of an insurer or self-insurer of the liquidator's powers under the *Corporations Act 2001* (Commonwealth) section 477 with respect to any claim, judgment, order or award arising out of or in relation to a workers compensation policy issued by the insurer or a self-insurer liability of the self-insurer.

**Clause 282. Payment into DI Fund of money recovered by liquidator**

[EISFA s.36]

Clause 282 requires the liquidator of a defaulting insurer to pay to WorkCover WA for payment into the Default Insurance Fund any reinsurance payment received by the liquidator, or any amount recovered by the liquidator that is due to the defaulting insurer.

For the purposes of this clause, an insurer or self-insurer is a defaulting insurer if any liability of the insurer under a workers compensation policy or any self-insurer liability of the self-insurer has been met by a payment by WorkCover WA pursuant to a claim under Part 5 Division 8.

The reinsurance payment or amount that a liquidator is required to pay to WorkCover WA is reduced by the amount of any expenses of or incidental to the recovery of the reinsurance payment or amount.

**Clause 283. Liquidator to notify WorkCover WA of dissolution of insurer or self-insurer**

[EISFA s.38]

Clause 283 requires the liquidator to notify WorkCover WA in writing of the making of an application to a court under a law of the State, another State or the Commonwealth for an order that an insurer or self-insurer be dissolved. The liquidator must also serve on WorkCover WA a copy of any order made by the court on that application.

**Clause 284. WorkCover WA may accept final payment from liquidator**

[EISFA s.38A]

Clause 284 provides for WorkCover WA to accept from the liquidator of an insurer or self-insurer an amount, as agreed between WorkCover WA and the liquidator, for payment into the Default Insurance Fund in full and final satisfaction of all rights, whether actual, contingent or prospective, that WorkCover WA has or may have

against the liquidator, insurer or self-insurer under the Act. If WorkCover WA accepts an amount the liability of the liquidator is discharged.

#### **Clause 285. Terms used**

[New provision]

Clause 285 defines terms that are used in Part 5 Division 9 of the Bill relating to Acts of terrorism.

#### **Clause 286. Division does not apply to public authority covered by Insurance Commission**

[New provision]

Clause 286 provides Part 5 Division 9 does not apply to an employer who is a public authority on behalf of which the Insurance Commission manages and administers insurance arrangements in relation to compensation liability in respect of a declared act of terrorism. This is because the Insurance Commission does not contribute to the Default Insurance Fund and has its own reinsurance arrangements for acts of terrorism causing injury or death to workers of public authorities that the Insurance Commission insures.

#### **Clause 287. Term used: act of terrorism**

[New provision]

Clause 287 defines 'act of terrorism' and 'dangerous action' for the purpose of Part 5 Division 9. The terms are closely aligned to the definition of 'terrorist act' adopted in the Commonwealth Criminal Code with a focus on the action and result being to cause physical or psychological harm or death, endanger life, or create risk to the health and safety of the public.

#### **Clause 288. Declaration of act of terrorism**

[WCIMATA s. 8]

Clause 288 provides for the Minister to declare an act of terrorism has occurred for the purposes of the Act. The declaration must identify the declared act of terrorism with sufficient particularity to enable a person to know whether a claim for compensation by the person might be affected by the declaration.

#### **Clause 289. Exclusion of declared act of terrorism from insurance**

[WCIMATA s. 4-7]

Clause 289 provides a workers compensation policy does not insure, and is not required to insure, an employer for any compensation liability in respect of a declared act of terrorism. This is because the compensation liability is met by the Default Insurance Fund and not from an employer's workers compensation policy that otherwise insures the employer for any injury from employment.

#### **Clause 290. Claims for compensation in respect of declared act of terrorism**

[WCIMATA s. 9]

Clause 290 provides an employer who has a compensation liability in respect of a declared act of terrorism may make a claim against WorkCover WA for payment or

reimbursement of payment of any claim arising from that liability. Amounts payable by WorkCover WA in satisfaction of a claim are payable from the Default Insurance Fund.

#### **Clause 291. Limits on claims for declared acts of terrorism**

[WCIMATA s. 8, WCIMA s.169]

Clause 291 provides for regulations to impose a claims limit on the total amount of the compensation liability of all employers in respect of a declared act of terrorism event. Either or both of the following limits may be imposed:

- A limit on the total amount of the compensation liability for claims payable during a specified period
- A limit on the total amount of the claims that are payable in respect of a particular declared act of terrorism

The limit on the total amount of the compensation liability under the current Act is \$25 million. While the limit will be prescribed in regulations and subject to further industry consultation, in its 2014 Final Report WorkCover WA recommended the limit be increased from \$25 million to \$100 million which is an industry standard retention amount for comparable catastrophic events.

#### **Clause 292. WorkCover WA's rights of indemnity and subrogation**

[WCIMATA s.9]

If WorkCover WA has paid, or is liable to pay, compensation for a declared act of terrorism, clause 292 provides that WorkCover WA is subrogated to any right the employer would have had if the employer had made the payment. This includes recovery of any amount from any other person in respect of that payment, whether the right arises by way of liability for contribution, apportionment of liability or otherwise.

### **Part 5 Division 10 — Special provisions for waterfront worker dust diseases if employer unknown**

#### **Clause 293. Terms used**

[WW(CARD) s 3]

Clause 293 defines terms that are used in Part 5 Division 10 of the Bill relating to claims from waterfront workers suffering a dust disease where the employer is unknown. Division 10 is in the Bill in the event any claims arise in the future even though it is dealing with a historical legacy with no claims made in recent years.

A waterfront worker means a worker employed in or about a harbour or port area at a time when asbestos was being loaded or unloaded from a vessel or otherwise handled in that harbour or port area.

#### **Clause 294. Claim for compensation if last relevant employer unknown**

[WW(CARD) s 5]

Clause 294 provides for a compensation claim to be made on WorkCover WA if a waterfront worker suffers a dust disease and the identity of the last relevant employer of a waterfront worker is not known. A claimant has the same rights and remedies against WorkCover WA, and WorkCover WA has the same liability to the claimant and the same rights and remedies in respect of that liability, as the claimant and WorkCover WA would have had if WorkCover WA were the last relevant employer of the waterfront worker.

#### **Clause 295. Payment of claim**

[WW(CARD) s 6]

Clause 295 requires WorkCover WA to pay a waterfront worker from the Default Insurance Fund the amount necessary to satisfy a claim.

#### **Clause 296. Recovery of money paid in satisfaction of claim**

[WW(CARD) s 9]

Clause 296 provides for the recovery of amounts paid in satisfaction of a waterfront worker claim if WorkCover WA has evidence of the identity of the employer who was liable to pay compensation or the identity of the insurer who is liable to indemnify the employer.

### **Part 5 Division 11 — Contributions to Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund**

#### **Clause 297. Terms used**

[New provision]

Clause 297 defines terms used in Part 5 Division 11 of the Bill relating to contributions to the Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund.

#### **Clause 298. Insurance Commission to determine required contributions to CIF**

[New provision]

Clause 298 provides for the Insurance Commission to determine each financial year the total annual contribution payable in respect of catastrophic workplace injury liabilities.

In determining the annual contribution, if any, the Insurance Commission must have regard to the amount standing to the credit of the catastrophic injuries fund in respect of workplace injury liabilities, any amount remitted by WorkCover WA under clause 301, and the amount required for all existing and expected workplace injury liabilities based on actuarial advice.

WorkCover WA will calculate the required contributions (cl. 301) and collect the contribution for crediting to the Insurance Commission's Catastrophic Injuries Fund (CIF) (cl. 302). The contribution and collection methodology mirrors that of the insurer

and self-insurer contributions to WorkCover WA's General Account and Default Insurance Fund, but will be remitted to the Insurance Commission for payment into the CIF.

The Insurance Commission is required to notify WorkCover WA of the total annual contribution so that WorkCover WA can collect the contributions from licensed insurers and self-insurers and remit the payments to the Insurance Commission.

#### **Clause 299. Calculation of required insurer contributions to CIF**

[New provision]

Clause 299 requires WorkCover WA to calculate the contributions that licensed insurers and self-insurers are required to give WorkCover WA for remitting to the CIF, by adopting the same method that WorkCover WA applies to calculating insurer and self-insurer contributions to the Default Insurance Fund. This is based on premium income for licensed insurers and notional premium income for licensed self-insurers.

#### **Clause 300. Requirement for payment of CIF contributions by insurers and self-insurers**

[New provision]

Clause 300 requires each licensed insurer and self-insurer to pay WorkCover WA for crediting to the CIF the required contribution based on the calculation done under clause 299.

Contributions paid to or recovered by WorkCover WA must be remitted to the Insurance Commission in accordance with arrangements agreed to by WorkCover WA and the Insurance Commission.

To the extent that a contribution payable under clause 300 includes an amount that is a tax the accompanying *Workers Compensation and Injury Management Amendment Bill 2023* provides for the imposition of a tax.

#### **Clause 301. Transfer from DI Fund to CIF**

[New provision]

If there is a surplus in the Default Insurance Fund, clause 301 provides flexibility for WorkCover WA to remit that surplus, or part thereof, to the Insurance Commission for crediting to the CIF.

#### **Clause 302. Additional insurer contribution for unexpected liabilities**

[New provision]

Clause 302 provides for WorkCover WA, on advice from the Insurance Commission, to determine and collect an additional contribution from licensed insurers and self-insurers to be credited to the CIF in order to meet the cost of unexpected workplace injury liabilities where the initial contribution is inadequate.

To the extent that any additional contribution payable under clause 302 includes an amount that is a tax the accompanying *Workers Compensation and Injury Management Amendment Bill 2023* provides for the imposition of a tax.

## **PART 6 - DISPUTE RESOLUTION**

### **Part 6 Division 1 – General**

#### **Clause 303. Terms used**

[New provision, WCIMA 1981 s.5,176]

Clause 303 defines terms used in Part 6.

#### **Clause 304. Exclusive jurisdiction of arbitrators**

[WCIMA 1981 s.176]

Clause 304 provides for the exclusive jurisdiction of arbitrators to examine, hear and determine all disputes under the Act.

#### **Clause 305. Object of this Part**

[WCIMA 1981 s.177]

Clause 305 sets out the objectives for the resolution of disputes.

#### **Clause 306. Relevant documents**

[WCIMA 1981 s.180]

Clause 306 defines *injury* and *relevant document* under Part 6 and sets out:

- the documents that may be relevant to a dispute (e.g. employment contract or a report of a medical practitioner)
- the requirements of an insurer or employer to provide copies of documents to a worker
- the timeframe for complying with any request to provide documents
- the penalty for failure to comply.

### **Part 6 Division 2 – Conciliation Service and Arbitration Service**

#### **Clause 307. Establishment of Conciliation Service and Arbitration Service**

[WCIMA 1981 s.181, 182ZO]

Clause 307 establishes a Conciliation Service and an Arbitration Service for the resolution of disputes and provides for a Director and conciliators and a Registrar and arbitrators to staff the respective services. Clause 307 amalgamates in substance sections 181 and 182ZO of the current Act.

### **Clause 308. Designation and functions of Director and Registrar**

[WCIMA 1981 s.182A, 182ZP]

Clause 308 designates the functions of the Director and Registrar. The CEO must designate a Director and Registrar who are not subject to the management or direction of the CEO with respect to decisions or discretion in any dispute. This separates the regulatory and other functions of WorkCover WA from the impartial role of the dispute resolution services. Clause 308 amalgamates and replicates sections 182A and 182ZP of the current Act.

### **Clause 309. Designation of conciliators and arbitrators**

[WCIMA 1981 s.182B, 182C, 182ZQ, 182ZR]

Clause 309 permits the CEO to designate conciliators and arbitrators. Arbitrators must be legal practitioners. Conciliators and arbitrators are not subject to the management or direction of the CEO with respect to decisions or discretion in any dispute. This separates the regulatory and other functions of WorkCover WA from the impartial role of the dispute resolution services. Clause 309 amalgamates and replicates sections 182B, 182C, 182ZQ and 182ZR of the current Act.

### **Clause 310. Delegation by Director or Registrar**

[WCIMA 1981 s.182D, 182ZS]

Clause 310 permits the Director and Registrar to delegate their power to conciliators or arbitrators respectively. This provides the dispute resolution body with the flexibility to appropriately carry out its duties and objectives. Clause 310 amalgamates and replicates sections 182D and 182ZS of the current Act.

## **Part 6 Division 3 – Conciliation**

### **Clause 311. Application for conciliation**

[WCIMA 1981 s.182E]

Clause 311 permits a party to a dispute to make an application for conciliation in accordance with the Act and conciliation rules. Conciliation is the first step in the dispute resolution process and, with some exceptions, must be completed before an application for arbitration can be made.

### **Clause 312. Requirements for acceptance of application for conciliation**

[WCIMA 1981 s.182F]

Clause 312 provides for requirements for an application for conciliation to be accepted, and provides flexibility by allowing the conciliation rules to impose requirements that must be satisfied for an application to be accepted.

### **Clause 313. Director may certify dispute not suitable for conciliation**

[WCIMA 1981 s.182H]

Clause 313 allows the Director to determine a dispute is not suitable for conciliation. This allows the Director to refer matters straight to arbitration where appropriate.

#### **Clause 314. Allocation of dispute**

[WCIMA 1981 s.182G]

Clause 314 requires the Director to allocate a dispute to a conciliation officer and gives the Director the power to reallocate the dispute to another conciliator at any time.

#### **Clause 315. Duties of conciliators**

[WCIMA 1981 s.182I, 182P]

Clause 315 sets out the duties of a conciliator to make all reasonable efforts to bring the parties of a dispute to agreement quickly and economically. Conciliators are to act without regard for technicalities or legalities and are not bound by the rules of evidence.

#### **Clause 316. Scope of conciliation**

[WCIMA 1981 s.182Q]

Clause 316 provides matters discussed in conciliation are not limited to the matters detailed in any application for conciliation, although a conciliator is empowered to determine that any matter should be the subject of another application for conciliation. This supports the aims of dispute resolution to be informal, flexible and without regard to technicalities.

#### **Clause 317. Powers of conciliators**

[WCIMA 1981 s.182J]

Clause 317 sets out the powers of conciliators to require parties to attend a conciliation conference, require parties to answer questions put to them by a conciliator and require parties to produce documents or consent to another producing documents.

#### **Clause 318. Finalising orders**

[WCIMA 198 s.182N]

Clause 318 allows a conciliator, with the consent of the parties, to make orders with respect to matters that have been agreed at conciliation. Clause 318 also sets out the procedural requirements for finalising orders to be made.

#### **Clause 319. Conclusion of conciliation and certificate of outcome**

[WCIMA 1981 s.182O]

Clause 319 provides for circumstances in which conciliation ends, the requirement to issue a certificate of outcome at the conclusion of conciliation and the procedural requirements relating to terms of an agreement. A certificate of outcome certifying the dispute could not be resolved by agreement after conciliation concludes is required before an application for a binding determination of an arbitrator can be sought.

### **Clause 320. Interim compensation directions**

[WCIMA 1981 s.182K(1)-(6)]

Clause 320 provides for a conciliator to issue an interim compensation direction and applies where the conciliator considers it would be reasonable to expect that the outcome of the dispute would lead to the worker being paid compensation.

Clause 320 sets out the types of compensation payments which may be ordered, the period of time the order can be made for and the maximum amounts, that can be paid for certain forms of compensation. There is no change to the maximum amounts that can be awarded relative to the current Act.

### **Clause 321. Amendment, suspension or revocation of interim compensation directions**

[WCIMA 1981 s.182K(7)-(9)]

Clause 321 provides for how a conciliator may amend, suspend, or revoke an interim compensation direction. The change cannot be retrospective, and any costs incurred prior to the amendment, suspension or revocation remain as if the change had not occurred.

### **Clause 322. Payment by insurer if employer fails to comply with interim compensation direction**

[WCIMA 1981 s.182ZL]

Clause 322 permits the Director, on application by an injured worker, to make an order to require an employer's insurer make payment, or any remaining payment under an interim compensation direction.

Clause 322 provides for an insurer's right to recover any compensation payments the insurer paid to the employer that the employer failed to pay to the worker.

### **Clause 323. Suspending and reducing income compensation payments**

[WCIMA 1981 s.182L, 182ZJ]

Clause 323 provides that a conciliator may suspend and reduce income compensation payments where it would be reasonable to expect the resolution of the dispute would result in payments being suspended, reduced or discontinued. The conciliator may not suspend or reduce income compensation payments for a period greater than specified, and the changes only take effect from the date the suspension or reduction has been made. A conciliator may also revoke an order to suspend or reduce income compensation.

### **Clause 324. Terms used**

[WCIMA 1981 s.182ZE]

Clause 324 defines the terms *certificate of outcome*, *conciliation agreement* and *conciliation decision* used in Part 6.

### **Clause 325. General provisions about conciliation decisions**

[WCIMA 1981 s.182M]

Clause 325 sets out the general principles that apply to conciliator decisions.

### **Clause 326 When conciliation decision or agreement has effect**

[WCIMA 1981 s.182ZF]

Clause 326 provides a conciliation agreement comes into effect immediately after an agreement is made or at a later time specified in the conciliation agreement.

### **Clause 327. Correcting mistakes**

[WCIMA 1981 s.182ZG]

Clause 327 allows for mistakes made on a conciliation decision or certificate of outcome to be rectified with minimal formality, as per the general aims of conciliation to be informal without regard for technicalities.

### **Clause 328. Enforcing conciliation decisions and agreements**

[WCIMA 1981 s.182ZH]

Clause 328 provides the procedure for a person to have a conciliation agreement or decision enforced. A person may file in court a copy of the conciliation decision or agreement and an affidavit after which the order becomes an order of the court and may be enforced accordingly. There is no charge for filing the documents.

### **Clause 329. Conciliation decisions not reviewable**

[WCIMA s. 182ZI]

Clause 329 provides conciliation decisions are not amenable to judicial review. Where the parties to conciliation do not reach agreement, the appropriate venue for the dispute is arbitration.

### **Clause 330. Recovery of compensation paid under conciliator direction**

[WCIMA 1981 s.182ZK]

Clause 330 provides when an arbitrator determines that a person was not liable to pay compensation in accordance with a direction of a conciliator, the worker is not required to refund the compensation unless that payment was wholly or partially fraudulent or unjustified.

## **Part 6 Division 4 – Arbitration**

### **Clause 331. Application for arbitration**

[WCIMA 1981 s.182ZT]

Clause 331 provides for a party to a dispute not resolved by conciliation to apply, in accordance with the Act and rules, for the matter to be heard by an arbitrator. Arbitration is binding on the parties and may only be appealed in certain circumstances.

### **Clause 332. Requirements for acceptance of application for arbitration**

[WCIMA 1981 s.182ZU, 182E(2)]

Clause 332 provides the Registrar cannot accept an application for Arbitration unless accompanied either by a certificate from the Director stipulating the matter is not suitable for conciliation, or a certificate of a conciliator indicating the matter could not be resolved by conciliation. The Arbitration Rules may also impose requirements or specify grounds an application for arbitration may be rejected.

Clause 332 substantively replicates and consolidates sections 182ZU and 182E(2) of the current Act.

### **Clause 333. Registrar to allocate dispute**

[WCIMA 1981 s.182ZV]

Clause 333 requires when an application for arbitration is accepted, the Registrar is to allocate a dispute to an arbitrator and may reallocate a dispute to another arbitrator at any time.

### **Clause 334. Information exchange by parties**

[WCIMA 1981 s.183]

Clause 332 sets out the information exchange obligations of parties to arbitration.

In line with the objectives of dispute resolution, parties are required to comply with the document exchange requirements of the Arbitration Rules. The clause also sets out requirements to provide copies of statements made by the worker to the worker, various requirements relating to documents and witnesses, and the options for an arbitrator to address non-compliance. Unrepresented workers are protected from the strict document exchange requirements and penalty provisions.

### **Clause 335. Duties of arbitrators**

[WCIMA 1981 s.185]

Clause 335 requires an arbitrator to determine a matter in accordance with the Act and Arbitration Rules and not to attempt to resolve the dispute by conciliation.

### **Clause 336. General practice and procedure**

[WCIMA 1981 s.188]

Clause 336 sets out the practice and procedure of an arbitrator. An arbitrator is bound by natural justice, unless the Act authorises otherwise, is not bound by the rules of evidence and may inform themselves of a matter as they see fit. To the extent the practice and procedure of an arbitrator are not prescribed, they are as an arbitrator determines.

Clause 336 is in line with the principles of dispute resolution, for matters to be determined according to the merits of the case with as little formality and technicality as practicable.

### **Clause 337. Relief or redress granted need not be restricted to claim**

[WCIMA 1981 s.189]

Clause 337 provides relief or redress granted by an arbitrator need not be restricted to a specific claim or subject matter of a claim. An arbitrator may also determine that a matter is beyond the scope of the arbitration and should be referred to conciliation.

### **Clause 338. Directions by arbitrator**

[WCIMA 1981 s.190]

Clause 338 provides an arbitrator with the power to make directions, on the arbitrator's initiative or on application of a party, necessary for the fair and speedy conduct of proceedings. Clause 338 also empowers an arbitrator to hold a directions hearing before the hearing of the proceeding.

### **Clause 339. Dismissal of proceeding**

[New provision]

Clause 339 empowers an arbitrator to dismiss proceedings on any of the specified grounds listed in clause 339(1) or any other ground for dismissal specified in the arbitration rules.

Clause 339 remedies the situation in the current Act where there is no clear power for an arbitrator to dismiss a proceeding which is otiose, vexatious or an abuse of process.

### **Clause 340. Illegal contracts of employment may be treated as valid**

[WCIMA 1981 s.192]

Clause 340 allows an arbitrator to treat a worker working under an illegal contract of employment as if they were working under a legal contract of employment. This clause provides protection to injured people who may otherwise be excluded from the Act.

### **Clause 341. Arbitrator's powers to obtain information**

[WCIMA 1981 s.193]

Clause 341 empowers an arbitrator to obtain information in order to assist in a determination. An arbitrator is empowered, through their own initiative or at the request of a party to proceedings, to order a person to produce documents and other things or provide information and who that information should be provided to.

Regulations or the arbitration rules may make provision for exemptions, circumstances where an arbitrator is required to use their power and where an arbitrator cannot use their power.

### **Clause 342. Use of experts by arbitrators**

[WCIMA 1981 s.201]

Clause 342 sets out the situations in which an arbitrator may refer matters to an expert to provide a report. Clause 342 requires an expert who provides a report to be called for examination if a party to proceedings requests it.

### **Clause 343. Summoning witnesses**

[WCIMA 1981 s.202]

Clause 343 empowers an arbitrator to issue a summons requiring attendance before the arbitrator.

### **Clause 344. Arbitrator's powers as to witnesses**

[WCIMA 1981 s.203]

Clause 344 sets out an arbitrator's power to call a person to give evidence, examine a witness or cross-examine a witness and require a witness to answer questions. Clause 344 includes circumstances in which a witness is not required to answer questions.

### **Clause 345. Communication between worker and WorkCover WA employee not admissible**

[WCIMA 1981 s.204A]

Clause 345 specifies that any communication between a worker and WorkCover WA staff cannot be used in proceedings before an arbitrator unless the worker consents to the evidence being admitted.

### **Clause 346. Oaths and affirmations**

[WCIMA 1981 s.207]

Clause 346 empowers an arbitrator to administer an oath or affirmation in proceedings, for the purposes of resolving a dispute.

### **Clause 347. Arbitrator may authorise another person to take evidence**

[WCIMA 1981 s.208]

Clause 347 empowers an arbitrator to authorise another person to take evidence for the purposes of a proceeding. The evidence may be taken outside of the state and the person taking the evidence has all the powers of an arbitrator in relation to taking the evidence.

### **Clause 348. Decisions generally**

[WCIMA 1981 s.211]

Clause 348 empowers an arbitrator to make decisions as they see fit. Clause 348 also empowers an arbitrator to confirm, amend or revoke a direction of a conciliator with respect to an interim compensation directions order, or a direction of a conciliator that income compensation payments be suspended or reduced.

### **Clause 349. Conditional and ancillary orders and directions**

[WCIMA 1981 s.212]

Clause 349 empowers an arbitrator, where making an order or direction, to make that order subject to conditions or make an ancillary order or direction for the purpose of achieving the primary order or direction.

### **Clause 350. Form and content of decision and reasons**

[WCIMA 1981 s.213]

Clause 350 sets out the procedural requirement of arbitrators with respect to a decision of an arbitrator. Arbitrators must provide a decision and reasons for decisions in writing if required by the Arbitration Rules or, if within 14 days of the decision being made, a party to proceedings requests the decision and reasons for decision be given in writing.

Clause 350 also sets out the details the arbitrator's reasons for decision must include and is not required to include.

### **Clause 351. Validity of decision not affected by contravention of this Subdivision**

[WCIMA 1981 s.214]

Clause 351 provides that a decision of an arbitrator is not invalidated because the arbitrator did not comply with a requirement under the subdivision dealing with decisions of an arbitrator.

### **Clause 352. When decision has effect**

[WCIMA 1981 s.215]

Clause 352 provides that an arbitrator's decision comes into effect immediately after the decision is made, or at the time specified in the decision. Clause 352 does not prevent a stay in the operation of the decision pending appeal.

### **Clause 353. Correcting mistakes**

[WCIMA 1981 s.216]

Clause 353 provides for situations relating to mistake or error in which an arbitrator may correct a decision or a statement or the reasons for a decision.

### **Clause 354. Reconsideration of decision on basis of new information**

[WCIMA 1981 s.217A]

Clause 354 provides for the reconsideration of a decision on the basis of new information that was not available to an arbitrator at the time a decision was made and enables an arbitrator to affirm, amend or revoke a decision.

Clause 354(4) provides greater clarity relative to the current Act of the matters an arbitrator should have regard to when considering whether new information justifies reconsideration of a decision.

### **Clause 355. Arbitration decision not reviewable**

[WCIMA 1981 s.217B]

Clause 355 provides, unless otherwise provided for, a decision of an arbitrator is final and binding and not subject to appeal and that anything done in the process of coming to a decision is not amenable to judicial review.

Appeals against an arbitrator's decision may be made to the District Court in certain circumstances, as set out in Clause 391.

### **Cause 356. Enforcing decision**

[WCIMA 1981 s.219]

Clause 356 sets out the procedure for a person to have an arbitration decision enforced. A person may file in court a copy of the arbitrator's decision and an affidavit after which the order becomes an order of the court and may be enforced accordingly. There is no charge for filing the documents.

### **Clause 357. Publication of decision and reasons**

[New provision]

Clause 357 allows the Registrar to publish reasons for decisions or limit the publication of reasons for decision in an appropriate manner.

### **Clause 358. Interest on sums to be paid**

[WCIMA 1981 s.222]

Clause 358 provides that an arbitrator may order interest is to be paid on a sum payable. Interest must be calculated at the rate prescribed in regulations.

### **Clause 359. Interest on unpaid sums**

[WCIMA 1981 s.223]

Clause 359 provides that, unless an arbitrator orders otherwise, interest is payable on any amount unpaid that is ordered to be paid by an arbitrator. Clause 359 prescribes how interest is to be calculated and at the prescribed rate (or by regulations) and the circumstances in which interest is not to be paid.

### **Clause 360. Interest on unpaid amount of agreed sum**

[WCIMA 1981 s.224]

Clause 360 provides for an arbitrator to order, in accordance with regulations, that interest is payable on an unpaid amount that has been agreed to be paid under the Act. Clause 360 prescribes how interest is to be calculated and at the prescribed rate (or by regulations) and that interest cannot be paid on interest.

### **Clause 361. Regulations may exclude interest**

[WCIMA 1981 s.225]

Clause 361 provides that regulations may provide circumstances in which interest is not payable under clauses 358-360.

## **Part 6 Division 5 – General provisions about conciliation and arbitration procedures**

### **Clause 362. Term used: relevant rules**

[New provision]

Clause 362 defines the term *relevant rules* used in Part 6.

### **Clause 363. Functions conferred by this Division**

[New provision]

Clause 363 is a new provision which clarifies functions conferred with respect to conciliation and arbitration procedures.

### **Clause 364. Provision of information to another party or medical practitioner**

[WCIMA 1981 s.182R, 194]

Clause 364 gives a conciliator or arbitrator the power to provide another party to a dispute, or their representative, or a health professional, information provided to them by a party to a dispute.

Clause 364 also gives a conciliator or arbitrator the power to prohibit or restrict a recipient from disclosing information to another person.

Clause 364 substantially replicates and amalgamates sections 182R and 194 of the current Act.

### **Clause 365. Representation**

[WCIMA 1981 s.182S, 195]

Clause 365 provides for legal practitioners, authorised agents and persons authorised by the conciliation rules or arbitration rules to represent parties to a dispute. Clause 365 also allows for circumstances where a conciliator or arbitrator may refuse to permit representation and disallows a prohibited person (defined in clause 366) from representing a party to a dispute.

Clause 365 substantively replicates and amalgamates sections 182S and 195 of the current Act.

### **Clause 366. Meaning of prohibited person: section 365(4)**

[New provision]

Clause 366 provides for the meaning of prohibited person. Clause 366 refers to the recently enacted *Legal Profession Uniform Law (WA) Application Act 2022* and expands and clarifies the circumstances in which a person is a prohibited person in section 195(4A) of the current Act.

### **Clause 367. Litigation guardians**

[WCIMA 1981 s.182T, 196]

Clause 367 provides for a conciliator or arbitrator to appoint a litigation guardian for a child who is a party to a dispute and, where a party is under a different legal disability, the conciliator or arbitrator may defer an action until a litigation guardian is appointed under relevant legislation. The relevant rules may provide the procedural requirements for the appointment of a litigation guardian.

Clause 367 substantively replicates sections 182T and 196 of the current Act.

### **Clause 368. Interpreters and assistants**

[WCIMA 1981 s.182U, 197]

Clause 368 provides for the appointment of interpreters and assistants in order to assist a party to a dispute communicate adequately. Clause 368 also provides for written submissions in languages other than English if accompanied by a translation and statutory declaration declaring the accuracy of the translation. Clause 368 replicates and amalgamates sections 182U and 197 of the current Act.

### **Clause 369. Ways of conducting proceedings**

[WCIMA 1981 s.182V, 198]

Clause 369 addresses the ways proceedings before a conciliator or arbitrator may be conducted. Proceedings may be conducted in the following ways:

- by means of telephone, video link or another system of communication
- all or part of proceedings on the basis of documents alone
- taking into account written submissions prepared by a person on behalf of a party whether or not that person is representing the party

Clause 369 also sets out procedural requirements where proceedings are conducted party or wholly on the basis of documents. Clause 369 replicates and amalgamates sections 182V and 198 of the current Act.

### **Clause 370. Proceedings to be in private**

[WCIMA 1918 s.182W, 199]

Clause 370 requires conciliation and arbitration proceedings to be in private unless the conciliator or arbitrator decides it should be conducted in public, or the relevant rules provide otherwise. Clause 370 replicates and amalgamates sections 182W and 199 of the current Act.

### **Clause 371. Notice of proceedings and failure to attend**

[WCIMA 1981 s.182X, 200]

Clause 371 provides parties to proceedings and other relevant people are to be notified of a conciliation conference or an arbitration hearing in accordance with the relevant rules.

Clause 371 also provides proceedings can be validly held even where a party or other relevant persons fails to attend the conciliation conference or arbitration hearing. Clause 371 replicates and amalgamates sections 182Q and 199 of the current Act.

### **Clause 372. Abrogation of privilege against self-incrimination**

[WCIMA 1981 s.182Y, 204]

Clause 372 provides a person is not excused from answering a question or providing information or a document on the basis that it may incriminate that person or render the person liable to penalty.

Clause 372 also provides any answer given, or any document or information produced, is not admissible in evidence in criminal proceedings against that person,

except out of the false or misleading nature of that answer, information, or document. Clause 372 replicates and amalgamates sections 182Y and 204 of the current Act.

### **Clause 373. Legal professional privilege in relation to medical reports**

[WCIMA 1981 s.182ZA, 205]

Clause 373 provides a legal practitioner is not excused from complying with a request to answer a question in relation to a medical report on the grounds of legal professional privilege if the question relates to the treatment, nature or extent of impairment or assessment of degree of impairment of a worker.

Medical reports are central to understanding a worker's medical condition and this clause ensures ready access to information that will allow parties to a dispute and the conciliator or arbitrator a clearer understanding of the merits of a dispute. Clause 373 replicates and amalgamates sections 182ZA and 205 of the current Act.

### **Clause 374. Other claims of privilege**

[WCIMA 1981 s.182ZB, 206]

Clause 374 excuses a person from answering a question, providing information, or producing a document or other thing if that person would not be required to do so in Supreme Court proceedings, unless contrary to clauses 372 (abrogation against self-incrimination), 373 (in relation to medical reports) or 341(1) (an arbitrator's power to obtain information).

Clause 374 also allows a conciliator or arbitrator to require a person to produce a document or other thing to determine if the conciliator or arbitrator has the power to require the person to produce the document or thing in proceedings. Clause 374 replicates and amalgamates sections 182ZB and 206 of the current Act.

### **Clause 375. Powers in relation to documents produced**

[WCIMA 1981 s.182ZC, 209]

Clause 375 allows an arbitrator to inspect any document or thing produced before the conciliator or arbitrator, or retain the document for as long as they see fit and make copies of the document or thing.

Clause 375 does not apply to a document or other thing produced to determine if the conciliator or arbitrator has the power to require the person to produce the document or thing in proceedings under clause 374. Clause 375 substantively replicates and amalgamates sections 182ZC and 209 of the current Act.

### **Clause 376. To whom compensation must be paid**

[WCIMA 1981 s.182ZN, 221]

Clause 376 provides a sum awarded as compensation is to be paid to the person to whom it is payable under the award, direction, or agreement, unless it is required to be paid to WorkCover WA.

There are some circumstances (e.g. child's allowance for dependants of a deceased worker) where funds are paid to WorkCover WA and held in trust to be released on request. Clause 376 replicates sections 182ZN and 221 of the current Act.

### **Clause 377. Payment of compensation to worker under legal disability**

[WCIMA 1981 s.218]

Clause 377 provides on application to an arbitrator, the arbitrator may determine that compensation for a worker under a legal disability must be paid to WorkCover WA and applied in a manner specified by the arbitrator. The question as to whether the compensation should be applied differently may be considered as a dispute.

### **Clause 378. Admissibility of statements made to conciliator**

[WCIMA 1981 s.182ZM]

Clause 378 provides a statement made to the conciliation officer or in a conciliation conference is not admissible in a subsequent proceeding (e.g. arbitration or common law proceedings) unless the person who made the statement agrees to the evidence being admitted.

Clause 378 also provides a conciliator may not be called as a witness in subsequent proceedings.

### **Clause 379. Statements to arbitrators not admissible in common law proceedings**

[WCIMA 1981 s.220]

Clause 379 provides evidence of statements in proceedings before an arbitrator are not admissible in common law proceedings unless the person who made the statement agrees to the evidence being admitted.

## **Part 6 Division 6 – Regulations, rules and practice notes**

### **Clause 380. Regulations**

[WCIMA 1981 s.292(1)(b), (c) and (e)]

Clause 380 provides regulations may make provision for regulating the operation of the Conciliation Service and Arbitration Service and allowances to be paid to witnesses in conciliation conferences and arbitration hearings.

### **Clause 381. Conciliation rules**

[WCIMA 1981 s.293A]

Clause 381 allows the making of conciliation rules for matters required or permitted by the Act, and the matters which may be considered or provided for in the rules.

Clause 381 differs from the current Act in allowing the Director to make the rules (rather than the Minister). As 'rules of court' it is appropriate for the Director, who is responsible for the administration of arrangements for conciliation of disputes, to provide oversight of the rules.

### **Clause 382. Arbitration rules**

[WCIMA 1981 s.293B]

Clause 382 allows the making of arbitration rules for matters required or permitted by the Act, and the matters which may be considered or provided for in the rules.

Clause 382 differs from the current Act in allowing the Registrar to make the rules (rather than the Minister). As ‘rules of court’ it is appropriate for the Registrar, who is responsible for the administration of arrangements for arbitration of disputes, to provide appropriate oversight of the rules.

### **Clause 383. General provisions about rules**

[WCIMA 1981 s.293]

Clause 383 provides:

- a rule may require a thing to be verified by statutory declaration
- the rules are ‘rules of a court’ under the *Interpretation Act 1984*
- the rules come into operation on the day of publication in the *Gazette*, or date specified in the rules.

### **Clause 384. Practice notes**

[WCIMA 1981 s.294]

Clause 384 provides the Director and Registrar may issue practice notes with respect to the Conciliation Service and Arbitration Service respectively. Such practice notes do not form part of the rules.

Clause 384 substantively replicates section 294 of the current Act but removes the requirement to provide the Minister with a copy of each practice note on issuance. It is not appropriate nor necessary to inform the Minister of every administrative amendment to the practice and procedure of the Conciliation and Arbitration Services.

## **Part 6 Division 7 – Offences**

### **Clause 385. Failure to comply with decision of dispute resolution authority**

[WCIMA 1981 s.255]

Clause 385 makes it an offence to fail to comply with a decision of a dispute resolution authority. Section 255 also sets out the decisions referred to in this clause and circumstances where the clause does not apply.

### **Clause 386. Failure to comply with summons or requirement to attend**

[WCIMA 1981 s.256]

Clause 386 makes it an offence to fail to comply, without reasonable excuse, to a summons of an arbitrator or a requirement of a conciliation officer.

### **Clause 387. Failure to give evidence as required**

[WCIMA 1981 s.257]

Clause 387 makes it an offence to refuse to swear an oath or make an affirmation or statutory declaration when required to do so by an arbitrator or fail to give evidence when required to do so by an arbitrator.

### **Clause 388. Giving false or misleading information**

[WCIMA 1981 s.258]

Clause 388 makes it an offence to give to a dispute resolution authority information knowing it to be false or misleading in a material particular.

### **Clause 389. Misbehaviour and other conduct**

[WCIMA 1981 s.259]

Clause 389 makes it an offence for a person to:

- insult, obstruct or hinder a dispute resolution authority, or person attending a conciliation conference or arbitration hearing
- misbehave or interrupt at a conciliation conference or arbitration hearing
- obstruct or hinder a person from complying with an order or direction of a dispute resolution authority or a summons to attend at a dispute resolution authority.

### **Clause 390. Referral of offence to CEO**

[New provision]

Clause 390 empowers the dispute resolution authority to refer a person who may have committed an offence under Part 6 to the CEO for investigation.

The current Act provides no clear power for referral of potential offences relating to dispute resolution proceedings. Clause 390 provides certainty and assists WorkCover WA in its regulatory function.

## **Part 6 Division 8 – Appeals to District Court**

### **Clause 391. Appeal against arbitrator's decision**

[WCIMA 1981 s.247]

Clause 391 provides for appeals against an arbitrator's decision to the District Court.

Appeals can only be made within 28 days of a decision being provided to a party and must:

- involve a question of law (i.e. not just a question of fact); and
- appeal an amount \$5,000 or greater; and
- appeal an amount at least 20% of the amount awarded in the decision; or
- be a matter of public interest in the opinion of the District Court.

The District Court may affirm, amend or quash the decision appealed against or substitute or make a decision that should have been made in the first instance, along with any costs order the court sees fit.

**Clause 392. Effect of appeal on decision under appeal**

[WCIMA 1981 s.250]

Clause 392 provides for the effect of an appeal on an arbitrator's decision. Clause 392 provides that, whilst not limiting the power of the District Court under other laws, the Court may stay the operation of an arbitrator's decision pending determination of an application for leave to appeal.

**Clause 393. Appeal from District Court to Court of Appeal**

[WCIMA 1981 s.254]

Clause 393 provides for an appeal from the District Court to the Court of Appeal in respect of an appeal made to the District Court. Leave to appeal must be obtained from the Court of Appeal and the appeal must relate to a question of law.

**Part 6 Division 9 - Costs**

**Clause 394. Terms used**

[WCIMA 1981 s.261]

Clause 394 defines various terms used in Part 6 Division 9.

**Clause 395. Costs to which Division applies**

[WCIMA 1981 s.262]

Clause 395 provides Part 6 Division 9 relate to party-to-party costs on a practitioner and client basis and any other basis provided by regulations.

**Clause 396. Division prevails over Legal Profession Uniform Law (WA)**

[WCIMA 1981 s.263]

Clause 396 provides Part 6 Division 9, and regulations to this Division, prevail over the costs provisions of the *Legal Profession Uniform Law (WA)*.

**Clause 397. Costs to be determined by dispute resolution authority**

[WCIMA 1981 s.264]

Clause 397 determines the manner in which costs in a dispute are to be dealt with. Costs:

- are at the discretion of the dispute resolution authority which may determine by whom to whom and to what extent costs are to be paid
- may be ordered by the dispute resolution authority to be assessed as set out in the *Legal Profession Uniform Law (WA)*
- may be applied for by any party to proceedings

- may not be ordered against a worker, unless the costs relate to an application by the worker that was, wholly or partially, frivolous, vexatious, fraudulent or without justification

Clause 397 provides regulations may make provision relating to the making of orders for the payment of costs of another party.

### **Clause 398. Costs unreasonably incurred by representative**

[WCIMA 1981 s.265]

Clause 398 provides for how costs unreasonably incurred by a legal practitioner or authorised agent (the representative) are to be dealt with. Where the representative incurs costs improperly, without reasonable cause, or costs are wasted by various means, the dispute resolution authority may:

- disallow the costs
- direct the representative to repay costs already paid to any party to proceedings
- direct the representative to indemnify any person other than their client against costs payable by the indemnified person.

Clause 398 also provides the dispute resolution authority must not make an order under this clause if for any reason the representative should not be held responsible for incurring the costs concerned.

### **Clause 399. Agent's costs**

[WCIMA 1981 s.266]

Clause 399 provides a person is not entitled to be paid or recover any amount for services performed unless that person is an authorised agent.

Other than legal practitioners, only registered independent agents and persons authorised by the regulations to provide agent services may represent parties to a dispute. Clause 399 ensures only those people authorised to provide agent services can be remunerated for their services.

### **Clause 400. Appeal costs**

[WCIMA 1981 s.267]

Clause 400 provides the District Court is not to make an order for costs against a worker on the grounds that an appeal to the District Court was successful.

Clause 400 also provides where an appellant to an appeal is a worker and is unsuccessful on appeal, the District Court must not make an order for the payment of the appellant's costs by any other party to the appeal.

### **Clause 401. Regulations for assessment of costs**

[WCIMA 1981 s.268]

Clause 401 provides for various matters to be determined by regulations with respect to the assessment of costs.

#### **Clause 402. Costs Committee established**

[WCIMA 1981 s.269]

Clause 402 provides for a Costs Committee to establish maximum costs relating to disputes. Clause 402 provides for the membership of the Costs Committee and the requirement for two members to also be members of the Legal Costs Committee, established under the *Legal Profession Uniform Law (WA) Application Act 2022*.

#### **Clause 403. Remuneration and allowances of Costs Committee members**

[WCIMA 1981 s.270A]

Clause 403 provides members of the Costs Committee are to be paid from the WorkCover WA General Account at an amount determined by the Minister on recommendation of the Public Sector Commission.

People employed in the public sector are not entitled to remuneration or allowances for membership of the Costs Committee.

#### **Clause 404. Constitution and procedure of Costs Committee**

[WCIMA 1981 s.270]

Clause 404 provides the constitution and procedure of the Costs Committee (other than the membership) may be prescribed by regulations or as directed in writing by WorkCover WA.

Clause 404 also provides to the extent the procedure of the Costs Committee is not prescribed by regulations or in writing by WorkCover WA, the procedure is to be as the Costs Committee determines appropriate.

#### **Clause 405. Determinations as to maximum costs**

[WCIMA 1981 s.271]

Clause 405 provides for a costs determination setting out maximum costs by the Costs Committee to be charged for:

- legal services and agent services
- matters relating to a claim for compensation (e.g. expert witness fees or medical reports)

A costs determination may:

- authorise any matter or thing to be determined, applied or regulated by a specified body or person
- fix costs by reference to an amount under a costs determination made under the *Legal Profession Uniform Law Application Act 2022*

Clause 405 also provides the Costs Committee has the power to determine that a costs determination may set out that a particular service or matter, or class of service or matter, have no amount charged for it and a legal practitioner or authorised agent has no entitlement to be paid or to recover any amount for that service or matter.

#### **Clause 406. Making a costs determination**

[WCIMA 1981 s.272]

Clause 406 provides that before making a costs determination the Costs Committee must make enquiries necessary to make the determination and publish notice of the proposed determination and consider any submissions made with respect of the proposed determination.

Clause 406 also provides the Costs Committee is not required to conduct formal proceedings and is not bound by the rules of evidence in making a costs determination.

#### **Clause 407. Approval and publication of costs determinations**

[WCIMA 1981 s.273]

Clause 407 sets out the process for approval and publication of a costs determination. Clause 407 provides once a costs determination has been made, the Costs Committee must report to the Minister and provide a report setting out reasons for the decision.

Clause 407 also provides where the Minister approves the costs determination it is to be published in the *Gazette*. The costs determination takes effect on the day of publication, or the date specified in the determination.

#### **Clause 408. Effect of approved costs determination**

[WCIMA 1981 s.274]

Clause 408 provides legal practitioners and authorised agents are not entitled to be paid or recover legal fees for an amount that exceeds the maximum costs applicable to that service or matter in the costs determination.

#### **Clause 409. Limit on agreement as to costs**

[WCIMA 1981 s.275]

Clause 409 provides any agreement for services charged by a legal practitioner or authorised agent in excess of the relevant amount applicable to that service in the costs determination is not allowed and any agreement contrary is void.

#### **Clause 410. Costs in relation to actions for damages**

[WCIMA 1981 s.276]

Clause 410 provides this Part 6 Division 9 does not affect the operation of section 428, which relates to agreements of solicitor and client costs in actions for damages independent of the Act.

## **PART 7 – COMMON LAW**

### **Part 7 Division 1 - General**

#### **Clause 411. Terms used**

[WCIMA 1981 s.93A, 159]

Clause 411 defines the terms *damages*, *third party*, and *tort* used in Part 7.

#### **Clause 412. References to employer include person for whom employer vicariously liable**

[WCIMA 1981 s.93B(4)]

Clause 412 provides for the application of the common law provisions to a person for whom the employer is vicariously liable. This ensures a worker is not disadvantaged because there is not a duty of care between the worker and the tortfeasor whose negligent act injured the worker.

#### **Clause 413. Liability independent of this Act not affected**

[WCIMA 1981 s.86]

Clause 413 provides, except where expressly provided for, the Act does not affect liability that exists independently of the Act. This ensures a worker is not prejudiced when pursuing a cause of action open to the worker under another law. For example, liability with respect to a deceased worker and liability under the *Fatal Accidents Act 1959*.

#### **Clause 414. Requirements for motor vehicle claims not affected**

[WCIMA 1981 s.85]

Clause 414 provides the Act does not affect the operation of sections 29 and 29A of the *Motor Vehicle (Third Party Insurance) Act 1943* and requires that Part 7 be read in conjunction with that Act.

Sections 29 and 29A of the *Motor Vehicle (Third Party Insurance) Act 1943* deal with the procedural requirements of a claim under that Act when providing notice of a claim for damages and the ability of a court to grant leave to proceed with an action.

### **Part 7 Division 2 – Constraint on common law proceedings and damages: actions against employer**

#### **Clause 415. Application of Division**

[WCIMA 1981 s.93B(1)]

Clause 415 provides Part 7 Division 2, constraining the awarding of damages, applies with respect to an injury caused by the tort of an employer and compensation is payable, or would be payable, but for clause 20 (relating to exclusions for serious and wilful misconduct).

### **Clause 416. Damages to which this Division does not apply**

[WCIMA 1981 s.93B(3)- (5)]

Clause 416 provides the circumstances under which Part 7 Division 2 does not apply. Those are, an award or damages:

- in respect to the death of a worker
- to which the *Motor Vehicle (Third Party Insurance) Act 1943* applies
- that are exemplary or punitive damages
- against an employer due to the operation of clause 215 (principal and contractor arrangements) or clause 225 (avoidance arrangements)
- against a person for whom a deemed employer is vicariously liable
- of a class excluded by regulations.

### **Clause 417. Application of Division depends on when cause of action accrues**

[WCIMA 1981 s.93I]

Clause 417 provides Part 7 Division 2 applies to a cause of action accrued before or after this clause comes into operation, but not prior to the date on which the *Workers' Compensation Reform Act 2004* section 79 came into operation (14 November 2004).

The *Workers' Compensation Reform Act 2004* provided a new regime for the payment of common law claims in the current Act.

### **Clause 418. Limit on powers of courts to award damages against employer**

[WCIMA 1981 s.93C]

Clause 418 provides a court cannot award damages contrary to the Act. For instance, a court may not award exemplary damages, punitive damages or damages above the maximum allowable for a worker with less than 25% whole person impairment.

### **Clause 419. No damages for noise-induced hearing loss**

[WCIMA 1981 s.93J]

Clause 419 provides no damages can be awarded for noise-induced hearing loss. Compensation for noise-induced hearing loss is provided for in Part 2, as a lump sum payment.

### **Clause 420. No damages if compensation settlement agreement registered**

[WCIMA 1981 s.93K(1)]

Clause 420 provides damages cannot be awarded where a settlement agreement has been registered in respect of the injury. Clause 420 does not apply where the settlement only applies in respect of dust disease impairment compensation.

## **Clause 421. Threshold requirements for commencement of proceedings and award of damages**

[WCIMA 1981 s.93K(4), 93L(5)-(8)]

Clause 421 provides the threshold requirements for commencing proceedings. They are:

- a worker's degree of whole person impairment (as assessed by a permanent impairment assessor) must be at least 15%
- the worker has elected to retain the right to seek damages
- the Director has registered the election and notified the worker in writing that the election has been registered

Clause 421 provides an election lodged on the Director and evidence supporting the assessment must be in the approved form.

Clause 421 also provides:

- the Director may refuse to register an election if not satisfied a worker has been properly advised of the consequences of election
- an election may not be withdrawn once it has been registered and another election in respect of the same injury cannot be registered
- another assessment as to the worker's degree of permanent impairment may be made after the Director has registered an election and that assessment may be used in court proceedings
- the Director may rectify any error made in registering an election.

Clause 421 provides, in relation to a court:

- a court cannot award damages unless the procedural requirements in this clause have been met
- the court is satisfied the worker's whole person impairment is at least 15%
- a court is not bound by an assessment made as part of a worker's election but may admit the assessment as evidence.

Clause 421 clarifies the threshold requirements apply to both the commencement of proceedings and the awarding of damages. This means a writ cannot be issued, or settlement of the common law claim effected, without the impairment assessment and election being registered.

## **Clause 422. Commencement of court proceedings against employer of worker with terminal disease**

[New provision]

Clause 422 provides for a worker suffering from a terminal dust disease to commence common law proceedings before the procedural requirements in clause 421 have been complied with (determination of the worker's degree of whole person impairment and election registered).

This preserves the worker's common law rights whilst awaiting a determination of the worker's degree of permanent whole of person impairment by the Dust Disease Medical Panel.

**Clause 423. Effect of election to retain right to seek damages on entitlement to compensation**

[WCIMA 1981 s.93P]

Clause 423 constrains access to compensation for workers with a whole person impairment of less than 25%, where that worker elects to seek damages.

Clause 423 provides such workers:

- have their income compensation with respect to the injury reduced to 70% of the amount the worker is otherwise entitled to for the first three-month period from registering an election
- have their income compensation with respect to the injury reduced to 50% of the amount the worker is otherwise entitled to for the proceeding three-month period from registering an election
- are not entitled to income compensation with respect to the injury for any time more than six months from registering an election
- are not entitled to any permanent impairment compensation in relation to the injury
- are not entitled to any medical and hospital expenses compensation, or workplace rehabilitation expenses in respect of the injury after the registration day.

**Clause 424. Maximum damages award for less than 25% impairment**

[WCIMA 1981 s.93K(5)-(7)]

Clause 424 provides unless a court is satisfied that a worker's whole person impairment is at least 25% the court may not award damages greater than the maximum damages amount for less than 25% impairment. A court may only award that amount in the most extreme case and otherwise award damages in proportion, determined by the severity of the injuries, of the maximum allowable amount that may be awarded.

Clause 424 also:

- does not impose a maximum amount for an award of damages where a worker's whole person impairment is at least 25%
- extends to the awarding of damages by way of consent or settlement of an action
- does not create an entitlement to damages
- is subject to any other law limiting the awarding of damages.

**Clause 425. Special provision for HIV and AIDS**

[WCIMA 1981 s.93Q]

Clause 425 provides a special process for awarding damages to a worker suffering from AIDS.

Clause 425 specifies damages cannot be awarded to a worker infected with HIV but can be awarded for a worker suffering from AIDS. Where a worker is suffering from AIDS, that worker is taken to have a whole person impairment of at least 25%. This allows the worker to pursue damages without the potential limitations to an award of damages in clause 424.

Clause 425 establishes a procedural requirement that a certificate of a medical practitioner specifying that a worker has AIDS must be recorded by the Director and treated as if it was an assessment of whole person impairment by an approved permanent impairment assessor. Regulations may specify the method for determining whether a worker has contracted AIDS.

#### **Clause 426. Special provisions for dust disease damages claims**

[WCIMA 1981 s.93R]

Clause 426 provides greater clarity to the procedure for dust disease damages claims relative to the current Act. Clause 426 requires a worker suffering from a dust disease to have their whole person impairment assessed by a Dust Disease Medical Panel, or else agreed to by the worker and employer.

If a worker has also made a claim for compensation the degree of whole of person impairment for the purposes of the common law claim will be assessed at the same time the worker is assessed for the purposes of their claim for compensation.

Where a Dust Disease Medical Panel determines a worker is suffering from mesothelioma, or is suffering from diffuse pleural fibrosis, lung cancer, pneumoconiosis or silicosis and is certified by the Dust Disease Medical Panel or a medical practitioner that they will likely die of their disease within two years, the worker's whole person impairment is deemed to be at least 25%.

#### **Clause 427. Effect of this Division on contribution required from employer**

[WCIMA 1981 s.93K(8)-(10)]

Clause 427 provides an employer is not required to make contributions under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* in respect of damages awarded against a third party in relation to an injury, where the threshold requirements for a common law claim have not been met (at least 15% whole person impairment and election recorded) or damages have been awarded against the employer under clause 424.

Clause 427 also provides where damages have been limited because a worker has a whole person impairment of less than 25%, the contributions an employer would be liable to make under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* are not to exceed the damages that could be awarded. Where an employer has made contributions in respect of damages awarded against a third party, the amount of damages awarded against an employer where the injured worker has a whole person impairment of less than 25% is to be reduced by the amount of that compensation.

### **Clause 428. Limits on agreements as to solicitor—client costs**

[WCIMA 1981 s.87]

Clause 428 provides a solicitor, acting for an injured worker in an action for damages, must not make an agreement for greater reward for appearing or acting on behalf of a person than that which is provided for under the *Legal Profession Uniform Law (WA) Application Act 2022*. Any agreement contrary to this clause is void.

### **Clause 429. Regulations**

[WCIMA 1981 s.93S(a)]

Clause 429 provides regulations may provide for notifications to be given to workers and employers to give effect to the provisions of Part 7 Division 2 and of things done under Part 7 Division 2.

## **Part 7 Division 3 – Prevention of double recovery**

### **Clause 430. Application of Division**

[WCIMA 1981 s.92]

Clause 430 applies to an action for damages brought by a worker against the worker's employer, a third party, or both the employer and a third party. Part 7 Division 3 prevents double recovery.

### **Clause 431. Worker to be given opportunity to discontinue action for damages**

[WCIMA 1981 s.92(a), (d)]

Clause 431 provides where a court decides that an action for damages should succeed, the worker must be given an opportunity, after damages have been ascertained and before judgment is entered to elect whether to discontinue the action or not. Where the action is discontinued, the worker must pay costs of the employer or a third party as the court sees fit.

### **Clause 432. Deduction or repayment of compensation if action for damages proceeds to judgment**

[WCIMA 1981 s.92(b) and (c)]

Clause 432 provides for the deduction or repayment of compensation where an action for damages proceeds to judgment.

Clause 432 provides damages payable to a worker under the judgment is reduced by the amount paid in compensation, including via settlement. Damages apportioned between an employer and third party must be on the basis of the reduced amount.

Clause 432 also deals with the payment of damages against a third party alone, and payment of damages where the worker's negligence contributes to the injury damages are awarded for.

**Clause 433. Compensation proceedings not permitted if action for damages succeeds**

[WCIMA 1981 s.92(e), (f)]

Clause 433 provides compensation proceedings are not permitted to commence or continue where an action for damages succeeds.

Clause 433 also provides where an action for damages is settled by agreement, a memorandum of the terms of the agreement must be filed with the Director, in an approved form, within three months of the date of execution of the agreement. Under Clause 433 the Director will no longer have a role in scrutinising common law settlements for fraud or misrepresentation.

**Part 7 Division 4 – Remedies against third parties**

**Clause 434. Worker entitled to proceed against third party for damages**

[WCIMA 1981 s.93(1)(a)]

Clause 434 provides where a third party is liable to pay damages in respect of an injury, a worker may take action against the third party to recover damages and against a person liable to pay compensation (i.e. the worker's employer).

Clause 434 also provides a worker is not entitled to both compensation and damages and an award of damages must be reduced to account for the payment of compensation.

**Clause 435. Employer's right to be indemnified by third party**

[WCIMA 1981 s.93(1)(b), (2), (3)]

Clause 435 provides for an employer's right to be indemnified by a third party whose tort caused an injury to a worker to the full extent of the employer's liability to pay compensation for the injury, including via a settlement.

Clause 435 also provides where the employer or worker's negligence contributes to the worker's injury, the extent of the indemnity is reduced in proportion to the employer's or worker's negligence. Questions about the rights to or amount of indemnity under this clause, where agreement cannot be made, are to be determined by a court of competent jurisdiction.

**Clause 436. Recovery of third party indemnity payment from worker**

[WCIMA 1981 s.93(4)]

Clause 436 provides where a third party has indemnified an employer for the payment of compensation (including via settlement), and has paid the whole or part of damages payable with respect to an injury, the third party may recover from the worker, the amount paid to the employer.

Clause 436 also provides the amount recovered cannot exceed the amount paid as damages to the worker by the third party.

### **Clause 437. Employer's right to recover unpaid damages from third party**

[WCIMA 1981 s.93(5)]

Clause 437 provides for circumstances in which some of the damages payable to a worker by a third party for an injury have not been paid to the worker. In these circumstances the employer can recover the unpaid damages from the third party if some of the compensation paid by the employer for the injury has not been refunded to the employer.

Clause 437 provides that any unpaid damages recovered by the employer from the third party in excess of the amount of compensation not refunded to the employer must be paid to the worker.

## **Part 7 Division 5 – Choice of law**

### **Clause 438. Terms used**

[WCIMA 1981 s.93AE]

Clause 438 defines the terms *State's legislation about damages for an injury from employment* and *substantive law* used in Part 7 Division 5 of the Bill. Division 5 deals with the choice of law where a worker's employment may be connected with a State other than Western Australia.

### **Clause 439. Extended meaning: injury, employer and worker**

[WCIMA 1981 s.93AC]

Clause 439 provides an extended definition for the terms *injury*, *employer* and *worker* to be used in Part 7 Division 5 to include anything within the scope of a corresponding term in another State's workers' compensation scheme.

Clause 439 also requires determination of whether a person is a worker, or a workers' employer to be made on the basis that those concepts include anything within the scope of a corresponding concept in another State's workers' compensation scheme.

### **Clause 440. Applicable substantive law for work injury claims**

[WCIMA 1981 s.93AA]

Clause 440 provides for the application of the applicable substantive law for common law work injury claims based on the State in which an entitlement to compensation is established.

Clause 440 also provides Part 7 Division 5 does not apply if there is an entitlement to compensation in more than one State, and the matters to consider to determine whether there is an entitlement to compensation in a particular state.

### **Clause 441. Claims to which Division applies**

[WCIMA 1981 s.93AB]

Clause 441 provides Part 7 Division 5 applies to a claim for damages, or recovery of contribution, brought against a worker's employer in respect of an injury that was caused by the tort or breach of contract by the worker's employer.

Clause 441 also provides Part 7 Division 5 applies to a claim for damages or recovery of compensation brought against a person other than the worker's employer, where that person's tort or breach of contract is found to occur in this State.

**Clause 442. Claim in respect of death included**

[WCIMA 1981 s.93AD]

Clause 442 provides, for the purposes of Part 7 Division 5, a claim for damages in respect of death resulting from an injury must be considered as a claim for damages in respect of the injury.

**Clause 443. Availability of action in another State not relevant**

[WCIMA 1981 s.93AF]

Clause 443 provides it is irrelevant to an action under Part 7 Division 5 that the nature of the circumstances, or the circumstances on which the claim is based, would not give rise to a cause of action under the substantive law of another State.

## **PART 8 – ADMINISTRATION**

### **Part 8 Division 1 – General**

#### **Clause 444. Terms used**

[New provision]

Clause 444 defines terms used in Part 8 of the Bill.

### **Part 8 Division 2 — WorkCover WA**

#### **Clause 445. WorkCover WA established**

[WCIMA 1981 s.94]

Clause 445 provides for the establishment of WorkCover WA which is a body corporate with perpetual succession. Clause 445 also provides:

- proceedings may be taken against or by WorkCover WA
- WorkCover WA may operate under the name WorkCover
- WorkCover WA is an SES organisation under the *Public Sector Management Act 1994*.

#### **Clause 446. Status**

[WCIMA 1981 s.94(2a)]

Clause 446 provides WorkCover WA is an agent of the Crown and has the status, immunities and privileges of the Crown.

#### **Clause 447. Objective**

[WCIMA 1981 s.100]

Clause 447 provides the objective of WorkCover WA is to ensure the efficient and effective operation of the workers compensation scheme.

#### **Clause 448. Functions**

[WCIMA 1981 s.100]

Clause 448 provides for the various functions of WorkCover WA.

#### **Clause 449. Powers generally**

[WCIMA 1981 s.94(2)(b), 101 and 102]

Clause 449 provides WorkCover WA has all the powers it needs to perform its functions. Clause 449 also establishes actions WorkCover WA may take for the purposes of performing its functions, including:

- determine and charge fees for the provision of services

- effect contracts of insurance
- acquire, dispose or otherwise deal with real or personal property
- alter, improve, maintain, manage or develop real property
- enter into contracts or arrangements.

#### **Clause 450. Delegation**

[WCIMA 1981 s.101AA]

Clause 450 provides WorkCover WA may delegate a power or duty to a Board member, the CEO or another WorkCover WA officer.

Clause 450 also provides delegations must be in writing and cannot be delegated by the person to whom the power or duty was delegated.

#### **Clause 451. Execution of documents**

[New provision]

Clause 451 provides clarity for documents executed by WorkCover WA. Clause 451 requires WorkCover WA to have a common seal (which replicates section 94(2)(a) of the current Act) and that a document is executed by WorkCover WA if the common seal is applied to the document, or it is signed on behalf of WorkCover WA by a person authorised to do so.

Clause 451 also sets out the procedural requirements for when the common seal is to be applied and when a person is authorised to sign documents on behalf of WorkCover WA.

### **Part 8 Division 3 — Administration of WorkCover WA**

#### **Clause 452. Board is governing body**

[WCIMA 1981 s.95]

Clause 452 provides WorkCover WA must have a board as its governing body, which is empowered to perform WorkCover WA's functions.

#### **Clause 453. Board membership**

[WCIMA 1981 s.95]

Clause 453 provides for a governing body consisting of:

- a person appointed by the Minister as chairperson (who must not be a public service officer)
- the CEO of WorkCover WA
- five additional members appointed by the Minister: the WorkSafe Commissioner or a public service officer employed in the department administering the *Work Health and Safety Act 2020*; a person experienced in employers' interests; a person experienced in workers' interests; a person experienced in insurance matters; and a person experienced in accounting and financial management.

#### **Clause 454. Term of office of appointed members**

[WCIMA 1981 s.96(1)]

Clause 454 provides an appointed member holds office for the period specified in the member's instrument of appointment, but not exceeding three years. Clause 454 also provides that an appointed member is eligible for reappointment.

#### **Clause 455. Casual vacancies, resignation and removal from office**

[WCIMA 1981 s.96(3), (4) and (5)]

Clause 455 provides for casual vacancies, resignation and the removal from office of appointed members.

Clause 455 provides the circumstances under which the office of an appointed member becomes vacant and the grounds on which the Minister may remove an appointed member from office. An appointed member may also resign by giving notice to the Minister.

#### **Clause 456. Extension of term of office during vacancy**

[New provision]

Clause 456 provides for what occurs when an appointed member's office expires due to the effluxion of time. In these circumstances, the appointed member remains an appointed member until the day on which the vacancy is filled.

Clause 456 does not apply where the member is removed from office by the Minister or resigns.

#### **Clause 457. Leave of absence**

[WCIMA 1981 s.96(2)]

Clause 457 provides the Minister may grant a leave of absence to an appointed member on terms and conditions the Minister sees fit.

#### **Clause 458. Alternate appointed members**

[New provision]

Clause 458 provides for the appointment of an alternative member where an appointed member is unable to act because of illness or some other reason. Clause 458 provides that in these circumstances the Minister may appoint another person to temporarily take the place of the appointed member, who is taken to have any entitlement an appointed member has.

#### **Clause 459. Remuneration and allowances of appointed members**

[WCIMA 1981 s.99(2)]

Clause 459 provides an appointed member is entitled to remuneration and allowances that the Minister may determine, on recommendation of the Public Sector Commissioner.

### **Clause 460. Meetings**

[WCIMA 1981 s.97(1)]

Clause 460 provides meetings of the Board are to be held at the time and place determined by the Board.

Clause 460 also provides that the Minister may require the Board to meet to discuss a matter specified by the Minister, and a special meeting may be convened at any time by the Chairperson.

### **Clause 461. Quorum**

[WCIMA 1981 s.97(3)]

Clause 461 provides a quorum for a meeting of the Board is four members.

### **Clause 462. Presiding member**

[WCIMA 1981 s.97(2)]

Clause 462 provides the chairperson, if present, must preside a meeting of the Board. Clause 462 requires that where the chairperson or an alternate appointed member of the chairperson is not present at a meeting, the Board members present must elect a member to preside.

### **Clause 463. Procedure at meetings**

[WCIMA 1981 s.97(7)]

Clause 463 provides the Board may determine the procedure at meetings as it sees fit.

### **Clause 464. Voting**

[WCIMA 1981 s.97(4), (5)]

Clause 464 provides each member of the Board has a deliberative vote on matters, unless prohibited by clause 473 (with respect to matters in which a board member has a personal interest).

Clause 464 provides questions are resolved by a majority of the votes cast and in the case of an equal number of votes, the member presiding has a casting vote in addition to a deliberative vote.

### **Clause 465. Holding meetings remotely**

[New provision]

Clause 465 provides meetings of the Board need not be held in person and may be held via telephone, audio-visual or other means of instantaneous communication.

### **Clause 466. Decision without meeting**

[New provision]

Clause 466 allows the Board to make a decision on a matter without a meeting of the Board being held.

Clause 466 provides the procedural requirements for such a decision being made and requires the Board to keep a record of each decision made without a meeting held.

#### **Clause 467. Minutes**

[WCIMA 1981 s.97(6)]

Clause 467 provides the Board must keep accurate minutes of the proceedings at each meeting.

#### **Clause 468. Committees**

[WCIMA 1981 s.100A(1), (2), (6)]

Clause 468 provides the Board may establish committees to assist WorkCover WA in the performance of its functions.

Clause 468 also provides the board may discharge, alter or reconstitute a committee and that the committee must include at least one Board member. When appointing a committee, the Board must, as far as practicable appoint:

- a person experienced in employers' interests
- a person experienced in workers' interests
- persons with experience relevant to the matters to be considered by the committee
- other persons the Board thinks appropriate.

#### **Clause 469. Directions to committee**

[WCIMA 1981 s.100A(3)]

Clause 469 provides the Board may give directions to a committee with respect to its functions and procedures and that a committee must comply with directions of the Board.

#### **Clause 470. Committee procedures**

[WCIMA 1981 s.100A(3)]

Clause 470 provides a Board member is to preside at meetings of the committee. Where more than one Board member is appointed to a committee, one must be specified in their appointment to preside.

Clause 470 also provides that subject to any directions of the Board, a committee may determine its own procedures.

#### **Clause 471. Remuneration and allowances of committee members**

[WCIMA 1981 s.100A(4) and (5)]

Clause 471 provides a member of a committee is entitled to be paid any remuneration and allowances the Minister may determine on recommendation of the Public Sector Commissioner.

### **Clause 472. Disclosure of material personal interest**

[WCIMA 1981 s.104AA]

Clause 472 provides for disclosure of a material personal interest in any matter under consideration by members of the Board and members of a committee.

Clause 472 requires members of the Board or members of a committee who have a material personal interest in a matter being considered, or about to be considered, to disclose the nature of the interest as soon as practicable. Such disclosure must be recorded in the minutes of the meeting. A penalty of \$10,000 applies for failing to disclose a material personal interest.

### **Clause 473. Interested member cannot participate**

[WCIMA 1981 s.104AB]

Clause 473 provides a Board member or member of a committee who has a material personal interest in a matter being considered must not vote at, or be present at, a meeting where the matter is being considered.

### **Clause 474. Board may resolve s. 473 is inapplicable**

[WCIMA 1981 s.104AC]

Clause 474 provides clause 473 does not apply where a member discloses an interest in a matter and the Board passes a resolution that the Board is satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

### **Clause 475. Quorum if s. 473 applies**

[WCIMA 1981 s.104AD]

Clause 475 provides where a member is disqualified under clause 473, a quorum requires at least three members of the Board who are entitled to vote.

Clause 475 creates a new power for the Minister to deal with a matter to the extent the Board cannot deal with it due to a failure to produce a quorum.

### **Clause 476. Minister may declare s. 473 and 475 inapplicable**

[WCIMA 1981 s. 104AE]

Clause 476 provides the Minister may declare in writing that clause 473 (requiring members with a personal interest to not participate) and clause 475 (quorum requirements) do not apply in relation to a specified matter or voting on particular resolutions.

Clause 476 also requires the Minister provide Parliament with a copy of any declaration made under this clause within 14 sitting days after the declaration is made.

## **Part 8 Division 4 — Staff of WorkCover WA**

### **Clause 477. Chief executive officer**

[WCIMA 1981 s.295(2)]

Clause 477 provides for a CEO to administer the day-to-day operations of WorkCover WA, subject to control of the Board.

### **Clause 478. Delegation by CEO**

[WCIMA 1981 s.296]

Clause 478 provides the CEO with the power to delegate to another officer of WorkCover WA any power or duty of the CEO with the exception of a power or duty delegated by the WorkCover WA Board to the CEO under clause 450(1).

### **Clause 479. Other staff**

[WCIMA 1981 s.295(2)]

Clause 479 provides for public service officers to be appointed to enable WorkCover WA to perform its functions.

### **Clause 480. Use of other government staff**

[WCIMA 1981 s.295(1)]

Clause 480 allows WorkCover WA by arrangement and terms agreed with the relevant department to make use of any officer of that department for WorkCover WA's purposes.

Clause 480 expands on the power in the current Act by allowing WorkCover WA to also make use of the facilities of the relevant department, agency or instrumentality on terms agreed between the parties.

## **Part 8 Division 5 — Ministerial directions**

### **Clause 481. Minister may give directions**

[WCIMA 1981 s.111]

Clause 481 provides the Minister may give written direction to WorkCover WA with respect to its functions, and WorkCover WA must give effect to the direction. Clause 481 prohibits the Minister from giving a direction about a function under clause 253 (with respect to fixing recommended premium rates).

Clause 481 also requires the text of the direction be included in WorkCover WA's annual report.

## **Clause 482. Protection for disclosure or compliance with directions**

[New provision]

Clause 482 provides WorkCover WA or another person performing a function is not liable for:

- a claim arising from disclosure of information under clause 481 (Ministerial direction) or 498 (Minister's right to access information) or a duty imposed under the financial management or Auditor General statutes
- having done or omitted a thing required to be done or omitted by a direction given under the Act.

## PART 9 – FINANCIAL PROVISIONS

### Part 9 Division 1 – General provisions

#### **Clause 483. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

[WCIMA 1981 s.105; EISFA s.8]

Clause 483 provides the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating finance, administration, auditing and reporting apply to WorkCover WA.

#### **Clause 484. Borrowing powers**

[WCIMA 1981 s.101A]

Clause 484 provides WorkCover WA may, with the approval of the Treasurer, borrow or re-borrow money and otherwise arrange for financial accommodation to be extended to WorkCover WA.

#### **Clause 485. Guarantee by Treasurer**

[WCIMA 1981 s.101B]

Clause 485 provides the Treasurer, on recommendation of the Minister, may guarantee the payment of money payable by WorkCover WA borrowed under clause 484.

Clause 485 also provides the Treasurer may fix charges to be paid by WorkCover WA and determine the form and terms and conditions of any guarantee and requirements on WorkCover WA before a guarantee is given.

#### **Clause 486. Effect of guarantee**

[WCIMA 1981 s.101B(3)]

Clause 486 provides the payment of money under a guarantee must be made by the Treasurer and charged to, and paid out of, the Consolidated Account.

### Part 9 Division 2 — General Account

#### **Clause 487. Terms used**

[New provision]

Clause 487 defines the terms *notional premium income*, *premium income* and *total annual contribution* used in Part 9.

Clause 487 also sets out the requirements on WorkCover WA to establish the notional premium income of a self-insurer and the notional premium income if an employer is a self-insurer for only part of the financial year.

### **Clause 488. WorkCover WA General Account established**

[WCIMA 1981 s.106]

Clause 488 establishes the WorkCover WA General Account as an agency special purpose account under the *Financial Management Act 2006* section 16.

Clause 488 sets out the various financial payments that must be credited to the General Account (e.g. insurer and self-insurer contributions) and the various financial payments that must be charged to the General Account (e.g. money paid for carrying out WorkCover WA functions). .

### **Clause 489. Estimate of funds needed for General Account**

[WCIMA 1981 s.107(1)]

Clause 489 provides that before each financial year, WorkCover WA must prepare an estimate of the total annual contribution to be credited to the General Account for the purposes of the Act for that financial year.

The estimate must be provided to the Minister for approval and does not have any force or effect until it is approved by the Minister.

### **Clause 490. Calculation of estimate**

[WCIMA 1981 s.107(2), (3) and (4)]

Clause 490 provides for the calculation of the estimate under clause 489 in circumstances where the General Account is in either surplus or deficit at the commencement of the preceding financial year.

### **Clause 491. Required contributions by insurers and self-insurers to General Account**

[WCIMA 1981 s.108, 109(1), (4), (4a), (4b)]

Clause 491 provides the calculations WorkCover WA must make to determine the contribution required to the General Account from each insurer and self-insurer and allows WorkCover WA to set minimum required contributions.

The method is based on premium income for insurers and notional premium income for self-insurers and is substantively the same as the method of calculating the contributions to the WorkCover WA General Account under the current Act.

Clause 491 also provides insurers and self-insurers must pay the required contributions to the General Account and provides for circumstances for payment and conditions with respect to a group of related self-insurers, and where an insurer or self-insurer becomes an insurer or self-insurer during the current year.

To the extent that a contribution payable under clause 491 includes an amount that is a tax the accompanying *Workers Compensation and Injury Management Amendment Bill 2023* provides for the imposition of a tax.

### **Clause 492. Arrangements for payment of contributions**

[WCIMA 1981 s.109(2) and (3)]

Clause 492 provides the provisions of clause 262 (arrangement for payment of contributions to the Default Insurance Fund) apply to the payment of contributions to the General Account. This enables WorkCover WA to specify the arrangements and time period for contributions to be paid, including payment by instalments.

### **Clause 493. Provision of information by licensed insurers and self-insurers**

[WCIMA 1981 s.109(4)]

Clause 493 provides WorkCover WA may give a direction under clause 264(1) (WorkCover WA may direct insurers and self-insurers to provide information to determine contributions) to determine contributions to the General Account.

## **Part 9 Division 3 — Trust account**

### **Clause 494. WorkCover WA Trust Account established**

[WCIMA 1981 s.110(1), (2), (7) and (8)]

Clause 494 establishes the WorkCover WA Trust Account. The Trust Account primarily holds funds in respect of certain dependants of workers who die at work.

Clause 494 sets out the circumstances where money is to be credited to the Trust Account and provides that money must be paid to or on behalf of the respective persons entitled to Trust Account money, the amount apportioned to them in accordance with an order of a dispute resolution authority, plus interest.

Clause 494 also provides WorkCover WA must, with the approval of the Treasurer, fix the rate of interest payable to a person entitled to money held on trust.

### **Clause 495. Investment of money standing to credit of Trust Account**

[WCIMA 1981 s.110(3)-(6)]

Clause 495 provides money standing to the credit of the Trust Account is taken to be one common fund to be invested by WorkCover WA and investments made do not belong to any one particular person.

Clause 495 also provides WorkCover WA may invest money of the Trust Account on approval of the Treasurer and any interest or income earned on investments are to be credited to the Trust Account.

## **PART 10 — MANAGEMENT AND DISCLOSURE OF INFORMATION**

### **Part 10 Division 1 — Approved forms and electronic processes**

#### **Clause 496. Approved forms**

[WCIMA 1981 s.292(1)(a)]

Clause 496 authorises the WorkCover WA CEO to approve forms for use under the Act, providing a modern and flexible alternative to the procedure in the current Act which prescribes many administrative forms in regulations.

Clause 496 also provides the CEO's power to approve a form extends to the form in which the document must be created, recorded or exchanged and the manner in which it must be conveyed or transmitted. An approved form may require a matter to be verified by statutory declaration.

#### **Clause 497. Service, documents and information, including facilitation of electronic processes**

[New provision, WCIMA 1981 s.314, 314A]

Clause 497 provides the arbitration rules, conciliation rules and regulations may provide for matters relating to the service of documents and information given under the Act. This includes the means and ways documents can be created, given, recorded, exchanged and authenticated, and when documents are taken to be effected if created, given or exchanged electronically.

### **Part 10 Division 2 — Disclosure of information**

#### **Clause 498. Minister to have access to information**

[WCIMA 1981 s.111A]

Clause 498 preserves the existing right of the Minister to obtain information in the possession of WorkCover WA relating to its functions and to make and retain copies of documents relating to that information.

#### **Clause 499. Information held by Conciliation Service or Arbitration Service**

[New provision]

Clause 499 provides information held by the Conciliation Service or the Arbitration Service is available to WorkCover WA if requested by the CEO in order for WorkCover WA to perform its functions and compile statistics, records and reports relating to dispute resolution.

### **Clause 500. Licensed insurers and self-insurers must provide information to WorkCover WA**

[WCIMA s. 57C, 103A, 171 and 314]

Clause 500 requires licensed insurers and self-insurers to provide information to WorkCover WA. The information relates to liability and costs associated with workers compensation and common law claims made by workers, injury management and return to work, and insurance policy and premium information.

### **Clause 501. Direction to provide WorkCover WA with information**

[WCIMA 1981 s.103A, 314]

Clause 501 provides authority for WorkCover WA to direct scheme participants to provide information relevant to its functions in an approved form.

### **Clause 502. Disclosure of information to work, health and safety officers**

[WCIMA 1981 s.100B]

Clause 502 requires WorkCover WA to disclose information to the WorkSafe Commissioner or Department CEO that is relevant to work, health and safety.

### **Clause 503. WorkCover WA may disclose information**

[New provision]

Clause 503 permits WorkCover WA to disclose information such as the identity of a worker's employer and the employer's insurance status at a specified time or period. The information must be for the purpose of ascertaining liability, contribution or recovery in relation to a compensation or common law claim (for example, a dust disease that may be connected to employment in the 1970's or 1980's).

### **Clause 504. Confidentiality**

[WCIMA 1981 s.57D]

Clause 504 provides a person must not, directly or indirectly use or disclose any information obtained by the person because of:

- the person's office, position, employment or engagement under or for the purposes of the Act
- any disclosure made to the person under or for the purposes of the Act.

This prohibition on disclosure does not apply if the information is already in the public domain or is statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates. It also does not apply if the disclosure is authorised.

### **Clause 505. Authorised use or disclosure of information**

[New provision]

Clause 505 provides for the authorised use or disclosure of information. Authorised disclosures include:

- for the purposes of, or in connection with, performing a function under the Act or another law

- as required or authorised under the Act or another law
- for the purposes of any legal proceedings arising under this Act or another law
- under an order of a court or other person or body acting judicially
- with the consent of the person to whom the information relates
- in other circumstances prescribed by the regulations.

#### **Clause 506. Disclosure of claim information for pre-employment screening**

[New provision]

Clause 506 prohibits disclosure of claim information for pre-employment screening purposes. This assists in prohibiting discriminatory practices such as where workers are asked to disclose any previous workers compensation claim, which is then taken into account in considering the worker's suitability for employment with the prospective employer.

Employers are still able to meet their work health and safety obligations and ascertain if a worker is able to carry out the inherent requirements of the position (for example, through pre-employment medical assessment), but cannot enquire about any current or historical workers compensation claim.

## **PART 11 — REGULATION AND ENFORCEMENT**

### **Part 11 Division 1 — General**

#### **Clause 507. Term used: compliance purposes**

[New provision]

Clause 507 defines the term *compliance purposes* used in Part 11.

### **Part 11 Division 2 — Inspectors**

#### **Clause 508. Inspectors**

[WCIMA 1981 s.175A(1)]

Clause 508 provides for inspectors to be designated by the CEO. Inspectors may be designated for a fixed or indefinite period and the CEO may revoke designation at any time.

#### **Clause 509. Identification of inspectors**

[WCIMA 1981 s.175A(4)]

Clause 509 requires the CEO to provide each inspector with an identity card, identifying the person as an inspector.

Clause 509 requires an inspector to carry the identity card and, where practicable, produce the card when exercising their powers, or where not practicable produce the identity card at the first available opportunity after a power has been exercised.

### **Part 11 Division 3 — Inspections and investigations**

#### **Clause 510. Compliance inspections**

[New provision]

Clause 510 provides for the various compliance purposes for which an inspector may carry out an inspection.

#### **Clause 511. Entry powers**

[WCIMA 1981 s.175B(1)(a), (b)]

Clause 511 provides an inspector may enter a place where the inspector reasonably suspects workers are employed or records relevant to compliance purposes or kept.

### **Clause 512. General powers on entry**

[WCIMA 1981 s.175B(1)(a), (b) and (h) and 175D(1)(b)]

Clause 512 provides for the powers of an inspector who enters a place under clause 511 which include powers to inspect and examine documents, take recordings, and seize anything that is or may afford evidence of contravention of the Act.

Clause 512 also provides that an inspector must provide a receipt for any thing taken from a place and that a person may not refuse to comply with a requirement of an inspector made under this clause.

### **Clause 513. Persons assisting inspectors**

[WCIMA 1981 s.175B(3), 175C]

Clause 513 provides that a person, including an interpreter, may accompany an inspector entering a workplace to assist the inspector carry out functions under clause 512.

## **Part 11 Division 4 — Powers relating to documents and information**

### **Clause 514. Power to require auditor's certificate**

[WCIMA 1981 s.175B(1)(f) and (2)]

Clause 514 provides for an inspector to require an employer to produce an auditor's certificate stating the number of workers and relevant remuneration paid to those workers in a specified period.

Clause 514 provides an employer may not, without reasonable excuse, fail to comply with the requirement under this clause.

### **Clause 515. Power to require documents and answers to questions**

[WCIMA 1981 s.175B(1)(c) to (e), (g), 175D(1)(b)]

Clause 515 provides an inspector with the power to require documents be produced and require a person to submit for interview to answer questions. A person may not, without reasonable excuse, fail to comply with a requirement under this clause.

### **Clause 516. Abrogation of privilege against self-incrimination**

[WCIMA 1981 s.175D(2)]

Clause 516 provides an individual is not excused from answering a question on the grounds that it may incriminate that person, or make them liable for penalty.

Clause 516 does not apply to proceedings relating to dispute resolution and an answer given in compliance with a requirement under this clause cannot be used in civil or criminal proceedings, other than with respect to proceedings arising out of the false or misleading nature of the answer.

### **Clause 517. Power to copy and retain documents**

[WCIMA 1981 s.175B(1)(c)]

Clause 517 provides an inspector with the power to make copies or reproductions of documents or keep original documents for as long as necessary. Where an inspector takes an original copy, the owner of the document or the person who provided the document or other authorised persons are entitled to inspect or make copies of the document.

## **Part 11 Division 5 — Contravention of Act**

### **Clause 518. Who can prosecute offences**

[WCIMA 1981 s.101(d) and 309]

Clause 518 provides proceedings for an offence may be taken in the name of WorkCover WA by a person authorised by the CEO to do so.

### **Clause 519. Time limit for prosecutions**

[WCIMA 1981 s.310]

Clause 519 provides prosecution for an offence must commence within two years of the day the offence is alleged to have been committed.

### **Clause 520. Application of fines**

[WCIMA 1981 s.312]

Clause 520 provides a penalty imposed for an offence must be credited to the General Account for use by WorkCover WA.

Various fines, which have been set at the same value for many years, have been revised in line with WorkCover WA's 2014 Final Report recommendations.

### **Clause 521. Offences under Acts about work health and safety not affected**

[WCIMA 1981 s.313]

Clause 521 provides the Act does not affect proceedings for a fine or penalty under work health and safety law.

### **Clause 522. Infringement notices and the Criminal Procedure Act 2004**

[WCIMA 1981 Part XA]

Part XA of the current Act (Infringement notices and modified penalties) provides a standard set of provisions for infringement notices and modified penalties. Comparable provisions for most other statutes are contained in the *Criminal Procedure Act 2004* to prevent the same provisions being repeated in numerous acts in WA legislation.

It is intended the Act will be prescribed in Schedule 1A of the *Criminal Procedure Regulations 2005* which will facilitate regulations to be made to replicate existing regulations for infringement notices and modified penalties.

Clause 522(2) extends the time (compared to the current Act) for giving an infringement notice from 6 months to 12 months. This reflects the complexity of some investigations and will allow for minor matters to be dealt with by way of an infringement notice instead of court prosecutions.

## **Part 11 Division 6 — Offences**

### **Clause 523. Hindering or obstructing inspector**

[WCIMA 1981 s.175D(1)(a)]

Clause 523 makes it an offence to intentionally hinder or obstruct, or induce another to hinder or obstruct, an inspector exercising their power.

### **Clause 524. Using name WorkCover WA**

[WCIMA 1981 s.94(4)]

Clause 524 makes it an offence for a person to use or operate under the name WorkCover WA or a name similar enough to be misunderstood as referring to WorkCover WA.

### **Clause 525. False or misleading information**

[WCIMA 1981 s.175D(1)(c), (d)]

Clause 525 makes it an offence to provide false or misleading information in connection to an application, notice or document given under the Act, in compliance with a requirement under the Act, or any other purpose under the Act.

### **Clause 526. Fraud**

[WCIMA 1981 s.308]

Clause 526 provides that it is an offence to fraudulently obtain or attempt to obtain a benefit under the Act by malingering or making a false statement.

### **Clause 527. Preventing another person from complying with Act**

[WCIMA 1981 s.175D(1)(e)]

Clause 527 makes it an offence to directly or indirectly prevent another person from complying with a requirement of the Act.

## PART 12 — STATE WITH WHICH EMPLOYMENT CONNECTED

### **Clause 528. Terms used**

[WCIMA 1981 s.20(1), 23A and 23E]

Clause 528 defines the terms *court*, *determination* and *State* used in Part 12.

### **Clause 529. Connection of employment with a State**

[WCIMA 1981 s.20]

Clause 529 provides a worker's employment must be connected with the State for compensation to be payable.

Clause 529 sets out the detailed process for how connection with the State is to be determined, and the methodology for deciding whether a worker usually works in a State.

### **Clause 530. Determining if employment is connected with this State**

[WCIMA 1981 s. 23B]

Clause 530 provides for determining if a worker's employment is connected to the State for the purpose of court proceedings.

### **Clause 531. Applying to District Court to determine connection**

[WCIMA 1981 s.23C]

Clause 531 provides for an application to be made to the District Court to determine the State to which the worker's employment is connected.

### **Clause 532. Recognition of previous determination by court**

[WCIMA 1981 s.23D]

Clause 532 provides where a court in this State, or the court of another State, under corresponding provisions, has made a previous determination about that State to which the worker's employment is connected, that determination must be recognised. Clause 532 does not prevent an appeal as to the determination.

## PART 13 — MISCELLANEOUS

### **Clause 533. Judicial notice**

[WCIMA 1981 s.299]

Clause 533 provides for judicial notice of WorkCover WA's common seal and the signature of statutory office holders in the conciliation and arbitration services.

### **Clause 534. Protection from liability for performance of functions**

[WCIMA 1981 s.304]

Clause 534 provides there is no liability from an action in tort for things done in good faith by a person in the performance of a function under the Act. The protection extends to the Minister and the State.

### **Clause 535. Protection and immunity of conciliators, arbitrators and persons involved in proceedings**

[WCIMA 1981 s.305]

Clause 535 provides protection and immunity for the dispute resolution authority, a person representing a party, a party to proceedings, and witnesses, on similar terms to the protections and immunity given in proceedings of the Supreme Court.

### **Clause 536. Protection for compliance with this Act**

[WCIMA 1981 s.306]

Clause 536 provides no civil or criminal liability attaches to a person for good faith compliance with the Act.

### **Clause 537. Protection from liability for publishing decision**

[WCIMA 1981 s.307]

Clause 537 provides no action or proceedings lie against the State, Minister, or person employed or engaged by the State in respect of publishing a transcript of proceedings, publishing a decision or reasons for decisions before a dispute resolution authority.

### **Clause 538. General maximum and other adjustable amounts**

[WCIMA 1981 s.5(1) def. prescribed amount, s. 5A, Sch. 1 cl. 11(2) Amount C, Sch. 1A]

Clause 538 provides for the general maximum amount and various other compensation caps or limits to be adjusted or indexed in accordance with the regulations.

The 'general maximum amount' is a value that represents the maximum amount of income compensation and permanent impairment compensation that a worker can be paid. It is aligned to the 'prescribed amount' of \$243,991 which is the maximum amount that applies to these entitlements in the current Act for the 2022/2023 period. Savings and transitional provisions (cl. 565) automatically update the general maximum amount to align with the prescribed amount immediately before commencement of the new Act.

This clause replaces, but is consistent with, section 5 of the *Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020*. The 2020 amendment to the 1981 Act provided for regulations to adjust capped amounts for worker entitlements and provide for the applicable methodology to be prescribed in regulations. That amendment Act also protected against any worker entitlement reducing if that would otherwise occur as a result of the indexation method in regulations. This is also reflected in clause 538. This addresses a problem that existed in the Act prior to 2020 when the capped amounts and the indexation method were hard coded in the Act. The prescribed amount referenced in the Act prior to 2020 (from 1997) quickly became obsolete, and the indexation methodology hard coded in the Act prior to 2020 became problematic when the ABS indices referred to in the Act changed in a way that was in conflict with the Act.

#### **Clause 539. Regulations**

[WCIMA 1981 s.292]

Clause 539 provides for the Governor to make regulations prescribing matters required or permitted by the Act or necessary or convenient to give effect to the Act.

#### **Clause 540. Regulations may adopt codes or legislation**

[WCIMA 1981 s.292(7)]

Clause 540 provides for the adoption of codes or subsidiary legislation in regulations. For example, technical standards that apply to assessing binaural hearing loss in workers claiming noise-induced hearing loss compensation.

#### **Clause 541. Review of Act**

[WCIMA 1981 s.314B]

Clause 541 provides a review clause requiring a review of the operation and effectiveness of the Act at intervals of not more than 5 years.

Clause 541 requires the Minister to lay the report before each House of Parliament as soon as practicable after the report is made.

## PART 14 — SAVINGS AND TRANSITIONAL PROVISIONS

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

The general approach with the savings and transitional provisions is that the new Act (the Bill when enacted and proclaimed) operates as a continuation of the current Act (referred to in Part 14 as the former Act). Any pending matter (as defined) continues and must be dealt with under the corresponding provisions in the new Act as if it arose under the new Act.

Subject to some exceptions, the new Act applies to any injury or death, an employer liability, and any insurance policy issued before commencement of the new Act.

### Part 14 Division 1 — General

#### **Clause 542. Terms used**

Clause 542 defines the terms *commencement day*, *former Act* and *pending matter*, used in Part 14.

#### **Clause 543. Expressions used in former Act**

Clause 543 provides an expression used in Part 14, as it relates to a liability for compensation or damages that arose before commencement, has the meaning given in the former Act.

#### **Clause 544. Transitional regulations**

Clause 544 provides where the Act does not provide for a particular transitional matter, the Governor may make regulations providing for the relevant transitional matter.

#### **Clause 545. *Interpretation Act 1984* not affected**

Clause 545 provides Part 14 does not limit the operation of the *Interpretation Act 1984* unless the contrary intention appears.

#### **Clause 546. Act operates as continuation of former Act**

Clause 546 provides the Act operates as a continuation of the former Act and any matter which arose and is pending under the former Act must be dealt with as if it occurred under the Act.

#### **Clause 547. References to former Act**

Clause 547 provides a reference in a document or instrument to the former Act (for example a claim form) includes a reference to the new Act, and a reference in a document or instrument to a provision of the former Act includes a provision to the relevant Act provision.

**Clause 548. Directions about corresponding provisions and pending matters**

Clause 548 provides the CEO may give directions about provisions and pending matters to assist in the interpretation of the Act with reference to the corresponding provisions of the former Act, or to modify the operation of a provision of the Act to make provision for differences between the new Act and the former Act.

**Clause 549. Effect of Act on validity of past acts**

Clause 549 provides the Act does not affect the validity of anything done or omitted to be done under the former Act once the Act comes into operation (for example, the reduction, suspension or cessation of payments, or a settlement under the former Act).

Clause 549 ensures certainty for parties to a claim and that decisions made under the former Act do not need to be re-examined once the Act comes into operation.

**Clause 550. Application of Act to existing injuries and other matters**

Subject to Part 14, clause 550 applies to injuries or deaths that occurred before commencement day and to any liability to pay compensation or damages and any insurance policy issued before commencement day.

**Clause 551. Pending claims under former Act**

Clause 551 provides a claim for weekly payments of compensation made under the former Act but not decided before the Act comes into operation must be dealt with as if made under the new Act.

A claim under the former Act that is not decided before the new Act comes into operation is one where liability was not accepted by the insurer or self-insurer, an arbitrator had not determined liability, or the insurer or self-insurer failed to comply with relevant provisions of the former Act for giving a notice about liability.

**Clause 552. Firefighters**

Clause 552 provides the specified firefighter cancer provisions in section 11 of the new Act do not apply to an injury suffered before 13 November 2013 (the date the firefighter cancer provisions in the current Act came into operation).

**Clause 553. Jockeys**

Clause 553 provides where an injury to a jockey occurred before 14 December 2012 (the date the amendments for coverage of jockeys in the current Act came into operation), Racing and Wagering Australia is considered the employer and not the licensed trainer for whom the person was engaged.

## **Part 14 Division 2 — Compensation**

### **Clause 554. Continuation of entitlement to compensation**

Clause 554 provides an entitlement to compensation a person has prior to the commencement becomes an entitlement to compensation under the new Act and is payable in accordance with the new Act.

### **Clause 555. Calculation of income compensation commenced as weekly payments under former Act**

Clause 555 provides for the calculation of income compensation that commenced as weekly payments under the former Act.

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

Clause 555 only applies where liability to pay weekly payments was accepted by the insurer or self-insurer or ordered by an arbitrator before commencement.

This means the method for calculating income compensation in the new Act including the extension of the step-down point from 13 to 26 weeks will not apply if weekly payments commenced before commencement day.

### **Clause 556. Caps on compensation**

Clause 556 provides for the treatment of caps on compensation for entitlements established under the former Act when the new Act comes into operation (for example, the cap on medical entitlements). Where a compensation cap has been exhausted prior to commencement day, the entitlement remains subject to the cap of the former Act and does not renew or revive when the new Act commences. Where a compensation cap has not been exhausted, the entitlement becomes subject to the corresponding cap under the new Act and is not subject to the cap in the former Act.

Clause 556 does not renew or revive a liability for compensation or any entitlement under the former Act that was discharged or extinguished under the former Act.

### **Clause 557. Compensation paid or payable under former Act**

Clause 557 provides a reference to compensation paid or payable in the Act includes a reference to compensation paid or payable in the former Act.

### **Clause 558. Provisional payments of compensation**

Clause 558 provides an employer is not required to make provisional payments in respect of a claim for compensation made prior to commencement of the Act, unless the claim is a pending claim as set out in clause 551 and is required to be dealt with as a claim in the new Act.

### **Clause 559. Vocational rehabilitation compensation**

Clause 559 provides a reference in section 95 with respect to workplace rehabilitation expenses compensation paid to an injured worker, includes a reference to compensation paid for vocational rehabilitation under the former Act. This ensures funding of workplace rehabilitation expenses continues when the Act comes into operation.

### **Clause 560. Lump sum compensation for permanent impairment**

Clause 560 provides a reference in section 102 to a compensable injury includes a personal injury by accident in respect of which compensation for permanent impairment under the former Act has been paid. This enables further permanent impairment compensation to be paid if permanent impairment results from a subsequent compensable injury.

### **Clause 561. Noise-induced hearing loss**

Clause 561 provides a reference in the Act to noise-induced hearing loss compensation paid to a worker includes reference to compensation under the former Act or the *Workers' Compensation Act 1912* and a reference in the Act to hearing loss and assessed noise-induced hearing loss includes hearing loss and assessed noise-induced hearing loss measured in accordance with the former Act.

### **Clause 562. Compensation for death of worker before 1 July 2018**

Clause 562 provides where a worker died before 1 July 2018 (the date amendments to compensation for dependants of deceased workers came into operation) the former provisions as defined in clause 9 of Schedule 8 to the former Act apply, except the child's allowance that a person is entitled is the eligible dependent child allowance under section 134 in the new Act.

### **Clause 563. When entitlement to income compensation ceases due to age [WCIMA s. 56, 57]**

Clause 563 provides where an injury occurred before 1 October 2011, (the date amendments to entitlements ceasing due to age came into operation) and the worker's entitlement to weekly payments had not ceased, that entitlement to compensation ceases upon the worker attaining the age of 65 years.

### **Clause 564. Compensation for AIDS**

Clause 564 provides the compensation arrangements for AIDS do not apply in respect to an accident in which the injured worker was infected with HIV before 14 November 2005 (the date amendments to AIDS compensation came into operation).

### **Clause 565. Updating of general maximum amount**

Clause 565 provides where the prescribed amount of \$243,991 specified as the general maximum amount is different to the prescribed amount immediately before commencement, the prescribed amount immediately before commencement replaces the amount of \$243,991 as the general maximum amount specified in clause 538 of the Act.

This ensures the most recent annual indexed increase to the prescribed amount under the former Act (as at 1 July) is effective when the new Act commences, given the Act may commence after the prescribed amount of \$243,991 for the 2022/2023 financial year has changed.

### **Part 14 Division 3 — Injury management**

#### **Clause 566. Return to work programs established under s. 155C of former Act**

Clause 566 provides a return to work program established under the former Act is taken to have been established under the Act at its commencement date. This ensures continuity of already established return to work programs.

#### **Clause 567. Employer's obligation to make position or suitable duties available**

Clause 567 provides sections 166, 167 and 168 which impose employment protection obligations on employers for injured workers with an incapacity for work do not apply to an injury which occurred before commencement (to avoid the potential for retrospective penalties). Clause 567 provides that the relevant provisions of the former Act apply in these circumstances.

#### **Clause 568. Approved workplace rehabilitation providers**

Clause 568 provides continuity for workplace rehabilitation providers approved under the former Act by providing that their approval remains in force at the commencement of the Act. Clause 568 also provides that the approval remains in force indefinitely unless converted to a fixed term approval by WorkCover WA.

#### **Clause 569. Vocational rehabilitation**

Clause 569 provides continuity for injured workers by providing that a rehabilitation service established under the former Act for an injured worker continues in operation at the commencement of the new Act.

### **Part 14 Division 4 — Dispute resolution**

#### **Clause 570. Terms used**

Clause 570 defines terms used in Part 14, Division 4.

#### **Clause 571. Disputes to which Act applies**

Clause 571 provides that at commencement the Act applies to a dispute arising before, on or after the commencement date.

#### **Clause 572. Continuity of conciliation and arbitration services**

Clause 572 provides continuity to the dispute resolution services by providing that the Conciliation and Arbitration Services and relevant officers from the former Act continue in office on and after commencement.

### **Clause 573. Conciliation rules, arbitration rules and practice notes**

Clause 573 provides authority for conciliation rules, arbitration rules and practice notes to be developed by the relevant statutory office holder so that they are ready to come into effect on commencement day of the new Act.

### **Clause 574. Pending dispute proceedings**

Clause 574 provides pending disputes must be dealt with as dispute proceedings under the new Act and are to be dealt with in accordance with the relevant rules in force immediately before commencement day, unless a transitional direction otherwise provides.

### **Clause 575. Transitional directions**

Clause 575 provides for an appropriate official (Director or Registrar) to give transitional directions with respect to various types of pending disputes, if required, to facilitate the appropriate resolution of the disputes.

### **Clause 576. Dispute decisions under former Act**

Clause 576 provides a decision of an arbitrator or conciliator made under the former Act is taken to have been made or given under the corresponding provision of the new Act.

### **Clause 577. Registration of independent agents**

[WCIMA 1981 s. 277]

As recommended in WorkCover WA's 2014 Final Report, the Bill discontinues the regime for registered agents.

Clause 577 provides for registered independent agents to continue to operate as agents or representatives of workers in the dispute resolution process for a period of two years from commencement of the new Act. After two years the registration scheme will terminate and the registration of any independent agent will cease.

Clause 577 provides for regulations to make provision for the registration framework during the transition period including regulating the conduct of registered independent agents, limiting certain agent services, conditions on registration, and circumstances in which registration may be suspended or cancelled.

This change does not affect the ability for parties to be represented by an 'authorised agent' in conciliation and arbitration proceedings. There will no longer be a separate requirement for agents (such as employees of insurers or unions) to be registered with WorkCover WA, other than independent registered agents over the two-year transitional period.

### **Clause 578. Costs determination**

Clause 578 provides for a Costs Committee established under the former Act to make a costs determination for the purposes of the new Act prior to the commencement day. Any costs determination will come into operation on commencement of the new Act.

Clause 578 ensures the necessary infrastructure for setting legal and agent fees is in place when the Act commences.

## **Part 14 Division 5 — Medical assessment**

### **Clause 579. Approved permanent impairment assessors**

Clause 579 provides continuity for medical practitioners who are approved medical specialists under the former Act by deeming them to be approved permanent impairment assessors. Permanent impairment assessors assess the degree of permanent impairment of injured workers which is a precondition of access to certain entitlements and common law damages.

Clause 579 also provides the approval remains in force indefinitely unless converted to a fixed term approval by WorkCover WA.

### **Clause 580. Medical assessments under former Act**

Clause 580 provides an assessment of a worker's degree of whole person impairment made under the former Act is taken to be an assessment under the new Act.

Clause 580 also provides a determination of a question by a medical panel relating to a dust disease under the former Act is taken to be a determination of that question by a Dust Disease Medical Panel.

## **Part 14 Division 6 — Insurer and self-insurer insolvency and uninsured liabilities**

### **Clause 581. Claims for uninsured liabilities**

Clause 581 provides section 267, which relates to the payment of damages where an employer is uninsured, does not apply if the action for damages or a claim for compensation was brought before 1 October 2011 (the date amendments came into operation providing for common law damages payable by uninsured employers to be met by the WorkCover WA General Account).

### **Clause 582. Amounts payable from DI Fund for uninsured liabilities**

Clause 582 provides an amount payable to a worker from the General Account (for example, for an uninsured claim) that remains unpaid at commencement of the new Act is payable from the Default Insurance Fund in the new Act.

Clause 582 also provides an amount paid from the General Account that is recoverable under the provisions of the former Act but that isn't recovered prior to the commencement is recoverable from the Default Insurance Fund in the new Act.

### **Clause 583. Insurer and self-insurer insolvency**

Clause 583 connects corresponding references in the former Act and new Act relating to insurer and self-insurer insolvency.

### **Clause 584. EIS Fund**

Clause 584 provides for funds standing to the credit of the *Employers' Indemnity Supplementation Fund Act 1980* to be credited to the Default Insurance Fund and other matters with respect to the fund.

### **Clause 585. Claims under EISF Act**

Clause 585 provides a claim pending under the *Employers' Indemnity Supplementation Fund Act 1980* must continue to be dealt with as if that Act is still in force. Amounts payable under that Act must be paid from the Default Insurance Fund, which picks up liabilities under the repealed Act.

## **Part 14 Division 7 — Settlement agreements**

### **Clause 586. Settlement agreements under former Act**

Clause 586 provides the provisions of the former Act still apply to settlements received by WorkCover WA for registration but not registered until after the commencement of the new Act. Agreements registered under the former Act are taken to have been registered under the new Act at commencement.

## **Part 14 Division 8 — Common law damages proceedings**

### **Clause 587. Terms used**

Clause 587 defines terms used in Part 14, Division 8.

### **Clause 588. Application of new common law provisions to existing claims**

Clause 588 provides the common law provisions in the Act extend to a cause of action that accrued before commencement and, except as provided for in the Act, do not apply to proceedings commenced prior to commencement of the new Act. Clause 588 also provides for various circumstances as they relate to common law proceedings from commencement day.

### **Clause 589. Transitional arrangements for application of new common law provisions to existing claims**

Clause 589 clarifies the status of any election or permanent impairment assessment or agreement made or registered for common law purposes in respect of any cause of action accruing before commencement and where proceedings have not validly commenced before commencement of the new Act.

### **Clause 590. Continuation of 1993 Scheme**

Clause 590 provides for the continuation of the 1993 common law scheme contained in the former Act, despite that Act being repealed, for relevant claims.

### **Clause 591. Dust disease actions accruing before 14 November 2005**

Clause 591 provides the common law provisions of the Act apply to a cause of action that accrued before 14 November 2005 if the worker claims to suffer from a dust disease and the worker's permanent impairment was assessed under the former Act or settled by agreement.

## **Part 14 Division 9 — Insurance**

### **Clause 592. Insurance policies under former Act**

Clause 592 provides an insurance policy taken out under the former Act insures an employer for any liability to pay compensation or damages that arises under the former or new Act in respect of employment during the period of the former Act policy. This ensures an insurance policy issued before commencement will respond to a claim for an injury after commencement if the liability arises during the period of that previous policy. For example, clause 592 applies to a liability to pay compensation for certain latent diseases that may manifest some years later but are attributable to a worker's exposure to injurious employment with the employer during the period the employer had an insurance policy in place under the former Act.

### **Clause 593. Failure to insure under former Act**

Clause 593 provides that provisions of the former Act about the failure of an employer to maintain a workers compensation insurance policy continue to apply in respect of a failure to insure that occurs before commencement of the new Act.

### **Clause 594. Underpaid premiums**

Clause 594 provides section 210 of the Act, which allows an insurer to recover underpaid premiums from an employer, applies to the extent that the employer provided false or misleading premium information to the insurer prior to commencement, and that information was used to calculate the premium owed by an employer for a policy of insurance issued or renewed after commencement.

### **Clause 595. Operation of policies issued by Insurance Commission**

Under the former Act there is a separate regime for insuring mining employers covering industrial disease compensation claims relating to pneumoconiosis, mesothelioma, lung cancer and diffuse pleural fibrosis arising from exposure in any mine or mining operation.

Clause 595 provides for the discontinuation of the special insurance policy mining employers are required to hold with the Insurance Commission of Western Australia for coverage of these industrial diseases and includes a savings provision for coverage of historical liabilities.

Clause 595 provides that a policy of insurance issued by the Insurance Commission under the former Act remains in force from commencement but does not apply to a liability arising in respect of employment after commencement day.

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

Current policies will lapse on commencement in respect of liabilities arising from employment on or after commencement. The coverage that a current policy would have provided to a mining employer for employment on or after commencement will instead be provided by the standard workers compensation policy that the employer is required to hold with a licensed insurer.

**Clause 596. Licensed insurers**

Clause 596 provides continuity for workers compensation insurers by providing an insurer that was an approved insurer under the former Act is taken to be a licensed insurer. Clause 595 also provides the license remains in force indefinitely unless converted to a fixed period by WorkCover WA.

**Clause 597. Self-insurers**

Clause 597 provides continuity for workers compensation self-insurers by providing that employers, or any group of employers, approved as self-insurers under the former Act are taken to be licensed self-insurers. Clause 597 also provides that the license remains in force indefinitely unless converted to a fixed period by WorkCover WA.

**Clause 598. Recommended premium rates**

Clause 598 provides a recommended premium rate fixed under the former Act remains in force and is taken to have been fixed under the new Act.

**Clause 599. Appeals by employers**

Clause 599 provides a premium appeal by an employer that is pending under the former Act must continue and be dealt with as a review under section 255 of the new Act.

**Clause 600. Permission for insurer to exceed 75% premium loading**

Clause 600 provides a request for permission to exceed 75% premium loading by an insurer under the former Act that is yet to be determined by WorkCover WA lapses on commencement of the new Act. The new Act does not require insurers to seek permission to load a premium by more than 75%, although the ability for an employer to appeal such a loading remains.

**Clause 601. Acts of terrorism**

Clause 601 provides if an order under the *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001* is in effect on commencement, the order declaring the act of terrorism remains in force, but the provisions of the new Act addressing claims and liability for compensation for acts of terrorism apply.

**Part 14 Division 10 — Administration**

**Clause 602. Term used: WorkCover Western Australia Authority**

Clause 602 defines the term *WorkCover Western Australia Authority* used in Part 14 Division 10.

### **Clause 603. Continuation of WorkCover Western Australia Authority**

Clause 603 provides WorkCover WA established under the Act is the same legal person and a continuation of the WorkCover Western Australia Authority.

### **Clause 604. Board is continuation of governing body**

Clause 604 provides the WorkCover WA Board is a continuation of the governing body of the WorkCover Western Australia Authority. Clause 603 also provides for the continuation of the Chairperson and members of the governing body as the chairperson and members of the Board.

### **Clause 605. Exercise of powers of Board before commencement day**

Clause 605 provides the WorkCover WA Board constituted in the former Act may, to the extent necessary or expedient, exercise powers to make a legislative or administrative instrument for the purposes of the new Act before commencement day. Any such legislative or administrative instrument comes into effect on commencement of the new Act.

### **Clause 606. Continuation of accounts**

Clause 606 provides the General Account and Trust Account referred to in the new Act are a continuation of the General Account and Trust Account in the former Act.

### **Clause 607. Chief executive officer**

Clause 607 provides the person who was CEO of WorkCover WA immediately before commencement, continues in office as CEO with the same employment conditions that applied immediately before commencement of the new Act.

### **Clause 608. Exercise of powers of CEO before commencement day**

Clause 608 provides before commencement day, the CEO may, to the extent necessary or expedient, exercise powers the CEO will have under the Act to make an administrative or legislative instrument.

Clause 608 provides an administrative or legislative instrument made under this clause takes effect at commencement of the new Act.

### **Clause 609. Other staff**

Clause 609 provides the staff of WorkCover WA immediately before commencement, continue as staff of WorkCover WA, with the same employment conditions that applied immediately before commencement.

### **Clause 610. Inspectors**

Clause 610 provides a person who is an inspector under the former Act is taken to be an inspector under the new Act.

### **Clause 611. Delegations [WCIMA s. 101AA]**

Clause 611 provides a delegation in force under the former Act remains in force at the commencement of the new Act.

**Clause 612. Guarantees of borrowings [WCIMA s. 101B]**

Clause 612 provides the repeal of the provisions relating to the guarantee of borrowings by the Treasurer found in the former Act, does not affect the validity of any guarantee given by the Treasurer or security given by WorkCover WA in relation to a guarantee.

**Clause 613. General Account**

Clause 613 provides any unpaid amount payable to or from the General Account, or recoverable for payment to the General Account prior to commencement is payable to the General Account under the new Act.

Clause 613 also enables WorkCover WA to pay from the General Account to the Default Insurance Fund the total amount of liabilities of the General Account of the current Act that remain unpaid at commencement of the new Act (relating to uninsured employers).

## **PART 15 — REPEALS AND CONSEQUENTIAL AND RELATED AMENDMENTS**

### **Part 15 Division 1 — Acts repealed**

#### **Clauses 614 - 618**

Part 15 Division 1 of the Bill repeals the following Acts:

- *Workers' Compensation and Injury Management Act 1981*
- *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001*
- *Employers Indemnity Policies (Premium Rates) Act 1990*
- *Employers' Indemnity Supplementation Fund Act 1980*
- *Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986*

Relevant provisions of the various repealed Acts are integrated into the Bill to provide a consolidated source of legislation for workers compensation matters.

Savings and transitional provisions in Part 14 provide for a seamless transition from the current Acts to the new Act following the repeals.

### **Part 15 Division 2 — Subsidiary legislation repealed**

#### **Clauses 619 - 622**

Part 15 Division 2 of the Bill repeals the following subsidiary legislation:

- *Workers' Compensation and Injury Management Regulations 1982*
- *Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998*
- *Workers' Compensation Code of Practice (Injury Management) 2005*
- *Workers' Compensation and Injury Management (Acts of Terrorism) (Final Day) Regulations 2002*

New subsidiary legislation will be developed to support the new Act following its enactment.

### **Part 15 Division 3 — Acts amended**

#### **Subdivision 1 — *Civil Liability Act 2002* amended**

##### **Clause 623. Act amended**

Clause 623 provides that Part 15 Division 2 Subdivision 1 amends the *Civil Liability Act 2002*.

**Clause 624. Section 3A amended**

Clause 624 deletes and replaces item 3 in the Table to section 3A of the *Civil Liability Act 2002* to insert the relevant provisions of the new Act relating to damages for which certain provisions of the *Civil Liability Act 2002* do not apply.

**Clause 625. Section 13A replaced**

Clause 625 deletes and replaces section 13A of the *Civil Liability Act 2002* which constrains damages awarded in respect of treatment, care and support needs for participants receiving payments for these services under the catastrophic injuries support Scheme. The amendment is necessary as a result of amendments to the renamed *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016* to extend the scheme to workers catastrophically injured in workplace accidents. The same restrictions on receiving damages apply to both motor vehicle injury and workplace injury and prevent double recovery.

**Subdivision 2 — *Financial Management Act 2006* amended**

**Clause 626. Act amended**

Clause 626 provides Part 15 Division 2 Subdivision 2 amends the *Financial Management Act 2006*.

**Clause 627. Schedule 1 amended**

Clause 627 deletes 'WorkCover Western Australia Authority' and inserts 'WorkCover WA' in schedule 1 of the *Financial Management Act 2006*.

**Subdivision 3 — *Fire and Emergency Services Act 1998* amended**

**Clause 628. Act amended**

Clause 628 provides Part 15 Division 2 Subdivision 3 amends the *Fire and Emergency Services Act 1998*.

**Clause 629. Section 36ZM amended**

Clause 629 deletes and replaces various definitions in section 36ZM of the *Fire and Emergency Services Act 1998* relating to firefighter diseases. The amendments are consequential to terminology and numbering in the new Act to which that Act refers.

**Clause 630. Section 36ZN replaced**

Clause 630 replaces section 36ZN of the *Fire and Emergency Services Act 1998* relating to when a firefighter disease is taken to be an injury caused by volunteer activities.

The amendments are consequential to terminology and numbering changes in the new Act to which the *Fire and Emergency Services Act 1998* refers. The only material change is to the 'qualifying period' for oesophageal cancer which will reduce from 25 years to 15 years. This change results from amendments to the 'qualifying period' in section 11(1) of the new Act which is referred to in section 36ZN of the *Fire and Emergency Services Act 1998*. This puts volunteer firefighters on the same footing as career firefighters.

**Clause 631. Section 36ZR amended**

Clause 631 makes amendments to section 36ZR of the *Fire and Emergency Services Act 1998* that are consequential to changes in terminology and numbering in the new Act.

**Clause 632. Section 36ZS amended**

Clause 632 makes amendments to section 36ZS of the *Fire and Emergency Services Act 1998* that are consequential to changes in terminology in the new Act.

**Clause 633. Section 36ZT amended**

Clause 633 makes amendments to section 36ZT of the *Fire and Emergency Services Act 1998* that are consequential to changes to changes in terminology in the new Act.

**Clause 634. Section 36ZU amended**

Clause 634 makes amendments to section 36ZU of the *Fire and Emergency Services Act 1998* that are consequential to changes in terminology in the new Act.

**Clause 635. Section 36ZW amended**

Clause 635 makes amendments to section 36ZW of the *Fire and Emergency Services Act 1998* that are consequential to changes in terminology in the new Act.

**Clause 636. Section 36ZX replaced**

Clause 636 deletes and replaces section 36ZX of the *Fire and Emergency Services Act 1998*. The amendments are consequential to changes in terminology and numbering in the new Act

**Clause 637. Other references to WC&IM Act replaced**

Clause 637 deletes and replaces various references to the revised abbreviated name of the Act in the *Fire and Emergency Services Act 1998*.

**Subdivision 4 — *Health Services Act 2016* amended**

**Clause 638. Act amended**

Clause 638 provides Part 15 Division 2 Subdivision 4 amends the *Health Services Act 2016*.

**Clause 639. Section 228 amended**

Clause 639 makes amendments to section 228 of the *Health Services Act 2016* that are consequential to changes to terminology and numbering in the new Act.

**Subdivision 5 — *Insurance Commission of Western Australia Act 1986* amended****Clause 640. Act amended**

Clause 640 provides Part 15 Division 2 Subdivision 5 amends the *Insurance Commission of Western Australia Act 1986*.

**Clause 641. Section 6 amended**

Clause 641 amends the title of the *Motor Vehicle (Catastrophic Injuries) Act 2016* to the *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016* which is referred to in section 6 of the *Insurance Commission of Western Australia Act 1986*.

Clause 641 also deletes and replaces paragraph 6(b) which is consequential to provisions in the new Act (section 595) that discontinue the Insurance Commission's function of insuring mining employers covering industrial disease compensation claims relating to pneumoconiosis, mesothelioma, lung cancer and diffuse pleural fibrosis arising from exposure in any mine or mining operation.

The consequential amendment ensures it is a continuing function of the Insurance Commission to respond to a liability in any historical policy issued by the Insurance Commission (those for which the period of insurance expired before commencement of the new Act, and those that are in force on commencement of the new Act with a period of insurance expiring after commencement of the new Act), but only in relation to a liability for a disease that arises from employment before commencement.

**Clause 642. Section 7 amended**

Clause 642 amends section 7 of the *Insurance Commission of Western Australia Act 1986* which is consequential to changes in terminology in the new Act.

**Clause 643. Section 15 amended**

Clause 643 amends section 15 of the *Insurance Commission of Western Australia Act 1986* to insert the additional funding sources for moneys available to the Insurance Commission resulting from the Insurance Commission being given the function of administering catastrophic workplace injuries being:

- contributions credited to the Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund as required under the new Act Part 5 Division 11 (levied from licensed insurers and self-insurers)
- any amount credited to the Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund under the new Act section 301 (transferred from the Default Insurance Fund).

**Clause 644. Section 16 amended**

Clause 644 amends section 16 of the *Insurance Commission of Western Australia Act 1986* to change the name of the fund referred to in that section to the Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund. The amendment is necessary as a result of extending the catastrophic injuries support scheme administered by the Insurance Commission to workers catastrophically injured in workplace accidents.

**Clause 645. Section 18 amended**

Clause 645 amends section 18 of the *Insurance Commission of Western Australia Act 1986* to change the name of the fund referred to in that section to the Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund.

**Clause 646. Section 44 deleted**

Clause 646 deletes section 44 of the *Insurance Commission of Western Australia Act 1986* which established public authorities insured by the Insurance Commission as a group of self-insured employers. This change is consequential to the change in status of the Insurance Commission as a licensed insurer under the new Act (section 235) with a specialised insurer condition to insure only public authorities.

**Clause 647. Section 49 inserted**

Clause 647 inserts a transitional provision at the end of Part V of the *Insurance Commission of Western Australia Act 1986* to provide that the Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Fund is a continuation of the Motor Vehicle (Catastrophic Injuries) Fund established and maintained under section 16(1)(b) before the day on which section 647 of the new Act comes into operation.

**Subdivision 6 — *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* amended**

**Clause 648. Act amended**

Clause 648 provides Part 15 Division 2 Subdivision 6 amends the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947*.

**Clause 649. Section 6 amended**

Clause 649 amends section 6 of the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* which is consequential to changes in terminology and numbering in the new Act.

**Subdivision 7 — *Law Reporting Act 1981* amended**

**Clause 650. Act amended**

Clause 650 provides Part 15 Division 2 Subdivision 7 amends the *Law Reporting Act 1981*.

**Clause 651. Section 2 amended**

Clause 651 deletes the definition of ‘court’ in section 2 of the *Law Reporting Act 1981*. The definition of ‘court’ includes the Commissioner within the meaning of the *Workers’ Compensation and Injury Management Act 1981*. The jurisdiction of the Commissioner was discontinued in the 2011 amendments to the Act.

**Subdivision 8 — *Legal Profession Uniform Law Application Act 2022* amended**

**Clause 652. Act amended**

Clause 652 provides Part 15 Division 2 Subdivision 8 amends the *Legal Profession Uniform Law Application Act 2022*.

**Clause 653. Section 134 amended**

Clause 653 amends section 6 of the *Legal Profession Uniform Law Application Act 2022* which is consequential to terminology and numbering in the new Act to which that Act refers.

**Subdivision 9 — *Limitation Act 2005* amended**

**Clause 654. Act amended**

Clause 654 provides Part 15 Division 2 Subdivision 9 amends the *Limitation Act 2005*.

**Clause 655. Section 55 amended**

Clause 655 deletes the word ‘asbestos’ and replaces it with ‘asbestos or silica dust’ in section 55(2) of the *Limitation Act 2005*. This change ensures that section 55 of the *Limitation Act 2005* which provides for when a cause of action accrues for personal injury does not apply in respect of a personal injury that is attributable to the inhalation of asbestos or silica dust.

This change puts workers with silicosis on the same footing as workers with asbestosis with both types of dust disease excluded from the operation of section 55 of the *Limitation Act 2005*. Section 56 of the *Limitation Act 2005* deals with the accrual of actions for personal injury attributable to asbestos or silica dust.

**Clause 656. Section 56 amended**

Clause 656(1) deletes the word ‘asbestos’ and replaces it with ‘asbestos or silica dust’ in section 56(1)(a) of the *Limitation Act 2005*.

This change puts workers with silicosis on the same footing as workers with asbestosis with both types of dust disease covered by the special provisions in section 56 of the *Limitation Act 2005* for working out when the cause of action accrues for these personal injuries.

The basis for amending section 56 of the *Limitation Act 2005* to include silica dust is to ensure workers suffering silicosis with a low initial impairment are not time barred,

which would occur if the worker's degree of impairment has not reached 15% or more within the 3-year limitation period (from date of diagnosis).

This is intended to protect the common law rights of workers diagnosed with silicosis (for example, from dry cutting stone benchtops) where the initial health effects can be quite minor but may to deteriorate, possibly quite significantly, over time.

The amended section 56 of the *Limitation Act 2005* addresses this problem as a cause of action for damages relating to a personal injury that is attributable to the inhalation of asbestos or silica dust accrues when the person has knowledge of the relevant facts. A person has knowledge of the relevant facts in relation to a cause of action when the person has knowledge, amongst other things, that the injury in question was significant.

Amended section 56(4) of the *Limitation Act 2005* provides that an injury is not to be treated as significant unless certain criteria are met. These criteria include agreement by the parties that the injury is significant, or where a Dust Disease Medical Panel constituted under the new Act clause 124 has determined for the purposes of Part 7 Division 2 of the new Act that the degree of permanent whole of person impairment resulting from the injury is at least 25%.

#### **Clause 657. Section 57 amended**

Clause 657 inserts 'or silica dust' after 'asbestos' in section 57(1) and (2) of the *Limitation Act 2005*. This change puts workers with silicosis who die on the same footing as workers with asbestosis with both types of dust disease covered by the special provisions in section 57 of the *Limitation Act 2005* which provides the cause of action relating to the personal injury is to be taken as having accrued when the person died.

### **Subdivision 10 — *Local Government Act 1995* amended**

#### **Clause 658. Act amended**

Clause 658 provides Part 15 Division 2 Subdivision 10 amends the *Local Government Act 1995*.

#### **Clause 659. Section 5.49 replaced**

Clause 659 deletes and replaces section 5.49 of the *Local Government Act 1995* and requires WALGA to hold a group self-insurer licence for itself and any eligible body to which the group self-insurer licence extends (e.g. local governments). This is consequential to terminology and numbering in the new Act to which that Act refers.

### **Subdivision 11 — *Motor Vehicle (Catastrophic Injuries) Act 2016* amended**

#### **Clause 660. Act amended**

Clause 660 provides Part 15 Division 2 Subdivision 11 amends the *Motor Vehicle (Catastrophic Injuries) Act 2016*.

**Clause 661. Long title amended**

Clause 661 amends the long title of the Act being an Act to provide for a scheme for the lifetime care and support of certain people catastrophically injured in motor vehicle or workplace accidents.

**Clause 662. Section 1 amended**

Clause 662 amends the short title of the Act to *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016*.

**Clause 663. Section 3 amended**

Clause 663 inserts new definitions into section 3 of the *Motor Vehicle (Catastrophic Injuries) Act 2016* for 'worker', 'workplace accident' and 'workplace injury' that are referred to in that Act, and amends existing terms so that they apply to eligible workers catastrophically injured in workplace accidents.

**Clause 664. Section 5A inserted**

Clause 664 provides for workplace injury criteria to which the *Motor Vehicle (Catastrophic Injuries) Act 2016* applies. That Act applies prospectively to a workplace injury that occurs on or after commencement where there is an established entitlement under the new Act.

This ensures the *Motor Vehicle (Catastrophic Injuries) Act 2016* only applies to workers who have made a successful claim for compensation with liability accepted or determined under the new Act (i.e. the person is a 'worker' and suffered an 'injury from employment' within the meaning of those terms in the new Act). Section 8 of the *Motor Vehicle (Catastrophic Injuries) Act 2016* then requires the workplace injury to be a catastrophic injury (as defined in *Motor Vehicle (Catastrophic Injuries) Act 2016* for the person to be eligible to participate in the CISS.

**Clause 665. Section 8 amended**

Clause 665 amends section 8(1) of the *Motor Vehicle (Catastrophic Injuries) Act 2016* to provide a person is eligible to be a participant in the CISS if the person suffers a catastrophic injury that is —

- (a) a motor vehicle injury to which this Act applies; or
- (b) a workplace injury to which this Act applies.

Clause 665 also amends section 8(1) in that a person is not eligible to be a participant in the CISS in respect of a motor vehicle injury or workplace injury if the person has been awarded damages, pursuant to a final judgment entered by a court or a binding settlement, in respect of the future treatment, care and support needs of the person that relate to the injury.

**Clause 666. Section 9 amended**

Clause 666 provides a person is not eligible to apply to become a participant in the CISS in respect of a workplace injury unless the person resides in Australia at the time of the application.

This amendment is required as it is not possible to assess eligibility or provide lifetime care and support for participants outside of Australia.

**Clause 667. Section 13 amended**

Clause 667 makes consequential amendments to section 13 of the *Motor Vehicle (Catastrophic Injuries) Act 2016* providing that an injured person who has ceased to be an interim participant in respect of a motor vehicle injury or workplace injury may apply to the Insurance Commission, in accordance with the regulations, to become a participant in the CISS as an interim participant or as a lifetime participant in respect of the same injury.

**Clause 668. Section 14 amended**

Clause 668 makes consequential amendments to section 14 of the *Motor Vehicle (Catastrophic Injuries) Act 2016* providing for suspension of participation while the person is absent from Australia if the person is a participant in respect of a workplace injury.

**Clause 669. Section 15 amended**

Clause 669 makes consequential amendments to section 15 of the *Motor Vehicle (Catastrophic Injuries) Act 2016* providing the assessment of the participant's treatment, care and support needs must relate to those treatment, care and support needs that relate to the motor vehicle injury or workplace injury in respect of which the person is a participant (and necessary and reasonable in the circumstances).

**Clause 670. Section 18 amended**

Clause 670 makes consequential amendments to section 18 of the *Motor Vehicle (Catastrophic Injuries) Act 2016* providing the Insurance Commission must pay for all necessary and reasonable treatment, care and support needs that relate to the motor vehicle injury or workplace injury in respect of which the person is a participant.

Clause 670 also brings workplace injury within section 18(4)(a)(ii) which provides criteria set out in the regulations may make provision for or with respect to determining which treatment, care and support needs of a participant in the CISS —

- (i) are necessary and reasonable in the circumstances
- (ii) relate to the motor vehicle injury or workplace injury in respect of which the person is a participant.

**Clause 671. Section 19 amended**

Clause 671 makes consequential amendments to section 19(1) of the *Motor Vehicle (Catastrophic Injuries) Act 2016* bringing workplace injury within the scope of the definition of 'ordinary costs of raising a child'.

**Clause 672. Section 22 deleted**

Clause 672 deletes section 22 of the *Motor Vehicle (Catastrophic Injuries) Act 2016* which applies if the motor vehicle injury in respect of which a person is a participant in the CISS is compensable under the (to be repealed) *Workers' Compensation and Injury Management Act 1981*. Section 22 authorises the Insurance Commission to recover costs for lifetime care expenses that would have been payable under the 1981 Act from the worker's employer. As catastrophic workplace injuries will be covered under the *Motor Vehicle (Catastrophic Injuries) Act 2016* a comparable provision to section 22 is not required.

### **Clause 673. Section 24 amended**

Clause 673 makes consequential amendments to section 24 of the *Motor Vehicle (Catastrophic Injuries) Act 2016* bringing workplace injury within the meaning of 'eligibility decision' in paragraph (a)(ii), and the dispute resolution provisions in Part 5, of the *Motor Vehicle (Catastrophic Injuries) Act 2016*.

### **Clause 674. Section 27 amended**

Clause 674 makes consequential amendments to section 27 of the *Motor Vehicle (Catastrophic Injuries) Act 2016* bringing workplace injury within section 27(2) of the *Motor Vehicle (Catastrophic Injuries) Act 2016*. This amendment enables a party to dispute resolution proceedings to appeal to the District Court against a decision made in those proceedings about whether an injury is a motor vehicle injury or workplace injury to which this Act applies.

### **Clause 675. Section 30A inserted**

Clause 675 inserts new section 30A into the *Motor Vehicle (Catastrophic Injuries) Act 2016* relating to notification and disclosure of information about injured workers if the worker's injury is or appears likely to be a catastrophic injury.

The new provision enables WorkCover WA, or a licensed insurer or self-insurer to disclose relevant information about an injured worker to the Insurance Commission if the worker's injury is, or appears likely to be, a catastrophic injury. This alerts the Insurance Commission to a potential claim under the CISS.

Section 30A also requires insurers and self-insurers who have received a claim for compensation in respect of an injury that is, or is likely to be, a catastrophic injury, to notify the Insurance Commission and provide details of the claim and copies of any medical reports or certificates within 7 days after liability is accepted determined. This information is essential for the Insurance Commission to assess eligibility for an injured worker's participation in the CISS (as an established entitlement under the workers compensation legislation is one of the eligibility criteria).

Section 30A(5) provides a worker who has suffered an injury that is a catastrophic injury must notify the Insurance Commission within 7 days after —

- (a) an election is made by the worker to retain the right to seek damages in respect of the injury for the purposes of the new Act
- (b) any payment of damages in respect of the injury is received by the worker, or any claim for damages by the worker in respect of the injury is settled, if the damages include an amount for expenses in relation to future treatment, care and support needs.

Section 30A(5) enables Insurance Commission to be informed there is a common law claim on foot that may affect the worker's participation in the CISS (e.g. in the event the worker receives damages for expenses in relation to the future treatment, care and support needs that are being paid, or would be payable to the worker, as a participant in the CISS).

### **Clause 676. Section 31 replaced**

Clause 676 replaces, and makes minor drafting improvements to, section 31 of the *Motor Vehicle (Catastrophic Injuries) Act 2016* relating to false and misleading information.

## **Subdivision 12 — *Motor Vehicle (Third Party Insurance) Act 1943* amended**

### **Clause 677. Act amended**

Clause 677 provides that Part 15 Division 2 Subdivision 12 amends the *Motor Vehicle (Third Party Insurance) Act 1943*.

### **Clause 678. Section 3 amended**

Clause 678 updates definitions of 'CISS' and 'MVWA(CI) Act' that are referenced in the *Motor Vehicle (Third Party Insurance) Act 1943* consequential to the extension of CISS and the catastrophic injuries legislation applying to people catastrophically injured in motor vehicle accidents and workplace accidents.

### **Clause 679. Section 3C amended**

Clause 679 updates the reference in the *Motor Vehicle (Third Party Insurance) Act 1943* to the part of the new Act that is relevant to restrictions on damages for non-pecuniary loss under section 3C of the *Motor Vehicle (Third Party Insurance) Act 1943*.

### **Clause 680. Section 3EA amended**

Clause 680 replaces the references to 'CISS' and 'MVWA(CI) Act' that are referenced in the *Motor Vehicle (Third Party Insurance) Act 1943* consequential to the extension of CISS and the catastrophic injuries legislation applying to people catastrophically injured in motor vehicle accidents and workplace accidents.

### **Clause 681. Section 3FB amended**

Clause 681 replaces the reference to the 'MVWA(CI) Act' that is referenced in the *Motor Vehicle (Third Party Insurance) Act 1943* consequential to the extension of catastrophic injuries legislation applying to people catastrophically injured in motor vehicle accidents and workplace accidents.

### **Clause 682. Section 3G amended**

Clause 682 amends section 3G(1) of the *Motor Vehicle (Third Party Insurance) Act 1943* to refer to a renumbered section of the new Act.

### **Clause 683. Section 3T amended**

Clause 683 replaces the reference to the 'MVWA(CI) Act' that is referenced in the *Motor Vehicle (Third Party Insurance) Act 1943* consequential to the extension of catastrophic injuries legislation applying to people catastrophically injured in motor vehicle accidents and workplace accidents.

Clause 683 also inserts a provision that clarifies the meaning of income, claims payments, costs and other expenses for the purposes of an assessment of premium

income under section 3T of the *Motor Vehicle (Third Party Insurance) Act 1943*. The assessment excludes income and expenses that relate to workplace injuries to which the *Motor Vehicle (Catastrophic Injuries) Act 2016* applies. This amendment is required as the funding source for catastrophic workplace injuries is a levy contribution from licensed insurers and self-insurers in the workers compensation scheme. The money received by the Insurance Commission from those contributions is to be used to fund catastrophic workplace liabilities only and should not be factored into assessments of premium required to fund motor vehicle injuries.

**Clause 684. Section 6A amended**

Clause 684 replaces the reference to the 'MVWA(CI) Act' that is referenced in the *Motor Vehicle (Third Party Insurance) Act 1943* consequential to the extension of catastrophic injuries legislation applying to people catastrophically injured in motor vehicle accidents and workplace accidents.

**Subdivision 13 — *Police Act 1892* amended**

**Clause 685. Act amended**

Clause 685 provides Part 15 Division 2 Subdivision 13 amends the *Police Act 1892*.

**Clause 686. Section 33ZS amended**

Clause 686 updates terms in section 33ZS of the *Police Act 1892* that refer to permanent impairment assessment in the new Act.

Clause 686 also provides that for the purposes of Part 2D – Compensation scheme for medically retired members - the prescribed amount for a financial year, is the amount specified as the general maximum amount for the financial year in section 538 of the new Act. This change is required as the police compensation scheme refers to maximum amounts for certain lump sum entitlements that apply in the workers compensation legislation.

**Clause 687. Section 33ZW amended**

Clause 687 updates terms and provisions in section 33ZW of the *Police Act 1892* that refer to provisions in the new Act relating to compensation for permanent impairment.

**Clause 688. Section 33ZX amended**

Clause 688 updates terms and provisions in section 33ZX of the *Police Act 1892* that refer to provisions in the new Act relating to noise-induced hearing loss.

**Clause 689. Section 33ZY amended**

Clause 689 updates terms and provisions in section 33ZY of the *Police Act 1892* that refer to the table of permanent impairment compensation in the new Act.

**Clause 690. Section 33ZZI amended**

Clause 690 updates terms and provisions in section 33ZY of the *Police Act 1892* that refer to terms and provisions in the new Act relating to permanent impairment assessment.

**Subdivision 14 — *Police (Medical and Other Expenses for Former Officers) Act 2008* amended**

**Clause 691. Act amended**

Clause 691 provides Part 15 Division 2 Subdivision 14 amends the *Police (Medical and Other Expenses for Former Officers) Act 2008*.

**Clause 692. Section 3 amended**

Clause 692 updates terms and provisions in section 3 of the *Police (Medical and Other Expenses for Former Officers) Act 2008* that refer to terms in the new Act.

**Clause 693. Section 5 amended**

Clause 693 updates section references from the new Act relating to medical and health expenses compensation that are referred to in the *Police (Medical and Other Expenses for Former Officers) Act 2008*.

**Clause 694. Section 7 amended**

Clause 694 updates the section references from the new Act relating to dispute resolution that are referred to in the *Police (Medical and Other Expenses for Former Officers) Act 2008*.

**Clause 695. Section 8 replaced**

Clause 695 replaces section 8 of the *Police (Medical and Other Expenses for Former Officers) Act 2008* relating to time limits under the workers compensation legislation relating to claims that do not apply under that Act.

**Clause 696. Section 9 amended**

Clause 696 updates the section references from the new Act that are referred to in the *Police (Medical and Other Expenses for Former Officers) Act 2008* providing that the restrictions on reviewing an arbitrator's decision do not apply with respect to an action for damages.

**Clause 697. Section 14 amended**

Clause 697 updates the title of the new Act referred to in several places in the *Police (Medical and Other Expenses for Former Officers) Act 2008*.

## **Subdivision 15 — *Public Sector Management Act 1994* amended**

### **Clause 698. Act amended**

Clause 698 provides Part 15 Division 2 Subdivision 15 amends the *Public Sector Management Act 1994*.

### **Clause 699. Schedule 2 amended**

Clause 699 updates schedule 2 of the *Public Sector Management Act 1994* relating to entities which are SES organisations to refer to WorkCover WA established under the new Act.

## **Subdivision 16 — *Sentencing Act 1995* amended**

### **Clause 700. Act amended**

Clause 700 provides Part 15 Division 2 Subdivision 16 amends the *Sentencing Act 1995*.

### **Clause 701. Schedule 1 amended**

Clause 701 updates schedule 1 of the *Sentencing Act 1995* relating to the account to which a fine under the *Sentencing Act 1995* is to be paid or credited, to include the WorkCover WA General Account established under the new Act.

## **Subdivision 17 — *State Superannuation (Transitional and Consequential Provisions) Act 2000* amended**

### **Clause 702. Act amended**

Clause 702 provides Part 15 Division 2 Subdivision 17 amends the *State Superannuation (Transitional and Consequential Provisions) Act 2000*.

### **Clause 703. Section 74 deleted**

Clause 703 deletes a redundant transitional provision, section 74 of the *State Superannuation (Transitional and Consequential Provisions) Act 2000*.

## **Subdivision 18 — *Workers' Compensation and Injury Management Amendment Act 2011* amended**

### **Clause 704. Act amended**

Clause 704 provides Part 15 Division 2 Subdivision 18 amends the *Workers' Compensation and Injury Management Amendment Act 2011*.

**Clause 705. Section 123 amended**

Clause 705 deletes sections 123(2) to (7) of the *Workers' Compensation and Injury Management Amendment Act 2011* which are redundant unproclaimed provisions.

**Subdivision 19 — Other Acts amended**

**Clause 706. References to *Workers' Compensation and Injury Management Act 1981* amended**

Clause 706 updates the title in various Acts to refer to the new Act.

## Appendix 1 - Reference Guide to Current Acts

Below is a list of provisions of the *Worker's Compensation and Injury Management Act 1981* [WCIMA], the *Employers' Indemnity Supplementation Fund Act 1980* [EISFA], the *Workers' Compensation and Injury Management (Acts of Terrorism) Act 2001* (WCIMATA) and the *Waterfront Workers (Compensation for Asbestos Related Diseases) Act 1986* (WW(CARD)) that are comparable to the relevant clauses of the *Workers Compensation and Injury Management Bill 2023*. This table is intended as a general guide only.

WCIM Bill 2023	WCIM Bill 2023 - clause Heading	WCIM Act 1981
4	No contracting out	[WCIMA s 301]
5	Terms used	[WCIMA s 5]
6	Injury	[WCIMA s 5(1)]
7	Exclusion of injury: reasonable administrative action	[WCIMA s 5(1) and (4)]
8	Injury from employment: work related attendances	[WCIMA s 19(1)]
9	Journeys	[WCIMA s 19(2)]
10	Prescribed diseases taken to be from certain employment	[WCIMA s 32, 44, 45, 49F and Sch 3]
11	Diseases of firefighters taken to be from employment	[WCIMA s 49A to 49E and Sch 4A]
12	Meaning of "worker" and "employer"	[New provision, cf WCIMA s 5(1) employer, worker, s 14]
13	Prescribed workers and excluded workers	[New provision, cf WCIMA s 8-11, 14(2a)]
14	Labour hire arrangements	[New provision, cf WCIMA s 5(1) employer]
15	Jockeys	[WCIMA s 11A]
16	Working directors	[WCIMA s 10A]
17	Employer liable for compensation	[WCIMA s 18]
18	Forms of compensation	
19	Employment must be connected with this State	[WCIMA s 20]
20	Compensation excluded: serious and wilful misconduct	[WCIMA s 22]
21	Compensation excluded: certain employment on ship	[WCIMA s 20(9)]
22	Person not to be paid twice	[WCIMA s 23]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
23	Terms used	
24	Application of Division	
25	Making claim for compensation	[WCIMA s 178]
26	Insured employer must give claim to insurer	[WCIMA s 57A]
27	Worker may give claim to insurer if employer defaults	
28	Insurer or self-insurer to make decision on liability	[WCIMA s 57A, 57B, 57BA]
29	Requirements when decision on liability deferred	[WCIMA s 57A, 57B, 57BA]
30	Determination by arbitrator of question about liability for compensation	[WCIMA s 58]
31	Claims on uninsured employers	[WCIMA s 57B, 57BA]
32	Worker to provide information about other employment	[WCIMA s 59]
33	Incapacity after claim made	
34	Claiming compensation when question as to liability or apportionment between employers	[WCIMA s 73, 74]
35	Claiming compensation for certain diseases when more than 1 employer liable	[WCIMA s 41]
36	Requirement for provisional payments	
37	Compensation for which provisional payments are required	
38	Calculating the amount of a provisional payment	
39	How and when provisional payments are to be made	
40	Provisional payments of medical and health expenses compensation	
41	Provisional payments of income compensation	
42	Insurer required to indemnify for provisional payments	
43	Status and effect of provisional payments	
44	Other employer or insurer liable	
45	Terms used	[New provision, cf Sch 1 cl 11]
46	Entitlement to income compensation for incapacity for work	[WCIMA s 21, Sch 1 cl 7]
47	Obligation to pay income compensation	[WCIMA s 57A(5), (7), (8A)]
48	Total or partial incapacity for work	[WCIMA Sch 1 cl 7(1) and (2)]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
49	Worker not to be prejudiced by resuming work	[WCIMA s 84]
50	Order that worker is taken to be totally incapacitated	[WCIMA Sch 1 cl 8]
51	General limit on total income compensation	[WCIMA Sch 1 cl 7(3)]
52	Additional income compensation	[WCIMA s 217]
53	Terms used	
54	Worker's pre-injury weekly rate of income	[WCIMA s 42, 52, Sch 1 cl 11(2) Amount B par (c), cl 14, 15]
55	Amount of income compensation	[WCIMA Sch 1 cl 11(3), (4), (6)]
56	Maximum weekly rate of income compensation	[WCIMA Sch 1 cl 11(2) Amount C, 11(3) and (4)]
57	Minimum weekly rate of income compensation	[WCIMA Sch 1 cl 11(2) Amounts Aa, D and E, 11(3) and (4)]
58	Monetary value of board and lodging	[WCIMA Sch 1 cl 15]
59	Working directors	[WCIMA Sch 1 cl 11(2) Amount B par (a) and (b), cl 11(2a), (2b), (2c)]
60	Public holidays	[WCIMA s 81]
61	Leave while entitled to income compensation	[WCIMA s 80]
62	Restrictions on reduction, suspension or discontinuation of income compensation	[WCIMA s 61]
63	Reducing or discontinuing income compensation on basis of worker's return to work	[WCIMA s 61]
64	Reducing or discontinuing income compensation on basis of medical evidence	[WCIMA s 61]
65	Worker not residing in State: failure to provide declaration	[WCIMA s 69]
66	Suspension of income compensation while worker in custody	[WCIMA s 72]
67	Effect of suspension of income compensation payments	[WCIMA s 63]
68	Power of arbitrator to review disputed income compensation payments	[WCIMA s 62]
69	Terms used	
70	Medical and health expenses compensation under this Division	[WCIMA s 18, Sch 1 cl 17(1)]
71	Expenses that are medical and health expenses	[WCIMA s 5(1) approved treatment, Sch 1 cl 17(1)]
72	Requirement that medical and health expenses be reasonable	[WCIMA s 292(2), Sch 1 cl 17]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
73	Medical and health expenses order	[WCIMA s 292(2)]
74	Eligibility to provide compensable medical and health services	[WCIMA s 5(1) approved treatment, s 292(2), Sch 1 cl 17(1)]
75	General limit on compensation for medical and health expenses	[WCIMA Sch 1 cl 17(1)]
76	Notice to worker that 60% of general limit reached	[WCIMA Sch 1 cl 18A(4)]
77	Standard increase in compensation limit	[WCIMA Sch 1 cl 18A(1b), 18(1CA), (2)]
78	Increase for special expenses in the medical and health expenses general limit amount	[WCIMA Sch 1 cl 18A(1C), (1d), (2), (2aa), 18B]
79	Assessment of degree of permanent impairment for special increase	[WCIMA Sch 1 cl 18A(2aa)]
80	Effect of participation in catastrophic injuries support scheme	
81	Term used: miscellaneous expense	
82	Compensation for reasonable miscellaneous expenses	[WCIMA Sch 1 cl 17]
83	Expenses that are miscellaneous expenses	[WCIMA Sch 1 cl 17(1aa), (3)-(6)]
84	Requirement that miscellaneous expenses be reasonable	[WCIMA Sch 1 cl 17]
85	First aid and emergency transport	[WCIMA Sch 1 cl 17(1)]
86	Wheelchair	[WCIMA Sch 1 cl 17(4)]
87	Surgical appliance or artificial limb	[WCIMA Sch 1 cl 17(5)]
88	Clothing	[WCIMA Sch 1 cl 17(6)]
89	Repair or replacement of artificial aids	[WCIMA Sch 1 cl 17(3)]
90	Travel	[WCIMA Sch 1 cl 19]
91	Assessment of permanent impairment	[WCIMA Sch 1 cl 17(1aa)]
92	Effect of participation in catastrophic injuries support scheme	
93	Compensation for workplace rehabilitation expenses	[WCIMA s 5(1) def vocational rehabilitation, Sch 1 cl 17(1a)]
94	Workplace rehabilitation fees and charges order	[WCIMA s 156A(2), 292(2)(b), Sch 1 cl 17(1a)]
95	General limit on compensation for workplace rehabilitation expenses	[WCIMA Sch 1 cl 17(1a)]
96	Effect of participation in catastrophic injuries support scheme	

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
97	Entitlement to lump sum permanent impairment compensation	[WCIMA s 31C]
98	Amount of permanent impairment compensation based on degree of permanent impairment	[WCIMA s 31C]
99	Worker's degree of permanent impairment	
100	Limit on permanent impairment compensation	[WCIMA s 31J]
101	Calculating permanent impairment compensation	[WCIMA s 31C, 31D, Sch 2]
102	Further permanent impairment from subsequent injury	[WCIMA s 31G]
103	Compensable impairment not to exceed 100%	[WCIMA s 31G]
104	Special provisions for AIDS	[WCIMA s 31F]
105	Agreement as to degree of permanent impairment	[WCIMA s 31D]
106	Determination by arbitrator when worker and employer fail to agree degree of permanent impairment	[WCIMA s 31D]
107	Terms used	
108	Lump sum compensation for noise-induced hearing loss	[WCIMA s 5(1) def noise-induced hearing loss, s 31E]
110	Calculation of amount of compensation	[WCIMA s 31E]
114	Regulations	[New provision, cf WCIMA Sch 7]
115	Terms used	
116	Dust disease taken to be from certain employment	[WCIMA s 33, 44, Sch 3]
117	Day on which dust disease injury is suffered	
118	Dust diseases taken to be single injury	[WCIMA s 46; Sch 5 cl 1A]
119	Entitlement to lump sum compensation for permanent impairment from dust disease	[WCIMA Sch 5 cl 1 and 4]
120	No entitlement to compensation until Panel determination	[WCIMA s 36, 38]
121	Claiming dust disease compensation	
122	Compensation claims to be referred to CEO	[WCIMA s 36]
123	Referral of claim to Panel	[WCIMA s 36 and 38]
124	Constitution of Panel	[WCIMA s 36]
125	Panel practice and procedure	[WCIMA s 145D]
126	Panel powers	[WCIMA s 145D, 37, 38]
127	Determination of Panel	[WCIMA s 145E]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
128	Effect of determination	[WCIMA s 38(4), 145E(6) and (8)]
129	Variation or remaking of determination	[WCIMA s 145F]
130	Remuneration and allowances of Panel members	[WCIMA s 145G]
131	Terms used	[WCIMA s 72C, Sch 1A cl 2 to 5]
132	Compensation only payable as provided by compensation order	[WCIMA s 72H(2)]
133	Lump sum compensation for death resulting from injury	[WCIMA Sch 1A cl 7]
134	Allowance for eligible dependent children	[WCIMA Sch 1A cl 8]
135	Funeral and medical expenses	[WCIMA Sch 1A cl 9]
136	Lump sum compensation for death not resulting from injury	[WCIMA Sch 1A cl 10, 11]
137	Claim for compensation under this Division	[WCIMA s 72E]
138	Claims procedure: insured employer	[WCIMA s 72F]
139	Claims procedure: self-insurer or uninsured employer	[WCIMA s 72G]
140	Determination of claim by arbitrator	[WCIMA s 72H]
141	Manner of payment: lump sum compensation	[WCIMA s 72I]
142	Manner of payment: child's allowance	[WCIMA s 72J]
143	Effect of recovery of damages on applying trust money	[WCIMA s 72K]
144	Application procedure	[WCIMA s 72L]
145	Inconsistency with other provisions	[WCIMA s 72D]
146	Recovery of erroneous payments of compensation	[WCIMA s 71]
147	Deductions from wages towards compensation not lawful	[WCIMA s 302]
148	Recovery of cost of services provided to worker	[WCIMA s 82]
149	Commuting compensation liabilities by settlement agreement	[WCIMA s 67, 76(1), 77]
150	Lump sum compensation required to be included in settlement agreement	[WCIMA s 76(1) and (6), 31H]
151	Effect on settlement of participation in catastrophic injuries support scheme	
152	Applying for registration of settlement agreement	[WCIMA s 76(1), 31H]
153	Settlement agreement cannot apply to common law damages	[WCIMA s 92(h)]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
154	Scrutiny by Director of settlement agreement	[WCIMA s 76]
155	Cancellation of registration of settlement agreement	[WCIMA s 76(8)]
156	Implementation of settlement agreement	[WCIMA s 67(5) and (7)]
157	Limit on lump sum compensation included in settlement agreement	[WCIMA s 31J]
158	Term used: treating medical practitioner	
159	Employer must establish injury management system	[WCIMA s 155B]
160	Duty of employer to establish and implement return to work program	[WCIMA s 155C]
161	Employer may be ordered to establish and implement return to work program	[WCIMA s 156B]
162	Duties of insurer	[WCIMA s 155D]
163	Duties of worker	[New provision, WCIMA s 156B]
164	Consequences of refusal or failure to comply with s 163 duty	[WCIMA s 72B, 156B]
165	Attendance at return to work case conference	
166	Employer must provide position during incapacity	[WCIMA s 84AA]
167	Host must cooperate with labour hirer	
168	Dismissal of injured worker	[WCIMA s 84AB]
169	Issue of certificate of capacity	[WCIMA s 57A(1)(b), 57B(1)(b), 61(1)]
170	Treating medical practitioner	
171	Employer, insurer and agent of insurer must not be present at examination or treatment	
172	Approval of workplace rehabilitation providers	[WCIMA s 156(1)(a)]
173	Determination of application for approval	[WCIMA s 156(2)]
174	Conditions of approval	[WCIMA s 156(1)(a), (3)]
175	Duration of approval	
176	Suspension or cancellation of approval	[WCIMA s 156(1)(b)]
177	Register of approved workplace rehabilitation providers	[WCIMA s 156A(1)]
178	Performance monitoring and review of approved workplace rehabilitation providers	[WCIMA s 156]
179	Term used: Permanent Impairment Guidelines	[WCIMA s 146]
180	Power to require medical examination of worker	[WCIMA s 64, 65, 66, 70]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
181	Worker contravening requirement for medical examination	[WCIMA s 72A]
182	Assessments to which Division applies	[WCIMA s 146, 146B to 146E]
183	Method of assessment	[WCIMA s 146A(1)]
184	Assessing degree of permanent impairment when multiple injuries arise from single event	[WCIMA s 93H]
185	Secondary conditions disregarded in certain cases	[WCIMA s 146C to 146E]
186	Assessment by approved permanent impairment assessor or Dust Disease Medical Panel	[WCIMA s 146A(2)]
187	Permanent Impairment Guidelines	[WCIMA s 146R]
188	Requirement for injury to have stabilised	[WCIMA s 146B to 146E]
189	Asymptomatic pre-existing disease	[WCIMA s 146A(4)]
190	Request for assessment of permanent impairment	[WCIMA s 146A(3)]
191	Powers of approved permanent impairment assessors	[WCIMA s 146G]
192	Report on results of assessment	[WCIMA s 146H]
193	Approval of permanent impairment assessors	[WCIMA s 146F]
194	Conditions of approval	[WCIMA s 146F]
195	Minister may fix scale of fees and charges for permanent impairment assessment	[WCIMA s 292(3)]
196	Duration of approval	
197	Suspension or cancellation of approval	[WCIMA s 146F]
198	Compliance audits and investigations	[WCIMA s 146F]
199	Register of approved permanent impairment assessors	[WCIMA s 146F(6) and (7)]
200	Terms used	[WCIMA s 159]
201	Agency arrangements	
202	Requirement for employers to be insured	[WCIMA s 160(1)]
203	Information to be provided by employer to insurer	[WCIMA s 160(2)-(2b)]
204	Offences	[WCIMA s 170(1)]
205	Evidence of non-compliance with insurance requirements	[WCIMA s 170(4)]
206	Defence: employment not connected with this State	[WCIMA s 170(3a), (3b)]
207	Recovery of premiums avoided by employer	[WCIMA s 170(2), (2a)]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
208	Liability of responsible officers of corporations	[WCIMA s 170(2b), (2c), (2d), (5), (6)]
209	Records to be kept by employer	
210	Insurer may recover underpaid premiums from employer	[WCIMA s 172]
211	Recovery of costs of audit of employer	
212	Certificate of currency	[WCIMA s 160(7), (8)]
213	Workers compensation insurance brokers	[New provision cf WCIMA s 292(1)(l)]
215	Both principal and contractor taken to be employers	[WCIMA s 175(1), (3)-(7)]
216	Claim or proceedings against principal	[WCIMA s 175(5)]
217	Indemnity	[WCIMA s 175(2), (3A), (3B)]
218	Effect of judgment against principal or contractor	[WCIMA s 175(4)]
219	Application of Subdivision to subcontractors	[WCIMA s 175(6)]
220	Subdivision does not extend right to damages	[WCIMA s 175(8)]
221	Contractor remuneration information	
222	What constitutes an avoidance arrangement	[WCIMA s 175AA(1), (2)]
223	Offence if work done under avoidance arrangement	[WCIMA s 303A]
224	Arbitrator's determination about avoidance arrangement	[WCIMA s 175AA(3), (4)]
225	Effect of avoidance arrangement on compensation and insurance	[WCIMA s 175AA(5)-(9)]
226	Offence: unlicensed insurers	[WCIMA s 161A]
227	Application for licence	[WCIMA s 161(4)]
228	Determination of licence application	[WCIMA s 161(2) to (4)]
229	Conditions of licence	[WCIMA s 161(3), (4)]
230	Duration of licence	[WCIMA s 161(5)]
231	Suspension, cancellation or surrender of licence	[WCIMA s 161(3), (7)]
232	Performance monitoring and review of insurers	
233	Improvement notice to licensed insurer	
234	Specialised insurers	
235	Special arrangements for Insurance Commission and public authorities	[New provision, s 44 of ICWA Act]
236	Obligation of licensed insurers to insure employers	[WCIMA s 154A, 160(3)]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
237	Terms of insurance and form of policies	[WCIMA s 169]
238	Adjustable premium policies	
239	Insurer to indemnify employer for compensation payments	[WCIMA s 57A(5)]
240	Coverage of insurance policy not limited by employer representations	
241	Refusal of indemnity	[WCIMA s 174A]
242	Cancellation of insurance policy	[WCIMA s 160(3a)]
243	Lapsing of insurance policy	[WCIMA s 160(4)-(6)]
244	Worker's rights against insurer when employer cannot be proceeded against	[WCIMA s 173]
245	Application for self-insurer licence	[WCIMA s 164(1)]
246	Coverage of related entities by group self-insurer licence	[WCIMA s 164(1)]
247	Liability of holder of group self-insurer licence	[WCIMA s 164(1)]
248	Application of licensed insurer provisions to self-insurers	[WCIMA s 164 to 168]
249	Terms used	
250	Requirement for security	[WCIMA s 164(1)]
251	Review and variation of required security amount	[WCIMA s 165]
252	Calling on security	
253	Fixing of recommended premium rates	[WCIMA s 151]
254	Reports as to recommended premium rates	[WCIMA s 151A]
255	Review of premium charged	[WCIMA s 152, 154]
256	Establishment of Default Insurance Fund	[New provision, EISFA s 5, 11]
257	Payments to and from DI Fund	[EISFA s 5, 10, WCIMA s 106(3)(b)]
258	Payments to and from General Account	[EISFA s 6A]
259	Advances to DI Fund	[EISFA s 7]
260	Terms used	
261	Required contributions by insurers and self-insurers to DI Fund	[New provision based on WCIMA s 109]
262	Arrangements for payment of contributions	[New provision based on WCIMA s 109]
263	Additional insurer contribution for unexpected claims	
264	Provision of information by licensed insurers and self-insurers	[New provision based on WCIMA s 109]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
265	Uninsured employer	[WCIMA s 174(1)(b), (1AA)(d)]
266	Payment of compensation when employer uninsured	[WCIMA s 174(1), (5AA)]
267	Payment of damages when employer uninsured	[WCIMA s 174(1AA), (5AA)]
268	Payment of compensation for dust disease or prescribed disease when insurer unknown or has ceased operation	[WCIMA s 174(3), (4), (5)]
269	Recovery of compensation or damages paid for uninsured employer	[WCIMA s 174(6), (7), (8), (9)]
270	Setting aside certain judgments and agreements	[WCIMA s 174AAA]
271	Recovery of uninsured employer payment from officer of body corporate	[WCIMA s 174AA]
272	Exercise by WorkCover WA of rights of uninsured employer	[WCIMA s 174(1a), 174AB]
273	WorkCover WA's rights of indemnity and subrogation	[WCIMA s 174AC]
274	Employer's duty to assist WorkCover WA	[WCIMA s 174AD]
275	Liability of employer if employment believed to be not connected with this State	[WCIMA s 174(5a)]
276	Payment to employer not required	[WCIMA s 174(5AB)]
277	Terms used	
278	Claims against WorkCover WA for insolvent insurer and self-insurer liabilities	[EISFA s 19]
279	Payment of claims	[EISFA s 22,24,25]
280	Recovery by WorkCover WA of payment made in satisfaction of claims	[EISFA s 37]
281	Control of powers of liquidator of insurer or self-insurer	[EISFA s 35]
282	Payment into DI Fund of money recovered by liquidator	[EISFA s 36]
283	Liquidator to notify WorkCover WA of dissolution of insurer or self-insurer	[EISFA s 38]
284	WorkCover WA may accept final payment from liquidator	[EISFA s 38A]
285	Terms used	
286	Division does not apply to public authority covered by Insurance Commission	
287	Term used: act of terrorism	
288	Declaration of act of terrorism	[New provision based on

WCIM Bill 2023	WCIM Bill 2023 - clause Heading	WCIM Act 1981
		WCIMATA s 8]
289	Exclusion of declared act of terrorism from insurance	[New provision based on WCIMATA s 4 to 7]
290	Claims for compensation in respect of declared act of terrorism	[New provision based on WCIMATA s 9]
291	Limits on claims for declared acts of terrorism	[New provision based on WCIMATA s 8, WCIMA s 169]
292	WorkCover WA's rights of indemnity and subrogation	[New provision based on WCIMATA s 9]
293	Terms used	[WW(CARD) s 3]
294	Claim for compensation if last relevant employer unknown	[WW(CARD) s 5]
295	Payment of claim	[WW(CARD) s 6]
296	Recovery of money paid in satisfaction of claim	[WW(CARD) s 9]
297	Terms used	
298	Insurance Commission to determine required contributions to CIF	
299	Calculation of required insurer contributions to CIF	
300	Requirement for payment of CIF contributions by insurers and self-insurers	
301	Transfer from DI Fund to CIF	
302	Additional insurer contribution for unexpected liabilities	
303	Terms used	[New provision, WCIMA s 5, 176]
304	Exclusive jurisdiction of arbitrators	[WCIMA s 176]
305	Object of this Part	[WCIMA s 177]
306	Relevant documents	[WCIMA s 180]
307	Establishment of Conciliation Service and Arbitration Service	[WCIMA s 181, 182ZO]
308	Designation and functions of Director and Registrar	[WCIMA s 182A, 182ZP]
309	Designation of conciliators and arbitrators	[WCIMA s 182B, 182C, 182ZO, 182ZR]
310	Delegation by Director or Registrar	[WCIMA s 182D, 182ZS]
311	Application for conciliation	[WCIMA s 182E]
312	Requirements for acceptance of application for conciliation	[WCIMA s 182F]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
313	Director may certify dispute not suitable for conciliation	[WCIMA s 182H]
314	Allocation of dispute	[WCIMA s 182G]
315	Duties of conciliators	[WCIMA s 182I, 182P]
316	Scope of conciliation	[WCIMA s 182Q]
317	Powers of conciliators	[WCIMA s 182J]
318	Finalising orders	[WCIMA s 182N]
319	Conclusion of conciliation and certificate of outcome	[WCIMA s 182O]
320	Interim compensation directions	[WCIMA s 182K(1)-(6)]
321	Amendment, suspension or revocation of interim compensation directions	[WCIMA s 182K(7)-(9)]
322	Payment by insurer if employer fails to comply with interim compensation direction	[WCIMA s 182ZL]
323	Suspending and reducing income compensation payments	[WCIMA s 182L, 182ZJ]
324	Terms used	[WCIMA s 182ZE]
325	General provisions about conciliation decisions	[WCIMA s 182M]
326	When conciliation decision or agreement has effect	[WCIMA s 182ZF]
327	Correcting mistakes	[WCIMA s 182ZG]
328	Enforcing conciliation decisions and agreements	[WCIMA s 182ZH]
329	Conciliation decisions not reviewable	[WCIMA s 182ZI]
330	Recovery of compensation paid under conciliator direction	[WCIMA s 182ZK]
331	Application for arbitration	[WCIMA s 182ZT]
332	Requirements for acceptance of application for arbitration	[WCIMA s 182ZU, 182E(2)]
333	Registrar to allocate dispute	[WCIMA s 182ZV]
334	Information exchange by parties	[WCIMA s 183]
335	Duties of arbitrators	[WCIMA s 185]
336	General practice and procedure	[WCIMA s 188]
337	Relief or redress granted need not be restricted to claim	[WCIMA s 189]
338	Directions by arbitrator	[WCIMA s 190]
339	Dismissal of proceeding	
340	Illegal contracts of employment may be treated	[WCIMA s 192]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
	as valid	
341	Arbitrator's powers to obtain information	[WCIMA s 193]
342	Use of experts by arbitrators	[WCIMA s 201]
343	Summoning witnesses	[WCIMA s 202]
344	Arbitrator's powers as to witnesses	[WCIMA s 203]
345	Communication between worker and WorkCover WA employee not admissible	[WCIMA s 204A]
346	Oaths and affirmations	[WCIMA s 207]
347	Arbitrator may authorise another person to take evidence	[WCIMA s 208]
348	Decisions generally	[WCIMA s 211]
349	Conditional and ancillary orders and directions	[WCIMA s 212]
350	Form and content of decision and reasons	[WCIMA s 213]
351	Validity of decision not affected by contravention of this Subdivision	[WCIMA s 214]
352	When decision has effect	[WCIMA s 215]
353	Correcting mistakes	[WCIMA s 216]
354	Reconsideration of decision on basis of new information	[WCIMA s 217A]
355	Arbitration decision not reviewable	[WCIMA s 217B]
356	Enforcing decision	[WCIMA s 219]
357	Publication of decision and reasons	
358	Interest on sums to be paid	[WCIMA s 222]
359	Interest on unpaid sums	[WCIMA s 223]
360	Interest on unpaid amount of agreed sum	[WCIMA s 224]
361	Regulations may exclude interest	[WCIMA s 225]
362	Term used: relevant rules	
363	Functions conferred by this Division	
364	Provision of information to another party or medical practitioner	[WCIMA s 182R, 194]
365	Representation	[WCIMA s 182S, 195]
366	Meaning of prohibited person: section 365(4)	
367	Litigation guardians	[WCIMA s 182T, 196]
368	Interpreters and assistants	[WCIMA s 182U, 197]
369	Ways of conducting proceedings	[WCIMA s 182V, 198]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
370	Proceedings to be in private	[WCIMA s 182W, 199]
371	Notice of proceedings and failure to attend	[WCIMA s 182X, 200]
372	Abrogation of privilege against self-incrimination	[WCIMA s 182Y, 204]
373	Legal professional privilege in relation to medical reports	[WCIMA s 182ZA, 205]
374	Other claims of privilege	[WCIMA s 182ZB, 206]
375	Powers in relation to documents produced	[WCIMA s 182ZC, 209]
376	To whom compensation must be paid	[WCIMA s 182ZN, 221]
377	Payment of compensation to worker under legal disability	[WCIMA s 218]
378	Admissibility of statements made to conciliator	[WCIMA s 182ZM]
379	Statements to arbitrators not admissible in common law proceedings	[WCIMA s 220]
380	Regulations	[WCIMA s 292(1)(b), (c), (e)]
381	Conciliation rules	[WCIMA s 293A]
382	Arbitration rules	[WCIMA s 293B]
383	General provisions about rules	[WCIMA s 293]
384	Practice notes	[WCIMA s 294]
385	Failure to comply with decision of dispute resolution authority	[WCIMA s 255]
386	Failure to comply with summons or requirement to attend	[WCIMA s 256]
387	Failure to give evidence as required	[WCIMA s 257]
388	Giving false or misleading information	[WCIMA s 258]
389	Misbehaviour and other conduct	[WCIMA s 259]
390	Referral of offence to CEO	
391	Appeal against arbitrator's decision	[WCIMA s 247]
392	Effect of appeal on decision under appeal	[WCIMA s 250]
393	Appeal from District Court to Court of Appeal	[WCIMA s 254]
394	Terms used	[WCIMA s 261]
395	Costs to which Division applies	[WCIMA s 262]
396	Division prevails over Legal Profession Uniform Law (WA)	[WCIMA s 263]
397	Costs to be determined by dispute resolution authority	[WCIMA s 264]
398	Costs unreasonably incurred by representative	[WCIMA s 265]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
399	Agent's costs	[WCIMA s 266]
400	Appeal costs	[WCIMA s 267]
401	Regulations for assessment of costs	[WCIMA s 268]
402	Costs Committee established	[WCIMA s 269]
403	Remuneration and allowances of Costs Committee members	[WCIMA s 270A]
404	Constitution and procedure of Costs Committee	[WCIMA s 270]
405	Determinations as to maximum costs	[WCIMA s 271]
406	Making a costs determination	[WCIMA s 272]
407	Approval and publication of costs determinations	[WCIMA s 273]
408	Effect of approved costs determination	[WCIMA s 274]
409	Limit on agreement as to costs	[WCIMA s 275]
410	Costs in relation to actions for damages	[WCIMA s 276]
411	Terms used	[WCIMA s 93A, 159]
412	References to employer include person for whom employer vicariously liable	[WCIMA s 93B(4)]
413	Liability independent of this Act not affected	[WCIMA s 86]
414	Requirements for motor vehicle claims not affected	[WCIMA s 85]
415	Application of Division	[WCIMA s 93B]
417	Application of Division depends on when cause of action accrues	[WCIMA s 93I]
418	Limit on powers of courts to award damages against employer	[WCIMA s 93C]
419	No damages for noise-induced hearing loss	[WCIMA s 93J]
420	No damages if compensation settlement agreement registered	[WCIMA s 93K(1)]
421	Threshold requirements for commencement of proceedings and award of damages	[WCIMA s 93K(4), 93L(5)-(8)]
422	Commencement of court proceedings against employer of worker with terminal disease	
423	Effect of election to retain right to seek damages on entitlement to compensation	[WCIMA s 93P]
424	Maximum damages award for less than 25% impairment	[WCIMA s 93K(5)-(7)]
425	Special provision for HIV and AIDS	[WCIMA s 93Q]
426	Special provisions for dust disease damages	[WCIMA s 93R]

WCIM Bill 2023	WCIM Bill 2023 - clause Heading	WCIM Act 1981
	claims	
427	Effect of this Division on contribution required from employer	[WCIMA s 93K(8)-(10)]
428	Limits on agreements as to solicitor-client costs	[WCIMA s 87]
429	Regulations	[WCIMA s 93S]
430	Application of Division	[WCIMA s 92]
431	Worker to be given opportunity to discontinue action for damages	[WCIMA s 92(a), (d)]
432	Deduction or repayment of compensation if action for damages proceeds to judgment	[WCIMA s 92(b) and (c)]
433	Compensation proceedings not permitted if action for damages succeeds	[WCIMA s 92(e), (f)]
434	Worker entitled to proceed against third party for damages	[WCIMA s 93(1)(a)]
435	Employer's right to be indemnified by third party	[WCIMA s 93(1)(b), (2), (3)]
436	Recovery of third party indemnity payment from worker	[WCIMA s 93(4)]
437	Employer's right to recover unpaid damages from third party	[WCIMA s 93(5)]
438	Terms used	[WCIMA s 93AE]
439	Extended meaning: injury, employer and worker	[WCIMA s 93AC]
440	Applicable substantive law for work injury claims	[WCIMA s 93AA]
441	Claims to which Division applies	[WCIMA s 93AB]
442	Claim in respect of death included	[WCIMA s 93AD]
443	Availability of action in another State not relevant	[WCIMA s 93AF]
444	Terms used	
445	WorkCover WA established	[WCIMA s 94]
446	Status	[WCIMA s 94(2a)]
447	Objective	[WCIMA s 100]
448	Functions	[WCIMA s 100]
449	Powers generally	[WCIMA s 94(2)(b), 101 and 102]
450	Delegation	[WCIMA s 101AA]
451	Execution of documents	
452	Board is governing body	[WCIMA s 95]
453	Board membership	[WCIMA s 95]
454	Term of office of appointed members	[WCIMA s 96(1)]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
455	Casual vacancies, resignation and removal from office	[WCIMA s 96(3)(4)(5)]
456	Extension of term of office during vacancy	
457	Leave of absence	[WCIMA s 96(2)]
458	Alternate appointed members	
459	Remuneration and allowances of appointed members	[WCIMA s 99(2)]
460	Meetings	[WCIMA s 97(1)]
461	Quorum	[WCIMA s 97(3)]
462	Presiding member	[WCIMA s 97(2)]
463	Procedure at meetings	[WCIMA s 97(7)]
464	Voting	[WCIMA s 97(4), (5)]
465	Holding meetings remotely	
466	Decision without meeting	
467	Minutes	[WCIMA s 97(6)]
468	Committees	[WCIMA s 100A(1), (2), (6)]
469	Directions to committee	[WCIMA s 100A(3)]
470	Committee procedures	[WCIMA s 100A(3)]
471	Remuneration and allowances of committee members	[WCIMA s 100A(4) and (5)]
472	Disclosure of material personal interest	[WCIMA s 104AA]
473	Interested member cannot participate	[WCIMA s 104AB]
474	Board may resolve s 473 is inapplicable	[WCIMA s 104AC]
475	Quorum if s 473 applies	[WCIMA s 104AD]
476	Minister may declare s 473 and 475 inapplicable	[WCIMA s 104AE]
477	Chief executive officer	[WCIMA s 295(2)]
478	Delegation by CEO	[WCIMA s 296]
479	Other staff	[WCIMA s 295(2)]
480	Use of other government staff	[WCCMA s 295(1)]
481	Minister may give directions	[WCIMA s 111]
482	Protection for disclosure or compliance with directions	
483	Application of Financial Management Act 2006 and Auditor General Act 2006	[WCIMA s 105; EISFA s 8]
484	Borrowing powers	[WCIMA s 101A]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
485	Guarantee by Treasurer	[WCIMA s 101B]
486	Effect of guarantee	[WCIMA s 101B(3)]
487	Terms used	
488	WorkCover WA General Account established	[WCIMA s 106]
489	Estimate of funds needed for General Account	[WCIMA s 107(1)]
490	Calculation of estimate	[WCIMA s 107(2), (3) and (4)]
491	Required contributions by insurers and self-insurers to General Account	[WCIMA s 108, 109(1), (4), (4a), (4b)]
492	Arrangements for payment of contributions	[WCIMA s 109(2) and (3)]
493	Provision of information by licensed insurers and self-insurers	[WCIMA s 109(4)]
494	WorkCover WA Trust Account established	[WCIMA s 110(1), (2), (7) and (8)]
495	Investment of money standing to credit of Trust Account	[WCIMA s 110(3)-(6)]
496	Approved forms	[WCIMA s 292(1)(a)]
497	Service, documents and information, including facilitation of electronic processes	[New provision, WCIMA s 314]
498	Minister to have access to information	[WCIMA s 111A]
499	Information held by Conciliation Service or Arbitration Service	
500	Licensed insurers and self-insurers must provide information to WorkCover WA	[WCIMA s 57C, 103A, 171 and 314]
501	Direction to provide WorkCover WA with information	[WCIMA s 103A, 314]
502	Disclosure of information to work, health and safety officers	[WCIMA s 100B]
503	WorkCover WA may disclose information	
504	Confidentiality	[WCIMA s 57D]
505	Authorised use or disclosure of information	
506	Disclosure of claim information for pre-employment screening	
507	Term used: compliance purposes	
508	Inspectors	[WCIMA s 175A(1)]
509	Identification of inspectors	[WCIMA s 175A(4)]
510	Compliance inspections	
511	Entry powers	[WCIMA s 175B(1)(a), (b)]
512	General powers on entry	[WCIMA s 175B(1)(a), (b) and (h)]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
		and 175D(1)(b)]
513	Persons assisting inspectors	[WCIMA s 175B(3), 175C]
514	Power to require auditor's certificate	[WCIMA s 175B(1)(f) and (2)]
515	Power to require documents and answers to questions	[WCIMA s 175B(1)(c) to (e), (g), 175D(1)(b)]
516	Abrogation of privilege against self-incrimination	[WCIMA s 175D(2)]
517	Power to copy and retain documents	[WCIMA s 175B(1)(c)]
518	Who can prosecute offences	[WCIMA s 101(d) and 309]
519	Time limit for prosecutions	[WCIMA s 310]
520	Application of fines	[WCIMA s 312]
521	Offences under Acts about work health and safety not affected	[WCIMA s 313]
522	Infringement notices and the Criminal Procedure Act 2004	[WCIMA s 175G(2)]
523	Hindering or obstructing inspector	[WCIMA s 175D(1)(a)]
524	Using name WorkCover WA	[WCIMA s 94(4)]
525	False or misleading information	[WCIMA s 175D(1)(c), (d)]
526	Fraud	[WCIMA s 308]
527	Preventing another person from complying with Act	[WCIMA s 175D(1)(e)]
528	Terms used	[WCIMA s 20(1), 23A and 23E]
529	Connection of employment with a State	[WCIMA s 20]
530	Determining if employment is connected with this State	[WCIMA s 23B]
531	Applying to District Court to determine connection	[WCIMA s 23C]
532	Recognition of previous determination by court	[WCIMA s 23D]
533	Judicial notice	[WCIMA s 299]
534	Protection from liability for performance of functions	[WCIMA s 304]
535	Protection and immunity of conciliators, arbitrators and persons involved in proceedings	[WCIMA s 305]
536	Protection for compliance with this Act	[WCIMA s 306]
537	Protection from liability for publishing decision	[WCIMA s 307]
538	General maximum and other adjustable amounts	[WCIMA s 5(1) def prescribed amount, s 5A, Sch 1 cl 11(2) Amount C, Sch 1A]

<b>WCIM Bill 2023</b>	<b>WCIM Bill 2023 - clause Heading</b>	<b>WCIM Act 1981</b>
539	Regulations	[WCIMA s 292]
540	Regulations may adopt codes or legislation	[WCIMA s 292(7)]
541	Review of Act	[WCIMA s 314B]
563	When entitlement to income compensation ceases due to age	[WCIMA s 56, 57]
577	Registration of independent agents	[WCIMA s 277]
611	Delegations	[WCIMA s 101AA]
612	Guarantees of borrowings	[WCIMA s 101B]