

Workers' Compensation and Injury Management Amendment Bill 2012

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Western Australia

LEGISLATIVE COUNCIL

**Workers' Compensation and Injury
Management Amendment Bill 2012**

A Bill for

An Act to amend the *Workers' Compensation and Injury Management Act 1981*.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Workers' Compensation and Injury Management Amendment Act 2012*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Workers' Compensation and Injury Management Act 1981* amended

3. Act amended

This Part amends the *Workers' Compensation and Injury Management Act 1981*.

4. Section 159 amended

(1) In section 159 delete the definition of *damages*.

(2) In section 159 insert in alphabetical order:

damages means —

- (a) damages due or payable to, or claimed by, a worker for an injury caused to that worker by the negligence, other tort or breach of statutory duty of the employer of the worker or the negligence of any person for whose conduct the employer is vicariously liable; or
- (b) damages due or payable to, or claimed by, a dependant of a deceased worker under the *Fatal Accidents Act 1959* for an injury causing the death of the worker; or
- (c) damages due or payable to, or claimed on behalf of, the estate of a deceased worker under the *Law Reform (Miscellaneous Provisions) Act 1941* for an injury causing the death of the worker; or
- (d) the amount of any contribution or indemnity due or payable to, or claimed by, a concurrent tortfeasor under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution)*

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1 *Act 1947* in respect of an injury to, or death of,
2 a worker,
3 but does not include a liability imposed by contract that
4 would not arise as a coordinate liability in negligence
5 or other tort or breach of statutory duty;
6 ***deemed worker***, in relation to an employer, means —
7 (a) a worker of whom the employer would not be
8 the employer, but for being deemed by
9 section 175(1) to be the employer; or
10 (b) a person to whom the employer would be liable
11 to pay compensation in the circumstances
12 described in section 175AA(5)(a);
13 ***insurable damages*** means damages in respect of which
14 an employer is required by section 160(1)(b) to insure;
15

16 **5. Section 160 amended**

17 (1) Delete section 160(1)(b) and insert:

18
19 (b) the amount of the employer's liability to pay
20 damages to or in respect of any worker
21 employed by the employer, other than a
22 deemed worker of the employer, in respect of a
23 compensable injury for which the employer is
24 liable.
25

26 (2) Delete section 160(3) and insert:

27
28 (3) An approved insurance office is to insure any employer
29 requesting it for the amount of the liabilities for which
30 the employer is required by subsection (1) to insure.

31 Penalty: a fine of \$2 000.
32

1 (3) In section 160(4)(a) delete “damages in respect of compensable
2 injuries for which the employer is liable; and” and insert:

3

4 insurable damages; and

5

6 **6. Section 161A amended**

7 In section 161A delete “damages in respect of compensable
8 injuries for which the employer is liable” and insert:

9

10 insurable damages

11

12 **7. Section 165 amended**

13 (1) In section 165(2)(d) delete “damages in respect of compensable
14 injuries for which the employer is liable,” and insert:

15

16 insurable damages,

17

18 (2) In section 165(3)(a) delete “damages in respect of compensable
19 injuries for which the employer is liable; or” and insert:

20

21 insurable damages; or

22

23 **8. Section 168 amended**

24 Delete section 168(b)(iii) and insert:

25

26 (iii) there are no outstanding or potential —

27 (I) claims for compensation; or

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1 (II) actions for insurable damages;
2 or
3

4 **9. Section 169 replaced**

5 Delete section 169 and insert:
6

7 **169. Terms of insurance and form of policies**

- 8 (1) The regulations may —
9 (a) limit, modify or exclude any requirement in
10 section 160(1) to obtain or keep current an
11 insurance policy in respect of liabilities arising
12 in prescribed circumstances or out of prescribed
13 events; and
14 (b) limit the amount for which an employer is
15 required by section 160(1) to obtain or keep
16 current an insurance policy; and
17 (c) otherwise limit, modify or exclude the
18 requirement in section 160(1) to obtain or keep
19 current an insurance policy.
20 (2) The regulations may prescribe any or all of the terms
21 and conditions of an insurance policy required by
22 section 160(1).
23 (3) The regulations may prescribe the form of any
24 insurance policy required by section 160(1).
25

26 **10. Section 174 amended**

27 (1) In section 174(1) delete “shall” and insert:
28

29 is, subject to subsection (5AA), to
30

- 1 (2) In section 174(1AA) —
2 (a) before paragraph (d) insert:
3
4 (da) the damages awarded or agreed are, or include,
5 insurable damages; and
6
7 (b) in paragraph (d) after “to pay” insert:
8
9 the insurable
10
11 (c) in paragraph (d) after “claim for” insert:
12
13 insurable
14
15 (d) delete “subject to section 174AAA, WorkCover WA is”
16 and insert:
17
18 Workcover WA is, subject to subsection (5AA) and
19 section 174AAA,
20
21 (e) after “the amount required to satisfy the judgment or
22 agreement” insert:
23
24 to the extent that the judgment or agreement provides
25 for the payment of insurable damages,
26
27 (3) After section 174(5) insert:
28
29 (5AA) Where WorkCover WA is to make a payment under
30 subsection (1) or (1AA) to a worker in respect of an
31 injury —
32 (a) the amount of that payment is to be reduced
33 by any amount of compensation payable to

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- 1 the worker by any employer in respect of the
2 injury; and
- 3 (b) the employer paying that compensation has
4 no right under section 92 or 93 to recovery
5 of, or indemnity for, the compensation from
6 the worker.
- 7 (5AB) Nothing in this section requires WorkCover WA to
8 make any payment to the employer of a worker or to
9 any person who is deemed by section 175(1) to be
10 the employer of a worker.
11
- 12 (4) In section 174(9) delete “or to pay damages to a worker in
13 respect of a compensable injury,”.
- 14 **11. Section 174AB amended**
- 15 In section 174AB(1) delete “damages in respect of a
16 compensable injury for which the employer is liable,” and
17 insert:
18
- 19 damages which are, or which include, insurable damages,
20
- 21 **12. Section 175 amended**
- 22 After section 175(2) insert:
23
- 24 (3A) The indemnity conferred by subsection (2) does not
25 allow the principal to recover from the worker —
- 26 (a) any amount which the worker receives from the
27 contractor by way of compensation or damages
28 in respect of a compensable injury; or
- 29 (b) any amount which the worker receives from
30 WorkCover WA under section 174 in respect of

1 the contractor's liability to pay compensation or
2 damages to the worker.

3 (3B) The indemnity conferred by subsection (2) does not
4 allow the principal to recover any amount from
5 WorkCover WA.
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Part 3 — Transitional

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13. Terms used

In this Part —

Part X means the *Workers' Compensation and Injury Management Act 1981* Part X;

transitional period means the period beginning on 1 October 2011 and ending when Part 2 of this Act comes into operation.

14. Things done or omitted during the transitional period

(1) Anything done during the transitional period that —

- (a) did not comply with a provision of Part X; and
- (b) would have complied with that provision if done immediately after the transitional period,

is taken to have complied with that provision at the time it was done.

(2) Where —

- (a) during the transitional period, an employer does not obtain or keep current an insurance policy under Part X for a liability of a particular kind to a particular person; and
- (b) the employer is taken under subsection (1) to have complied with a provision of Part X requiring it to obtain or keep current such a policy,

an insurer who has issued to the employer a liability insurance policy other than for the purposes of Part X may not reject a claim under that policy on the grounds that the claim relates to a liability for which the employer was required under Part X to insure.

(3) In this section a reference to doing anything includes a reference to omitting to do that thing.

1 **15. Validity of terms, conditions and exclusions of insurance**
2 **policies effected during the transitional period**

3 A term, condition or exclusion of an insurance policy obtained
4 or kept current during the transitional period for the purposes of
5 Part X which, if the policy were obtained immediately after the
6 transitional period, would be valid, lawful and effective is taken
7 to be valid, lawful and effective from the time when the policy
8 was obtained or, if later, from the beginning of the transitional
9 period.

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