

WORKERS COMPENSATION AND INJURY MANAGEMENT BILL 2023

Introduction and First Reading

Bill introduced, on motion by **Mr W.J. Johnston (Minister for Industrial Relations)**, and read a first time.
Explanatory memorandum presented by the minister.

Second Reading

MR W.J. JOHNSTON (Cannington — Minister for Industrial Relations) [12.40 pm]: I move —

That the bill be now read a second time.

The bill I am introducing today represents the modernisation of Western Australia's workers compensation laws. The current 1981 act has served the state well, but over time has become complex and unwieldy and now fails to provide sufficient clarity on fundamental aspects of the workers compensation scheme. The Workers Compensation and Injury Management Bill 2023 will modernise WA's workers compensation laws, while preserving fundamental aspects of the scheme. 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 contained in WorkCover WA's 2014 *Review of the Workers' Compensation and Injury Management Act 1981: Final report*.

Some important changes have already been implemented by the McGowan government during the previous term. The government amended the act in 2018 to implement WorkCover WA's final report recommendations relating to increased entitlements and better support for dependants of workers who die in work-related accidents. In 2020, the government enacted other priority reforms through the Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020. This amendment act provided for a presumption of work injury for healthcare workers who contract COVID-19 and removed a number of procedural barriers and constraints in the act highlighted by the COVID-19 pandemic, including acting on WorkCover WA's final report recommendation to remove the common-law termination day.

This bill is a complete rewrite of the workers compensation legislation and although it is in large part a technical drafting exercise, it is underpinned by some key and important improvements to worker entitlements and elements of the workers compensation scheme, which I will now summarise.

In the lead-up to the 2021 state election, the McGowan government reiterated its commitment to modernise WA's workers compensation laws based on WorkCover WA's final report recommendations and announced additional election commitments for inclusion in the bill. One of these changes is to increase the cap on medical and health expenses compensation. The current act has a monetary limit for compensable medical and health expenses that is set at 30 per cent of the maximum weekly compensation limit. It is currently \$73 197 and indexed annually. Although this amount is adequate to cover the medical expenses of most workers, the entitlement can be quickly exhausted for seriously injured workers requiring long hospital stays or multiple and complex surgical procedures. The bill will increase the limit for compensable medical and health expenses from 30 per cent to 60 per cent of the prescribed maximum limit. This will result in an increase in the capped amount from \$73 197 to \$146 395. This will see seriously injured workers receive an appropriate level of financial support to cover the cost of medical and health treatment without the need for them to go cap in hand asking for an extension.

Another election commitment delivered in the bill will see injured workers who cannot work because of their injury receive an appropriate level of support for loss of income for a longer period of time. This will be achieved by extending the point at which income compensation steps down by 15 per cent. The bill will extend the step-down point from 13 to 26 weeks. The step down will also be subject to a minimum safety net amount to ensure that the step down cannot fall below a worker's base award rate of pay plus any regular additional earnings a worker received over the previous 12 months from the date of injury. This will ensure that award workers on base award rates of pay or who rely upon regular additional earnings to make ends meet are not disadvantaged after the step down, as is the case under the current act.

A no-fault catastrophic injuries support scheme for motor vehicle accidents was implemented in Western Australia on 1 July 2016. This scheme is administered by the Insurance Commission of Western Australia. This bill will provide for the scope of the catastrophic injuries support scheme to be extended to apply also to catastrophically injured workers who have a compensable workers compensation claim. By doing so, workers suffering catastrophic injuries at work who meet the eligibility criteria and who choose to participate will receive lifetime tailored care and support based on their needs. Catastrophically injured workers will retain the right to seek common-law damages should they prefer that pathway.

There will be no substantive change in the forms of compensation and the maximum amounts of compensation payable to workers, other than the entitlements I have just outlined. The entitlement improvements I have just outlined are the areas in the bill that will have cost impacts on employers in the form of higher workers compensation insurance premiums. PricewaterhouseCoopers has actuarially assessed the bill and estimates a 2.83 per cent increase in premium

rates resulting from these changes. If the increased cost was applied to the 2022–23 premium rating year, it would increase the average recommended premium rate from 1.822 per cent to 1.874 per cent of an employer’s payroll. The government is cognisant of the economic challenges facing WA businesses and is not making fundamental scheme design changes or costly workers compensation reform. The cost impacts of this bill will be modest, fair and reasonable.

I now turn to the key technical changes of the bill.

The bill will continue to cover workers engaged under a contract of service or apprenticeship, but will modify the way that contractors are covered in a way that provides clarity and consistency with those in other states and territories. The bill is not expected to have any significant impact on the number of contractors covered by the scheme.

There is provision for regulations to declare or deem an individual of a specified class or description as a worker and to deem who is a worker’s employer for the purposes of the act. This regulation-making power is important, as the nature of work and the relationships between parties are changing and the legal status of some of these arrangements is evolving. The bill will continue to cover injuries that arise from employment and will apply the same legal tests as the current act for working out whether a personal injury by accident or a disease results from employment.

It is important that insurers and self-insurers inform workers about the status of their claim and eligibility for compensation as soon as possible. It is acknowledged that insurers and self-insurers will sometimes defer or delay a decision on a claim while medical and factual investigations are being carried out. However, without clear statutory time frames, there is no incentive for insurers or self-insurers to carry out medical and factual investigations and respond to a worker’s claim in a timely manner. The bill will require an insurer or self-insurer to respond to a worker’s claim for compensation in a timely manner, with new obligations for provisional payments and “deemed acceptance of liability” if liability decisions are not made within prescribed time frames. This is an important change that will lead to quicker liability decisions by insurers and self-insurers and faster access to financial support for workers when claims are investigated for long periods.

Sometimes over the journey of a worker’s compensation claim, workers and employers may decide that a settlement is in everyone’s best interests. A settlement commutes to a lump sum the liability of an employer to pay compensation to a worker and discharges that liability. Barriers to settlement was a contentious issue in the consultation process that informed the development of the bill and the government has responded to those concerns by minimising barriers to settlement. In particular, the bill does not prescribe a time constraint before a settlement can be negotiated and registered, as the current act does. The bill also does not require that liability necessarily be accepted by the insurer or self-insurer as a precondition for a settlement.

Although the bill will provide greater flexibility for settlements to occur, there will continue to be safeguards. These include scrutiny by a WorkCover WA statutory office holder to ensure that settlements are genuine and workers are aware of the consequences of registering a settlement. When a worker is unfit for work, workers and employers are expected to work together to facilitate a safe and durable return to work as soon as possible. The bill clearly sets out the return to work duties and obligations of both employers and workers. The bill recognises the important role and functions of the worker’s treating medical practitioner and reinforces a worker’s right to choose their own treating medical practitioner. The bill will also prohibit an employer or their agent from attending a medical consultation when a worker is being physically or clinically examined by their treating medical practitioner. This will ensure that a worker’s privacy and dignity is protected and will prevent an employer or agent asserting pressure on the treating medical practitioner when issuing a certificate of capacity. To prevent discriminatory practices, the bill will prohibit employers or recruitment agencies from asking any person as part of pre-employment screening to disclose information about whether they have made any claim for compensation. The bill will also prevent any person disclosing information about a workers compensation claim previously made by a worker for the purposes of pre-employment screening.

The bill will maintain the fundamental obligation on every employer to have a workers compensation insurance policy to cover their workers, although the penalty is doubling for noncompliance. Although the maximum penalty is seldom awarded in the courts, the penalty has not changed in many years and it is appropriate for the legislation to set an appropriate benchmark maximum amount for high-risk, recidivous offenders. The bill will maintain WorkCover WA’s role in setting recommended premium rates for workers compensation policies, but the current requirement for insurers to seek WorkCover WA approval to charge 75 per cent or greater than the recommended premium is to be discontinued. Instead, a premium review procedure will apply when employers seek to challenge the premium charged by insurers.

The bill provides for a modernised framework for WorkCover WA to license and regulate both insurers and self-insurers operating in the workers compensation scheme and take appropriate action when performance and compliance issues arise. The special insurance policy that mining employers are required to hold with the Insurance Commission of Western Australia for coverage of certain industrial diseases will be discontinued, with these liabilities integrated into conventional workers compensation insurance policies. Savings provisions will address coverage of historical liabilities.

There is to be a single default insurance fund to provide a safety net for scheme and system risks. The bill will streamline and consolidate into the default insurance fund the administrative and funding arrangements for liabilities

associated with uninsured employers, insolvent insurers and self-insurers, and acts of terrorism. Payments from the default insurance fund will be met by a levy contribution from licensed insurers and self-insurers. The accompanying Workers Compensation and Injury Management Amendment Bill 2023 will authorise the levy in the event the contributions are considered to be a tax.

The bill provides for the continuation of the conciliation and arbitration services, without any material changes, as the dispute resolution framework in the current act was significantly amended in 2011, continues to work well and compares favourably with dispute resolution procedures in other jurisdictions. However, the bill will discontinue the regime for approving and regulating registered agents, and will transition the small number of non-legally qualified independent self-employed agents out of the scheme over a two-year period following commencement of the new act.

The bill will streamline provisions for dust disease damages claims. If a dust disease is terminal, the bill will enable the common-law action to commence before the worker is assessed by the Dust Disease Medical Panel and has registered an election, thereby preserving the worker's common-law rights. An important consequential amendment will also be made to the Limitation Act 2005 to place workers suffering silicosis on the same footing as workers with asbestosis. It will do this by ensuring that the three-year limitation period for commencing a common-law action applies to workers with silicosis only from when a worker has greater than 25 per cent whole-person impairment. The change will prevent a worker suffering silicosis with a low initial impairment from being time barred if the impairment has not reached the whole-person impairment threshold required for common-law damages within three years of the diagnosis. The common-law part of the bill will retain the 15 per cent whole-person impairment threshold and the requirement for a worker to make an election in order to pursue common-law damages. The common-law threshold requirements will apply to both the commencement of proceedings and the awarding of damages. This will mean a writ cannot be issued, and damages cannot be awarded or settled, without the impairment assessment indicating at least 15 per cent whole-person impairment and an election being registered.

The bill provides for the continuation of the WorkCover WA Board, staff and statutory office holders with no substantive changes from the current act. The bill will provide for the enforcement of the workers compensation legislation, including revised penalties for some offences, which have been set at the same value for many years, and will integrate the infringement notice regime into the framework under the Criminal Procedure Act 2004.

The bill clarifies the various circumstances in which information disclosure will be permitted or prohibited with a default position of confidentiality. A new provision will address discrimination in recruitment practices by expressly prohibiting disclosure of a worker's claim history for pre-employment screening purposes. The bill also provides that a worker cannot be required to disclose information about a compensation claim by the worker for the purpose of selection for employment.

At the end of this process there will be a single modern act covering workers compensation and injury management in this state. Savings and transitional provisions provide for a seamless transition from the current act to the new act and will allow for the current act and related statutes to be repealed. Savings and transitional provisions will provide for the treatment and status of pending matters such as claims and disputes at the time when the new act comes into operation and the current act and other related statutes are repealed. The savings and transitional provisions are drafted to minimise disruption to scheme stakeholders with approved or licensed service providers recognised under the new legislation without any requirement to apply.

This bill is a key pillar of the government's reforms to modernise the industrial relations system and follows the successful implementation of work health and safety and industrial relations reforms in 2022. The bill will deliver a modern act for the workers compensation and injury management scheme in this state, and the clarity and certainty that stakeholders need in the statute.

I commend the bill to the house.

Debate adjourned, on motion by **Mr P.J. Rundle**.