

Workers' Compensation and Injury Management Amendment (COVID-19 Response) Bill 2020

Contents

1.	Short title	2
2.	Commencement	2
3.	Act amended	2
4.	Section 5 amended	2
5.	Section 5A amended	2
6.	Part III Division 4B inserted	5
	Division 4B — Injury: prescribed diseases	
	49F. Prescribed diseases taken to be from certain employment	5
	49G. Division 3 does not apply if s. 49F(3) applies	6
7.	Section 93L amended	6
8.	Sections 93M deleted	6
9.	Section 93N amended	7
10.	Section 93O deleted	7
11.	Section 93Q amended	7
12.	Section 93R amended	7
13.	Section 93S amended	8
14.	Part IV Division 2 Subdivision 4 inserted	8
	Subdivision 4 — Savings and transitional arrangements arising from <i>Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020</i>	
	93T. Transitional arrangements for termination day	8
15.	Section 314A inserted	9
	314A. Facilitating electronic processes	9
16.	Section 315 deleted	9
17.	Schedule 1 amended	10

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Workers' Compensation and Injury
Management Amendment (COVID-19
Response) Bill 2020**

A Bill for

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

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Workers' Compensation and Injury Management*
3 *Amendment (COVID-19 Response) Act 2020*.

4 **2. Commencement**

5 This Act comes into operation as follows —

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

10 **3. Act amended**

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

13 **4. Section 5 amended**

14 In section 5(1) delete the definition of *prescribed amount* and
15 insert:

16
17 *prescribed amount* has the meaning given in
18 section 5A(1A);

19
20 **5. Section 5A amended**

21 (1) Before section 5A(1) insert:

22
23 (1A) In this section —

24 *adjustable amount* means —

- 25 (a) the prescribed amount; or
- 26 (b) an amount that a provision of this Act describes
27 as applying in accordance with this section; or
- 28 (c) Amount C;

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Amount C means —

- (a) for a financial year ending before 1 July 2020, the amount worked out under clause 11(2) as in force on 1 July of that year;
- (b) for the financial year ending 30 June 2021, the amount of \$2 645.90;
- (c) for any subsequent financial year, the amount prescribed, or worked out, under the regulations for that financial year;

prescribed amount means —

- (a) for a financial year ending before 1 July 2020, the amount that was the prescribed amount for that financial year under this Act as in force on 1 July of that year;
- (b) for the financial year ending 30 June 2021, the amount of \$235 971.00;
- (c) for any subsequent financial year, the amount prescribed, or worked out, under the regulations for that financial year.

(2) In section 5A(1):

- (a) in paragraph (a) delete “provision; and” and insert:

provision;
- (b) in paragraph (b):
 - (i) delete “1 July 1997,” and insert:

1 July 1997 and ending before 1 July 2021,

s. 5

- 1 (ii) delete “dollars).” and insert:
2
3 dollars);
4
- 5 (3) After section 5A(1)(b) insert:
6
- 7 (c) for any subsequent financial year, the amount
8 prescribed for the purposes of the provision, or
9 worked out, under the regulations for that
10 financial year.
11
- 12 (4) After section 5A(2) insert:
13
- 14 (3) The regulations may vary an adjustable amount,
15 including by providing for the periodic variation of an
16 adjustable amount in accordance with a specified
17 methodology (an *adjustment methodology*).
- 18 (4) The regulations may provide for different adjustment
19 methodologies for different adjustable amounts.
- 20 (5) If, for a particular period, variation under the
21 regulations of an adjustable amount would reduce the
22 amount, the amount is not to be varied for the period.
- 23 (6) An adjustable amount for a financial year must be
24 published on the WorkCover WA website.
25
- 26 Note: The heading to amended section 5A is to read:
27 **Prescribed amount and variation of certain amounts**

1 **6. Part III Division 4B inserted**

2 After Part III Division 4A insert:

3
4 **Division 4B — Injury: prescribed diseases**

5 **49F. Prescribed diseases taken to be from certain**
6 **employment**

- 7 (1) The regulations may —
- 8 (a) specify diseases for the purposes of this section
9 (each a *prescribed disease*);
- 10 (b) for each prescribed disease specify 1 or more
11 kinds of employment as *prescribed*
12 *employment* for that disease.
- 13 (2) The regulations cannot specify a disease to which
14 section 33 or 34 applies.
- 15 (3) Subject to the regulations under subsection (4), if a
16 worker suffers an injury by contracting a prescribed
17 disease and the worker is working in prescribed
18 employment when the worker suffers the injury or
19 worked in prescribed employment at any time before
20 suffering the injury, the prescribed employment is, for
21 the purposes of this Act, taken to have been a
22 contributing factor and to have contributed to a
23 significant degree to the prescribed disease, unless the
24 employer proves the contrary.
- 25 (4) The regulations may —
- 26 (a) impose conditions or limitations on the
27 operation of subsection (3); and
- 28 (b) specify the day on which subsection (3) applies
29 to a worker or class of worker in relation to a
30 prescribed disease; and

s. 7

- 1 (c) specify the day on which an injury by
2 contracting a prescribed disease that under
3 subsection (3) is taken to be from prescribed
4 employment is taken to have been suffered.
- 5 (5) A day specified for the purposes of subsection (4)(b)
6 or (c) may be —
- 7 (a) a day before or after the coming into operation
8 of the *Workers' Compensation and Injury*
9 *Management Amendment (COVID-19*
10 *Response) Act 2020* section 6; or
- 11 (b) a day before or after the relevant disease is
12 specified as a prescribed disease by the
13 regulations.
- 14 (6) This section does not prevent it from being established
15 independently of this section that an injury contracted
16 by a prescribed disease is an injury under this Act
17 whether or not the worker was working in prescribed
18 employment.
- 19 **49G. Division 3 does not apply if s. 49F(3) applies**
- 20 If section 49F(3) applies to a worker in relation to a
21 disease and employment, Division 3 does not apply to
22 the worker in relation to the same disease and
23 employment.
24
- 25 **7. Section 93L amended**
- 26 Delete section 93L(1) and (4).
- 27 **8. Section 93M deleted**
- 28 Delete section 93M.

1 **9. Section 93N amended**

2 (1) In section 93N(1) delete “6 months after the day that would
3 have been the termination day had there been no extension
4 under section 93M(4),” and insert:

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6 18 months after the day on which a claim for compensation by
7 way of weekly payments is made by a worker,
8

8

9 (2) After section 93N(1) insert:

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11 (1A) In subsection (1) —

12 *claim for compensation by way of weekly payments*
13 means a claim for compensation by way of weekly
14 payments for total or partial incapacity that has been
15 made on an employer in accordance with
16 section 178(1)(b).
17

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18 (3) In section 93N(4) delete “not later than 8 weeks before the
19 termination day”.

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20 **10. Section 93O deleted**

21 Delete section 93O.

22 **11. Section 93Q amended**

23 Delete section 93Q(7).

24 **12. Section 93R amended**

25 Delete section 93R(6).

25

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1 **13. Section 93S amended**

2 (1) In section 93S(d) delete “impairment;” and insert:

3

4 impairment.

5

6 (2) Delete section 93S(e).

7 **14. Part IV Division 2 Subdivision 4 inserted**

8 At the end of Part IV Division 2 insert:

9

10 **Subdivision 4 — Savings and transitional arrangements**
11 **arising from *Workers' Compensation and Injury Management***
12 ***Amendment (COVID-19 Response) Act 2020***

13 **93T. Transitional arrangements for termination day**

14 (1) In this section —

15 *commencement day* means the day on which the
16 *Workers' Compensation and Injury Management*
17 *Amendment (COVID-19 Response) Act 2020* section 7
18 comes into operation;

19 *former Subdivision* means Subdivision 3 as in force
20 immediately before commencement day.

21 (2) A worker can elect on or after commencement day to
22 retain the right to seek damages in respect of a cause of
23 action accruing before that day even if the termination
24 day for an election under the former Subdivision in
25 respect of those damages was before commencement
26 day.

- 1 (3) Nothing in the *Workers' Compensation and Injury*
2 *Management Amendment (COVID-19 Response)*
3 *Act 2020* sections 7 to 13 affects the validity or effect
4 of an agreement or assessment recorded by the Director
5 under section 93L(2), or an election registered by the
6 Director in accordance with the regulations, before
7 commencement day.
8

9 **15. Section 314A inserted**

10 After section 314 insert:
11

12 **314A. Facilitating electronic processes**

- 13 (1) In this section —
14 *document* includes a notice, notification, particulars or
15 return required or permitted to be given under this Act,
16 including a document for which a form is prescribed in
17 the regulations.
- 18 (2) A person who is required or permitted under this Act to
19 give a document to a person other than WorkCover
20 WA may —
- 21 (a) create and record the document in the form (if
22 any) specified under the regulations, which may
23 include an electronic, paper or other form; and
- 24 (b) give the document in the manner (if any)
25 specified under the regulations.
26

27 **16. Section 315 deleted**

28 Delete section 315.

s. 17

1 **17. Schedule 1 amended**

2 In Schedule 1 clause 11(2) delete the definition of *Amount C*
3 and insert:

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5 *Amount C* has the meaning given in section 5A(1A);

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