

## Notes

<sup>1</sup> This is a compilation of the *Workers' Compensation and Injury Management Act 1981* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

Short title	Number and year	Assent	Commencement
<i>Workers' Compensation and Assistance Act 1981</i> <sup>21, 21a</sup>	86 of 1981	23 Nov 1981	3 May 1982 (see s. 2 and <i>Gazette</i> 8 Apr 1982 p. 1205)
<i>Workers' Compensation and Assistance Amendment Act 1983</i>	16 of 1983	7 Nov 1983	7 Nov 1983
<i>Workers' Compensation and Assistance Amendment Act (No. 2) 1983</i>	79 of 1983	22 Dec 1983	22 Dec 1983
<i>Health Legislation Amendment Act 1984</i> Pt. XXIV	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
<i>Workers' Compensation and Assistance Amendment Act 1984</i> <sup>22</sup>	104 of 1984	19 Dec 1984	19 Dec 1984 (see s. 2)
<i>Workers' Compensation and Assistance Amendment Act 1985</i> <sup>23, 23a–23e, 24</sup>	44 of 1985	20 May 1985	s. 3(1) and (2) and 26: 20 May 1985 (see s. 2(1)); s. 3(3), 4-9, 13-18, 21, 22, 24, 27-37, 39-43: 28 Jun 1985 (see s. 2(2) and <i>Gazette</i> 14 Jun 1985 p. 2134); s. 25: 1 Jul 1985 (see s. 2(3)); s. 20: 25 Oct 1985 (see s. 2(2) and <i>Gazette</i> 25 Oct 1985 p. 4100); s. 23: 7 Feb 1986 (see s. 2(2) and <i>Gazette</i> 7 Feb 1986 p. 425); s. 38: 25 Jul 1986 (see s. 2(2) and <i>Gazette</i> 25 Jul 1986 p. 2453)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 June 1986 p. 2255)
<i>Workers' Compensation and Assistance Amendment Act 1986</i> <sup>25</sup>	33 of 1986	1 Aug 1986	1 Aug 1986 (see s. 2)
<i>State Government Insurance Commission Act 1986</i> s. 46(2)	51 of 1986	5 Aug 1986	1 Jan 1987 (see s. 2 and <i>Gazette</i> 19 Dec 1986 p. 4859)

Short title	Number and year	Assent	Commencement
<i>Workers' Compensation and Assistance Amendment Act (No. 2) 1986</i>	85 of 1986	5 Dec 1986	s. 7 and 11: 22 May 1987 (see s. 2(2) and <i>Gazette</i> 22 May 1987 p. 2167); balance: 5 Dec 1986
<i>Acts Amendment (Workers' Compensation and Assistance) Act 1986 Pt. III</i>	86 of 1986	5 Dec 1986	2 Jan 1987
<b>Reprint of the <i>Workers' Compensation and Assistance Act 1981</i> as at 6 Feb 1987</b> (includes amendments listed above except those in the <i>Workers' Compensation and Assistance Amendment Act (No. 2) 1986</i> s. 7 and 11)			
<i>Workers' Compensation and Assistance Amendment Act 1987</i> <sup>26</sup>	21 of 1987	25 Jun 1987	23 Jul 1987
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987 Pt. VII</i>	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and <i>Gazette</i> 12 Feb 1988 p. 397)
<i>Workers' Compensation and Assistance Amendment Act 1988</i>	36 of 1988	24 Nov 1988	1 Mar 1991 (see s. 2 and <i>Gazette</i> 1 Mar 1991 p. 967)
<i>Workers' Compensation and Assistance Amendment Act 1990</i> <sup>27, 27a-27c</sup>	96 of 1990	22 Dec 1990	8 Mar 1991 (see s. 2 and <i>Gazette</i> 8 Mar 1991 p. 1030)
<b>Reprint of the <i>Workers' Compensation and Rehabilitation Act 1981</i> as at 9 Oct 1991</b> (includes amendments listed above) (errata in <i>Gazette</i> 1 May 1992 p. 1866)			
<i>Acts Amendment (Parliamentary, Electorate and Gubernatorial Staff) Act 1992 Pt. 6</i>	40 of 1992	2 Oct 1992	3 Nov 1992 (see s. 2 and <i>Gazette</i> 3 Nov 1992 p. 5389)
<i>Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1992</i>	72 of 1992	15 Dec 1992	s. 6-8: 5 Feb 1993 (see s. 2 and <i>Gazette</i> 5 Feb 1993 p. 975); balance: 24 Dec 1992 (see s. 2 and <i>Gazette</i> 24 Dec 1992 p. 6277)
<i>Employers' Indemnity Supplementation Fund Amendment Act 1993 s. 14</i>	1 of 1993	19 Jul 1993	19 Jul 1993 (see s. 2)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 August 1993	Deemed operative 1 Jul 1993 (see s. 2(1))
<i>Mines Regulation Amendment Act 1993 s. 13</i>	30 of 1993	16 Dec 1993	24 Dec 1993 (see s. 2 and <i>Gazette</i> 24 Dec 1993 p. 6796)

Short title	Number and year	Assent	Commencement
<i>Workers' Compensation and Rehabilitation Amendment Act 1993</i> <sup>28</sup> , 28a-28h	48 of 1993 (as amended by No. 42 of 2004 s. 172)	20 Dec 1993	Pt. 1-3: 20 Dec 1993 (see s. 2(1)); s. 21, 23, 25, 28(1) (only so far as it gives effect to Sch. 1 cl. 13, 14, 27(a)(i), (b)(i) and (c) and 31) of Pt. 4, and Pt. 5 (other than s. 36-38, 41 and 43): 24 Dec 1993 (see s. 2(2) and <i>Gazette</i> 24 Dec 1993 p. 6795); balance: 1 Mar 1994 (see s. 2(2) and <i>Gazette</i> 24 Dec 1993 p. 6795)
<b>Reprint of the Workers' Compensation and Rehabilitation Act 1981 as at 14 Mar 1994</b> (includes amendments listed above)			
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Mines Safety and Inspection Act 1994</i> s. 109	62 of 1994	7 Nov 1994	9 Dec 1995 (see s. 2 and <i>Gazette</i> 8 Dec 1995 p. 5935)
<i>Hospitals Amendment Act 1994</i> s. 18	103 of 1994	11 Jan 1995	3 Feb 1995 (see s. 2 and <i>Gazette</i> 3 Feb 1995 p. 333)
<i>Occupational Safety and Health Legislation Amendment Act 1995</i> s. 48	30 of 1995	11 Sep 1995	1 Oct 1995 (see s. 2 and <i>Gazette</i> 15 Sep 1995 p. 4301)
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 84	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<b>Reprint of the Workers' Compensation and Rehabilitation Act 1981 as at 29 Jan 1999</b> (includes amendments listed above)			
<i>Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1999</i> <sup>29</sup>	33 of 1999	5 Oct 1999	5 Oct 1999 (see s. 2)
<i>Workers' Compensation and Rehabilitation Amendment Act 1999</i> <sup>30</sup> , 30a-30d	34 of 1999 (as amended by No. 37 of 1999 s. 3)	5 Oct 1999	s. 5, 14, 15, 32, 48(a)(iv), 53(a), 53(c) and 53(d)(ii): 5 Oct 1999 (see s. 2(1)); balance: 15 Oct 1999 (see s. 2(2) and <i>Gazette</i> 15 Oct 1999 p. 4889)
<i>Workers' Compensation and Rehabilitation Amendment Act 2000</i>	44 of 2000	17 Nov 2000	s. 1, 2 and 4(2)(b): 17 Nov 2000 (see s. 2(2)); balance: 5 Oct 1999 (see s. 2(1))

Short title	Number and year	Assent	Commencement
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 57	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<b>Reprint of the <i>Workers' Compensation and Rehabilitation Act 1981</i> as at 14 Sep 2001</b> (includes amendments listed above)			
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 63	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Racing and Gambling Legislation Amendment and Repeal Act 2003</i> Pt. 15 <sup>32</sup>	35 of 2003	26 Jun 2003	1 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Jul 2003 p. 3259)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 72, 96, 97 <sup>33</sup>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 134	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Workers' Compensation (Common Law Proceedings) Act 2004</i> s. 8-11 <sup>30a</sup>	35 of 2004	25 Oct 2004	s. 5(1) and (2): 5 Oct 1999 (see s. 2(2)); Act other than s. 5(1) and (2): 25 Oct 2004 (see s. 2(1))
<i>Workers' Compensation and Rehabilitation Amendment (Cross Border) Act 2004</i> Pt. 2 <sup>39</sup>	36 of 2004	28 Oct 2004	22 Dec 2004 (see s. 2 and <i>Gazette</i> 21 Dec 2004 p. 6143)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Workers' Compensation Reform Act 2004</i> <sup>37</sup>	42 of 2004	9 Nov 2004	s. 3, s. 4(b), s. 5, s. 8(1) in so far as it deletes the definitions of "Commission", "Committee", "Executive Director", and "the Chairman of the Commission", s. 8(2) in so far as it inserts the definitions of "chief executive officer", "the Chairman of WorkCover WA", and "WorkCover WA", s. 8(3)(a), (b), (d), (e) & (i), s. 9, s. 19, s. 23-26, s. 28-35, s. 38-39, s. 40(a), s. 55(3)(b), s. 57(a) & (b), s. 64, s. 65(1), s. 80-86, s. 87(8), s. 88(1)-(4), s. 89-91, s. 93(a), (c), & (d), s. 94-95, s. 97, s. 98(1), (2) & (3)(a), s. 99-100, s. 101(1), s. 102, s. 111-113, s. 115-117, s. 122, s. 123(1)-(5), s. 124, s. 125(1), s. 126(1), (2), (3) & (5), s. 127, s. 131, s. 133, s. 135, s. 137-138, s. 140, s. 141(4)(a), (5)(a), (8), (9), (10), (11), (12), (13), (14), (15)(a), (c) & (d), & (21), s. 143(2), s. 150-153 and Pt. 4 (other than Div. 3): 4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)

1a On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

#### **Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Acts Amendment (ICWA) Act 1996</i> Sch. 1 it. 16 <sup>31</sup>	45 of 1996 (as amended by No. 42 of 2004 s. 155)	25 Oct 1996	To be proclaimed (see s. 2)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 74 <sup>20</sup>	43 of 2000 (as amended by No. 42 of 2004 s. 174)	2 Nov 2000	To be proclaimed (see s. 2(2))
<i>Workers' Compensation and Rehabilitation Amendment (Cross Border) Act 2004</i> Pt. 3 <sup>34</sup>	36 of 2004	28 Oct 2004	To be proclaimed (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Workers' Compensation Reform Act 2004</i> <sup>35</sup>	42 of 2004	9 Nov 2004	s. 4(a) & (c), s. 6 & 7, s. 8(1) other than the definitions of "Commission", "Committee", "Executive Director", and "the Chairman of the Commission", s. 8(2) other than the definitions of "chief executive officer", "the Chairman of WorkCover WA", and "WorkCover WA", s. 8(3)(c), (f)-(h) & (4)-(5), s. 10-18, s. 20-22, s. 27, s. 36, s. 37, s. 40(b), s. 41-54, s. 55(1), (2), (3)(a) & (4), s. 56, s. 57(c)-(e), s. 58-63, s. 65(2), s. 66-79, s. 87(1)-(7), s. 88(5), s. 93(b), s. 96, s. 98(3)(b) & (c), s. 101(2), (3) & (4)(b), s. 103-110, s. 114, s. 118-121, s. 123(6), s. 125(2), s. 126(4), s. 128-130, s. 132, s. 134, s. 136, s. 139 s. 141(1)-(3), (4)(b), (5)(b), (6), (7), (15)(b) & (e), (16)-(20), (22)-(25), s. 142, s. 143(1), s. 144-149, s. 154, s. 182-188: 1 Jul 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131); s. 101(4)(a): <b>to be proclaimed</b>
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37 <sup>36</sup>	45 of 2004	9 Nov 2004	To be proclaimed (see s. 2)

2

Footnote no longer applicable.

3

Formerly referred to The Western Australian Industrial Commission the name of which was changed to The Western Australian Industrial Relations Commission by the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984* s. 8. The reference was changed under the *Reprints Act 1984* s. 7(3)(h).

4

Formerly referred to the *Industrial Arbitration Act 1979* the short title of which was changed to the *Industrial Relations Act 1979* by the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984* s. 4. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

5

See *Industrial Relations Act 1988* of the Commonwealth.

6

Repealed by the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984* s. 83(c).

7

This tribunal no longer exists. Now see the Coal Industry Tribunal of Western Australia constituted under the *Coal Industry Tribunal of Western Australia Act 1992* s. 4.

8

Repealed by the *Mining Act 1978* s. 3(1)(a).

9

The name of the State Government Insurance Commission was changed to the Insurance Commission of Western Australia by the *Acts Amendment (ICWA) Act 1996* s. 8.

- 10 Under the *Acts Amendment (ICWA) Act 1996* s. 31(2)(h), which had not come into operation on the date as at which this compilation was prepared, a reference to the State Government Insurance Corporation in a written law will be required, unless because of the context it would be inappropriate so to do, to be construed, or have effect, as if it had been amended to be a reference to the Insurance Commission of Western Australia.
- 11 The *Workers' Compensation Act Amendment Act (No. 2) 1977* s. 3 became operative on 28 November 1977.
- 12 The effect of this section was removed by the *Western Australian Marine Act 1982* s. 135, subject to the savings provisions in section 135(4) of that Act.
- 13 Under the *Acts Amendment (Public Service) Act 1987* s. 31(1)(f) a reference in a written law to "Permanent Head" is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the chief executive officer of the department. This reference was amended under the *Reprints Act 1984* s. 7(5)(a).
- 14 Footnote no longer applicable.
- 15 Footnote no longer applicable.
- 16 Formerly referred to the *Workers' Compensation Supplementation Fund Act 1980* the short title of which was changed to the *Employers' Indemnity Supplementation Fund Act 1980* by the *Workers' Compensation Supplementation Fund Amendment Act 1982* s. 3. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).
- 17 The Standards Association of Australia has changed its corporate status and its name. It is now Standards Australia International Limited (ACN 087 326 690). It also trades as Standards Australia.
- 18 Now see the *Interpretation Act 1984*.
- 19 Repealed by the *State Superannuation Act 2000*.
- 20 On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 74 had not come into operation. It reads:
- “
- 74.        *Workers' Compensation and Injury Management Act 1981 amended***  
Section 201(2) of the *Workers' Compensation and Injury Management Act 1981* is amended by deleting "or the *Superannuation and Family Benefits Act 1938*".  
[Section 74 amended by No. 42 of 2004 s. 174.]
- ”.
- 21 Now known as the *Workers' Compensation and Rehabilitation Act 1981*; short title changed by the *Workers' Compensation and Assistance Amendment Act 1990* s. 4.
- 21a Now known as the *Workers' Compensation and Injury Management Act 1981*; short title changed (see note under s. 1).

“

**9. Transitional**

- (1) In this section “**the amended Schedule**” means Schedule 5 to the principal Act as amended by section 8 of this Act.
- (2) Nothing in section 8 renews a liability that has been discharged or an entitlement that has been extinguished, under Schedule 5 to the principal Act.
- (3) Clause 6 or 7, whichever is appropriate, of the amended Schedule applies to a person who has elected to take the redemption amount as a lump sum or a supplementary amount weekly under Schedule 5 clause 3 to the principal Act.
- (4) Where there is under the amended Schedule —
  - (a) liability to pay compensation or to pay for the provision of other benefits or both; and
  - (b) entitlement to receive compensation or other benefits, or both,

for or in relation to a disability, in determining that liability and the extent of it and that entitlement and the extent of it, moneys already paid or required to be paid under Schedule 5 to the principal Act shall be taken into account and deemed to be moneys paid or required to be paid under the amended Schedule.

**10. Validation and ratification**

- (1) In this section “**the amended Schedule**” means Schedule 5 to the principal Act as amended by section 8 of this Act.
- (2) Where moneys have been paid by The State Government Insurance Office established under the *State Government Insurance Office Act 1938* to a person on behalf of an employer before the coming into operation of this Act and such payment would have been authorized if clause 3(7) and clause 4 or 8 of the amended Schedule had been in operation at the time the payment was made —
  - (a) where the payment is expressed to be equivalent to weekly payments of compensation that payment shall be, and shall be deemed always to have been, as valid as if clause 3(7) of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met;
  - (b) where the payment is expressed to be equivalent to weekly payments of compensation and a redemption amount as a lump sum, that payment shall be, and shall be deemed always to have been as valid as it would have been if clause 3(7) and clause 4 of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met; or
  - (c) where the payment is expressed to be equivalent to weekly payments of compensation and weekly



supplementary amounts, that payment shall be, and shall be deemed always to have been as valid as it would have been if clause 3(7) and clause 4 or 8, whichever is appropriate, of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met.

- (3) Notwithstanding sections 77 and 181 of the principal Act, any deed of release signed by a person in respect of a payment referred to in subsection (2) is declared to be legal and binding upon that person and may be filed with the Workers' Compensation Board.
- (4) A form of election signed by a person in relation to a payment referred to in subsection (2)(b) or (2)(c) may be filed with the Workers' Compensation Board and is deemed to be, and to always have been, as valid and as effective as it would have been if it had been signed, filed and served in accordance with the provisions of the principal Act as amended by this Act.
- (5) Where there is under the amended Schedule —
  - (a) liability to pay compensation or to pay for the provision of benefits or both; and
  - (b) entitlement to receive compensation or other benefits, or both,to and by a person who has received a payment referred to in subsection (2) for or in relation to a disability, in determining that liability and the extent of it and that entitlement and the extent of it, moneys already paid as a payment referred to in subsection (2) shall be taken into account and be deemed to be moneys paid under the amended Schedule.
- (6) Clause 6 or 7, whichever is appropriate, of the amended Schedule applies to a person who has received a payment referred to in subsection (2)(b) or (2)(c).

”

23 The *Workers' Compensation and Assistance Amendment Act 1985* s. 4(2) reads as follows:

“

- (2) Nothing in this section in any way affects or limits the operation of the principal Act in relation to a disability to or the death of a person if that person, at any time before the coming into operation of this section, received compensation under the principal Act in respect of that disability or death and the principal Act shall continue to apply to the liability for and the right to compensation in respect of that disability or death as if this section had not been enacted.

”

23a The *Workers' Compensation and Assistance Amendment Act 1985* s. 16 reads as follows:

“

- 16. Transitional — sections 24, 28, 29 and 30 of principal Act**  
Sections 24, 28, 29 and 30 of the principal Act, as amended by sections 9, 13, 14 and 15 respectively of this Act, apply to and in respect

of any election of a worker made in accordance with section 24 of the principal Act on or after the day on which this section comes into operation and to and in respect of the compensation payable pursuant to that election; but an election made under section 24 of the principal Act before that day, and the compensation payable pursuant to that election, shall not be affected by the amendments effected by sections 9, 13, 14 and 15 of this Act.

”

23b The *Workers' Compensation and Assistance Amendment Act 1985* s. 20(2) reads as follows:

“

- (2) Nothing in this section affects or limits the operation of section 61(3) of the principal Act in relation to applications made under that provision with respect to weekly payments of compensation which were discontinued or diminished before the coming into operation of this section and section 61(3) shall continue to apply to those applications as if this section had not been enacted.

”

23c The *Workers' Compensation and Assistance Amendment Act 1985* s. 23(2) reads as follows:

“

- (2) Section 74 of the principal Act shall —
  - (a) where the latest disability or recurrence of the worker occurs on or after the coming into operation of this section — apply as amended by this section; and
  - (b) except as provided in paragraph (a) — continue to apply notwithstanding the coming into operation of this section as if this section had not been enacted.

”

23d The *Workers' Compensation and Assistance Amendment Act 1985* s. 41(2) reads as follows:

“

- (2) Clause 17 of Schedule 1 of the principal Act as amended by subsection (1) applies to and in respect of liability and the extent of liability to pay, and entitlement and the extent of entitlement to receive, benefits for such expenses as are provided for in that clause incurred before, on or after the coming into operation of this section but nothing in subsection (1) shall revive or increase the entitlement to such expenses where a worker had received a sum equal to 10% of the prescribed amount or such further amount as the Board had allowed under that clause before the coming into operation of this section.

”

23e The *Workers' Compensation and Assistance Amendment Act 1985* s. 42(2) reads as follows:

“

- (2) Notwithstanding any provision of the principal Act and in particular section 117 of the principal Act, where any decision,

ruling, order, award, judgment, settlement or agreement was given or made by, or registered with the Board before the coming into operation of this section, on the basis that compensation payable for an injury under item 29 of the table set out in Schedule 2 to the principal Act was in accordance with the amount indicated in column 2 of that table in respect of that injury at the date of the accident whereby that injury was caused to the worker, that decision, ruling, order, award, judgment, settlement or agreement shall not be rescinded, altered or amended, and the worker shall not be entitled to any further payment under the provisions of that table in respect of that injury, by reason that it was given, made or registered on that basis.

”

24 The *Workers' Compensation and Assistance Amendment Act 1988* repealed s. 10-12, 19, 44 and 45 of the *Workers' Compensation and Assistance Amendment Act 1985* and the *Workers' Compensation and Assistance Amendment Act 1990* repealed s. 30(2) of that Act.

25 The *Workers' Compensation and Assistance Amendment Act 1986* s. 6(2) reads as follows:

“

- (2) Any minimum premium recommended by the Committee for the purposes of Part VIII of the principal Act before the commencement of this section is deemed to be, and always to have been, lawfully recommended by the Committee and properly chargeable by an insurer.

”

26 The *Workers' Compensation and Assistance Amendment Act 1987* s. 6(2) reads as follows:

“

- (2) Any act, matter or thing done or purported to be done, or duty performed or purported to be performed under the principal Act before the commencement of subsection (1) by a person appointed as an inspector under section 103 of that Act is and always has been as valid as if subsection (1) was in operation at the time the act, matter or thing was done or the duty was performed.

”

27 The *Workers' Compensation and Assistance Amendment Act 1990* s. 30(2) reads as follows:

“

- (2) The specification by the Committee of a category under section 151(c) of the principal Act as in force before the commencement of this section is of no further effect, and section 30(2) of the *Workers' Compensation and Assistance Amendment Act 1985* is repealed.

”

27a The *Workers' Compensation and Assistance Amendment Act 1990* s. 48(2) reads as follows:

“

- (2) Clause 17 of Schedule 1 of the principal Act as amended by subsection (1) applies to and in respect of liability and the extent of liability to pay, and entitlement and the extent of entitlement to receive, benefits for such expenses as are provided for in that clause incurred before, on, or after the coming into operation of this section but nothing in subsection (1) revives or increases the entitlement to such expenses where a worker has received under that clause a sum equal to 20% of the prescribed amount, or such further amount as the Board has allowed under clause 18A of that Schedule, before the coming into operation of this section.

”.

27b The *Workers' Compensation and Assistance Amendment Act 1990* s. 50 reads as follows:

“

**50. Transitional**

- (1) The amendments effected by this Act that relate to rehabilitation do not apply in respect of a disability that occurred before the commencement of section 35 of this Act, and the principal Act shall apply in respect of any such disability as if the amendments effected by this Act that relate to rehabilitation had not been enacted.
- (2) Without limiting subsection (1), the amendments effected by sections 8, 9 and 19 of this Act do not apply in respect of a claim that was made before the commencement of section 8 of this Act, and the principal Act shall apply in respect of any such claim as if the amendments effected by sections 8, 9 and 19 of this Act had not been enacted.

”.

27c The *Workers' Compensation and Assistance Amendment Act 1990* s. 51 reads as follows:

“

**51. Transitional and Schedule 5**

- (1) In this section “**the amended Schedule**” means Schedule 5 to the principal Act as amended by section 49 of this Act.
- (2) Where there is under the amended Schedule —
  - (a) liability to pay compensation or to pay for the provision of other benefits, or both; and
  - (b) entitlement to receive compensation or other benefits, or both,

for or in relation to the disability of lung cancer, in determining that liability and the extent of it and that entitlement and the extent of it moneys already paid or required to be paid under clause 2 of Schedule 5 to the principal Act shall be taken into account and

deemed to be moneys paid or required to be paid under the amended Schedule.

”

28 The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 4(4) reads as follows:

“

- (4) The provisions inserted by subsection (3) have no operation in relation to a cause of action in respect of which legal proceedings have been instituted before 4 p.m. on 30 June 1993 and, regardless of when legal proceedings are instituted, sections 93E and 93F of those provisions have no operation in relation to a cause of action arising wholly before 1 July 1993 but otherwise the provisions inserted by subsection (3) apply to causes of action arising before the commencement of this section in the same way as they apply to causes of action arising after that commencement.

”

28a The *Workers' Compensation and Rehabilitation Amendment Act 1993* Pt. 2 Div. 2 (as amended by No. 34 of 1999 Pt. 3) reads as follows:

“

## **Division 2 — Further transitional provisions**

### **5. Definitions**

(1) In this Division —

“**affected person**” means a person having a notifiable cause;

“**improved statutory benefits**” means the benefits under the principal Act that would be applicable if the amendments made by this Act to Schedule 2 to the principal Act and to the prescribed amount had been made immediately before the date of the accident that caused the injury or the date of the audiometric test that showed that a loss or diminution of the worker's hearing had been incurred, as the case requires;

“**notifiable cause**” means a cause of action that arose wholly before 1 July 1993 in respect of a disability for which, because of section 93D of the principal Act, damages are prevented from being awarded other than under this Division;

“**preliminary questions**”, in relation to a notifiable cause, means —

- (a) whether or not a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on that cause; and
- (b) if the relevant employer or insurer would be likely to be found liable for damages, whether or not the damages that a court would be likely to award, but for section 93D of the principal Act, would be significant damages;

“**relevant employer or insurer**”, in relation to a notifiable cause, means the employer against whom the affected person has the cause of action or the person insuring the employer against liability arising out of that cause;

“significant damages” means damages of which —

- (a) the amount attributable to non-pecuniary loss; or
  - (b) the amount attributable to future pecuniary loss, is equal to or more than \$25 000.
- (2) Unless the contrary intention appears, expressions in this Division that are used in the principal Act have the same respective meanings in this Division as they have in the principal Act.

**6. Registration of certain causes of action**

- (1) WorkCover WA is to keep a register containing particulars of notifiable causes registered under this Division and persons who have those causes.
- (2) WorkCover WA is to register a notifiable cause if it was notified of the cause before 5 p.m. on 29 July 1993.
- (3) WorkCover WA may, not later than 30 June 1994, register a notifiable cause if it is satisfied that there is good reason for notice of the cause not having been given until after 5 p.m. on 29 July 1993.
- (4) The functions of WorkCover WA under this section in respect of a notifiable cause are to be performed within 21 days after the day on which it is notified of the cause.

*[Section 6 amended by No. 34 of 1999 s. 59; No. 42 of 2004 s. 172.]*

**7. Appeals for registration**

- (1) A person seeking to have a notifiable cause registered under section 6(3) who is dissatisfied with the decision of WorkCover WA may appeal to the Minister against the decision.
- (2) The Minister may dismiss or allow the appeal and, if the appeal is allowed, WorkCover WA is to register the cause.

*[Section 7 amended by No. 42 of 2004 s. 172.]*

**8. Certificate of registration**

WorkCover WA, upon registering a notifiable cause, is to give to the affected person a certificate to the effect that the cause is registered and within 21 days notify the relevant employer or insurer in writing accordingly.

*[Section 8 amended by No. 42 of 2004 s. 172.]*

**9. Negotiations with employer or insurer**

- (1) Within 60 days after the day on which the affected person is given a certificate of registration of a cause of action, the affected person may submit to the relevant employer or insurer details of the claim for damages in respect of the disability from which the cause arose, together with a copy of the certificate.
- (2) The employer or insurer may, within 60 days after the day on which details of the claim are submitted in accordance with subsection (1) —
  - (a) notify the affected person in writing that the employer’s liability is accepted and either —

- (i) offer to pay to the affected person in settlement of the claim an amount specified in the notice; or
  - (ii) decline to pay on the grounds that the damages are not significant damages;
- or
- (b) notify the affected person in writing that the employer's liability is not accepted.
- (3) Nothing in a notice under subsection (2) is admissible in court proceedings for the award of damages in respect of the disability.
- (4) Without limiting the other matters that may be taken into account by a court but subject to section 12(3) and (4), in making an order as to costs the court shall have regard to whether or not a person has acted within the time specified in this section.

**10. Improved statutory benefits available if liability accepted**

- (1) An affected person who is notified under section 9 that liability is accepted may, whether or not damages are considered to be significant, discontinue proceedings, if any, in respect of the cause and opt for the improved statutory benefits.
- (2) An offer made under section 9(2)(a)(i) to an affected person lapses if the person opts for the improved statutory benefits.

**11. Consequences of filing certificate in court proceedings**

- (1) If an affected person —
  - (a) has commenced court proceedings in respect of a registered cause (whether the cause was registered before or after the proceedings were commenced); and
  - (b) has, within 90 days after the day on which the certificate was given, filed the certificate of registration in the proceedings and given a copy of the certificate to each other party to the proceedings,

the relevant employer or insurer may within 60 days after the day on which the certificate is filed, apply to a District Court Judge for a declaration as to the preliminary questions or either of those questions that is in dispute.

- (2) If, in the circumstances mentioned in subsection (1)(a) and (b), the relevant employer or insurer does not apply under subsection (1) to a District Court Judge within the time provided by that subsection, the affected person may —
  - (a) discontinue the proceedings and opt for the improved statutory benefits; or
  - (b) continue the proceedings and enjoy the exemption given by section 13(1).
- (3) If, on an application under subsection (1), the District Court Judge declares that a court would not be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause, this Division has no further application in relation to that cause.
- (4) If, on an application under subsection (1), the District Court Judge declares that —

- (a) a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause; and
- (b) the damages that a court would be likely to award but for section 93D of the principal Act would not be significant damages,

this Division has no further application in relation to that cause unless the affected person discontinues the proceedings and opts for the improved statutory benefits.

- (5) If, on an application under subsection (1), the District Court Judge declares that —
  - (a) a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause; and
  - (b) the damages that a court would be likely to award but for section 93D of the principal Act would be significant damages,

the affected person may —

- (c) discontinue the proceedings and opt for the improved statutory benefits; or
- (d) continue the proceedings and enjoy the exemption given by section 13(1).

*[Section 11 amended by No. 34 of 1999 s. 60.]*

## **12. Offer to settle**

- (1) If the proceedings are continued in the circumstances described in subsection (2) or (5) of section 11, the relevant employer or insurer is to make an offer to settle, or consent to judgment, in the proceedings.
- (2) The offer is to be made within 60 days after —
  - (a) the last day on which the application under section 11(1) could have been made; or
  - (b) the day on which the declaration under section 11(5) was made,

as the case requires, unless the proceedings had been commenced less than 120 days before the day by which the offer would otherwise be required to be made in which case the offer is to be made within 120 days after the day on which the proceedings were commenced.

- (3) If the offer is not accepted nor withdrawn and the court awards damages in an amount that is not more than 120% of the amount offered, the costs of the proceedings are to be paid by the affected person.
- (4) If the court awards damages in an amount that is more than 120% of the amount offered, the costs of the proceedings are to be paid by the relevant employer or insurer.
- (5) If an offer is not made as required by this section or an offer is made but withdrawn, a nil amount is taken for the purposes of subsection (4) to have been offered.



**13. Exemption from effect of section 93D**

- (1) If proceedings in respect of a cause are continued in the circumstances described in subsection (2) or (5) of section 11, section 93D of the principal Act has no operation in relation to the cause.
- (2) Unless, in the proceedings continued, the court has decided that the disability did not result from the negligence or other tort of the employer, the affected person may, at any time, discontinue the proceedings and opt for the improved statutory benefits.
- (3) If the court decides that the relevant employer or insurer is liable for damages but the damages are not significant damages, no damages are to be awarded but the affected person is to be taken to have opted under this Division for the improved statutory benefits.

**14. Consequences of opting for improved statutory benefits**

- (1) An affected person opting for the improved statutory benefits is to do so by notice in writing given to the relevant employer or insurer and, if court proceedings have been commenced, a copy of the notice is to be filed in the proceedings.
- (2) If under this Division an affected person opts for the improved statutory benefits, the benefits available to the person under the principal Act are the improved statutory benefits but otherwise this Division has no further application in relation to that cause.
- (3) Subsection (2) applies whether or not the full extent of the benefits to which a person would be entitled under the principal Act but for this section had already been received when the person opts for the improved statutory benefits.

**15. Time limits for bringing proceedings**

- (1) If the time limited for bringing proceedings for a notifiable cause would, but for this subsection, expire or have expired at any time after 4 p.m. on 30 June 1993 but before the day that is 90 days after the day on which a certificate of the registration of that cause under this Division is given, the time for bringing those proceedings is extended to the day that is 90 days after the day on which the certificate is given.
- (2) The extension of time given by subsection (1) does not limit any extension given by a court.

**16. Fund to bear cost of declarations**

WorkCover WA is to pay from the General Fund to the Consolidated Fund such amount as the Treasurer directs in respect of the cost to the State of dealing with applications for declarations under this Division by a District Court Judge.

*[Section 16 amended by No. 42 of 2004 s. 172.]*

**17. Leave not required if certificate filed**

Section 93D(4) and (5) of the principal Act do not apply to the commencement of proceedings in respect of a registered cause if the certificate of registration was issued not more than 90 days before the proceedings are commenced and, when the proceedings are commenced, the certificate is filed.

- ”
- 28b The *Workers’ Compensation and Rehabilitation Amendment Act 1993* s. 18(3) reads as follows:
- “
- (3) The increase in the prescribed amount effected by subsection (1) has effect on and from 1 July 1993.
- ”
- 28c The *Workers’ Compensation and Rehabilitation Amendment Act 1993* s. 19(2) reads as follows:
- “
- (2) The amendments made by subsection (1) have effect on and from 1 July 1993.
- ”
- 28d The *Workers’ Compensation and Rehabilitation Amendment Act 1993* s. 20(2) reads as follows:
- “
- (2) The amendments made by subsection (1) have effect on and from 1 July 1993.
- ”
- 28e The *Workers’ Compensation and Rehabilitation Amendment Act 1993* s. 27 reads as follows:
- “
- 27. Transitional provision as to proceedings**
- (1) On the commencement of section 24, all proceedings pending before the Board are to be transferred to the Director and dealt with as if they had been referred for conciliation.
- (2) In this section —
- “**Board**” has the meaning given to that expression by the principal Act as in force immediately before the commencement of section 24;
- “**Director**” has the meaning given to that expression by the principal Act as amended by section 21.
- ”
- 28f The *Workers’ Compensation and Rehabilitation Amendment Act 1993* s. 28(2) reads as follows:
- “
- (2) Regulations may be made amending the principal Act (including any provision amended by Schedule 1) to deal with any matter of a transitional nature that arises from the amendments made by this Part or to deal with any matter that is consequential on or incidental to those amendments.
- ”

28g The *Workers' Compensation and Rehabilitation Amendment Act 1993* Sch. 1 cl. 30 amended section 73(1), (4) and (6), however those amendments were made redundant by the amendments effected by clause 16 of that Schedule.

28h The *Workers' Compensation and Rehabilitation Amendment Act 1993* Sch. 1 cl. 30 amended Schedule 7 clauses 6(1)(a), 6(2)(a) and 8(3), however those amendments were made redundant by the amendments effected by clause 27 of the firstmentioned Schedule.

29 The *Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1999* s. 7(3) reads as follows:

“

- (3) For the purposes of section 84E(1)(aa) of the *Workers' Compensation and Rehabilitation Act 1981* as inserted by subsection (2), the making of an order under section 67(2) or (3) of that Act as in force before the commencement of this Act is to be regarded as constituting the recording of a memorandum of agreement under section 76 of that Act.

”

30 The *Workers' Compensation and Rehabilitation Amendment Act 1999* s. 32(6), (7), (8) (as amended by No. 37 of 1999 s. 3) read as follows:

“

- (6) In subsections (7) and (8) —  
“**amended provisions**” means Part IV Division 2 of the principal Act as amended by this section;  
“**assent day**” means the day on which this Act receives the Royal Assent;  
“**former provisions**” means Part IV Division 2 of the principal Act before it was amended by this section.
- (7) The amended provisions do not affect the awarding of damages in proceedings —
- (a) commenced before the assent day; or
  - (b) for the commencement of which the District Court gave leave under the former provisions before the assent day,
- and the former provisions continue to apply in relation to those proceedings.
- (8) If weekly payments of compensation in respect of a disability —
- (a) commenced before the assent day; or
  - (b) were ordered by a dispute resolution body to commence before the assent day,
- and the termination day referred to in section 93E of the amended provisions —
- (c) was before the assent day;
  - (d) is the assent day; or
  - (e) would not be more than 3 months after the assent day,
- the termination day is to be regarded as being the day that is 3 months after the assent day.

[Subsection (8) amended by No. 37 of 1999 s. 3.]

”

30a The *Workers' Compensation (Common Law Proceedings) Act 2004* Pt. 2 may also be relevant.

30b The *Workers' Compensation and Rehabilitation Amendment Act 1999* s. 32(20) and (21) read as follows:

“

- (20) In subsection (21) —  
    **“amended provisions”** means Schedule 1 to the principal Act as amended by this section;  
    **“former provisions”** means Schedule 1 to the principal Act before it was amended by this section.
- (21) If weekly payments commenced before the coming into operation of this section —
- (a) the amended provisions do not apply to the first 4 weekly payments after the coming into operation of this section and the former provisions continue to apply to those weekly payments; and
  - (b) for the purposes of the amended provisions the 5th weekly payment after the coming into operation of this section is to be regarded as the 5th weekly payment and so on.

”

30c The *Workers' Compensation and Rehabilitation Amendment Act 1999* s. 46(2), (3) and (4) read as follows:

“

- (2) A person who —
- (a) before the commencement of section 35, was authorized by the Commission under the former section 103 as an inspector; or
  - (b) before the commencement of section 44, was authorized by the Minister under the former section 172,

is to be regarded as having been authorized by the Commission as an inspector under section 175A(1) of the principal Act and as having taken the oath required by section 175A(2).

- (3) If —
- (a) a requirement made under the former section 103 by a person referred to in subsection (2)(a); or
  - (b) a request or requirement made under the former section 172 or 172A by a person referred to in subsection (2)(b),

has not been complied with when this section commences, it is to be regarded as a requirement made under section 175B of the principal Act and for that purpose this section is taken to have commenced before the request or requirement was made.

- (4) In subsections (2) and (3) —  
    **“former section”** means a section of the principal Act as in force before its repeal by this Act.

30d The *Workers' Compensation and Rehabilitation Amendment Act 1999* s. 56(2) reads as follows:

“

- (2) Clause 5(3) of Schedule 7 to the principal Act, as inserted in the principal Act by subsection (1), applies to and in relation to the results of audiometric tests whether delivered to the Commission before or after the commencement of that subsection.

”

31 On the date as at which this compilation was prepared, the *Acts Amendment (ICWA) Act 1996* Sch. 1 it. 16 had not come into operation. It reads as follows:

“

### **Schedule 1 — Consequential amendments to other Acts**

16. *Workers' Compensation and Rehabilitation Act 1981*

Section 5(1) (a) After the definition of “industrial disease premium”, insert the following definition —

“

#### **“Insurance Commission of Western Australia”**

means the body continued under that name under the *Insurance Commission of Western Australia Act 1986*;

”

- (b) Delete the definitions of “State Government Insurance Commission” and “State Government Insurance Corporation”.

Section 162(1) Delete “State Government Insurance Commission”, substitute “Insurance Commission of Western Australia”.

Section 163 Delete “State Government Insurance Commission”, substitute “Insurance Commission of Western Australia”.

[Schedule 1 item 16 amended by No. 42 of 2004 s. 155(2)(a).]

”

32 The *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 19 reads as follows:

“

### **19. Power to amend regulations**

- (1) The Governor, on the recommendation of the Minister, may make regulations amending subsidiary legislation made under any Act.

- (2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of the RWWA Act or this Act.
- (3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

”.

33 The *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 97 reads as follows:

“

**97. References to Crown Solicitor**

If in a written law or other document or instrument there is a reference to the Crown Solicitor that reference may, where the context so requires, be read as if it had been amended to be a reference to the State Solicitor.

”.

34 On the date as at which this compilation was prepared, the *Workers’ Compensation and Rehabilitation Amendment (Cross Border) Act 2004* Pt. 3 had not come into operation. It reads as follows:

“

**Part 3 — Further amendments**

**15. The Act amended**

Except as otherwise indicated, the amendments in this Part are to the *Workers’ Compensation and Rehabilitation Act 1981* as amended by Part 2 Division 1.

**16. References to “a disability” changed to “an injury”**

The provisions specified in the Table to this section are amended by deleting “a disability” in each place where it occurs and inserting instead —

“ an injury ”.

**Table**

s. 16(2)	s. 93AD
s. 93AA(1), (3) and (4)	s. 14(2), (3) and (4) of this Act
s. 93AB(1) and (2)	

**17. References to “disability” changed to “injury”**

- (1) Section 93AC(a) is amended by deleting “disability” and inserting instead —

“ injury ”.

- (2) Section 93AD is amended by deleting “disability” in the second place where it occurs and inserting instead —

“ injury ”.

- (3) Section 93AE is amended as follows:

- (a) in the definition of “a State’s legislation about damages for a work related disability” by deleting “disability” in the first place where it occurs and inserting instead —

- “ injury ”;
- (b) in paragraph (b) of the definition of “a State’s legislation about damages for a work related disability” by deleting “disability” and inserting instead —  
“ injury ”;
- (c) in paragraph (g) of the definition of “substantive law” by deleting “disability” and inserting instead —  
“ injury ”.
- (4) Section 20(3) and (6)(a) and section 93AA(1)(a), (2) and (3)(a) are amended by deleting “disability” in each place where it occurs and inserting instead —  
“ injury ”.
- (5) Section 14(3) of this Act is amended by deleting “disability” in the third place where it occurs and inserting instead —  
“ injury ”.

**18. References to “the Commission” changed to “WorkCover WA”**

Section 174(5a) is amended by deleting “the Commission” in each place where it occurs and inserting instead —

“ WorkCover WA ”.

**19. Reference to “disabilities” changed to “injuries”**

Section 14(5) of this Act is amended by deleting “disabilities” and inserting instead —

“ injuries ”.

”.

35

On the date as at which this compilation was prepared, the *Workers’ Compensation Reform Act 2004* Pt. 2, s. 172 and Pt. 4 Div. 3 had not come into operation. They read as follows:

“

**Part 2 — Amendments to the *Workers’ Compensation and Injury Management Act 1981***

**4. Long title amended**

The long title is amended as follows:

- (a) by deleting “for and the rehabilitation of workers suffering disability by accident or disease in the course of their employment,” and inserting instead —

“

**for, and the management of, employment-related injuries,**

”;

”;

”;

- (c) by deleting “dispute resolution bodies” and inserting instead —

“ a Dispute Resolution Directorate ”.

**6. Section 3 amended**

Section 3 is amended as follows:

- (a) by deleting paragraph (b) and inserting the following paragraphs instead —

“

(b) to make provision for the management of workers' injuries in a manner that is directed at enabling injured workers to return to work;

(ba) to make provision for specialised retraining programs for certain injured workers;

”;

(b) in paragraph (d) by deleting “bodies” and inserting instead —

“ authorities ”.

**7. Section 4 amended**

- (1) Section 4(2)(a)(v) is amended by inserting after “injuries” —

“ and impairments from injury ”.

- (2) Section 4(2)(b) is amended by deleting “rehabilitation” and inserting instead —

“ the injury management ”.

**8. Section 5 amended**

- (1) Section 5(1) is amended by deleting the definitions of “approved rehabilitation provider”, “compensation magistrate’s court”, “conciliation officer”, “Directorate”, “disability”, “disabled from earning full wages”, “dispute resolution body”, “rehabilitation”, “review officer”, and “vocational rehabilitation”.

- (2) Section 5(1) is amended by inserting the following definitions in the appropriate alphabetical positions —

“

“**approved medical specialist**” means a person for the time being designated under section 146F as an approved medical specialist;

“**approved medical specialist panel**” means an approved medical specialist panel constituted under Part VII Division 3;

“**approved vocational rehabilitation provider**” means a person approved under section 156 as a vocational rehabilitation provider;

“**arbitrator**” means an officer of WorkCover WA approved under section 286(2) as an arbitrator;

“**Commissioner**” means the Commissioner appointed under section 281;

“**decision**” includes an order, award, direction or determination;

“**dispute resolution authority**” means the Director, an arbitrator or the Commissioner;

“**DRD**” means the Dispute Resolution Directorate established under section 278;

“**DRD Rules**” means the rules made under section 293;



**“injury”** means —

- (a) a personal injury by accident arising out of or in the course of the employment, or whilst the worker is acting under the employer’s instructions;
- (b) a disease because of which an injury occurs under section 32 or 33;
- (c) a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a significant degree;
- (d) the recurrence, aggravation, or acceleration of any pre-existing disease where the employment was a contributing factor to that recurrence, aggravation, or acceleration and contributed to a significant degree; or
- (e) a loss of function that occurs in the circumstances mentioned in section 49,

but does not include a disease caused by stress if the stress wholly or predominantly arises from a matter mentioned in subsection (4) unless the matter is mentioned in paragraph (a) or (b) of that subsection and is unreasonable and harsh on the part of the employer;

**“injury management”** means the management of workers’ injuries in a manner that is directed at enabling injured workers to return to work;

**“medical report”** includes a medical opinion;

**“NRE amount”** means —

- (a) in relation to any financial year ending on or before 30 June 2005, the prescribed amount in relation to that financial year;
- (b) in relation to the financial year ending on 30 June 2006, \$200 000;
- (c) in relation to any subsequent financial year, the nearest whole number of dollars to —
  - (i) the amount obtained by varying the NRE amount for the preceding financial year by the percentage by which the amount that the Australian Statistician published as the Wages Cost Index, ordinary time hourly rates of pay (excluding bonuses) for Western Australia (**“WCI”**) varied between the second-last December quarter before the financial year commenced and the last December quarter before the financial year commenced; or
  - (ii) if the calculation under subparagraph (i) cannot be performed in relation to a financial year because the WCI for a relevant quarter was not published, the amount obtained by varying the NRE amount for the preceding financial year in accordance with the regulations,

with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars;

**“officer of the DRD”** refers to —

- (a) the Director;
- (b) an arbitrator; and
- (c) any other officer of WorkCover WA made available under section 291;

**“participate”**, in relation to a return to work program established under section 155C(1), means to participate in the program in a cooperative manner including attending appointments as required under the program;

**“registered agent”** means a person registered under regulations made under section 277;

**“return to work”**, in relation to a worker who has suffered an injury compensable under this Act, means —

- (a) the worker holding or returning to the position held by the worker immediately before the injury occurred, if it is reasonably practical for the employer who employed the worker at the time the injury occurred to provide that position to the worker; or
- (b) if the position is not available, or if the worker does not have the capacity to work in that position, the worker taking a position —
  - (i) for which the worker is qualified; and
  - (ii) that the worker is capable of performing,

whether with the employer who employed the worker at the time the injury occurred, or another employer;

**“specialised retraining assessment panel”** means a specialised retraining assessment panel constituted under Part VII Division 5;

**“specialised retraining program”** means a program directed at enabling a worker to return to work by assisting the worker to undertake formal vocational training or study through technical or tertiary training courses of no longer than 3 years duration;

**“vocational rehabilitation”**, in relation to a worker who has suffered an injury compensable under this Act, means the provision to the worker of prescribed services, according to the worker’s assessed needs, for the purpose of enabling the worker to return to work;

**“WorkCover Guides”** means the directions published by WorkCover WA under section 146R;

”.

(3) Section 5(1) is amended as follows:

- (c) by deleting the definition of “Director” and inserting instead —

“

**“Director”** means the officer of WorkCover WA approved under section 288(2) as the Director Dispute Resolution;

”;  
”;  
”;

- (f) in the definition of “medical assessment panel” by inserting after “Part VII” —  
“ Division 1 ”;
- (g) in the definition of “notional residual entitlement” —
  - (i) in paragraph (a) by deleting “that disability;” and inserting instead —

“

the injury or impairment resulting from the injury;

”;

and

- (ii) by deleting paragraph (b) and inserting instead —

“

- (b) the NRE amount as at the date of the worker’s death, less the amount of any weekly payments made, the amount of any lump sum paid in redemption of weekly payments, and the amount of any sum paid under Schedule 2, for the injury suffered by the worker or impairment resulting from the injury,

”;

- (h) in the definition of “relevant employment” in paragraph (b) and (e) by deleting, in each case, “disabling”;

- (4) Before section 5(4) the following subsection is inserted —

“

- (3) A reference in this Act to a “personal injury by accident” is a reference to an injury of a kind referred to in paragraph (a) of the definition of “injury” in subsection (1).

”.

- (5) Section 5(4) and 5(5) are amended by deleting “disability”, in each case, and inserting instead —

“ “injury” ”.

#### **10. Section 10A replaced**

Section 10A is repealed and the following section is inserted instead —

“

#### **10A. Working directors**

- (1) Despite anything in section 5, and except as provided in subsection (2), a person who is a director of a company is, to the extent that the person executes work for or on behalf of the company, taken not to be a worker within the meaning of this Act.
- (2) If —
  - (a) a company contracts with another person (in this section referred to as the “principal”) for the execution of work by or under the company, being work which is for the purpose of the principal’s trade or business; and

(b) a director of the company executes any of that work for or on behalf of the company,

then, to the extent that the director executes the work, the director is taken to be a worker and the principal is taken to be the employer of the director.

(3) Section 175 does not apply in respect of a director referred to in subsection (2).

”.

**11. Section 12 amended**

Section 12(1) is amended by deleting “disabled” and inserting instead —

“ injured ”.

**12. Heading to Part III Division 1 replaced**

The heading to Part III Division 1 is deleted and the following heading is inserted instead —

“

**Division 1 — Injury: general**

”.

**13. Section 22 amended**

Section 22 is amended by deleting “disability shall be disallowed unless the disability results in death or serious and permanent disablement.” and inserting instead —

“

injury shall be disallowed unless the injury has serious and permanent effects or results in death.

”.

**14. Heading to Part III Division 2 replaced**

The heading to Part III Division 2 is deleted and the following heading is inserted instead —

“

**Division 2 — Discontinued regime for lump sum payments for specified injuries**

”.

**15. Section 24 amended**

(1) After the heading to section 24 the following subsection is inserted —

“

(1) In this section —  
“**amendment day**” means the day on which section 21 of the *Workers’ Compensation Reform Act 2004* comes into operation.

”.

(2) Section 24 is amended as follows:

- (a) by inserting before “Notwithstanding” the subsection designation “(2)”;
- (b) by inserting after “column 1 of” —  
“ Part 1 of ”;
- (c) by deleting “thereof” and inserting instead —  
“ of that Part ”.

(3) At the end of section 24 the following subsections are inserted —  
“

- (3) This Division does not apply if the compensable personal injury by accident occurs on or after the amendment day.
- (4) This Division does not apply in relation to noise induced hearing loss shown on or after the amendment day by an audiometric test under Schedule 7 clause 4.

”.

**16. Section 24A amended**

Section 24A(1) is amended by inserting before “the table” in both places where it occurs —

“ Part 1 of ”.

**17. Section 24B amended**

- (1) Section 24B(1)(b) is amended by deleting “Directorate” and inserting instead —

“ Director ”.

- (2) Section 24B(5) is amended as follows:

- (a) by deleting “Part IIIA” in the first place where it occurs and inserting instead —

“ Part XI ”;

- (b) by deleting “in this Division or Part IIIA”.

**18. Section 26 amended**

Section 26(1) is amended by inserting after “column 1 of” —

“ Part 1 of ”.

**20. Section 31 amended**

Section 31 is amended by inserting after “application of” —

“ Part 1 of ”.

**21. Part III Division 2A inserted**

After section 31 the following Division is inserted —

“

**Division 2A — New regime for lump sum payments for specified injuries**

**31A. Application of Division**

- (1) In this section —

“**amendment day**” means the day on which section 21 of the *Workers’ Compensation Reform Act 2004* comes into operation.

- (2) This Division does not apply in respect of a compensable personal injury by accident that occurs before the amendment day.
- (3) This Division does not apply in relation to noise induced hearing loss shown before the amendment day by an audiometric test under Schedule 7 clause 4.

**31B. Degree of permanent impairment**

In this Division —

**“degree of permanent impairment”** means —

- (a) except as provided in paragraph (b), the degree of permanent impairment of a part or faculty of the body, evaluated as described in sections 146A and 146B;
- (b) in the case of scarring referred to in item 80 or 81 of Schedule 2, the degree of permanent whole of person impairment, evaluated as described in sections 146A and 146B,

resulting from the injury or injuries arising from a single accident.

**31C. Compensation for impairments mentioned in Schedule 2**

- (1) Despite Schedule 1, in respect of a permanent impairment from a compensable personal injury by accident, if the worker so elects during the lifetime of the worker as provided by section 31H in respect of an impairment mentioned in column 1 of Part 2 of the table in Schedule 2, the compensation payable for the impairment is, subject to subsection (2) and the provisions of this Act relating to Schedule 2, to be the percentage ratio of the prescribed amount indicated in column 2 of that Part.
- (2) Except as provided in sections 31E and 31F(3), the compensation payable for each such impairment from injury is to be in accordance with the percentage ratio of the prescribed amount indicated in column 2 of Part 2 of the table in Schedule 2 in respect of such an impairment at the date of the accident by which that injury was caused to the worker, irrespective of when the worker so elects.

**31D. Schedule 2 impairment assessment**

- (1) In subsection (2) —  
**“full amount”**, in relation to an injury, means the amount payable under this Division if the degree of permanent impairment resulting from the injury is 100%.
- (2) If compensation is payable under section 31C but the degree of permanent impairment from the injury of the worker is less than 100%, a percentage of the full amount equal to the degree of permanent impairment is to be awarded in lieu of the full amount.
- (3) If —
  - (a) there is not agreement between an employer and a worker as to the degree of permanent impairment of the worker; and
  - (b) the worker has a certificate of an approved medical specialist given under section 146H indicating that the

worker has not less than the degree of permanent impairment alleged by the worker,

the worker may apply to have the question as to the degree of permanent impairment arising from the injury concerned determined by an arbitrator.

- (4) An arbitrator to whom an application to determine a question is made under subsection (3) may —
  - (a) determine the degree of permanent impairment; or
  - (b) refer the question as to the degree of permanent impairment for assessment by an approved medical specialist panel and make a determination as to the degree of permanent impairment according to that assessment.
- (5) If a determination is made that the worker's degree of permanent impairment arising from the injury concerned is not less than that alleged by the worker, the arbitrator may order the employer to pay all or any of the costs connected with the dispute, including any costs connected with referral to an approved medical specialist panel.

**31E. Lump sum compensation for noise induced hearing loss**

- (1) Subject to Schedule 7 and this section, a worker suffering from noise induced hearing loss is entitled to compensation for that loss under item 44 of Part 2 of the table in Schedule 2 if the worker so elects as provided by section 31H.
- (2) The compensation payable for noise induced hearing loss is to be, subject to the provisions of this Act relating to Schedule 2, in accordance with the percentage ratio of the prescribed amount indicated in column 2 of Part 2 of the table in Schedule 2 in respect of item 44 at the date of the audiometric test under Schedule 7 that showed that a loss or diminution of the worker's hearing had been incurred, irrespective of when the worker so elects.
- (3) A worker is entitled to compensation under this section only in respect of noise induced hearing loss incurred after 1 March 1991 and —
  - (a) in respect of the worker's first election under this section (if the worker has not made a successful first election under section 24A), where that noise induced hearing loss is at least a 10% loss of hearing; and
  - (b) in respect of a subsequent election by the worker under this section after a successful first election under section 24A or paragraph (a) of this section —
    - (i) where that noise induced hearing loss is at least a further 5% loss of hearing; or
    - (ii) where the worker has reached the age of 65 years or on the worker's retirement from work before that age, where that noise induced hearing loss is assessed under Schedule 7 as any further percentage of loss of hearing.
- (4) Nothing in subsection (3) operates to stop a worker who —

- (a) has retired from work before attaining the age of 65 years;
  - (b) has made a successful election under section 24A(2)(b)(ii) or subsection (3)(b)(ii) of this section; and
  - (c) subsequently returns to work, from making an election under subsection (3)(b) in respect of further loss of hearing.
- (5) A worker is not entitled to compensation under this section in respect of noise induced hearing loss incurred after the worker has attained the age of 65 years.
  - (6) In subsection (3), loss of hearing means percentage loss of hearing calculated in accordance with the National Acoustic Laboratory Tables prescribed by the regulations.
  - (7) Schedule 7 applies and noise induced hearing loss is to be ascertained and measured for the purposes of this section in accordance with that Schedule.

**31F. Lump sum compensation for AIDS**

- (1) In this section and in the table in Schedule 2 —
  - “**AIDS**” means acquired immune deficiency syndrome;
  - “**HIV**” means human immunodeficiency virus;
  - “**prohibited drug**” has the meaning given to that term by the *Misuse of Drugs Act 1981* section 3.
- (2) Subject to this section, for the purposes of this Division —
  - (a) the infection of a worker by HIV by accident arising out of or in the course of employment, or whilst the worker is acting under the employer’s instructions, is taken to be a personal injury by accident; and
  - (b) if that worker subsequently contracts AIDS, the contracting of AIDS —
    - (i) is taken to be a compensable personal injury by accident;
    - (ii) is taken to result in a degree of permanent impairment of 100%; and
    - (iii) is taken to have occurred on the date on which the worker contracted the HIV infection referred to in paragraph (a).
- (3) Despite section 31C the compensation payable for the contracting of AIDS in the circumstances set out in subsection (2) is 100% of the prescribed amount at the date on which a certificate is given by a medical practitioner that the worker has contracted AIDS.
- (4) The regulations may make provision for methods of deciding for the purposes of this section whether a worker is HIV infected or has contracted AIDS.
- (5) Sections 31C(2) and 31D do not apply to an impairment that is AIDS.
- (6) A worker is not entitled to compensation under this Division in respect of an impairment that is AIDS if the impairment resulted



from the unlawful use of any prohibited drug or from voluntary sexual activity.

- (7) Subsection (6) does not limit the operation of section 22.
- (8) A worker is not entitled to compensation under this Division in respect of an impairment that is AIDS if the accident by which the worker became HIV infected occurred on a day before the coming into operation of section 21 of the *Workers' Compensation Reform Act 2004*.

**31G. Subsequent injuries**

- (1) In this section —  
“**impairment**” includes a loss of full and efficient use of a part or faculty of the body to which the provisions of Division 2 apply.
- (2) When —
  - (a) by a compensable personal injury by accident, a worker has already suffered a permanent impairment of any part or faculty of the body referred to in column 1 of the table in Schedule 2; and
  - (b) by a subsequent compensable personal injury by accident the worker suffers further permanent impairment of that part or faculty of the body,

the compensation payable under the provisions of the table in Schedule 2 and this Division in respect of each such subsequent injury is to be proportionate to any increase (resulting from that subsequent injury) in the degree of permanent impairment, and the compensation payable is to be calculated at the rates applicable at the time of occurrence of each subsequent injury.

- (3) Where a worker has received compensation payable under the provisions of the table in Schedule 2 and Division 2 or this Division in respect of an impairment of a part of the body or a faculty for a degree of permanent impairment of 100%, whether in one payment for a degree of permanent impairment of 100% or in several payments, each of which has been made for a degree of permanent impairment of less than 100%, then and in such case, the worker is not entitled to any further payment under the provisions of that table and this Division in respect of that impairment.

**31H. Election under section 31C or 31E**

- (1) A worker elects under this section for the purposes of section 31C or 31E when —
  - (a) the worker signs a form of election prescribed by the regulations containing particulars prescribed by the regulations in respect of the impairment or loss; and
  - (b) that form of election is filed with the Director, and a copy of it is served by or on behalf of the worker on the employer.
- (2) A worker can elect for the purposes of section 31C only if —
  - (a) the worker and the worker's employer agree as to the worker's degree of permanent impairment resulting from the injury concerned; or

- (b) a determination has been made under section 31D(4) in respect of the worker's degree of permanent impairment resulting from the injury concerned or the worker has a certificate given for the purposes of section 31F(3) that the worker has contracted AIDS.
- (3) In the case of an election for the purposes of section 31E, the employer on whom the copy of the form of election is served is to be the employer who last employed the worker in employment to the nature of which noise induced hearing loss is due.
- (4) Where a worker makes an election under subsection (1) for the purposes of section 31E, this Division and Part XI apply as if the noise induced hearing loss in respect of which the election was made were a compensable personal injury by accident arising out of or in the course of the worker's employment, and for that purpose a reference to the time or date of a personal accident by injury is, in respect of compensable noise induced hearing loss, to be construed as a reference to the date of the audiometric test under Schedule 7 that showed that a loss or diminution of the worker's hearing had been incurred.

**31I. Effect of election**

- (1) A form of election referred to in section 31H(1) is not binding upon a worker unless the Director is satisfied that it contains a statement in clear terms of the effect the election will have on the worker's future entitlements to compensation under this Act.
- (2) If not satisfied in accordance with subsection (1), the Director is to, within 7 days of so determining, notify the employer and the worker accordingly.
- (3) Subject to this Act, a worker who elects as provided by section 31H(1) is entitled to continue to receive any weekly payments of compensation to which the worker is entitled until —
  - (a) an agreement with respect to the election is registered under section 76; or
  - (b) an order of an arbitrator is made with respect to the amount of compensation payable under the election,whichever is the sooner.
- (4) Sections 31C and 31E do not limit the amount of compensation that is payable to a worker for any period of incapacity resulting from the impairments or losses referred to in those sections unless the worker elects under section 31H and an agreement is registered or an order of an arbitrator is made with respect to the amount of compensation payable pursuant to the election.

**31J. Limit on compensation of worker electing**

- (1) A worker who elects under section 31H is not in any case (including the case of a worker suffering by the same accident more than one of the impairments mentioned in Schedule 2) entitled to more than the prescribed amount, in addition to payment of such expenses as are provided for in clauses 9, 17, 18, 18A and 19.
- (2) Clauses 9, 17, 18, 18A and 19 are by this section made applicable to each worker entitled to compensation under this Division until

that worker elects under section 31H and an agreement is registered or an order of an arbitrator is made with respect to the amount of compensation payable pursuant to the election.

**31K. Compensation payable before election**

Subject to section 31J, when a worker elects under section 31H, any amount of compensation that was payable to the worker for any period of incapacity resulting from the injuries referred to in section 31C or 31E and occurring before the worker so elects and an agreement is registered or an order of an arbitrator is made with respect to the amount of compensation payable pursuant to the election is not to be deducted from the amount payable in accordance with the table in Schedule 2.

”

**22. Heading to Part III Division 3 replaced**

The heading to Part III Division 3 is deleted and the following heading is inserted instead —

“

**Division 3 — Injury: specified industrial diseases**

”

**27. Section 37 amended**

Section 37 is amended by deleting “in a compensation magistrate’s court” and inserting instead —

“ before an arbitrator ”.

**36. Heading to Part III Division 4 replaced**

The heading to Part III Division 4 is deleted and the following heading is inserted instead —

“

**Division 4 — Injury: specified losses of functions**

”

**37. Section 49 replaced**

Section 49 is repealed and the following section is inserted instead —

“

**49. Injury occurs when loss of function renders worker less able to earn full wages**

Where a worker is rendered less able to earn full wages by reason of suffering from a loss of function described in column 1 of Schedule 4 and the loss of function is due to the nature of any employment in which the worker was employed at any time within 3 years before the date on which the worker is rendered less able to earn full wages, an injury, being that loss of function, occurs and this Act applies to such an injury subject to this Division.

”

**40. Section 57 amended**

Section 57 is amended as follows:

- (b) by deleting “clause 17(1)” and inserting instead —  
“ clauses 17(1) and 18A(1c) ”.

**41. Section 57A amended**

- (1) Section 57A(3) is repealed and the following subsection is inserted instead —  
“
  - (3) Upon an employer making a claim as mentioned in subsection (2), the insurer must, before the expiration of 14 days after the claim was made by the employer —
    - (a) give the worker to whom the claim relates and the employer notice, in accordance with section 57BA and the regulations, that liability is accepted in respect of the weekly payments claimed;
    - (b) subject to section 75, give the worker to whom the claim relates and the employer notice, in accordance with section 57BA and the regulations, that liability is disputed in respect of all or any of the weekly payments claimed; or
    - (c) give the worker to whom the claim relates, the employer and the Director notice, in accordance with section 57BA and the regulations, that a decision as to whether or not liability is to be accepted in respect of the weekly payments claimed is not able to be made within the time allowed by this subsection.”

Penalty: \$1 000.

- (2) Section 57A is amended at the foot of subsection (4) by inserting —  
“ Penalty: \$1 000. ”.
- (3) Section 57A(5) is amended by deleting “to the Directorate”.
- (4) Section 57A(6) is amended as follows:
  - (a) by deleting “the Directorate may” and inserting instead —  
“ an arbitrator may ”;
  - (b) by deleting “by the Directorate”.
- (5) Section 57A(7)(b) is amended by deleting “the Directorate” and inserting instead —  
“ an arbitrator ”.

**42. Section 57B amended**

- (1) Section 57B(2) is repealed and the following subsection is inserted instead —  
“
  - (2) In the circumstances mentioned in subsection (1), an employer must, before the expiration of 17 days after those circumstances arose —”

- (a) if liability to make the weekly payments claimed is accepted, subject to subsection (6), make the first of those weekly payments;
- (b) subject to section 75, give the worker notice, in accordance with section 57BA and the regulations, that liability is disputed in respect of all or any of the weekly payments claimed; or
- (c) give the Director and the worker notice, in accordance with section 57BA and the regulations, that a decision as to whether or not liability is to be accepted in respect of the weekly payments claimed is not able to be made within the time allowed by this subsection.

Penalty: \$1 000.

”.

- (2) Section 57B is amended as follows:
  - (a) at the foot of subsection (2b) by inserting —  
“ Penalty: \$1 000. ”;
  - (b) at the foot of subsection (3) by inserting —  
“ Penalty: \$1 000. ”.
- (3) Section 57B(4) is amended by deleting “to the Directorate”.
- (4) Section 57B(5) is amended as follows:
  - (a) by deleting “the Directorate may” and inserting instead —  
“ an arbitrator may ”;
  - (b) by deleting “by the Directorate”.
- (5) Section 57B(6)(b) is amended by deleting “the Directorate” and inserting instead —  
“ an arbitrator ”.

**43. Section 57BA inserted**

After section 57B the following section is inserted —

“

**57BA. Notices under sections 57A and 57B**

- (1) A notice under section 57A or 57B is to be expressed in plain language.
- (2) The regulations may make provision —
  - (a) as to information to be included in or to accompany a notice under section 57A or 57B; and
  - (b) requiring information included in or accompanying a notice under section 57A or 57B to be given to WorkCover WA or other persons prescribed by the regulations.
- (3) A notice under section 57A(3)(b) or 57B(2)(b) is to be in or to the effect of the form prescribed by the regulations and is to contain a statement of —
  - (a) the reason the person giving the notice disputes liability;
  - (b) the provisions of this Act on which the person giving the notice relies to dispute liability.

- (4) A notice under section 57A(3)(b) or 57B(2)(b) is to also include —
  - (a) a statement to the effect that the worker can apply for resolution of the dispute under this Act;
  - (b) a statement to the effect that the worker can seek advice or assistance from the worker’s trade union organisation, a legal practitioner or a registered agent; and
  - (c) such other information as the regulations may prescribe or, subject to the regulations, as WorkCover WA may from time to time approve and notify to insurers and, in the case of information required in a notice under section 57B(2)(b), to employers.
- (5) A statement in a notice under section 57A(3)(b) or 57B(2)(b) is given —
  - (a) in the case of a notice under section 57A(3)(b), subject to the insurer not being prejudiced in any subsequent proceedings relating to the claim by any information included in the statement; and
  - (b) in the case of a notice under section 57B(2)(b), subject to the employer, or the insurer if the insurer subsequently agrees to indemnify the employer, not being prejudiced in any subsequent proceedings relating to the claim by any information included in the statement.
- (6) A notice under section 57A(3)(c) or 57B(2)(c) is to —
  - (a) be in or to the effect of the form prescribed by the regulations;
  - (b) include a statement as to the reasons why a decision as to whether or not liability is to be accepted in respect of the weekly payments claimed is not able to be made within the time allowed by section 57A(3) or 57B(2), as the case requires, and —
    - (i) if a reason is that the person giving the notice requires further medical information, a statement as to the nature and substance of the medical information and whether or not the person giving the notice requires any written authority from the worker for that purpose;
    - (ii) if a reason is that the person giving the notice requires further information as to the worker’s weekly earnings, a statement as to the nature and substance of the information required; and
    - (iii) any other particulars required by the person giving the notice to make the decision;
  - and
  - (c) include such other information as the regulations may prescribe.

”.

**44. Section 57C amended**

Section 57C is amended as follows:

- (a) at the foot of subsection (2) by inserting —
  - “ Penalty: \$1 000. ”;

- (b) at the foot of subsection (3) by inserting —  
“ Penalty: \$1 000. ”;
- (c) at the foot of subsection (4) by inserting —  
“ Penalty: \$1 000. ”;
- (d) at the foot of subsection (5) by deleting the penalty provision.

**45. Section 58 amended**

- (1) Section 58(1) is amended by deleting “the Directorate” and inserting instead —

“ an arbitrator ”.

- (2) Section 58(2) is amended by deleting “the Directorate” and inserting instead —

“ an arbitrator ”.

- (3) Section 58(2a) is amended as follows:

- (a) by deleting “the Directorate may order” and inserting instead —

“ the Director may order ”;

- (b) by deleting “for the Directorate to hear” and inserting instead —

“ for an arbitrator to hear ”.

- (4) Section 58(3) is amended as follows:

- (a) by deleting “for the Directorate to hear” and inserting instead —

“ for an arbitrator to hear ”;

- (b) by deleting “the Directorate may hear” and inserting instead —

“ an arbitrator may hear ”.

- (5) Section 58(5) is amended as follows:

- (a) by deleting “Directorate shall satisfy itself as to all the evidence before it whereupon the Directorate” and inserting instead —

“

arbitrator is to satisfy himself as to all the evidence before him and

”;

- (b) in paragraph (a) by deleting “it” in both places where it occurs and inserting instead —

“ the arbitrator ”;

- (c) in paragraph (b) by deleting “it” in both places where it occurs and inserting instead —

“ the arbitrator ”.

- (6) Section 58(6) is amended by deleting “by the Directorate” and inserting instead —

“ by an arbitrator ”.

**46. Section 59 amended**

Section 59(10) is amended by deleting “to the Directorate for an order” and inserting instead —

“ for an order of an arbitrator ”.

**47. Section 60 amended**

(1) Section 60(1) is amended by deleting “to the Directorate at any time for an order” and inserting instead —

“ at any time for an order of an arbitrator ”.

(2) Section 60(2) is amended as follows:

(a) by deleting “the Directorate that” and inserting instead —

“ an arbitrator that ”;

(b) by deleting “the Directorate may” and inserting instead —

“ the arbitrator may ”;

(c) by deleting “the Directorate directs” and inserting instead —

“ the arbitrator directs ”;

(d) by deleting “it” in both places where it occurs and inserting instead —

“ the arbitrator ”.

**48. Section 61 amended**

(1) Section 61(1) is amended as follows:

(a) by deleting “order of the Directorate” and inserting instead —

“ order of an arbitrator ”;

(b) by deleting “to the Directorate”.

(2) After section 61(2) the following subsection is inserted —

“

(2a) If a person is required to give notice under subsection (1) and —

(a) fails to give the notice within the period referred to in that subsection; or

(b) gives a notice that does not comply with subsection (2), the person commits an offence.

Penalty: \$2 000.

”.

(3) Section 61(3) is amended as follows:

(a) by deleting “as the Directorate” and inserting instead —

“ as an arbitrator ”;

(b) by deleting “to the Directorate for an order” and inserting instead —

“ for an order of an arbitrator ”.

(4) Section 61(4) is amended as follows:

(a) by deleting “the Directorate” and inserting instead —

“ an arbitrator ”;



- (b) in paragraphs (a) and (c) by deleting “it” and inserting instead —  
“ the arbitrator ”.

(5) After section 61(4) the following subsection is inserted —

“

- (4aa) A reference in subsection (1), (3) or (4) to the employer is, where the employer is insured against liability to pay compensation under this Act, a reference to the employer’s insurer.

”.

(6) Section 61(4a) is amended as follows:

- (a) by deleting “the Directorate” and inserting instead —  
“ an arbitrator ”;
- (b) by deleting paragraph (a) and the “and” after it and inserting instead —

“

- (a) may, where the case requires, take into account whether —
  - (i) a return to work program has been established for the worker under section 155C(1);
  - (ii) the establishment, content and implementation of the return to work program are in accordance with the code as defined in section 155; and
  - (iii) the worker has participated in the return to work program,and for the purposes of determining the application accordingly treat the worker’s incapacity as being of such degree as the arbitrator sees fit; and

”.

(7) Section 61(7) is amended as follows:

- (a) in paragraph (ba) by inserting after “93E(8)” —  
“ or 93P(2)(b) ”;
- (b) in paragraph (c) by deleting “64, 65,”.

**49. Section 62 amended**

(1) Section 62(1) is amended as follows:

- (a) by deleting “the Directorate at the request” and inserting instead —  
“ an arbitrator on an application ”;
- (b) by deleting “as the Directorate” and inserting instead —  
“ as the arbitrator ”.

(2) After section 62(1) the following subsection is inserted —

“

- (2) An arbitrator may, instead of discontinuing, reducing or increasing the weekly payments, suspend the weekly payments from the date of the order until such time as is specified in the order.

”.

**50. Section 63 amended**

Section 63 is amended by deleting “the Directorate” and inserting instead —

“ an arbitrator ”.

**51. Section 64 amended**

- (1) Section 64(1) is amended by deleting “, and, if he, without reasonable excuse, proof of which is on him, refuses to submit himself to such an examination, or in any way obstructs it, his right to compensation, and to take or prosecute any proceeding under this Act shall be suspended until such an examination has taken place, and shall cease unless he submits himself for examination within one month after being required to do so”.
- (2) Section 64(2) is repealed and the following subsections are inserted instead —

“

- (2) Subsection (1) does not apply in relation to an election made by the worker —
  - (a) for the purposes of section 24 to receive compensation in accordance with that section for permanent loss of the full efficient use of the back, neck or pelvis; or
  - (b) for the purposes of section 31C to receive compensation in accordance with that section for impairment of the back, neck or pelvis.
- (3) A reference in subsection (1) to the employer is, where the employer is insured against liability to pay compensation under this Act, a reference to the employer’s insurer.

”.

**52. Section 65 amended**

Section 65 is amended as follows:

- (a) by inserting after “employer” in the first place where it occurs —

“

or, if the employer is insured against liability to pay compensation under this Act, the employer’s insurer

”;

- (b) by inserting after “employer” in the second place where it occurs —

“ or insurer, as the case may be ”;
- (c) by deleting “, and if he, without reasonable excuse, proof of which is on him, refuses to submit himself to such an examination, or in any way obstructs it, his right to such weekly payments shall be suspended until such examination has taken place, and shall cease unless he submits himself for examination within one month after being required to do so”.

**53. Section 66 amended**

Section 66 is amended by inserting after “prescribed” —

“ , nor more often than is prescribed ”.

**54. Section 66A inserted**

After section 66 the following section is inserted —

“

**66A. Additional medical examinations**

(1) In this section —

“**additional medical examination**” means an examination by a medical practitioner in addition to those permitted by section 66.

(2) An arbitrator may by order require a worker to submit himself for an additional medical examination if the arbitrator is satisfied that the examination is necessary.

(3) An additional medical examination required under subsection (2) is to be carried out by a medical practitioner registered under section 145B —

- (a) agreed to by the worker and the employer; or
- (b) selected by the arbitrator, if the worker and the employer cannot reach agreement under paragraph (a) within such period as is specified in the order.

(4) The medical practitioner is to be paid by the employer.

(5) The regulations may limit the number of additional medical examinations that may be required.

(6) A reference in subsection (3) or (4) to the employer is, where the employer is insured against liability to pay compensation under this Act, a reference to the employer’s insurer.

”.

**55. Section 67 amended**

(1) Section 67(1)(a) and (b) and “and” after paragraph (a) are deleted and the following is inserted instead —

“

(a) an arbitrator, with the consent of the worker and the employer, makes an order that the liability for the incapacity is to be redeemed by the payment of a lump sum of an amount specified in the order; or

(b) the worker and the employer agree to the redemption, and on the amount of the lump sum, and a memorandum of the agreement is registered under Division 7.

”.

(2) Section 67(4) is amended as follows:

(a) by deleting “settled, in default of agreement, under Part IIIA” and inserting instead —

“

determined, in default of agreement, by an arbitrator

”.

(b) by deleting “under Part IIIA” in the second place where it occurs and inserting instead —

“ by the arbitrator ”.

- (3) Section 67(5) is amended as follows:
- (a) by deleting “subsection (4)” and inserting instead —  
“ subsection (1) or (4) ”;
- (4) After section 67(5) the following subsection is inserted —

“

- (6) The regulations may make provision as to details that are to be specified in a consent order, or an agreement registered under Division 7, for payment of a lump sum.

”.

**56. Section 70 replaced**

Section 70 is repealed and the following section is inserted instead —

“

**70. Furnishing medical reports**

- (1) Where a worker has submitted himself for examination by a medical practitioner as required under section 64, 65 or 66A, the employer or employer’s insurer, as the case requires, shall, within 14 days after receiving the report of that practitioner as to the worker’s medical condition, furnish the worker with a copy of that report.
- (2) If a person is required to furnish a worker with a copy of a report under subsection (1) and fails to do so within the period referred to in that subsection, that person commits an offence.  
Penalty: \$2 000.
- (3) In proceedings for an offence under subsection (2) it is a defence for the employer or the employer’s insurer, as the case may be, to show that the other of them furnished a copy of the report within the period referred to in subsection (1).
- (4) Where a worker has been examined by a medical practitioner selected by himself, the worker shall, within 14 days after receiving the report of that practitioner as to the worker’s medical condition, furnish the employer with a copy of that report.
- (5) The reference in subsection (4) to the employer is, where the employer is insured against liability to pay compensation under this Act, a reference to the employer’s insurer.

”.

**57. Section 71 amended**

Section 71 is amended as follows:

- (c) by deleting “to the Directorate for an order” and inserting instead —  
“ for an order of an arbitrator ”;
- (d) by deleting “the Directorate has” and inserting instead —  
“ an arbitrator has ”;
- (e) by deleting “it” and inserting instead —  
“ the arbitrator ”.

**58. Section 72 replaced by sections 72, 72A and 72B**

Section 72 is repealed and the following sections are inserted instead —

“

**72. Suspension of payments during custody**

- (1) Subject to subsection (2), a worker's entitlement to weekly payments of compensation under this Act is suspended during any period that the worker is —
  - (a) in custody under a law of this State, another State or a Territory, or the Commonwealth except where that custody is of a kind prescribed by the regulations; or
  - (b) otherwise serving a term of imprisonment of a kind prescribed by the regulations.
- (2) The worker's entitlement to compensation is suspended from the date on which an arbitrator certifies to the existence of the ground of suspension under subsection (1) until the date from which an arbitrator certifies that the ground no longer exists.
- (3) A certificate issued under subsection (2) is binding on the worker, the employer and the insurer of the employer.
- (4) An arbitrator may exercise functions under this section entirely on the basis of the documents and information provided to the arbitrator.

**72A. Suspension or cessation of payments for failure to undergo medical examination**

- (1) A worker's entitlement to compensation under this Act, and to take and prosecute any proceeding under this Act, may be suspended by order of an arbitrator if the worker —
  - (a) being required by the employer under section 64 to submit himself for examination by a medical practitioner; or
  - (b) being required by an arbitrator to submit himself for an additional medical examination as defined in section 66A(1), being an examination additional to examinations under section 64,refuses or fails to do so or in any way obstructs the examination.
- (2) A worker's entitlement to compensation under this Act, may be suspended by order of an arbitrator if the worker —
  - (a) being required by the employer under section 65 to submit himself for examination by a medical practitioner; or
  - (b) being required by an arbitrator to submit himself for an additional medical examination as defined in section 66A(1), being an examination additional to examinations under section 65,refuses or fails to do so or in any way obstructs the examination.
- (3) An arbitrator is not to make an order under subsection (1) or (2) if the worker satisfies the arbitrator that the worker had a reasonable excuse for refusing or failing to submit to the medical examination.

- (4) An arbitrator is to revoke an order made under subsection (1) or (2) if satisfied that the worker has submitted himself for the examination and has not obstructed the examination.
- (5) The worker's entitlements are suspended from the date on which the arbitrator makes the order until the date on which the order is revoked or the worker's entitlements cease under subsection (7).
- (6) An order made under subsection (1) or (2) is binding on the worker, the employer and the insurer of the employer.
- (7) If a worker continues to refuse or fail to submit to medical examination for one month, or such time as an arbitrator otherwise orders, after an order is made under subsection (1) or (2) in respect of the worker, then —
  - (a) the worker's entitlement to compensation for the injury in respect of which the worker was required to submit to medical examination ceases; and
  - (b) in the case of an order under subsection (1), the worker's entitlement to take and prosecute any proceeding under this Act in relation to that compensation ceases.

**72B. Suspension or cessation of payments for failure to participate in return to work program**

- (1) A worker's entitlement to compensation under this Act may be suspended by order of an arbitrator if the worker, being required by an arbitrator under section 156B(2) to participate in a return to work program, refuses or fails to participate in the return to work program.
- (2) An arbitrator is not to make an order under subsection (1) if —
  - (a) the establishment, content or implementation of the return to work program is not in accordance with the code as defined in section 155; or
  - (b) the worker satisfies the arbitrator that the worker had a reasonable excuse for refusing or failing to participate in the return to work program.
- (3) An arbitrator is to revoke an order made under subsection (1) if satisfied that the worker has subsequently participated in a return to work program that has been established for the worker under section 155C(1).
- (4) The worker's entitlements are suspended from the date on which the arbitrator makes the order until the date on which the order is revoked under subsection (3) or the worker's entitlements cease under subsection (6).
- (5) An order made under subsection (1) is binding on the worker, the employer and the insurer of the employer.
- (6) If a worker continues to refuse or fail to comply with an order to participate in the return to work program for one month, or such time as an arbitrator otherwise orders, after an order is made under subsection (1) in respect of the worker, then the worker's entitlement to compensation for the injury in respect of which the worker was required to participate in the return to work program ceases.

”.

**59. Section 73 amended**

- (1) Section 73(4) is amended by deleting “refer to the Director for conciliation under Part IIIA” and inserting instead —  
“ apply for determination by an arbitrator of ”.
- (2) Section 73(5) is amended by deleting “it may” and inserting instead —  
“ the arbitrator may ”.
- (3) Section 73(6) is amended as follows:
  - (a) by inserting after “24A” —  
“ or 31E ”;
  - (b) by deleting “a conciliation officer, review officer or court dealing with the dispute under Part IIIA” and inserting instead —  
“ an arbitrator dealing with the dispute ”.

**60. Section 74 amended**

- (1) Section 74(1a) is amended by deleting “refer to the Director for conciliation under Part IIIA” and inserting instead —  
“ apply for determination by an arbitrator of ”.
- (2) Section 74(2) is amended as follows:
  - (a) by deleting “A dispute resolution body” and inserting instead —  
“ An arbitrator ”;
  - (b) by deleting “it” and inserting instead —  
“ the arbitrator ”.

**61. Section 75 amended**

Section 75 is amended as follows:

- (a) by inserting before “Where” the subsection designation “(1)”;
- (b) by inserting at the end of the section the following subsection —

“

- (2) An employer or insurer that gives notification contrary to subsection (1) commits an offence.  
Penalty: \$1 000.

”.

**62. Section 76 amended**

- (1) Section 76(1) is amended as follows:
  - (a) by deleting “or 24A” and inserting instead —  
“ , 24A, 31C or 31E ”;
  - (b) by deleting “the Directorate” and inserting instead —  
“ an arbitrator ”.
- (2) Section 76(4) is amended by deleting “the Directorate” and inserting instead —  
“ an arbitrator ”.

(3) Section 76(5) is amended by deleting “Directorate” and inserting instead —

“ Director ”.

(4) Section 76(6) is amended as follows:

(a) by deleting “or 24A” in both places where it occurs and inserting instead —

“ , 24A, 31C or 31E ”;

(b) by deleting “to a compensation magistrate’s court which” and inserting instead —

“ to the Commissioner who ”;

(c) by deleting “the court” and inserting instead —

“ the Commissioner ”.

(5) Section 76(7) is amended by deleting “or 24A” and inserting instead —

“ , 24A, 31C or 31E ”.

(6) After section 76(7) the following subsection is inserted —

“

(7a) A medical practitioner nominated by the Director under subsection (7) to examine a worker who has made an election under section 31C in respect of an impairment that is not AIDS must be an approved medical specialist.

”.

(7) Section 76(8) is amended as follows:

(a) by deleting “The Directorate” and inserting instead —

“ An arbitrator ”;

(b) by deleting “the Board’s” and inserting instead —

“ the arbitrator’s ”;

(c) by deleting “or 24A” and inserting instead —

“ , 24A, 31C or 31E ”;

(d) by deleting “the Directorate” and inserting instead —

“ the arbitrator ”.

**63. Section 79 amended**

Section 79 is amended by deleting “a dispute resolution body may in its” and inserting instead —

“ an arbitrator may in the arbitrator’s ”.

**65. Section 83 amended**

(2) Section 83(2) is amended by deleting “by the Directorate” and inserting instead —

“ by an arbitrator ”.

**66. Section 84AB inserted**

After section 84AA the following section is inserted —



“

**84AB. Employer to notify worker and WorkCover WA of intention to dismiss worker**

- (1) An employer must not dismiss a worker to whom section 84AA(1) applies unless the employer has given to the worker and to WorkCover WA in accordance with subsection (2) a notice of intention to dismiss the worker.  
Penalty: \$2 000.
- (2) A notice of intention to dismiss a worker —
  - (a) is to be given to the worker and to WorkCover WA not less than 28 days before the dismissal is to take effect; and
  - (b) is to be in or to the effect of the form prescribed and contain substantially the information sought in the form.
- (3) Nothing in this section limits any other obligation of an employer or rights of a worker under this Act or any other written law.

”

**67. Part IIIA repealed**

Part IIIA is repealed.

**68. Section 91 amended**

Section 91 is amended as follows:

- (a) by inserting before “If” the subsection designation “(1)”;
- (b) by deleting “to the Directorate” and inserting instead —  
“ for determination by an arbitrator ”;
- (c) by inserting at the end of the section the following subsection —

“

- (2) To the extent that it is practicable to do so, and subject to the DRD Rules, a referral under subsection (1) is to be dealt with as if it were an application for resolution of a dispute under Part XI.

”

**69. Section 92 amended**

Section 92 is amended as follows:

- (a) in paragraph (f)(i) by deleting “Directorate” and inserting instead —  
“ Director ”;
- (b) in paragraph (f)(ii) by deleting “Directorate” and inserting instead —  
“ Director ”.

**70. Section 93 amended**

Section 93(3) is amended by deleting “by the Directorate in any action brought by the worker before the Directorate” and inserting instead —

“ by an arbitrator on any application made by the worker ”.

**71. Heading to Part IV Division 2 Subdivision 1 inserted**

After the heading to Part IV Division 2 the following heading is inserted —

“

**Subdivision 1 — Preliminary provisions**

”.

**72. Section 93A amended**

Section 93A is amended by deleting the definition of “AMA Guides”.

**73. Section 93B amended**

(1) Section 93B(1) is amended as follows:

(a) by deleting “a disability suffered by a worker” and inserting instead —

“

an injury suffered by a worker, or a noise induced hearing loss suffered by a worker that is not an injury,

”;

(b) in each of paragraphs (a) and (b), by deleting “the disability” and inserting instead —

“ it ”.

(2) Section 93B(3a) is amended by deleting “if the disability” and inserting instead —

“ in respect of an injury if the injury ”.

(3) After section 93B(4) the following subsection is inserted —

“

(5) In the context of a cause of action arising on or after the day on which section 79 of the *Workers' Compensation Reform Act 2004* comes into operation, a reference in the other subsections of this section to the worker's employer does not include a reference to a person who is the worker's employer only because of section 175.

”.

**74. Heading to Part IV Division 2 Subdivision 2 inserted**

After section 93C the following heading is inserted —

“

**Subdivision 2 — 1993 scheme**

”.

**75. Sections 93CA, 93CB and 93CC inserted**

Before section 93D the following sections are inserted —

“

**93CA. Meaning of “AMA Guides” in this Subdivision**

In this Subdivision —

“**AMA Guides**” means the edition of the Assessment of Disability Guide published by the Western Australian Branch of the

Australian Medical Association Incorporated that is prescribed in the regulations.

**93CB. Limits on application of this Subdivision**

- (1) This Subdivision does not apply if the cause of action arises on or after the day on which section 79 of the *Workers' Compensation Reform Act 2004* comes into operation.
- (2) This Subdivision does not apply to the awarding of damages to the extent that they are for noise induced hearing loss that is not an injury.

**93CC. Application of this Subdivision**

This Subdivision applies to a cause of action arising before the day on which section 79 of the *Workers' Compensation Reform Act 2004* comes into operation, regardless of when the cause of action arose and whether proceedings in respect of the cause of action have commenced, unless —

- (a) because of section 32(7) of the *Workers' Compensation and Rehabilitation Amendment Act 1999*, the former provisions as defined in section 32(6) of that Act apply to proceedings in respect of the cause of action; or
- (b) because of Part 2 of the *Workers' Compensation (Common Law Proceedings) Act 2004*, the former provisions as defined in section 4 of that Act apply to proceedings in respect of the cause of action.

”.

**76. Section 93D amended**

- (1) Section 93D(2)(a) is amended as follows:
  - (a) by inserting after “so far as Schedule 2” —  
“ Part 1 ”;
  - (b) by deleting “such a disability,” and inserting instead —  
“ an injury suffered by the worker, ”;
  - (c) by deleting “that Schedule” and inserting instead —  
“ that Part ”.
- (2) Section 93D(8) is amended by deleting “Part IIIA” and inserting instead —  
“ Part XI ”.
- (3) Section 93D(10) is amended by deleting “the Director is to refer the question for resolution under the provisions of Part IIIA (other than Division 2).” and inserting instead —

“

it is to be dealt with under Part XI, and for that purpose —

- (a) an application is taken to have been made by the worker under section 181; and
- (b) the requirement to give copies under section 182 does not apply.

”.

**77. Section 93E amended**

- (1) Section 93E(1) is amended by deleting “on a reference under” and inserting instead —  
“ when dealt with as described in ”.
- (2) After section 93E(13) the following subsection is inserted —

“

- (14) If a further additional sum has been allowed to the worker under clause 18A(1b) in relation to an injury that is compensable under this Act, damages are not to be awarded in respect of the injury.

”.

**78. Section 93G amended**

Section 93G(a) is amended by deleting “Division” and inserting instead —

“ Subdivision ”.

**79. Part IV Division 2 Subdivision 3 inserted**

After section 93G the following Subdivision is inserted —

“

**Subdivision 3 — 2004 scheme**

**93H. Terms used in this Subdivision**

- (1) In this Subdivision —  
“**degree of permanent whole of person impairment**” means the degree of permanent whole of person impairment, evaluated as described in sections 146A and 146C, resulting from the injury or injuries arising from a single event, as defined in subsection (2);  
“**election registration day**” means the day on which the Director registers the election under section 93K(4)(b).
- (2) In the definition of “degree of permanent whole of person impairment” in subsection (1) —  
“**event**” means anything that results, whether immediately or not and whether suddenly or not, in an injury or injuries of a worker and the term includes continuous or repeated exposure to conditions that results in an injury or injuries of a worker.

**93I. Application of this Subdivision**

This Subdivision applies only if the cause of action arises on or after the day on which section 79 of the *Workers’ Compensation Reform Act 2004* comes into operation.

**93J. No damages for noise induced hearing loss if not an injury**

Damages to which this Division applies are not to be awarded, in circumstances to which this Subdivision applies, in respect of noise induced hearing loss that is not an injury.

**93K. Restrictions on awarding, and amount of, damages**

- (1) If the liability for an incapacity resulting from the injury has been redeemed under section 67, damages are not to be awarded in respect of the injury.
- (2) If a further additional sum has been allowed to the worker under clause 18A(1b) in relation to an injury that is compensable under this Act, damages are not to be awarded in respect of the injury.
- (3) If the worker is participating, or has at any time participated, in a specialised retraining program established in respect of an injury that is compensable under this Act, damages are not to be awarded in respect of the injury.
- (4) Damages in respect of an injury can only be awarded if —
  - (a) the worker elects, in the manner prescribed in the regulations, to retain the right to seek the damages;
  - (b) the Director registers the election in accordance with the regulations;
  - (c) court proceedings seeking the damages are commenced within —
    - (i) the period of 30 days after the Director gives the worker written notice that the Director has registered the election; or
    - (ii) any further time provided for in the regulations to allow for things to be done before court proceedings are commenced;and
  - (d) the court is satisfied that the worker's degree of permanent whole of person impairment is at least 15%.
- (5) Unless the court is satisfied that the worker's degree of permanent whole of person impairment is at least 25% —
  - (a) the amount of damages to be awarded is to be a proportion, determined according to the severity of the injury or injuries, of the maximum amount that may be awarded; and
  - (b) the maximum amount of damages that may be awarded in respect of the injury or injuries is Amount A, but the maximum amount may be awarded only in a most extreme case in which the worker's degree of permanent whole of person impairment is less than 25%.
- (6) Subsection (5) has effect in respect of the amount of a judgment before the operation of section 92(b).
- (7) No entitlement to damages is created by subsection (5) and that subsection is subject to any other law that prevents or limits the awarding of damages.
- (8) If —
  - (a) subsection (4) does not allow damages to be awarded in respect of the injury; or
  - (b) damages in respect of the injury have been awarded in accordance with subsection (5),

the employer is not liable to make any contribution under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution)*

Act 1947 (the “**Contribution Act**”) in respect of damages awarded against another person in relation to the injury.

- (9) If subsection (5) limits the damages that could have been awarded in respect of the injury —
  - (a) the contributions that the employer may be liable to make under the Contribution Act in respect of damages awarded against other persons in relation to the injury are not to exceed the damages that could have been awarded in accordance with subsection (5); and
  - (b) if the employer has made or been directed to make a contribution under the Contribution Act in respect of damages awarded against another person in relation to the injury, the amount of damages that may be awarded in accordance with subsection (5) is reduced by the amount of that contribution.
- (10) This section applies regardless of whether the damages are awarded against one or several employers.
- (11) An issue as to the amount of damages that may be awarded, is to be determined by reference to Amount A as in effect on the date on which the determination is made.
- (12) In this section —

“**Amount A**” means, in relation to a financial year, the amount that section 93F(8) defines to be Amount A in relation to that financial year.
- (13) The court is not bound by an agreement or assessment recorded by the Director under section 93L(2), but may admit it as evidence relevant to the worker’s degree of permanent whole of person impairment.

**93L. Election to retain right to seek damages**

- (1) In this section —

“**termination day**” has the meaning given in section 93M.
- (2) A worker can only elect under section 93K(4) to retain the right to seek damages if —
  - (a) the worker and the employer agree —
    - (i) that the worker’s degree of permanent whole of person impairment is at least 15%; and
    - (ii) as to whether or not the worker’s degree of permanent whole of person impairment is at least 25%;
  - or
  - (b) the worker’s degree of permanent whole of person impairment has been assessed to be a percentage that is not less than 15%,

and the Director has, at the written request of the worker, recorded that agreement or assessment in accordance with the regulations.

- (3) The Director cannot, under subsection (2), record an assessment that involves a special evaluation as defined in section 146C(4) unless the Director has been given a copy of the certificate referred to in section 93N(1) on the basis of which the special evaluation was requested.

- (4) If a claim for compensation by way of weekly payments has been made wholly or partially with respect to the injury or injuries concerned, an election cannot be made after the termination day.
- (5) An agreement or assessment that the Director has, at the written request of the worker, recorded in accordance with the regulations cannot be withdrawn and, after it has been recorded, another agreement or assessment as to the worker's degree of permanent whole of person impairment cannot be recorded.
- (6) An election that the Director has registered in accordance with the regulations cannot be withdrawn and a subsequent election cannot be made in respect of the same injury or injuries.
- (7) Subsection (5) does not prevent an agreement or assessment as to the worker's degree of permanent whole of person impairment from being made, whether before or after the commencement of court proceedings, after the Director has, at the written request of the worker, recorded an agreement or assessment in accordance with the regulations, or from being used in court proceedings.
- (8) The Director may at any time rectify an error that was made in recording an agreement or assessment or registering an election.

**93M. Termination day**

- (1) If a claim for compensation by way of weekly payments has been made wholly or partially with respect to an injury, the termination day for an election to retain the right to seek damages in respect of that injury is the last day of the period of one year after the day on which the claim for compensation by way of weekly payments is made unless a later day is fixed by subsection (3) or under subsection (4).
- (2) In subsection (1) —  
**“claim for compensation by way of weekly payments”** means a claim for compensation by way of weekly payments for total or partial incapacity that has been made on an employer in accordance with section 178(1)(b).
- (3) If, after the expiry of the period of 3 months after the day on which the claim is made —
  - (a) a dispute resolution authority, acting under section 58(1) or (2), determines the question of liability to make the weekly payments claimed; or
  - (b) the worker is first notified that liability is accepted in respect of the weekly payments claimed,
 the termination day is the last day of the period of 9 months after the day of the act described in paragraph (a) or (b) that was most recently done unless a later day is fixed under subsection (4).
- (4) The Director may, in accordance with the regulations, from time to time extend the termination day, but only if —
  - (a) before the termination day, an approved medical specialist, in writing —
    - (i) certifies that the worker's condition has not stabilised to the extent required for a normal evaluation of the worker's degree of permanent whole of person impairment to be made in

- accordance with the WorkCover Guides as described in sections 146A and 146C; and
- (ii) recommends a day until which the termination day be extended;
- (b) the Director is satisfied that the employer has failed to comply with section 93O;
  - (c) the Director is satisfied that the extension should be given because an approved medical specialist requires or required more than the time described in section 93O(1)(d) before being able to give the worker the documents required by section 146H; or
  - (d) the Director is satisfied that —
    - (i) the worker has, in accordance with the regulations, requested an approved medical specialist to assess the worker's degree of permanent whole of person impairment other than as described in subparagraph (ii), allowing at least the time described in section 93O(1)(d) for the approved medical specialist to give the worker the documents required by section 146H at least 7 days before the termination day, but the worker was not given, or it would be impracticable to give, those documents at least 7 days before the termination day; or
    - (ii) the worker has, in accordance with the regulations, requested an approved medical specialist to make an assessment that involves a special evaluation of the worker's degree of permanent whole of person impairment, allowing at least 7 weeks for the approved medical specialist to make the assessment and give the worker the documents required by section 146H at least 7 days before the termination day, but the worker was not given, or it would be impracticable to give, those documents at least 7 days before the termination day.
- (5) In subsection (4) —  
**“normal evaluation”** has the meaning given to that term in section 146C(3);  
**“special evaluation”** has the meaning given to that term in section 146C(4).
- (6) An extension under subsection (4) is to be to a day that is not more than one year after the day that would have been the termination day had there been no extension under that subsection except that, in circumstances described in subsection (4)(d), the Director may give an extension for as long as the Director considers necessary to give the worker an opportunity to make an election.
- (7) An extension is to be in writing and the Director is required to give the worker and the employer each a copy of the extension.
- (8) An extension may be given even though the termination day has passed.



**93N. Special evaluation if condition has not sufficiently stabilised**

- (1) This section applies if, after the expiry of the period of 6 months after the day that would have been the termination day had there been no extension under section 93M(4), an approved medical specialist certifies that the worker's condition has not stabilised to the extent required for a normal evaluation of the worker's degree of permanent whole of person impairment to be made in accordance with sections 146A and 146C.
- (2) The worker may request an approved medical specialist to make a special evaluation of the worker's degree of permanent whole of person impairment in accordance with sections 146A and 146C.
- (3) The approved medical specialist requested to make a special evaluation may be the approved medical specialist who certified as described in subsection (1).
- (4) The request is to be made in accordance with the regulations not later than 8 weeks before the termination day and is to be accompanied by a copy of the certificate referred to in subsection (1).
- (5) The approved medical specialist is to make the special evaluation in accordance with sections 146A and 146C unless the worker's condition is found to have stabilised to the extent required for a normal evaluation, in which case the approved medical specialist is to make a normal evaluation in accordance with those sections.
- (6) In this section —  
“normal evaluation” has the meaning given to that term in section 146C.

**93O. Employer to give worker notice of certain things**

- (1) At the time described in subsection (2), the employer is required to notify the worker in writing in accordance with the regulations —
  - (a) of the day that would be the termination day if no later day were to be fixed under section 93M(4);
  - (b) that about 6 months remains before the termination day;
  - (c) of the significance of the termination day for the worker's ability to seek damages; and
  - (d) of the amount of time that, according to the regulations, an approved medical specialist can reasonably be expected to take, after a worker requests an assessment of the worker's degree of permanent whole of person impairment, to give the worker the documents that an approved medical specialist is required by section 146H to give the worker.
- (2) The notice is required to be given within the period of 14 days commencing on the day that is 6 months and 14 days before the day that would be the termination day if no later day were to be fixed under section 93M(4).

**93P. How election may affect statutory compensation**

- (1) This section applies unless, according to an agreement or assessment that the Director has recorded as described in section 93L(2), the worker's degree of permanent whole of person impairment is at least 25%.

- (2) If a worker elects under section 93K to retain the right to seek damages and this section applies —
  - (a) the amount of any weekly payment of compensation to which the worker is entitled under this Act in respect of the injury or injuries, to the extent that the payment is for any time during the first 6 months after the election registration day, is varied to the amount calculated as described in subsection (4);
  - (b) the worker is not entitled to any weekly payment of compensation under this Act in respect of the injury or injuries to the extent that the payment would be for any time that is more than 6 months after the election registration day; and
  - (c) no other compensation under this Act is payable in respect of the injury or injuries —
    - (i) in relation to a time that is after the election registration day;
    - (ii) under Part III Division 2 or 2A, irrespective of whether an election under that Division is made before or after the election registration day; or
    - (iii) for expenses incurred after the election registration day.
- (3) In subsection (2) —

**“in respect of the injury or injuries”** includes wholly or partially in respect of the injury or injuries and also includes wholly or partially in respect of any recurrence, aggravation or acceleration of the injury or injuries.
- (4) The amount of a weekly payment is —
  - (a) to the extent that it is for any time during the first 3 months after the election registration day, 70% of the amount of the weekly payment to which the worker would have been entitled if this section had not applied; and
  - (b) to the extent that it is for any other time during the first 6 months after the election registration day, 50% of the amount of the weekly payment to which the worker would have been entitled if this section had not applied.

**93Q. Special provisions about HIV and AIDS**

- (1) Damages are not to be awarded in respect of the infection of a worker by HIV but damages may be awarded in respect of the contraction of AIDS unless it results from the unlawful use of any prohibited drug or from voluntary sexual activity.
- (2) A worker who has contracted AIDS has, for the purposes of this Subdivision, a degree of permanent whole of person impairment resulting from the disease of at least 25%.
- (3) A certificate in writing by a medical practitioner to the effect that the worker has contracted AIDS is to be recorded by the Director under section 93L(2), and otherwise treated for the purposes of this Subdivision, as if it included an assessment that the worker's degree of permanent whole of person impairment resulting from the disease was at least 25%.

- (4) The regulations may make provision for methods of deciding for the purposes of this section whether a worker has contracted AIDS.
- (5) Part VII Division 2 does not apply to the degree of permanent whole of person impairment of a worker resulting from the contraction of AIDS.
- (6) For the purposes of this Subdivision and any limitation on the period within which proceedings may be commenced to recover damages for that cause, the cause of action of a worker who has contracted AIDS is to be taken to have arisen when a certificate is first given in writing by a medical practitioner to the effect that the worker has contracted AIDS.
- (7) Section 93L(4) and sections 93M, 93N, 93O, and 93P do not apply in the case of an action for damages in respect of the contraction of AIDS.
- (8) In this section —  
“**AIDS**” means acquired immune deficiency syndrome;  
“**HIV**” means human immunodeficiency virus;  
“**prohibited drug**” has the meaning given to that term by the *Misuse of Drugs Act 1981* section 3.

**93R. Special provisions about specified industrial diseases**

- (1) If damages are sought or to be sought in respect of a disease referred to in section 33 or 34, any assessment to evaluate the worker’s degree of permanent whole of person impairment resulting from the disease as described in sections 146A and 146C is to be made, not by an approved medical specialist as stated in section 146A(2), but by a medical panel constituted as described in section 36.
- (2) Subsection (1) does not prevent the evaluation of the worker’s degree of permanent whole of person impairment being settled by agreement.
- (3) A person seeking an assessment may advise the chief executive officer, in accordance with any relevant regulation, and the chief executive officer is to arrange for a medical panel to be constituted to make the assessment and refer the making of the assessment sought to the panel.
- (4) Section 36(3), section 37, and section 38(1) and (3) apply for a reference under this section as they would for a reference under section 36 except that what is to be considered and determined is the assessment referred under this section instead of the questions that arise on a reference under section 36.
- (5) Even though the worker’s condition is not required to have stabilised, the evaluation is not a special evaluation as referred to in section 146C.
- (6) There is no termination day for an election to retain the right to seek damages in respect of a disease described in subsection (1).
- (7) A medical panel from which an assessment under this section is sought is not bound by a previous assessment made under this section if the previous assessment has not been recorded by the Director under section 93L(2).

- (8) If the Director, under section 93L(2), records an assessment under this section —
- (a) any reference in this Subdivision to the worker’s degree of permanent whole of person impairment is to be taken to be a reference to the worker’s degree of permanent whole of person impairment as evaluated in the assessment recorded; and
  - (b) section 93K(13) does not apply.

**93S. Regulations**

Regulations may provide for —

- (a) the notification to be given to workers, and the notification to be given to employers, of —
  - (i) the effect of the provisions of this Subdivision;
  - (ii) things done under this Subdivision;
- (b) the form and lodgment of elections under section 93K(4)(a);
- (c) the registration by the Director of elections under section 93K(4)(a) if an agreement or assessment for the purposes of section 93L(2) has been recorded, and the power of the Director to refuse to register an election if not satisfied that the worker has been properly advised of the consequences of the election;
- (d) the recording by the Director of an agreement or assessment under section 93L(2) as to the worker’s degree of permanent whole of person impairment;
- (e) how and when a worker may apply for the Director to extend the termination day under section 93M(4), and the period for which the Director may give an extension.

”.

**87. Section 100 amended**

- (1) Section 100(d) is deleted.
- (2) Section 100(da) is deleted and the following paragraph is inserted instead —

“

- (da) to promote injury management;

”.

- (3) Section 100(e) is amended by deleting “, loss of function, or disease”.
- (4) Section 100(f) is amended as follows:
  - (a) by deleting “all insurers and self-insurers” and inserting instead —

“

persons who are insurers or self-insurers or are referred to in section 292(2)(a) or (b) or (3)

”;

- (b) by inserting before “information” —
  - “ and from courts ”.

- (5) Section 100(fa) is amended as follows:
- (a) by deleting “insurers and self-insurers” in the first place where it occurs and inserting instead —
 

“

persons who are insurers or self-insurers or are referred to in section 292(2)(a) or (b) or (3)

”;
  - (b) by deleting “for assessing the performance of insurers and self-insurers” and inserting instead —
 

“

or prescribed by the regulations for assessing the performance of those persons

”.
- (6) Section 100(h) is deleted.
- (7) Section 100(i) is amended by deleting “panel;” and inserting instead —
- “
- panel, approved medical specialist panel or specialised retraining assessment panel;
- ”.
- ”.

**88. Section 100A amended**

- (5) After section 100A(6) the following subsection is inserted —
- “
- (7) Despite subsection (2), an advisory committee appointed for the purposes of section 146R or in connection with the assessment of matters of a medical nature is to consist of the following members —
- (a) at least one member of WorkCover WA’s governing body appointed by WorkCover WA;
  - (b) such medical practitioners as are nominated by the Australian Medical Association (WA) incorporated and appointed by WorkCover WA with the approval of the Minister; and
  - (c) such other members as are appointed by WorkCover WA with the approval of the Minister and after consultation with the Australian Medical Association (WA) incorporated.
- (8) WorkCover WA may, with the Minister’s approval, appoint members of an advisory committee under subsection (7) without complying with subsection (6).
- ”.

**92. Section 102 amended**

Section 102 is amended by deleting “section 100(d) and (e),” and inserting instead —

“ section 100(e), ”.

**93. Section 103A amended**

Section 103A is amended as follows:

- (b) by deleting “or self insurer” and inserting instead —

“

, a self-insurer, or a person referred to in section 292(2)(a) or (b) or (3)

”;  
”  
”.

**96. Part V Division 1A repealed**

Part V Division 1A is repealed.

**98. Section 106 amended**

- (3) Section 106(3) is amended as follows:

”;  
”

- (b) by deleting paragraph (c);  
(c) in paragraph (e) by deleting “dispute resolution bodies” and inserting instead —  
“ the DRD ”.

**101. Section 110 amended**

- (2) Section 110(2) is amended by deleting “section 84F.” and inserting instead —

“ section 218. ”.

- (3) Section 110(7)(a) is amended by deleting “body” and inserting instead —

“ authority ”.

- (4) Section 110(8) is amended as follows:

- (a) by deleting “and” after paragraph (a);  
(b) in paragraph (b) by deleting “body” and inserting instead —  
“ authority ”.

**103. Part VI repealed**

Part VI is repealed.

**104. Part VII heading replaced**

The heading to Part VII is deleted and the following headings are inserted instead —

“

**Part VII — Medical assessment and assessment for specialised retraining programs**

**Division 1 — Medical assessment panels**

”.

**105. Section 145A amended**

- (1) Section 145A(1) is amended by deleting “under section 84R, 84ZH or 84ZR” and inserting instead —  
“ under section 210 ”.
- (2) Section 145A(2) is amended by deleting “under section 84R, 84ZH or 84ZR” and inserting instead —  
“ under section 210 ”.

**106. Section 145C amended**

- (1) Section 145C(1) is amended by deleting “2 or”.
- (2) After section 145C(2) the following subsection is inserted —

“

- (2a) Despite subsection (2), if the question is referred under clause 18A(2ab), each practitioner selected is to be a specialist in a branch of medicine or surgery that is relevant to the question.

”.

**107. Section 145D amended**

- (1) Section 145D(1) is amended by inserting after “legal forms and” —  
“ , except as provided under this Act, ”.
- (2) Section 145D(5) is amended by deleting “the Director” in both places where it occurs and inserting instead —  
“ an arbitrator ”.
- (3) After section 145D(5) the following subsection is inserted —

“

- (6) To the extent that the practice and procedure of a medical assessment panel are not prescribed under this Act, they are to be as the panel determines.

”.

**108. Section 145E amended**

- (1) Section 145E(4) is amended by deleting “3” and inserting instead —  
“ 7 ”.
- (2) Section 145E(5) is repealed and the following subsections are inserted instead —

“

- (5) The determination is not relevant in relation to —
  - (a) a determination of an arbitrator under Part III Division 2A as to the permanent or other impairment of the efficient use of any part or faculty of the body for the purposes of Part III Division 2A, or the degree of that impairment;
  - (b) an action for damages independently of this Act if Part IV Division 2 Subdivision 3 applies to the awarding of damages in the action;

- (c) a determination of an arbitrator under section 158C or 158D; or
  - (d) a determination of an arbitrator for the purposes of clause 18A(2a)(b).
- (6) Unless rescinded under section 145F, the determination, or if the determination is varied under that section the determination as varied, is final and binding on the worker and the worker's employer and on any court or tribunal hearing a matter in which any such determination is relevant.
  - (7) The determination is, in the absence of evidence that the determination was rescinded or varied under section 145F, conclusive evidence as to the matters determined.
  - (8) A determination of a medical assessment panel is not —
    - (a) to be vitiated because of any informality or want of form; or
    - (b) subject to an appeal.
  - (9) A decision of a medical assessment panel or anything done under this Act in the process of coming to a decision of a medical assessment panel is not amenable to judicial review.

”

**109. Part VII Divisions 2, 3 and 4 inserted**

After section 145G the following Divisions are inserted —

“

**Division 2 — Assessing degree of impairment**

**146. Degree of impairment**

In this Part —

“**degree of impairment**”, in relation to a worker, means —

- (a) the worker's degree of permanent impairment for the purposes of Part III Division 2A;
- (b) the worker's degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3;
- (c) the worker's degree of permanent whole of person impairment for the purposes of Part IXA;
- (d) the worker's degree of permanent whole of person impairment for the purposes of clause 18A;

“**secondary condition**” means a condition, whether psychological, psychiatric, or sexual, that, although it may result from the injury or injuries concerned, arises as a secondary, or less direct, consequence of that injury or those injuries.

**146A. Evaluation of impairment generally**

- (1) Subject to sections 146B, 146C, 146D and 146E, a worker's degree of impairment is to be evaluated, as a percentage, in accordance with the WorkCover Guides.
- (2) If a worker and the employer do not agree about the evaluation of the worker's degree of impairment, it is to be assessed by an



approved medical specialist or, if this Act so provides, an approved medical specialist panel.

- (3) A request for assessment by an approved medical specialist is to be made in accordance with the regulations.
- (4) For a case in which the evaluation of the degree of impairment of the worker involves taking into account a recurrence, aggravation, or acceleration of any pre-existing disease that was to any extent asymptomatic before the event from which the injury or injuries arose, the WorkCover Guides are not to provide for a deduction to reflect the pre-existing nature of that disease to the extent that it was asymptomatic before that event.

**146B. Evaluation for the purposes of Part III Division 2A**

- (1) This section applies to an evaluation of a worker's degree of permanent impairment for the purposes of Part III Division 2A.
- (2) Section 146A(2) does not prevent a finding that the worker's condition has not stabilised to the extent required for an evaluation of the worker's degree of permanent impairment to be made in accordance with the WorkCover Guides for the purposes of Part III Division 2A.

**146C. Evaluation for purposes of Part IV Division 2 Subdivision 3**

- (1) This section applies to an evaluation of a worker's degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3.
- (2) Section 146A(2) does not prevent a finding that the worker's condition has not stabilised to the extent required for a normal evaluation of the worker's degree of permanent whole of person impairment to be made in accordance with the WorkCover Guides.
- (3) In subsection (2) —  
**“normal evaluation”** means an evaluation that is not a special evaluation as defined in subsection (4).
- (4) If this Act provides for a special evaluation of the worker's degree of permanent whole of person impairment to be made in accordance with this section, the evaluation (a **“special evaluation”**) is to be made, even though the worker's condition has not stabilised to the extent otherwise required for an evaluation to be made in accordance with the WorkCover Guides, in accordance with any provisions of the WorkCover Guides that apply to a special evaluation.
- (5) If the evaluation of a worker's degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3 is assessed on the basis that the worker's condition has not stabilised to the extent otherwise required for an evaluation to be made in accordance with the WorkCover Guides, the evaluation has to be a special evaluation made in accordance with this section.
- (6) In evaluating the degree of permanent whole of person impairment of the worker, any secondary condition is to be disregarded.
- (7) Subsection (6) does not prevent a secondary condition from contributing in the assessment of damages by a court.

**146D. Evaluation for the purposes of Part IXA**

- (1) This section applies to an evaluation of a worker's degree of permanent whole of person impairment for the purposes of Part IXA.
- (2) Section 146A(2) does not prevent a finding that the worker's condition has not stabilised to the extent required for an evaluation of the worker's degree of permanent whole of person impairment to be made in accordance with the WorkCover Guides for the purposes of Part IXA.
- (3) In evaluating the degree of permanent whole of person impairment of the worker, any secondary condition is to be disregarded.

**146E. Evaluation for the purposes of clause 18A**

- (1) This section applies to an evaluation of a worker's degree of permanent whole of person impairment for the purposes of clause 18A.
- (2) The evaluation (a "special evaluation") is to be made even if the worker's condition has not stabilised —
  - (a) in the case of an evaluation for the purposes of clause 18A(2a)(a), by an approved medical specialist;
  - (b) in the case of an evaluation for the purposes of clause 18A(2a)(b) if the employer disputes the assessment referred to in clause 18A(2a)(a), by an approved medical specialist panel,in accordance with any provisions of the WorkCover Guides that apply to a special evaluation for the purposes of this section.
- (3) In evaluating the degree of permanent whole of person impairment of the worker, any secondary condition is to be disregarded.

**146F. Approved medical specialist**

- (1) WorkCover WA may, by order published in the *Gazette*, designate a person as an approved medical specialist if the person is a medical practitioner who in WorkCover WA's opinion, is sufficiently trained in the use of the WorkCover Guides and otherwise satisfies criteria for designation as an approved medical specialist that WorkCover WA for the time being applies.
- (2) WorkCover WA is required to publish in the *Gazette* the criteria that it applies for deciding whether a medical practitioner is suitable for designation as an approved medical specialist.
- (3) WorkCover WA may require an approved medical specialist to enter into a written agreement with WorkCover WA about the procedures to be followed and the fees to be charged for, and other matters relating to, the performance of functions as an approved medical specialist and other matters relevant to the implementation of this Act.
- (4) WorkCover WA may, by order published in the *Gazette*, cancel the designation of a person as an approved medical specialist.
- (5) WorkCover WA is required to monitor assessments for consistency and monitor compliance with this Act and agreements under subsection (3).

- (6) The Director is to keep a register identifying persons who have been designated as approved medical specialists showing —
  - (a) the day on which the person was designated; and
  - (b) if a person's designation as an approved medical specialist has been cancelled, the day on which it was cancelled.
- (7) The Director is to make the register available for inspection at any reasonable time by any member of the public.

**146G. Powers of approved medical specialist**

- (1) On being requested to assess a worker's degree of impairment, an approved medical specialist may —
  - (a) in accordance with the regulations, require the worker to attend at a place specified by the approved medical specialist;
  - (b) require the worker to answer any question about the injury;
  - (c) in accordance with the regulations, require the worker, the employer, or the employer's insurer to —
    - (i) produce to the approved medical specialist any relevant document or information; or
    - (ii) consent to another person who has any relevant document or information producing it to the approved medical specialist;
  - (d) require the worker to submit to examination by, or as requested by, the approved medical specialist.
- (2) Regulations may be made —
  - (a) requiring a worker who requests an assessment of the worker's degree of impairment to produce any information described in the regulations for use in dealing with the request, and prescribing a fine of not more than \$2 000 for a contravention of the requirement;
  - (b) about the time within which a requirement made under subsection (1) or imposed by a regulation under paragraph (a) has to be complied with if the time for complying is not specified in the requirement.
- (3) A person who contravenes a requirement under subsection (1) commits an offence and is liable to a fine of \$2 000.
- (4) If the assessment is sought for the purpose of court proceedings and a person contravenes a requirement made under subsection (1) or imposed by a regulation under subsection (2), the court may order that the proceedings be stayed, either wholly or in part, or that any pleading be struck out.

**146H. Outcome of assessment**

- (1) An approved medical specialist making an assessment for the purposes of Part III Division 2A, Part IV Division 2 Subdivision 3, Part IXA or clause 18A is required to give to each of the worker and the employer, in writing in accordance with the regulations —

- (a) a report of the worker's degree of impairment, including details of the assessment and reasons justifying the assessment; and
  - (b) a certificate specifying the worker's degree of impairment.
- (2) An approved medical specialist giving a certificate —
- (a) for the purposes of Part III Division 2A or Part IXA that a worker's condition has not stabilised to the extent required for an evaluation made in accordance with the WorkCover Guides as described in sections 146A, 146B, and 146D; or
  - (b) for the purposes of Part IV Division 2 Subdivision 3 that a worker's condition has not stabilised to the extent required for a normal evaluation made in accordance with the WorkCover Guides as described in sections 146A and 146C,
- is required to give to each of the worker and the employer, in writing in accordance with the regulations —
- (c) a report of any relevant details provided by the worker; and
  - (d) brief reasons justifying the finding certified.
- (3) A certificate for the purposes of —
- (a) Part III Division 2A;
  - (b) Part IV Division 2 Subdivision 3;
  - (c) Part IXA; or
  - (d) clause 18A,
- is to specify the provisions for the purposes of which it is made.
- (4) A certificate for the purposes of the provisions referred to in one of paragraphs (a), (b), (c) or (d) of subsection (3) —
- (a) is not to be given for the purposes of the provisions referred to in any of the other paragraphs; and
  - (b) has no effect for the purposes of the provisions referred to in any of the other paragraphs.
- (5) If any of the documents described in subsection (1) or (2) is produced to the Director for the purposes of Part III Division 2A, Part IV Division 2 Subdivision 3, Part IXA or clause 18A and it contains an obvious error, the Director may reject it and require the approved medical specialist to replace it with a correct document given to each of the recipients of the document that contained the error.

**146I. Release of information relevant to assessment**

If an approved medical specialist has been requested to assess a worker's degree of impairment, WorkCover WA may, with the consent of the worker, disclose to the approved medical specialist any information that it has in relation to the worker that may be relevant to the assessment.

**146J. Decisions of approved medical specialist**

- (1) A decision of an approved medical specialist or anything done under this Act in the process of coming to a decision of an approved medical specialist is not amenable to judicial review.
- (2) In subsection (1) —  
“**decision of an approved medical specialist**” means an opinion, assessment, or other decision of an approved medical specialist that is relevant to the operation of Part III Division 2A, Part IV Division 2, Part IXA or clause 18A.

**Division 3 — Approved medical specialist panels**

**146K. Panel to be constituted**

- (1) On a question being referred under section 31D(4), 158C(2)(b) or clause 18C for assessment by an approved medical specialist panel, the Director is to select 2 approved medical specialists to be the panel that is to assess the degree of impairment.
- (2) An approved medical specialist who has treated or examined the worker concerned in a professional capacity or in the capacity of an approved medical specialist is not eligible to be a member of the panel.
- (3) If a referral is made to an approved medical specialist panel, WorkCover WA may, with the consent of the worker, disclose to the panel any information that it has in relation to the worker that may be relevant to the assessment.

**146L. Procedures**

- (1) In assessing the degree of impairment the approved medical specialist panel —
  - (a) is to act speedily and informally, and in accordance with good conscience, without regard to technicalities or legal forms; and
  - (b) is not bound by rules of evidence.
- (2) On being referred a question as to a worker’s degree of impairment, an approved medical specialist panel may —
  - (a) in accordance with the regulations, require the worker to attend at a place specified by the approved medical specialist panel;
  - (b) require the worker to answer any question about the injury;
  - (c) in accordance with the regulations, require the worker, the employer, or the employer’s insurer to —
    - (i) produce to the approved medical specialist panel any relevant document or information; or
    - (ii) consent to another person who has any relevant document or information producing it to the approved medical specialist panel;
  - (d) require the worker to submit to examination by, or as requested by, the members of the approved medical specialist panel.
- (3) Regulations may be made —

- (a) requiring a worker in respect of whom a question as to degree of impairment has been referred to an approved medical specialist panel to produce any information described in the regulations for use in dealing with the referral, and prescribing a fine of not more than \$2 000 for a contravention of the requirement;
  - (b) about the time within which a requirement made under subsection (2) or imposed by a regulation under paragraph (a) has to be complied with if the time for complying is not specified in the requirement.
- (4) Powers given by subsection (2)(a), (b) or (d) are to be exercised in private unless the worker otherwise consents, and any information or document obtained from, or by the consent of, the worker is not to be disclosed or given to any other person, except the person from whom it was obtained, without the consent of the worker.
  - (5) A person is not entitled to be represented in proceedings before an approved medical specialist panel.
  - (6) To the extent that the practice and procedure of an approved medical specialist panel are not prescribed under this Act, they are to be as the panel determines.

**146M. Failure to comply with requirement of approved medical specialist panel**

- (1) If a worker —
  - (a) fails to comply with a requirement made by an approved medical specialist panel under section 146L(2)(a), (b) or (c); or
  - (b) on being required to submit to examination by the panel refuses or fails to do so or in any way obstructs the examination,

an arbitrator may issue a certificate to that effect and upon the issue of that certificate the making of an assessment of the worker's degree of impairment is suspended until an arbitrator certifies that the suspension is removed.

- (2) An arbitrator is not to issue a certificate under subsection (1) if the worker satisfies the arbitrator that there was a reasonable excuse for refusing or failing to comply with the requirement or obstructing the examination.
- (3) An employer or insurer who refuses or fails to comply with a requirement of an approved medical specialist panel under section 146L(2)(c) commits an offence.  
Penalty: \$5 000.
- (4) It is a defence to a charge under subsection (3) to prove that the employer or insurer had a reasonable excuse for failing to comply with the requirement.

**146N. Assessment of impairment by approved medical specialist panel**

A worker's degree of impairment is to be assessed by an approved medical specialist panel in accordance with section 146A, and section 146B, 146D or 146E, as the case requires.

**146O. Outcome of assessment by approved medical specialist panel**

- (1) Subject to section 146P, the assessment is to be made as soon as is practicable after the day on which a medical examination of the worker concerned is carried out by the approved medical specialist panel.
- (2) An approved medical specialist panel is required to give to the Director in writing in accordance with the regulations —
  - (a) a report of the worker’s degree of impairment, including details of the assessment and reasons justifying the assessment; and
  - (b) a certificate specifying the worker’s degree of impairment.
- (3) The Director is to give copies of the report and certificate to the arbitrator who referred the question to the panel, the worker concerned, and the employer of the worker concerned, within 7 days after the day on which the Director receives them.
- (4) The assessment is —
  - (a) final and binding on the worker, the worker’s employer, on any dispute resolution authority, court or tribunal hearing a matter in which any such determination is relevant and on any other approved medical specialist panel; and
  - (b) conclusive evidence as to the matters determined.
- (5) An assessment of an approved medical specialist panel is not —
  - (a) to be vitiated because of any informality or want of form; or
  - (b) subject to an appeal.
- (6) A decision of an approved medical specialist panel or anything done under this Act in the process of coming to a decision of an approved medical specialist panel is not amenable to judicial review.
- (7) In subsection (6) —

**“decision of an approved medical specialist panel”** means an opinion, assessment, or other decision of an approved medical specialist panel that is relevant to the operation of Part III Division 2A, Part IXA or clause 18A.
- (8) If any of the documents described in subsection (1) or (2) contains an obvious error, the Director may reject it and require the approved medical specialist panel to replace it with a correct document which the Director is to give to each of the recipients of the document that contained the error.

**146P. No assessment without unanimous agreement**

- (1) If the members of the approved medical specialist panel are not in unanimous agreement as to the degree of impairment, the panel is discharged and a new panel is to be selected to assess the worker’s degree of impairment in accordance with section 146N.
- (2) A member of a panel discharged under subsection (1) is not eligible to be selected as a member of a new panel under that subsection.

**146Q. Remuneration**

- (1) A member of an approved medical specialist panel is entitled to such fees and allowances as may be determined by the Minister.
- (2) The fees and allowances mentioned in subsection (1) are to be paid by WorkCover WA from moneys standing to the credit of the General Fund.

**Division 4 — WorkCover Guides**

**146R. WorkCover Guides**

- (1) WorkCover WA may issue directions with respect to the evaluation of degree of impairment.
- (2) The directions, and any amendment of them, are to be developed in consultation with an advisory committee appointed under section 100A for the purposes of this section.
- (3) The directions may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (4) Sections 41, 42, 43 and 44 of the *Interpretation Act 1984* apply to the directions as if they were regulations.

”.

**110. Part VII Division 5 inserted**

At the end of Part VII the following Division is inserted —

“

**Division 5 — Assessment for specialised retraining programs**

**146S. Register for panel membership**

- (1) The Director is to keep a register, with such divisions as the Director considers appropriate, containing the names of persons approved under subsection (2) who are willing to be selected for a specialised retraining assessment panel.
- (2) WorkCover WA may, with the person’s consent, approve of the name of a person being included in the register.

**146T. Panel to be constituted**

- (1) On a question being referred under section 158D(2) for assessment by a specialised retraining assessment panel, the Director is to select 3 persons who are registered under section 146S to be the panel that is to make the assessment.
- (2) Of the members of the panel —
  - (a) one is to be an occupational physician who is an approved medical specialist;
  - (b) one is to be a person —
    - (i) who in the opinion of WorkCover WA, has knowledge of, and experience in, matters relating to the labour market; and
    - (ii) who is not an officer of WorkCover WA;
  - (c) one is to be an officer of WorkCover WA who is experienced in the review of injury management.



- (3) A person is not eligible to be a member of the panel if the person —
  - (a) has treated or examined the worker concerned in a professional capacity; or
  - (b) has had dealings with, or has knowledge of, the worker concerned in a professional capacity.
- (4) The Director is to nominate one of the members of the panel to be its chairman.

**146U. Procedures**

- (1) In making an assessment a specialised retraining assessment panel is to act speedily and informally, and in accordance with good conscience, without regard to technicalities or legal forms and, except as provided in this Act, is not bound by rules of practice nor evidence.
- (2) For the purposes of assisting it in making an assessment a specialised retraining assessment panel may request the worker, employer, insurer, medical practitioner or approved vocational rehabilitation provider concerned —
  - (a) to attend before the panel;
  - (b) to answer questions put by the panel;
  - (c) to produce to the panel any relevant document; or
  - (d) to authorise any person who possesses a relevant document to produce it to the panel.
- (3) Powers given by subsection (2) to a panel are to be exercised in private unless the worker otherwise consents, and any information or document obtained from, or by the consent of, the worker is not to be disclosed or given to any other person, except the person from whom it was obtained, without the consent of the worker.
- (4) A person is not entitled to be represented in proceedings before a specialised retraining assessment panel.
- (5) If the worker concerned, without reasonable excuse (proof of which is on the worker), refuses to comply with a request made by the panel under subsection (2)(a), (b), (c) or (d), an arbitrator may issue a certificate to that effect and upon the issue of the certificate the making of an assessment in relation to the retraining criterion in question is suspended until an arbitrator certifies that the suspension is removed.
- (6) To the extent that the practice and procedure of a specialised retraining assessment panel are not prescribed under this Act, they are to be as the panel determines.

**146V. Assessments**

- (1) If the members of a specialised retraining assessment panel are not in unanimous agreement as to a question, the assessment is to be made in accordance with the opinion of at least 2 members of the panel.
- (2) The assessment is to be made as soon as is practicable but in any event within 28 days after the day on which the panel first convenes to make the assessment.

- (3) The assessment and the reasons for making it are to be given in writing signed by the chairman in a form approved by the Director, and are to be given to the Director within 7 days after the day on which the assessment is made.
- (4) The Director is to give the assessment and reasons to the person who referred the question to the panel and the worker concerned within 7 days after the day on which the Director receives them.
- (5) The assessment is not relevant in relation to an action for damages independently of this Act if Part IV Division 2 Subdivision 3 applies to the awarding of damages in the action.
- (6) The assessment is —
  - (a) final and binding on the worker and the worker’s employer and on any body hearing a matter in which any such assessment is relevant; and
  - (b) conclusive evidence as to the matters assessed.
- (7) An assessment of a specialised retraining assessment panel is not —
  - (a) to be vitiated because of any informality or want of form; or
  - (b) subject to an appeal.
- (8) A decision of a specialised retraining assessment panel or anything done under this Act in the process of coming to a decision of a specialised retraining assessment panel is not amenable to judicial review.
- (9) In subsection (8) —
 

**“decision of a specialised retraining assessment panel”** means an opinion, assessment, or other decision of a specialised retraining assessment panel that is relevant to the operation of Part IXA.

**146W. Remuneration**

- (1) A member of a specialised retraining assessment panel who is not an officer of WorkCover WA is entitled to such fees and allowances as may be determined by the Minister.
- (2) The fees and allowances mentioned in subsection (1) shall be paid by WorkCover WA from moneys standing to the credit of the General Fund.

”.

**114. Section 152 amended and transitional provision**

- (1) Section 152 is amended by deleting “100%” and inserting instead —
 

“ 75% ”.
- (2) Section 152 is amended at the foot of the section by inserting —
 

“ Penalty: \$1 000. ”.
- (3) The amendment made by subsection (1) does not apply to the charging of a loading in so far as the loading relates to a period of insurance that commenced before the commencement of that subsection.

**118. Part IX replaced**

Part IX is repealed and the following Part is inserted instead —

“

**Part IX — Injury management**

**155. Terms used in this Part**

In this Part —

“**code**” means the code of practice (injury management) issued under section 155A(1) that is currently in force;

“**injury management system**” means an injury management system established under section 155B;

“**return to work program**” means a return to work program established under section 155C(1);

“**treating medical practitioner**”, in relation to a worker, means the medical practitioner who the worker has chosen or accepted to have the primary responsibility for the medical care and coordination of medical care for the worker.

**155A. Code of practice (injury management)**

- (1) WorkCover WA may issue a code of practice (injury management).
- (2) The code may include provisions and guidelines in relation to —
  - (a) the establishment, content and implementation of injury management systems;
  - (b) the establishment, content and implementation of return to work programs;
  - (c) the development by approved vocational rehabilitation providers of service delivery plans and the contents of, and other requirements in relation to, those plans;
  - (d) such other matters relating to injury management as WorkCover WA considers appropriate.
- (3) The code may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (4) Sections 41, 42, 43 and 44 of the *Interpretation Act 1984* apply to the code as if the code were regulations.

**155B. Establishment of injury management systems for employer’s workers**

Each employer is to ensure that —

- (a) an injury management system is established in relation to the employer’s workers; and
- (b) the establishment, content and implementation of the injury management system are in accordance with the code.

Penalty: \$2 000.

**155C. Establishment of return to work programs for individual workers**

- (1) An employer of a worker who has suffered an injury compensable under this Act must ensure that a return to work program is

established for the worker as soon as practicable after either of the following occurs —

- (a) the worker's treating medical practitioner advises the employer in writing that a return to work program should be established for the worker;
  - (b) the worker's treating medical practitioner signs a medical certificate to the effect that the worker has a total or partial capacity to return to work.
- (2) Subsection (1) does not require a return to work program to be established for a worker —
- (a) who has returned to the position held by the worker immediately before the injury occurred; and
  - (b) who has a total capacity to work in that position.
- (3) An employer must ensure that the establishment, content and implementation of a return to work program are in accordance with the code.

Penalty applicable to subsections (1) and (3): \$2 000.

**155D. Injury management: insurers' obligations**

- (1) An insurer must take such action as is prescribed by the regulations in relation to making each employer who is insured by the insurer aware of the employer's obligations under sections 155B and 155C(1) and (3).
- (2) If an insured employer requests the insurer to assist the employer to comply with any of the employer's obligations under section 155B or 155C(1) or (3), the insurer must take such action as is reasonable —
  - (a) to assist the employer to comply with the employer's obligations that are the subject of the employer's request; and
  - (b) to ensure that the employer complies with the employer's obligations that are the subject of the employer's request.
- (3) If an insured employer requests the insurer to discharge the employer's obligations under section 155C(1) or (3) on behalf of the employer, the insurer must take such action as is reasonable —
  - (a) to discharge the employer's obligations that are the subject of the employer's request; and
  - (b) to comply with the employer's obligations that are the subject of the employer's request,

within such time as is reasonable in the circumstances.

Penalty applicable to subsection (3): \$2 000.

**156. Approval of vocational rehabilitation providers**

- (1) WorkCover WA may, in writing —
  - (a) subject to such conditions, if any, as it sees fit to impose, approve as a vocational rehabilitation provider any person WorkCover WA considers capable of satisfactorily providing vocational rehabilitation; and
  - (b) revoke any such approval.

- (2) In considering whether or not to approve a person as a vocational rehabilitation provider, to impose conditions on any such approval, or to revoke any such approval, WorkCover WA —
  - (a) may have regard to performance criteria established by an advisory committee under section 100A, and to the advice of such a committee in a particular case; and
  - (b) in the case of the revocation of an approval that is subject to conditions, is to have regard to whether or not there has been compliance with the conditions.
- (3) An implied and non-revocable condition of a person's approval as a vocational rehabilitation provider is that the person is to comply with the code in relation to —
  - (a) the development and content of service delivery plans;
  - (b) other requirements in relation to service delivery plans; and
  - (c) other requirements applicable to vocational rehabilitation providers.

**156A. Vocational rehabilitation services**

- (1) WorkCover WA, upon request, is to provide to workers, employers and other persons information as to the persons who are approved vocational rehabilitation providers.
- (2) If a person providing vocational rehabilitation —
  - (a) is not an approved vocational rehabilitation provider; or
  - (b) is an approved vocational rehabilitation provider but contravenes a condition imposed in respect of the person's approval,

the amount of any fee or other reward paid in respect of the vocational rehabilitation is not to be regarded as a reasonable expense incurred in respect of vocational rehabilitation for the purposes of clause 17(1a).

- (3) If a fee or other reward is paid for the provision of vocational rehabilitation mentioned in subsection (2) by a person who —
  - (a) not being approved as a vocational rehabilitation provider, held himself or herself out as being so approved; or
  - (b) being approved as a vocational rehabilitation provider subject to any condition, contravenes any such condition,

the person who paid the fee or other reward may recover as a debt due from that person the amount of the fee or other reward paid.

**156B. Arbitrators' powers in relation to return to work programs**

- (1) The employer of a worker, or a worker, may apply for an order of an arbitrator requiring the worker to participate in a return to work program.
- (2) The arbitrator may require the worker to participate in a return to work program if satisfied that —
  - (a) a return to work program is required under section 155C(1) to be established for the worker;
  - (b) the worker, without reasonable excuse, refuses or has failed to participate in a return to work program; and

- (c) the establishment, content and implementation of the return to work program are, or will be, in accordance with the code.
- (3) The arbitrator may require the worker to participate in a return to work program other than that proposed by or on behalf of a party to the application.

**157. Information about injury management matters**

- (1) WorkCover WA is to provide information and advice on injury management generally.
- (2) WorkCover WA is to make available, upon request, to employers, workers and other persons such information or other assistance as it considers appropriate to facilitate the arranging of injury management.
- (3) WorkCover WA may make arrangements with other persons or authorities for the use of facilities for providing information about injury management and related matters.
- (4) An arbitrator may request WorkCover WA to provide information on injury management or related matters, and WorkCover WA is to provide that information to the arbitrator.

**157A. Early identification of injuries that require, or may require, management**

- (1) An insurer or a self-insurer shall, not later than the expiration of 7 days after acquiring the knowledge referred to in paragraph (a) or (b), give to WorkCover WA notice in writing, containing the prescribed particulars, with respect to —
  - (a) a worker whose period of incapacity the insurer or self-insurer knows to have exceeded 4 consecutive weeks; or
  - (b) a worker whose periods of incapacity during any period of 12 months or less the insurer or self-insurer knows to have exceeded, in sum, 12 weeks.

Penalty: \$1 000.

- (2) Subsection (1) does not apply —
  - (a) to an insurer or self-insurer who is exempted under subsection (3) and who is acting in accordance with the exemption; or
  - (b) in relation to a period of incapacity with respect to which notice has already been given under —
    - (i) this section;
    - (ii) section 155 as in force before section 118 of the *Workers' Compensation Reform Act 2004* came into operation; or
    - (iii) section 155 as in force before 8 March 1991, being the day on which section 33 of the *Workers' Compensation and Assistance Amendment Act 1990* came into operation.
- (3) WorkCover WA may, in writing, exempt an insurer or a self-insurer from the requirement to comply with subsection (1), either absolutely or subject to such conditions as it sees fit to

impose, and any such exemption has effect according to its tenor until revoked by WorkCover WA.

- (4) If WorkCover WA is of the opinion that a worker's injury should be reviewed to determine whether a return to work program should be established for the worker, WorkCover WA may —
- (a) notify the worker, the worker's employer and the employer's insurer of that opinion; and
  - (b) inform those persons of the requirements of section 155C and 155D and their obligations under those provisions.

**157B. Mediation and assistance**

WorkCover WA may provide mediation and independent guidance on injury management and related matters with a view to facilitating the informal resolution of questions and disputes arising from those matters.

”.

**119. Part IXA inserted**

After Part IX the following Part is inserted —

“

**Part IXA — Specialised retraining programs**

**158. Meaning of “retraining criteria”**

- (1) In this Part —

**“degree of permanent whole of person impairment”** means the degree of permanent whole of person impairment, evaluated as described in sections 146A and 146D, resulting from the injury or injuries arising from a single event, as defined in subsection (2);

**“retraining criteria”**, in relation to a worker, means the following criteria —

- (a) the worker has participated in a return to work program established under section 155C(1) but has not been able to return to work;
  - (b) the worker has a capacity for retraining and is a person for whom a specialised retraining program is a viable option;
  - (c) formal vocational training or study through a technical or tertiary training course appears to be the only course of action that will enable the worker to return to work;
  - (d) it is reasonable to expect that a specialised retraining program will provide the worker with the qualification or skills necessary to return to work, having regard to the labour market, the worker's existing qualifications and work experience;
  - (e) such other criteria as may be prescribed in the regulations for the purposes of this definition.
- (2) In the definition of “degree of permanent whole of person impairment” in subsection (1) —

“event” means anything that results, whether immediately or not and whether suddenly or not, in an injury or injuries of a worker and the term includes continuous or repeated exposure to conditions that result in an injury or injuries of a worker.

**158A. Eligibility to participate in specialised retraining programs**

- (1) A worker may participate in a specialised retraining program if —
  - (a) the worker has suffered an injury that is compensable under this Act;
  - (b) the injury occurred on or after the day on which section 119 of the *Workers' Compensation Reform Act 2004* comes into operation;
  - (c) either —
    - (i) the worker and the worker's employer agree that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%; or
    - (ii) an arbitrator has determined that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%;
  - and
  - (d) either —
    - (i) the worker and the worker's employer agree that the worker satisfies all of the retraining criteria; or
    - (ii) an arbitrator has determined that the worker satisfies all of the retraining criteria.
- (2) A worker is eligible to participate in a specialised retraining program even if —
  - (a) the worker is receiving weekly payments under clause 7 or other compensation under Schedule 1; or
  - (b) the weekly payments paid for periods of the incapacity arising from the worker's injury have reached the prescribed amount.
- (3) Despite having suffered an injury referred to in subsection (1)(a) and (b), a worker is not eligible to participate in a specialised retraining program if —
  - (a) an election by the worker under section 93K(4) in respect of the injury has been registered;
  - (b) an agreement in respect of the whole of the liability for the incapacity or impairment arising from the injury has been registered under Part III Division 7;
  - (c) an order for redemption of the liability for incapacity arising from the injury has been made under section 67(1)(a) or (4);
  - (d) an order in respect of the whole of the liability for the incapacity or impairment arising from the injury has been made under Part XI; or
  - (e) the worker's claim for damages in respect of the injury or the incapacity or impairment arising from the injury has



been settled by agreement independently of this Act and has not been disapproved under section 92(f).

- (4) The participation of a worker in a specialised retraining program is subject to sections 158B and 158E.

**158B. Final day for recording agreed matters, referring disputed matters for determination**

- (1) A worker is not eligible to participate in a specialised retraining program unless, on or before the final day referred to in subsection (2) —
- (a) either —
- (i) the Director has, at the written request of the worker, recorded in accordance with the regulations an agreement as to the worker's degree of permanent whole of person impairment; or
- (ii) if there is not agreement between the worker and the worker's employer as to the worker's degree of permanent whole of person impairment, the worker has applied under section 158C to have the matter in dispute determined by an arbitrator;
- and
- (b) either —
- (i) the Director has, at the written request of the worker, recorded in accordance with the regulations an agreement that the worker satisfies all of the retraining criteria; or
- (ii) if there is not agreement between the worker and the worker's employer that the worker satisfies all of the retraining criteria, the worker has applied under section 158D to have the matter in dispute determined by an arbitrator.
- (2) If a claim for compensation by way of weekly payments has been made on an employer in accordance with section 178(1)(b) with respect to an injury of a worker, the final day for purposes of subsection (1) is the last day of the period of 2 years after the day on which the claim for compensation is made unless a later day is fixed under subsection (3) or (4).
- (3) If, after the expiry of the period of 3 months after the day on which the claim is made —
- (a) an arbitrator, acting under section 58(1) or (2), determines the question of liability to make the weekly payments claimed; or
- (b) the worker is first notified that liability is accepted in respect of the weekly payments claimed,
- the final day is the last day of the period 1 year and 9 months after the day of the act described in paragraph (a) or (b) that was most recently done unless a later day is fixed under subsection (4).
- (4) The Director may, in accordance with the regulations, from time to time extend the final day, but only if the Director is satisfied that the worker has, in accordance with the regulations and at least

8 weeks before the final day requested an approved medical specialist to assess the worker's degree of permanent whole of person impairment, but the worker could not take, or it would be impracticable for the worker to take, the action referred to in subsection (1) before the final day referred to in subsection (2).

- (5) An extension under subsection (4) is to be to a day that is not more than 6 months after the day that would have been the final day had there been no extension under that subsection.
- (6) An extension is to be in writing and the Director is required to give the worker and the employer each a copy of the extension.
- (7) An extension may be given even though the final day has passed.

**158C. Disputes as to degree of permanent whole of person impairment**

- (1) If —
  - (a) there is not agreement between a worker and the worker's employer that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%; and
  - (b) the worker's degree of permanent whole of person impairment has been assessed by an approved medical specialist under sections 146A and 146D as at least 10% but less than 15%,

but the employer disputes the assessment referred to in paragraph (b), the worker may apply to have the question as to the worker's degree of permanent whole of person impairment arising from the injury concerned determined by an arbitrator.

- (2) An arbitrator to whom an application to determine a question is made under subsection (1) may —
  - (a) determine the worker's degree of permanent whole of person impairment; or
  - (b) refer the question as to the worker's degree of permanent whole of person impairment for assessment by an approved medical specialist panel in accordance with sections 146A and 146D.
- (3) If a determination or assessment is made that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%, the arbitrator may order the employer to pay all or any of the costs or expenses connected with the dispute, including expenses connected with the referral to an approved medical specialist panel.

**158D. Disputes as to retraining criteria**

- (1) If there is not agreement between a worker and the worker's employer that the worker satisfies all of the retraining criteria, the worker may apply to have the question as to whether the worker satisfies all of the retraining criteria determined by an arbitrator.
- (2) An arbitrator to whom an application to determine a question is made under subsection (1) is to refer the question for assessment by a specialised retraining assessment panel in accordance with section 146V.

- (3) If an assessment is made that the worker is suitable to participate in a specialised retraining program, the arbitrator may order the employer to pay all or any of the costs or expenses connected with the dispute, including expenses connected with the referral to a specialised retraining assessment panel.

**158E. Specialised retraining program agreements**

- (1) A worker who is eligible under sections 158A and 158B to participate in a specialised retraining program cannot participate in the program unless —
- (a) the worker has entered into an agreement with WorkCover WA in relation to the program; and
  - (b) the agreement is entered into on or before the final day referred to in subsection (2).
- (2) The final day for the purposes of subsection (1) is the later of —
- (a) the day that is 30 days after the day on which —
    - (i) the worker is notified of the recording of an agreement referred to in section 158B(1)(a)(i) as to the worker's degree of permanent whole of person impairment; or
    - (ii) the worker is given the decision of an arbitrator as to the worker's degree of permanent whole of person impairment,as is relevant to the case; and
  - (b) the day that is 30 days after the day on which —
    - (i) the worker is notified of the recording of an agreement referred to in section 158B(1)(b)(i) that the worker satisfies all of the retraining criteria; or
    - (ii) the worker is given the decision of an arbitrator as to whether the worker satisfies all of the retraining criteria,as is relevant to the case.
- (3) An agreement is to make provision in relation to —
- (a) course attendance requirements;
  - (b) the worker's role in relation to reviews under section 158H including attendances and communications with WorkCover WA and providing information in relation to the performance and cooperation of the worker in the specialised retraining program;
  - (c) acknowledgement by the worker of the effects of this Part relating to the modification, suspension and cessation of amounts payable in respect of the worker's participation in the program.
- (4) Any provision of an agreement that is inconsistent with a provision of this Act is of no effect to the extent of the inconsistency.

**158F. WorkCover WA to direct payments in relation to specialised retraining programs**

- (1) As soon as practicable after an agreement under section 158E has been signed by the worker and WorkCover WA, WorkCover WA is to notify the following persons of the agreement —
  - (a) the worker's employer; and
  - (b) if the employer is insured against liability to pay compensation under this Act, the employer's insurer.
- (2) The total of the amounts payable in respect of a worker's participation in a specialised retraining program is the amount equal to 75% of the prescribed amount calculated as at the date on which the worker signed the agreement.
- (3) WorkCover WA may, as it sees fit, but subject to this section and any regulations under subsection (10), give a written direction to the worker's employer or the employer's insurer to make a payment in respect of a worker's participation in a specialised retraining program.
- (4) A direction may be for periodic payments or for a particular payment.
- (5) A payment may be for, but is not limited to —
  - (a) reasonable fees for a course;
  - (b) the cost of books and relevant resource materials reasonably necessary to undertake a course;
  - (c) subject to subsections (8) and (9), a weekly retraining allowance.
- (6) Subject to subsection (7), a payment may be for reasonable expenses incurred in respect of vocational rehabilitation under clause 17(1a) that is requested by the worker if the assistance of an approved vocational rehabilitation provider is necessary to coordinate the specialised retraining program.
- (7) If the amount payable under clause 17(1a) is exhausted in respect of a worker, then for the purpose mentioned in subsection (6), WorkCover WA may direct that an additional amount, not exceeding 3% of the amount referred to in subsection (2), be paid in respect of the worker, as long as the additional amount does not exceed the total amount applicable to the worker under subsection (2).
- (8) The worker cannot receive any weekly retraining allowance payments until the total weekly payments under clause 7 have reached the prescribed amount.
- (9) Any weekly retraining allowance amount —
  - (a) is not to be linked to or represent the worker's capacity or otherwise to work; and
  - (b) is not to exceed the worker's pre-injury weekly earnings.
- (10) Subject to subsections (6), (7), (8) and (9), the following matters may be prescribed by the regulations —
  - (a) the submission of requests for payment and requirement for copies of invoices to be provided to WorkCover WA;
  - (b) the manner in which funds may be apportioned;
  - (c) when funds should be directed to be paid;

- (d) when funds should be paid;
- (e) the rate of any weekly training allowance.

**158G. Obligations of employers, insurers**

- (1) An employer or insurer who receives a direction under section 158F or 158I must comply with the direction within the time specified in the direction, or such longer period as may be subsequently specified by WorkCover WA but not exceeding 30 days.
- (2) An employer or insurer must not modify, suspend or cease an amount payable under a direction under section 158F or affected by a direction under section 158I unless WorkCover WA has given the employer or insurer written approval to do so.
- (3) A reference in section 174(1)(c) to the obtaining of an award by the worker includes a reference to the receipt by an employer or insurer of a direction under section 158F or 158I.
- (4) Nothing in section 174 prevents moneys standing to the credit of the General Fund from being paid in accordance with a direction under section 158F or 158I within 30 days of the direction being received if —
  - (a) the direction relates to a payment in respect of a particular specialised retraining program; and
  - (b) moneys have already been paid from the General Fund in respect of that program.

**158H. 3 monthly reviews of performance, payments under specialised retraining programs**

- (1) WorkCover WA is to conduct, at the times set out in subsection (2), a review of —
  - (a) the performance and cooperation of each worker who is participating in a specialised retraining program; and
  - (b) the payments directed to be made in respect of each worker who is participating in a specialised retraining program.
- (2) The first review in respect of a worker is to be conducted 3 months after the day on which the worker commences participation in the specialised retraining program, and subsequent reviews are to be at 3 monthly intervals.

**158I. WorkCover WA may direct modification, suspension, cessation of payments under specialised retraining programs**

- (1) WorkCover WA may, as it sees fit, but subject to this Part and any regulations in relation to the administration of funds for specialised retraining programs, and having regard to the results of a review under section 158H in relation to a worker, give a written direction to the worker's employer or the employer's insurer to modify, suspend or cease the amounts payable in respect of the worker's participation in the program.
- (2) Without affecting subsection (1) WorkCover WA may give a written direction to the worker's employer or the employer's insurer to do any of the following —
  - (a) suspend any entitlement that a worker has under an agreement under section 158E if WorkCover WA is of

the opinion that the worker has not complied, or is not complying, with a provision of the agreement;

- (b) cease the entitlement if the worker does not, within one month of being requested in writing by WorkCover WA to do so, comply with the provision;
- (c) modify, suspend or cease the amounts payable in respect of the worker's participation in the program if the worker fails a course requirement or does not achieve the results that, in the opinion of WorkCover WA, are required for the course to be successfully completed.

**158J. Cessation of payments**

Payments in respect of a worker's participation in a specialised retraining program cease from the date on which an event referred to in section 158A(3)(a) to (e) occurs in respect of a claim for the injury concerned.

**158K. Directions not open to challenge etc.**

A decision of WorkCover WA to direct the payment, modification, suspension or cessation of an amount payable to or in respect of a worker participating in a specialised retraining program is not liable to be challenged, appealed against, reviewed, quashed or called into question under this Act or by any court.

**158L. Other effects of participation in specialised retraining program**

- (1) The amount referred to in section 158F(2) is in addition to and separate from any other compensation that a worker is entitled to under this Act in relation to an injury.
- (2) A worker's participation in a specialised retraining program is not, of itself, a ground for the suspension, discontinuance, reduction or increasing, under this Act, of payments of other compensation that the worker receives in respect of the injury.
- (3) A worker's participation in a specialised retraining program is not, of itself, a ground for an arbitrator to require or not require, under section 156B, the worker to participate in a return to work program.
- (4) No part of the specialised retraining program entitlement can be taken into account in the calculation of any other compensation to which the worker is entitled under this Act.

”

**120. Section 160 amended**

- (1) Section 160(2a) is repealed.
- (2) After section 160(3) the following subsection is inserted —

“

- (3a) Where WorkCover WA permits an approved insurance office to cancel a policy or contract of insurance obtained by an employer under this section, the approved insurance office shall notify the employer of the cancellation within 14 days after the cancellation has effect.

Penalty: \$1 000.

”

(3) After section 160(4) the following subsections are inserted —

“

(5) Where an approved insurance office declines to indemnify an employer in respect of a liability referred to in subsection (4) in respect of which the approved insurance office would be liable to indemnify the employer if the liability were incurred during the term of the policy or contract of insurance, the approved insurance office commits an offence.

Penalty: \$2 000.

(6) A conviction for an offence under subsection (5) does not affect the liability of the approved insurance office under subsection (4).

(7) Where an employer has obtained a policy of insurance from an approved insurance office under this section, the employer shall ensure that a valid certificate of currency issued by the insurance office in respect of the policy is available for inspection at the employer's principal office or place of business in the State.

Penalty: \$2 000.

(8) An employer does not have to comply with subsection (7) if it is not reasonably practicable to do so.

”

**121. Section 162 amended**

After section 162(1) the following subsection is inserted —

“

(1a) An insurer that issues or renews a policy contrary to subsection (1) commits an offence.

Penalty: \$1 000.

”

**123. Section 165 amended**

(6) After section 165(4) the following subsection is inserted —

“

(5) Where an employer or group of employers fails to give to the State, within 21 days after the direction is given, any securities directed by the Minister to be given under subsection (4)(b) —

(a) the employer; or

(b) each employer belonging to the group of employers,

as the case may be, commits an offence.

Penalty: \$1 000.

”

**125. Section 171 amended**

(2) Section 171 is amended at the foot of subsection (1) by inserting —

“ Penalty: \$1 000. ”.

**126. Section 174 amended**

- (4) Section 174(3) is amended by deleting “Part IIIA” and inserting instead —  
“ Part XI ”.

”

**128. Sections 174AB and 174AC inserted**

Before section 174A the following sections are inserted —

“

**174AB. WorkCover WA may exercise rights of employer**

- (1) If an employer is uninsured and is not defending a claim brought by a worker, WorkCover WA has all of the rights of the employer under this Act in place of the employer including the right to —
- (a) consent to an award or order being made in a proceeding before a dispute resolution authority;
  - (b) enter into an agreement as to redemption of the claim;
  - (c) become a party to proceedings in relation to the claim;
  - (d) exercise the rights of the employer in relation to injury management; and
  - (e) require the worker to submit himself for examination under sections 64 and 65.
- (2) If an employer —
- (a) is uninsured and is defending a claim brought by a worker; or
  - (b) may be uninsured and a worker has brought a claim, irrespective of whether or not the employer is defending the claim,

then, unless an order to the contrary is made pursuant to an application under subsection (3), WorkCover WA has all of the rights of the employer under this Act in place of the employer as if subsection (1) applied.

- (3) The employer may apply under Part XI for an order as to the rights WorkCover WA may exercise under subsection (2) and the exercise of those rights.
- (4) An arbitrator may hear and determine an application under subsection (3) and may make such orders in relation to the application as the arbitrator thinks fit.
- (5) WorkCover WA may sue for and recover from the employer fees, costs and charges incurred by WorkCover WA under this section, whether or not WorkCover WA was successful in any proceedings.

**174AC. WorkCover WA’s right of subrogation**

If WorkCover WA has paid, or is liable to pay, from the General Fund an amount as compensation for which an employer is liable under this Act, WorkCover WA is subrogated to any right of the employer and any insurer of the employer to recover any amount from any other person in respect of that payment (had the payment been made by the employer or insurer), whether the right arises by



way of liability for contribution, apportionment of liability or otherwise.

”

**129. Part XA inserted**

After section 175D the following Part is inserted —

“

**Part XA — Infringement notices and modified penalties**

**175E. Definitions**

In sections 175G, 175H, 175I and 175J —

“**authorised officer**” means a person designated as an authorised officer under section 175F for the purposes of the section in which the term is used;

“**prescribed**” means prescribed by the regulations.

**175F. Authorised officers**

- (1) The chief executive officer may designate officers of WorkCover WA as authorised officers for the purposes of section 175G, 175H, 175I or 175J or for the purposes of 2 or more of those sections, but a person who is authorised to give infringement notices under section 175G is not eligible to be an authorised officer for the purposes of any of the other sections.
- (2) The chief executive officer is to issue a certificate of authorisation to each person designated as an authorised officer under subsection (1).
- (3) An authorised officer is to produce the certificate whenever required to do so by a person in respect of whom the officer has exercised, or is about to exercise, any power under this Part.
- (4) Production of a certificate referred to in subsection (2) in respect of a person is evidence in any court that the person is duly designated under subsection (1).

**175G. Giving of notice**

- (1) An authorised officer who has reason to believe that a person has committed a prescribed offence under this Act may give an infringement notice to the alleged offender.
- (2) The notice is to be given within 6 months after the alleged offence is believed to have been committed.

**175H. Content of notice**

- (1) An infringement notice is to be in the prescribed form.
- (2) An infringement notice is to —
  - (a) contain a description of the alleged offence;
  - (b) specify the amount of the modified penalty for the offence;
  - (c) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, that amount may be paid to an authorised officer within the period of 28 days after the giving of the notice; and

- (d) inform the alleged offender as to who are authorised officers for the purpose of receiving payment of modified penalties.
- (3) The amount specified under subsection (2)(b) is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.
- (4) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

**175I. Extension of time**

An authorised officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid, and the extension may be allowed whether or not the period of 28 days has elapsed.

**175J. Withdrawal of notice**

- (1) An authorised officer may, whether or not the modified penalty has been paid, withdraw an infringement notice within 60 days after the day on which it was given by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

**175K. Benefit of paying modified penalty**

- (1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.
- (2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

**175L. No admission implied by payment**

Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

**175M. Application of penalties collected**

An amount paid as a modified penalty is to be dealt with in accordance with section 312, unless section 175J(2) requires the amount to be refunded.

**130. Part XI replaced by Parts XI to XVIII**

Part XI is repealed and the following Parts are inserted instead —

**Part XI — Dispute resolution**

**Division 1 — General**

**176. Exclusive jurisdiction**

- (1) In this Part —

“dispute” means —

- (a) a dispute in connection with a claim for compensation, or the liability to pay compensation, under this Act;
  - (b) a dispute in connection with an obligation imposed under Part IX;
  - (c) any other dispute or matter for which provision is made under this Act for determination by an arbitrator;
  - (d) any other matter of a kind prescribed by the regulations.
- (2) A proceeding for the determination of a dispute is not capable of being brought other than under this Part or Part XII.
- (3) Subject to this Act, arbitrators have exclusive jurisdiction to examine, hear and determine all disputes.

**177. Evidence of communication between worker and injury management officer**

Evidence of any communication between a worker and a person employed by WorkCover WA and acting in the capacity of an injury management officer is not admissible in a proceeding before an arbitrator unless, during the course of the proceeding, the worker consents to the evidence being so admitted.

**Division 2 — Requirements before commencing proceeding**

**178. Notice of injury and claim**

- (1) Proceedings for the recovery under this Act of compensation for an injury are not maintainable unless —
- (a) a notice of the occurrence of the injury has been given under section 179 in writing containing substantially the information required by subsection (2) as soon as practicable after the occurrence; and
  - (b) the claim for compensation with respect to such injury has been made within 12 months from the occurrence of the injury or, in case of death, within 12 months from the time of death,

but —

- (c) the want of or any defect or inaccuracy in such notice is not a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in defending the proceedings by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake, absence from the State, or other reasonable cause; and
- (d) the failure to make a claim within the period mentioned in paragraph (b) is not a bar to the maintenance of such proceedings, if it is shown that the employer has not been prejudiced in defending the proceedings by such failure, or if it is found that the failure was occasioned by

mistake, absence from the State, or other reasonable cause.

- (2) Notice in respect of an injury under this Act is to state —
- (a) the name and address of the person injured;
  - (b) in ordinary language the cause of the injury; and
  - (c) the date and place at which the injury occurred,

and is to include such other information, if any, as may be prescribed by the regulations.

**179. Service of notice of injury**

- (1) Notice in respect of an injury under this Act is to be served on the employer, or, if there is more than one employer, upon one of such employers.
- (2) The notice may be served by delivering it at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.
- (3) When the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering it at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there is more than one office, any one of the offices of such body.
- (4) When the employer is —
- (a) the State, notice in respect of an injury under this Act is to be served on the State Solicitor, at Perth, or the manager of the work on which the worker was employed at the time the injury occurred;
  - (b) the Governor under the *Governor's Establishment Act 1992*, notice in respect of an injury under this Act is to be served on the Official Secretary within the meaning of that Act;
  - (c) the President of the Legislative Council, notice in respect of an injury under this Act is to be served —
    - (i) in the case of a worker who is a member of the Department of the Legislative Council, on the Clerk of the Legislative Council; or
    - (ii) in the case of a worker who is an electorate officer, on the Director-General;
  - (d) the Speaker of the Legislative Assembly, notice in respect of an injury under this Act is to be served —
    - (i) in the case of a worker who is a member of the Department of the Legislative Assembly, on the Clerk of the Legislative Assembly; or
    - (ii) in the case of a worker who is an electorate officer, on the Director-General;
- or
- (e) the President of the Legislative Council and the Speaker of the Legislative Assembly, acting jointly, notice in respect of an injury under this Act is to be served, in the case of a worker who is a member of —
    - (i) the Department of the Parliamentary Reporting Staff, on the Chief Hansard Reporter;

(ii) the Department of the Parliamentary Library, on the Parliamentary Librarian; or

(iii) the Joint House Department, on the Executive Officer of the Joint House Department,

as the case requires.

- (5) A reference in subsection (4)(c), (d) or (e) to an expression that is defined in the *Parliamentary and Electorate Staff (Employment) Act 1992* is a reference to that expression as so defined.

**180. Provision of certain documents before commencement of proceeding**

- (1) In this section —

“**injury**” includes alleged injury;

“**relevant document**” means any of the following —

- (a) a contract of service or apprenticeship to which the worker is a party;
  - (b) a contract for service to which the worker is a party;
  - (c) records of wages or other remuneration paid to the worker;
  - (d) a report relevant to the injury by a medical practitioner who has treated the worker for the injury;
  - (e) a report by a medical practitioner who has conducted tests or investigations on the worker in relation to the injury;
  - (f) a report by a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (d) or (e) in connection with treatment of, or tests related to, the injury;
  - (g) a report by an approved vocational rehabilitation provider in relation to the worker;
  - (h) a notice of occurrence of the injury made in accordance with section 178(1)(a);
  - (i) a claim for compensation with respect to the injury made in accordance with section 178(1)(b);
  - (j) a document of a kind prescribed by the regulations.
- (2) A worker who has suffered an injury, or the worker’s legal practitioner or agent, may request the worker’s employer at the time the injury occurred, or that employer’s insurer, to provide the person making the request with a copy of such relevant documents as are in the possession of or under the control of the employer and the insurer.
- (3) If a worker has made a claim for compensation with respect to noise induced hearing loss in accordance with section 178(1)(b), the worker’s employer or that employer’s insurer may request WorkCover WA to provide the person making the request with a copy of any documents in the possession of or under the control of WorkCover WA that —
- (a) are of a kind described in paragraph (d), (e) or (f) of the definition of “relevant document” in subsection (1); or
  - (b) relate to the worker’s employment history or the worker’s exposure to noise.

- (4) A request under subsection (2) or (3) is to be made in accordance with the DRD Rules and within the time prescribed by the DRD Rules.
- (5) An employer or insurer requested to provide a copy of a relevant document under subsection (2) or (3) that fails to comply with the request within the period referred to in subsection (4) commits an offence.  
Penalty: \$1 000.
- (6) An arbitrator may make an order requiring the production of documents under this section.

### **Division 3 — Proceedings before an arbitrator**

#### **181. Arbitrators to determine disputes**

- (1) A party to a dispute may apply to the Director in accordance with this Act and the DRD Rules for determination of the dispute by an arbitrator.
- (2) A proceeding before an arbitrator commences when the application is accepted by the Director.

#### **182. Who is to be given a copy of an application**

- (1) When an application is accepted by the Director the applicant is to give a copy of the application to —
  - (a) each other party;
  - (b) any other person entitled under this Act to a copy of, or notice of, the application; and
  - (c) any person to whom the applicant is directed by the Director to give a copy of the application.
- (2) Subsection (1) does not require the applicant to give a copy of the application to a person mentioned in subsection (1) (a “**notifiable person**”) if —
  - (a) the Director has undertaken to give a copy of the application to the notifiable person; or
  - (b) under subsection (3) an arbitrator dispenses with the requirement to give a copy of the application to a notifiable person.
- (3) An arbitrator may make an order dispensing with the requirement to give a copy of an application to a notifiable person specified in the order if satisfied —
  - (a) that the applicant has made all reasonable attempts to give a copy of the application to the notifiable person but has been unsuccessful; or
  - (b) that the hearing of the application without notice to the notifiable person would not cause injustice.
- (4) The DRD Rules may provide for the manner in which and time within which subsection (1) is to be complied with.

#### **183. Information exchange between parties**

- (1) When, and at times prescribed by the DRD Rules after, an application is made for a determination of a dispute by an arbitrator, each party to the dispute must provide to the other party

and to the Director, in accordance with the DRD Rules, such documents, material and information as the DRD Rules require.

- (2) Subject to section 206, a party to a dispute who fails to comply with a requirement of subsection (1) commits an offence.  
Penalty: \$2 000.
- (3) Where a worker, after an injury has occurred, makes a statement in writing, in relation to the injury to the employer of the worker or to an insurer or to any person acting on behalf of the employer or insurer, that statement is not to be admitted in evidence if tendered by the employer or insurer or used by the employer or insurer in a proceeding before an arbitrator unless the employer or insurer has supplied to the worker or to a legal practitioner or agent acting on behalf of the worker in the proceeding a copy in writing of the statement.
- (4) Any document, material or information that a party to a dispute has failed to provide in contravention of subsection (1) cannot be admitted on behalf of the party in a proceeding on the dispute before an arbitrator.
- (5) A witness cannot appear in a proceeding on a dispute before an arbitrator if a party to the dispute has failed to file a statement from that witness in contravention of this section.
- (6) Subsections (2), (4) and (5) do not apply if the party is a worker unless it is established that the worker was represented by a legal practitioner or agent (as defined in section 261) at the relevant time.
- (7) The DRD Rules may provide for exceptions to subsections (4) and (5) and may authorise an arbitrator to permit —
  - (a) the admission in a proceeding before the arbitrator in specified circumstances of any document, material or information that would otherwise be not admissible under subsection (4); or
  - (b) the appearance in a proceeding before the arbitrator in specified circumstances of a witness who would otherwise not be permitted to appear under subsection (5).
- (8) If an arbitrator is satisfied that a party has failed without reasonable excuse to comply with a requirement of this section, the arbitrator may do any one or more of the following —
  - (a) refer the matter to WorkCover WA;
  - (b) note the matter in a certificate issued by the arbitrator in respect of the dispute (together with details of the documents, material or information to which the failure relates);
  - (c) order that a specified amount or proportion of the costs that would otherwise be recoverable by the party in connection with the application to the arbitrator are not recoverable.

**184. Interim assessment and minor claims**

When an application is made under this Part, the Director may refer the application or any part of the application to be dealt with under Part XII if the application or that part of the application

could have been made under that Part, and may defer determination of a dispute under this Part while the matter referred is being dealt with under that Part.

**185. Arbitrator to attempt conciliation**

- (1) An arbitrator is not to determine a dispute without first using the arbitrator's best endeavours to bring the parties to the dispute to a settlement acceptable to all of them.
- (2) No objection may be taken to the determination of a dispute by an arbitrator on the ground that the arbitrator had previously used the arbitrator's best endeavours to bring the parties to a dispute to a settlement.
- (3) The DRD Rules may make provision for or with respect to conciliation.

**186. Arbitrator may review decision**

- (1) In this section —  
“**new information**” means information relevant to a decision that, although available to a party at the time the decision was made, was not available to the arbitrator and, in the opinion of the arbitrator, justifies reconsideration of the matter.
- (2) If new information becomes available after an arbitrator makes a decision, the arbitrator may reconsider the decision and —
  - (a) vary or revoke the decision previously made; or
  - (b) make any further decision,as the arbitrator considers appropriate having regard to the new information.

**187. Decisions of arbitrator**

- (1) Except as otherwise provided by this Act a decision of an arbitrator —
  - (a) is final and binding on the parties and is not subject to an appeal; and
  - (b) is not to be vitiated because of any informality or want of form.
- (2) A decision of an arbitrator or anything done under this Act in the process of coming to a decision of an arbitrator is not amenable to judicial review.

**Division 4 — Practice and procedure**

**188. Practice and procedure, generally**

- (1) An arbitrator is bound by rules of natural justice except to the extent that this Act authorises, whether expressly or by implication, a departure from those rules.
- (2) The *Evidence Act 1906* does not apply to proceedings before an arbitrator and an arbitrator —
  - (a) is not bound by the rules of evidence or any practice or procedure applicable to courts of record, except to the extent that the DRD Rules make them apply; and
  - (b) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.



- (3) An arbitrator may inform himself on any matter as the arbitrator thinks fit.
- (4) An arbitrator may —
  - (a) receive in evidence any transcript of evidence in proceedings before a court or other person or body acting judicially and draw any conclusion of fact from the transcript; and
  - (b) adopt, as the arbitrator thinks fit, any finding, decision, or judgment of a court or other person or body acting judicially that is relevant to the proceeding.
- (5) To the extent that the practice and procedure of an arbitrator are not prescribed under this Act, they are to be as the arbitrator determines.

**189. Relief or redress not restricted to claim**

The granting of relief or redress under this Act is not necessarily to be restricted to the specific claim made nor to the subject matter of the claim.

**190. Directions**

- (1) An arbitrator may give directions at any time in a proceeding and do whatever is necessary for the speedy and fair conduct of the proceeding.
- (2) An arbitrator may give directions on the initiative of the arbitrator or on the application of a party.
- (3) A directions hearing conducted by an arbitrator may be held for the purposes of this section before the hearing of the proceeding.

**191. Dependants**

In considering a question as to whether a person who resides outside the State is a dependant of a worker, an arbitrator is to require proof by or including documentary evidence that the worker has, wholly or in part as the case may be, supported the person and is not to accept as sufficient proof a statutory declaration or affidavit unsupported by documentary evidence to that effect.

**192. Arbitrator may regard illegal contracts of employment as valid**

If in any proceeding for the recovery under this Act of compensation for an injury it appears to an arbitrator that the contract under which the injured worker was engaged at the time when the injury occurred was illegal, the arbitrator may, if, having regard to all the circumstances of the case the arbitrator thinks proper to do so, deal with the matter as if the injured person had at that time been a worker under a valid contract.

**193. Power of arbitrator to require information**

- (1) An arbitrator may order any person (whether or not a party to a dispute before the arbitrator) —
  - (a) to produce, at a time and place specified in the order, the documents or material specified in the order; or
  - (b) to furnish specified information within a time specified in the order.

- (2) The order may require the documents or material to be produced or the information to be furnished —
  - (a) to the arbitrator or to another party to a dispute before the arbitrator, in the case of an order given to a party to the dispute; or
  - (b) to the arbitrator in the case of an order given to a person who is not a party to a dispute before the arbitrator.
- (3) If a person fails without reasonable excuse to produce a document or material or furnish information in compliance with an order given to the person under this section, the person cannot as a party to a proceeding before a dispute resolution authority have the document, material or information admitted in the proceeding.
- (4) An arbitrator may exercise powers under this section at the request of a party to a dispute before an arbitrator or of the arbitrator's own motion.
- (5) The regulations or DRD Rules may make provision for or with respect to any of the following matters —
  - (a) exempting specified kinds of documents, material or information from the operation of this section;
  - (b) specifying cases and circumstances in which an arbitrator is required to exercise the arbitrator's powers under this section;
  - (c) specifying cases and circumstances in which an arbitrator is not to exercise the arbitrator's powers under this section.
- (6) An arbitrator may order a person to produce a document, material or information despite any rule of law relating to privilege or the public interest in relation to the production of documents.

**194. Arbitrator may provide documents, material and information to party**

- (1) When a document or other material or information relevant to a proceeding before an arbitrator is produced or furnished to the arbitrator by a party to the proceeding or another person (whether or not pursuant to a requirement under this Part), the arbitrator may produce or furnish the document, material or information to —
  - (a) any other party to the proceeding;
  - (b) any other party's legal representative or registered agent; or
  - (c) a medical practitioner (including a medical assessment panel and an approved medical specialist panel).
- (2) The arbitrator may, when producing or furnishing documents, material or information, to another person direct that the person must not cause or permit disclosure of the information, or information in the documents or material, or any specified part of that information, to another person.

**195. Representation**

- (1) At any hearing or conference before an arbitrator, a party to the proceeding may appear in person or may be represented by —
  - (a) a legal practitioner;

- (b) a registered agent;
  - (c) if the party is a body corporate, a director, secretary, or other officer of the body corporate; or
  - (d) if the party is a public sector body as defined in section 3(1) of the *Public Sector Management Act 1994*, a public sector employee authorised by the party to represent the party.
- (2) In any proceeding an arbitrator may refuse to permit an employer or an insurer to be represented by a legal practitioner or registered agent if a party who is a worker is not represented by a legal practitioner or registered agent.
  - (3) A person who has been struck off the roll of practitioners of the Supreme Court cannot represent a party.
  - (4) An arbitrator may refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.
  - (5) The regulations or the DRD Rules may prevent specified persons, or persons of a specified class, from representing a party.

**196. Arbitrator may appoint guardian**

If a child is a party or potential party to a proceeding or proposed proceeding, an arbitrator may appoint a litigation guardian in accordance with the DRD Rules to conduct the proceeding on the child's behalf.

**197. Interpreters and assistants**

- (1) Unless the arbitrator directs otherwise, a party or a party's representative may be assisted in the course of a proceeding by an interpreter or another person necessary or desirable to make the proceeding intelligible to that party and to enable the party to communicate adequately.
- (2) A person may present a written submission or evidence in a language other than English if it is accompanied by a translation into English and a statutory declaration by the translator to the effect that the translation accurately reproduces in English the contents of the original document.

**198. Electronic hearings and proceedings without hearings**

- (1) A proceeding before an arbitrator need not be conducted by formal hearing and may, if the DRD Rules so provide or if the arbitrator thinks it appropriate, be conducted by way of a conference between the parties.
- (2) If an arbitrator thinks it appropriate, the arbitrator is to allow the parties and their representatives and any witnesses (or one or more of them) to participate in a conference or hearing of a proceeding by means of telephones, video links, or any other system or method of communication.
- (3) If an arbitrator thinks it appropriate, the arbitrator may conduct all or part of a proceeding entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a conference or hearing.

- (4) An arbitrator may take into account a written submission prepared by a legal practitioner acting for a party to a proceeding and submitted by or on behalf of the party, whether or not the party is represented by a legal practitioner at any conference or hearing of the proceeding.
- (5) If an arbitrator conducts a proceeding in accordance with this section, the arbitrator is to take steps to ensure that the public has access to, or is precluded from access to, matters disclosed in the proceeding to the same extent as if the proceeding had been heard before the arbitrator with the attendance in person of all persons involved in the proceeding.
- (6) Provisions of this Act applying to hearings apply with any necessary modifications in relation to a conference or proceeding conducted in accordance with subsection (3).

**199. Hearings to be held in private**

Hearings and conferences before an arbitrator are to be conducted in private unless —

- (a) the arbitrator conducting the hearing or conference decides that it should be conducted in public; or
- (b) the DRD Rules otherwise provide.

**200. Notice of hearings**

- (1) Notice of the time and place for the hearing of a proceeding is to be given in accordance with the DRD Rules to —
  - (a) each party to the proceeding;
  - (b) each other person entitled to notice of the hearing under this Act.
- (2) If a person, including a party, to whom notice has been given in accordance with the DRD Rules fails to attend, the hearing may be held in the absence of that person.
- (3) The failure of a party to attend a hearing of a proceeding does not affect the validity of any decision made in relation to the proceeding.

**201. Expert or professional assistance**

- (1) An arbitrator may refer any technical or specialised matter to an expert and accept that expert's report as evidence.
- (2) An arbitrator who obtains an expert's report is to call the expert for examination on the subject matter of the report if a party to the proceedings so requests.

**202. Summoning witnesses**

The Director or an arbitrator may issue a summons requiring the attendance of a person before an arbitrator.

**203. Powers relating to witnesses**

- (1) In any proceeding before an arbitrator, the arbitrator may —
  - (a) call any person to give evidence;
  - (b) examine any witness on oath or affirmation, or by use of a statutory declaration;
  - (c) examine or cross-examine any witness to such extent as the arbitrator thinks proper; and

- (d) require any witness to answer questions put to the witness.
- (2) Nothing in subsection (1) enables an arbitrator to require a witness to answer a question if the witness —
  - (a) is excused by section 206(1) from answering the question; or
  - (b) has a reasonable excuse (other than on the ground mentioned in section 204(1) or 205) for refusing to answer the question.

**204. Privilege against self-incrimination**

- (1) A person is not excused from complying with a requirement under this Part to answer a question, produce a document or other material, or furnish information, on the ground that the answer, the production of the document or other material, or the furnishing of the information, might incriminate the person or render the person liable to a penalty.
- (2) However neither —
  - (a) an answer given by that person that was given to comply with the requirement; nor
  - (b) the fact that a document or other material produced by the person, or information furnished by the person, to comply with the requirement was produced or furnished,is admissible in evidence in any criminal proceedings against the person other than proceedings for perjury or for an offence against this Act arising out of the false or misleading nature of an answer.

**205. Legal professional privilege in relation to medical reports**

- (1) A legal practitioner is not excused from complying with a requirement under this Part to answer a question in relation to a medical report or produce a medical report on the ground that the answer to the question would disclose, or the report contains, a privileged communication made by or to the legal practitioner in his capacity as a legal practitioner.
- (2) Subsection (1) does not apply in respect of a question that does not relate directly to the treatment, or nature or extent of impairment, or assessment of degree of impairment, of a worker.
- (3) A medical report may be produced by the legal practitioner in compliance with a requirement under this Part with the omission of passages that —
  - (a) do not relate directly to the treatment, or nature or extent of impairment, or assessment of degree of impairment, of a worker; and
  - (b) contain a privileged communication made by or to the legal practitioner in his capacity as a legal practitioner.

**206. Other claims of privilege**

- (1) Unless it would be contrary to section 204 or 205 or an order under section 193, a person is excused from answering a question or producing or furnishing a document, material or information in a proceeding if the person could not be compelled to answer the question or produce or furnish the document, material or information in proceedings in the Supreme Court.

- (2) An arbitrator may require a person to produce a document or other material to the arbitrator for the purpose of determining whether or not it is a document or material that the arbitrator has power to require the person to produce.

**207. Oaths and affirmations**

An arbitrator may administer an oath or take an affirmation for the purposes of this Act.

**208. Authorising person to take evidence**

- (1) An arbitrator may authorise, in writing, a person (whether or not an arbitrator) to take evidence on behalf of the arbitrator for the purposes of any proceeding.
- (2) The arbitrator may authorise evidence to be taken under this section outside Western Australia.
- (3) The arbitrator may give directions as to the taking of evidence under this section.
- (4) If a person other than an arbitrator is authorised to take evidence the person has all the powers of an arbitrator in relation to the taking of evidence.
- (5) Evidence taken under this section is to be regarded as having been given to the arbitrator.

**209. Dealing with things produced**

An arbitrator may inspect any document or other material produced before the arbitrator, and retain it for as long as the arbitrator reasonably thinks fit, and make copies of any document or any of its contents.

**210. Referral of medical dispute for assessment**

- (1) If permitted by section 145A to do so, an arbitrator may refer a question as to —
  - (a) the nature or extent of an injury;
  - (b) whether an injury is permanent or temporary; or
  - (c) a worker's capacity for work,for determination by a medical assessment panel.
- (2) Without limiting subsection (1), that subsection applies to —
  - (a) questions as to the permanent or other loss of the efficient use of any part or faculty of the body for the purposes of Part III Division 2, or to the degree of that loss;
  - (b) questions as to the degree of disability assessed in accordance with section 93D(2);
  - (c) questions for the purposes of section 31F as to whether a worker has contracted AIDS.
- (3) Subsection (1) does not apply to questions as to —
  - (a) the permanent or other impairment of the efficient use of any part or faculty of the body for the purposes of Part III Division 2A, or to the degree of that impairment;
  - (b) the degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3;

- (c) the degree of whole of person impairment for the purposes of Part IXA; or
- (d) the degree of permanent whole of person impairment for the purposes of clause 18A.

## **Division 5 — Decisions**

### **Subdivision 1 — General provisions**

#### **211. Decisions generally**

- (1) Subject to this Act, an arbitrator may make such decisions as the arbitrator thinks fit.
- (2) Subject to the provisions of Part XII, an arbitrator may confirm, vary or revoke a direction or order made under Part XII Division 2 or 3.

#### **212. Conditional and ancillary orders and directions**

A power of an arbitrator to make an order or give a direction (the “**primary power**”) includes the power to make the order subject to conditions and the power to make any ancillary order or direction the arbitrator considers appropriate for achieving the purpose for which the arbitrator may exercise the primary power.

#### **213. Form and content of decision and reasons**

- (1) A decision of an arbitrator is to be given in writing to a party to a proceeding if —
  - (a) the DRD Rules state that the decision is to be given in writing to that party; or
  - (b) within 14 days after the arbitrator makes the decision, the party requests that the decision be given in writing.
- (2) An arbitrator’s decision in writing is to include information as to appeal rights that may be available to the parties under this Act.
- (3) The reasons for a decision of an arbitrator are to be given in writing to a party to a proceeding if —
  - (a) the DRD Rules state that the reasons are to be given in writing to that party; or
  - (b) within 14 days after the arbitrator makes the decision, the party requests that the reasons for the decision be given in writing.
- (4) The reasons for an arbitrator’s decision —
  - (a) need only identify the facts that the arbitrator has accepted in coming to the decision and give the reasons for doing so;
  - (b) need only identify the law that the arbitrator has applied in coming to the decision and give the reasons for doing so;
  - (c) need not canvass all the evidence given in the case; and
  - (d) need not canvass all the factual and legal arguments or issues arising in the case.
- (5) A written transcript of the part of the proceeding in which a decision is given orally or reasons are given orally is sufficient compliance with the requirement for the decision or reasons to be in writing.

- (6) The fact that a decision is, or reasons are, given orally or in accordance with subsection (4) or (5) is not of itself a ground for reversing or modifying the decision on an appeal.

**214. Validity of decision**

A failure of an arbitrator to comply with a requirement of this Subdivision does not affect the validity of a decision.

**215. When decision has effect**

- (1) A decision of an arbitrator comes into effect immediately after it is given, or at such later time as is specified in it.
- (2) Subsection (1) does not prevent a stay of the effect of the decision from being given under section 250.

**216. Correcting mistakes**

An arbitrator may correct a decision an arbitrator gives or a statement of the reasons an arbitrator has given for the decision to the extent necessary to rectify —

- (a) a clerical mistake;
- (b) an error arising from an accidental slip or omission;
- (c) a material miscalculation of figures or a material mistake in the description of any person, thing, or matter referred to in the decision; or
- (d) a defect of form.

**Subdivision 2 — Particular orders**

**217. Order as to total liability**

- (1) This section applies where —
  - (a) an arbitrator considers that an injury to a worker that is compensable under this Act has resulted in the permanent total incapacity for work of the worker;
  - (b) an order for redemption of the liability for the incapacity has not already been made under section 67;
  - (c) no memorandum of agreement for the payment of a lump sum in redemption of the liability for the incapacity has been recorded under section 76; and
  - (d) the total weekly payments by way of compensation payable under clause 7 for that injury have reached the prescribed amount.
- (2) If this section applies, the arbitrator may, subject to this section, make any order as to the total liability of the employer for the incapacity that the arbitrator thinks proper in the circumstances.
- (3) An arbitrator is not to make an order under subsection (2) unless the arbitrator considers an order ought to be made, having regard to the social and financial circumstances and the reasonable financial needs of the worker.
- (4) The total liability of the employer ordered under this section is not to exceed the lesser of —
  - (a) an amount equal to 75% of the prescribed amount; or
  - (b) weekly payments at the rate to which the worker was entitled at the time when the total weekly payments for



the injury of the worker reached the prescribed amount —

- (i) for the period of the expectation of life of the worker; or
- (ii) if section 56 or Schedule 5 clause 2 applies in respect of the incapacity, up to the date when weekly payments would cease by reason of age,

whichever is the shorter.

- (5) An arbitrator is to deal with the payment of the final liability by ordering weekly payments at such rate as the arbitrator thinks proper in the circumstances, having regard to the matters referred to in subsection (3), but not at a rate that exceeds the rate to which the worker was entitled at the time when the total weekly payments for the injury of the worker reached the prescribed amount.
- (6) In making an order as to final liability under this section an arbitrator may order payment of an amount for arrears of such weekly payments from the time when the total weekly payments for the worker's injury reached the prescribed amount to the date of the order.

**218. Order relating to payment of compensation in respect of persons under legal disability or who are dependants**

- (1) A question as to the payment of compensation that is payable to —
  - (a) a person under a legal disability to give an effective discharge for payment; or
  - (b) a dependant or dependants of a deceased worker,may be determined on application under this Part as a dispute.
- (2) An arbitrator may order that compensation that is payable to a person under a legal disability to give an effective discharge for payment is to be paid to WorkCover WA and applied in the manner specified in the order.
- (3) An arbitrator may order that all or any of the compensation that is payable to a dependant or dependants of a deceased worker —
  - (a) is to be paid to WorkCover WA and applied in the manner specified in the order; or
  - (b) is to be paid to a dependant or dependants of the deceased worker as specified in the order.
- (4) After it has been ordered under subsection (2) or (3)(a) that compensation be paid to WorkCover WA, a question as to —
  - (a) whether the compensation should be applied differently; or
  - (b) if the order was under subsection (3)(a), whether all or any of the compensation should be paid to a dependant or dependants of the deceased worker,may be determined on application under this Part as a dispute.
- (5) An arbitrator may make such orders under subsections (1) and (4) as the arbitrator thinks fit.

### **Subdivision 3 — Enforcement of decisions**

#### **219. Enforcement of decisions**

- (1) A person to whom money is to be paid under a decision of an arbitrator may enforce the decision by filing in a court of competent jurisdiction —
  - (a) a copy of the decision that the Director has certified to be a true copy; and
  - (b) an affidavit as to the amount not paid under the decision.
- (2) No charge is to be made for filing a copy of a decision or affidavit under this section.
- (3) On filing, the decision is to be taken to be an order of that court, and may be enforced accordingly, and section 142(1) of the *Supreme Court Act 1935* applies to the amount not paid under the decision as if it were payable under a judgment of the court.

### **Division 6 — Miscellaneous**

#### **220. Evidence not admissible in common law proceedings**

Evidence of a statement made in a proceeding before an arbitrator is not admissible in an action brought by a worker for damages independently of this Act unless the person who made the statement agrees to the evidence being admitted.

#### **221. Payment of compensation awarded**

A sum awarded as compensation, unless paid into the custody of WorkCover WA and in the absence of any order to the contrary, is to be paid to the person to whom it is payable under any agreement, award, or order.

#### **222. Interest before order for payment**

- (1) In any proceeding before an arbitrator, the arbitrator may order that there is to be included, in any sum to be paid, interest on the whole or any part of the sum for the whole or any part of the period before the sum is payable.
- (2) Interest payable under an order made under subsection (1) is to be calculated at a rate prescribed by or determined under the regulations.
- (3) This section does not —
  - (a) authorise the giving of interest upon interest; or
  - (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.

#### **223. Interest after order for payment**

- (1) Unless an arbitrator orders in any particular case that interest is not payable, interest is payable on so much of the amount of any sum ordered to be paid by an arbitrator as is from time to time unpaid.
- (2) Interest payable under subsection (1) in respect of any sum ordered to be paid —
  - (a) is to be calculated as from the date when the order was made or from such later date as an arbitrator in any particular case fixes;

- (b) is to be calculated at a rate prescribed by or determined under the regulations; and
  - (c) forms part of the sum ordered to be paid, but not so as to require the payment of interest on interest.
- (3) Despite subsections (1) and (2), where an amount ordered to be paid is paid in full within the period prescribed or determined under the regulations, interest is not payable on the amount so paid.

**224. Interest on agreed payment of lump sum compensation**

- (1) An arbitrator may order, in accordance with the regulations, that interest is payable on so much of the amount of any sum agreed to be paid under this Act as is from time to time unpaid.
- (2) Interest payable under subsection (1) in respect of any sum so agreed to be paid —
  - (a) is to be calculated as from the date provided by the agreement as the date when the sum is due to be paid or, if the agreement does not so provide, the date that is 21 days after the date the agreement was made;
  - (b) is to be calculated at a rate prescribed by or determined under the regulations; and
  - (c) forms part of the sum agreed to be paid, but not so as to require the payment of interest on interest.

**225. Regulations may exclude interest**

Interest is not payable under section 222, 223 or 224 in the circumstances prescribed in the regulations.

## **Part XII — Interim orders and minor claims**

### **Division 1 — Preliminary**

**226. Interpretation**

In this Part —

“**statutory expenses**” means a compensation entitlement under clause 17.

**227. Exercise of functions under this Part**

- (1) Without limiting section 198, an arbitrator may make a decision under this Part on the basis of —
  - (a) documents and information provided when the relevant application was made; and
  - (b) advice given to the arbitrator by an officer of the DRD.
- (2) An arbitrator is not to conduct a formal hearing under this Part.
- (3) An arbitrator is not required to give reasons in writing for a decision under this Part.
- (4) A decision under this Part is not subject to an appeal or amenable to judicial review.

**228. Provisions of Part XI apply**

Except where provision to the contrary is made in this Part or in the DRD Rules, the provisions of Part XI apply to and in relation to proceedings and decisions under this Part.

**229. Arbitrator may direct that matter be dealt with under Part XI**

An arbitrator may direct that a matter under this Part, or a matter referred under section 184 to be dealt with under this Part, is to be dealt with instead under Part XI.

**230. DRD Rules apply**

- (1) An application under this Part is to be made in the manner, and is to include the information, prescribed by the DRD Rules.
- (2) The giving of directions and orders under this Part is subject to the provisions of the DRD Rules relating to those directions and orders.

**Division 2 — Interim payment orders**

**231. Application for interim payment order**

- (1) An application for an order as to payment of weekly payments before liability for those weekly payments is otherwise determined under this Act may be made under this Division by a worker at any time after —
  - (a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 178(1)(b); and
  - (b) the worker suffering the injury has served on the employer a certificate signed by a medical practitioner —
    - (i) in or to the effect prescribed by the regulations containing substantially the information sought in the form; or
    - (ii) to the effect that the worker is unfit for work because of a recurrence of an injury in respect of which a certificate as first referred to has previously been served.
- (2) An application for an order as to payment of statutory expenses before liability for those expenses is otherwise determined under this Act may be made by a worker at any time after —
  - (a) a claim for compensation by way of payment of statutory entitlements has been made on an employer in accordance with section 178(1)(b); and
  - (b) the worker suffering the injury has served on the employer a certificate in or to the effect prescribed and signed by a medical practitioner to the effect that the expenses claimed are expenses incurred by the worker for treatment or services required in relation to the injury.

**232. Orders for interim weekly payments**

- (1) Subject to section 234, if —
  - (a) a period of not less than 21 days has elapsed since a worker served on the worker's employer the documents referred to in section 231(1); and
  - (b) the worker has not received the first of the weekly payments claimed,

an arbitrator may order the employer to pay weekly payments to the worker.

- (2) An order under subsection (1) is referred to in this Division as an **“interim payment order”**.
- (3) An arbitrator may make an interim payment order for weekly payments of compensation on an application under this Division unless it appears to the arbitrator that —
  - (a) the claim concerned would have minimal prospects of success under Part XI;
  - (b) insufficient medical evidence is available concerning the nature or period of incapacity of the worker; or
  - (c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.
- (4) An interim payment order can be made subject to conditions.
- (5) A further interim payment order can be made after the expiry of any earlier order.

**233. Orders for interim payment of statutory expenses**

- (1) Subject to section 234, if —
  - (a) a period of not less than 21 days has elapsed since a worker served on the worker’s employer the documents referred to in section 231(2); and
  - (b) the worker has not received the statutory expenses claimed,an arbitrator may order the employer to pay statutory expenses to the worker.
- (2) An order under subsection (1) is referred to in this Division as an **“interim payment order”**.
- (3) An arbitrator may make an interim payment order for statutory expenses unless it appears to the arbitrator that —
  - (a) the claim concerned would have minimal prospects of success under Part XI;
  - (b) insufficient evidence is available as to whether or not the expenses claimed are reasonable; or
  - (c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.
- (4) An interim payment order can be made subject to conditions.
- (5) A further interim payment order can be made after the expiry of any earlier order.

**234. Limits on interim payment orders**

- (1) An arbitrator is not to order the payment of weekly payments of compensation for a period that exceeds 12 weeks.
- (2) An arbitrator may order payment of weekly payments during a period that is before the order is made, but that period is not to exceed 10 weeks.
- (3) An arbitrator is not to make an interim payment order for payment of statutory expenses for an amount that is more than 5% of the prescribed amount.

**235. Effect of interim payment order**

- (1) The payment of compensation in accordance with an interim payment order —
  - (a) is not an admission of liability by the person paying the compensation; and
  - (b) does not prevent a question of liability from being heard and determined on an application under section 58 or otherwise under this Act as if the compensation had not been paid.
- (2) Refusal to make an interim payment order is not a finding as to liability in respect of the matter concerned.

**236. Recovery of payments**

If an arbitrator subsequently determines that a person is not liable to pay compensation by way of the weekly payments or statutory expenses that have been paid in accordance with an interim payment order, the following provisions apply —

- (a) the worker or other person who received that compensation is not required to refund the compensation unless the arbitrator otherwise orders under paragraph (b);
- (b) if the arbitrator is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, the arbitrator may order the worker or other person concerned to refund the whole or a specified part of the compensation;
- (c) the arbitrator may (instead of making an order for a refund) order any other person whom the arbitrator determines was liable for the whole or any part of the compensation to reimburse the person who paid the compensation;
- (d) the compensation is to be excluded from any determinations of the claims experience of the employer for the purposes of calculating the premium payable by the employer for a policy of insurance.

**237. Revocation of interim payment order**

- (1) An arbitrator may revoke an interim payment order at any time.
- (2) When an interim payment order is revoked the obligation to pay compensation under the order ceases.
- (3) The revocation of an interim payment order does not affect the requirement to pay the compensation before the revocation.
- (4) Revocation of, or refusal to revoke, an interim payment order is not a finding as to liability in respect of the matter concerned.

**Division 3 — Interim suspension or reduction orders**

**238. Interim suspension or reduction order**

- (1) An application for an order suspending or reducing weekly payments may be made under this Division by an employer —
  - (a) at the same time as lodging an application under Part XI in respect of the same matter (the “**Part XI application**”); or

- (b) after lodging an application under Part XI in respect of the same matter (the “**Part XI application**”) and before that application is determined.
- (2) The arbitrator may order that a specified number of weekly payments are suspended or reduced but is not to suspend or reduce more than 12 weekly payments.
- (3) An order under subsection (2) is referred to in this Division as an “**interim suspension order**” or an “**interim reduction order**”, as the case requires.
- (4) The arbitrator may make the interim suspension or reduction order unless it appears to the arbitrator that —
  - (a) the Part XI application has minimal prospects of success; or
  - (b) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.
- (5) An interim suspension or reduction order can be made subject to conditions.
- (6) A further interim suspension or reduction order can be made after the expiry of any earlier order.

**239. Effect of Part XI determination on the same matter as a matter determined under this Division**

- (1) If —
  - (a) an interim suspension order is made under section 238(2); and
  - (b) an arbitrator dismisses the Part XI application,the weekly payments of the worker during the period of suspension are to be paid.
- (2) If —
  - (a) an interim suspension order is made under section 238(2); and
  - (b) on the Part XI application an arbitrator orders that the weekly payments be increased or reduced,the weekly payments of the worker during the period of suspension are to be paid as if the order under Part XI had effect during that period.
- (3) If —
  - (a) an interim reduction order is made under section 238(2); and
  - (b) on the Part XI application an arbitrator dismisses the application or orders that the weekly payments be increased,the weekly payments of the worker during the period of reduction are to be paid as if the order under Part XI had effect during that period.
- (4) Nothing in this Division affects the operation of section 71 in relation to a determination under Part XI of an application in respect of the same matter as an application that has been dismissed under this Division.

**240. Revocation of interim suspension or reduction order**

- (1) An arbitrator may revoke an interim suspension or reduction order at any time.
- (2) When an interim suspension order is revoked —
  - (a) the obligation to make weekly payments recommences from the date on which the suspension is revoked; and
  - (b) the worker is to be paid the weekly payments that were not paid during the period of suspension unless the arbitrator orders otherwise.
- (3) When an interim reduction order is revoked —
  - (a) the obligation to make weekly payments as if the interim reduction order had not been made recommences from the date on which the interim reduction order is revoked; and
  - (b) the worker is to be paid any amount of weekly payments to which the worker would have been entitled if the interim reduction order had not been made unless the arbitrator orders otherwise.
- (4) Revocation of, or refusal to revoke, an interim suspension or reduction order is not a finding as to liability in respect of the matter concerned.

**Division 4 — Expedited determination of minor claims**

**241. Application for determination of minor claim**

- (1) An application for an order as to payment of not more than 12 weekly payments in respect of a period prior to the application may be made under this Division by a worker at any time after —
  - (a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 178(1)(b); and
  - (b) the worker suffering the injury has served on the employer a certificate signed by a medical practitioner —
    - (i) in or to the effect prescribed by the regulations containing substantially the information sought in the form; or
    - (ii) to the effect that the worker is unfit for work because of a recurrence of an injury in respect of which a certificate as first referred to has previously been served.
- (2) An application for an order as to payment of statutory expenses not exceeding 5% of the prescribed amount may be made by a worker at any time after —
  - (a) a claim for compensation under this Act by way of payment of statutory entitlements has been made on an employer in accordance with section 178(1)(b); and
  - (b) the worker suffering the injury has served on the employer a certificate in or to the effect prescribed by the regulations and signed by a medical practitioner to the effect that the expenses claimed are expenses incurred by the worker for treatment or services required in relation to the injury.



- (3) If —
  - (a) a period of not less than 21 days has elapsed since a worker served on the worker's employer the documents referred to in subsection (1) or (2), as the case requires;
  - (b) the worker has not received the first of the weekly payments or the statutory expenses claimed; and
  - (c) an arbitrator is satisfied that the worker is entitled to some or all of the compensation claimed,the arbitrator may order the employer to pay the compensation to which it appears to the arbitrator the worker is entitled.
- (4) An arbitrator may make an order for weekly payments of compensation unless it appears to the arbitrator that —
  - (a) the claim would have minimal prospects of success under Part XI;
  - (b) insufficient medical evidence is available concerning the nature or period of incapacity of the worker; or
  - (c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.
- (5) An arbitrator may make an order for payment of statutory expenses unless it appears to the arbitrator that —
  - (a) the claim concerned would have minimal prospects of success under Part XI;
  - (b) insufficient evidence is available as to whether or not the expenses claimed are reasonable; or
  - (c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.

**242. Limits on minor claims orders**

- (1) An arbitrator is not to order the payment of weekly payments of compensation for a period that exceeds the period set out in the application.
- (2) An arbitrator is not to make an order for payment of statutory expenses for an amount that exceeds the amount set out in the application.

**243. No recovery of compensation**

A worker cannot be required to refund compensation paid to the worker under this Division.

**244. Production of documents**

A worker or an employer may make an application under this Division for an order as to the production of documents, material or information under section 70 or 180 and an arbitrator may make the order accordingly.

## **Part XIII — Questions of law and appeals**

**245. Application of Part XI**

- (1) Unless the contrary intention appears in this Part —
  - (a) the provisions of Part XI apply to and in relation to the exercise of jurisdiction of the Commissioner under this

Part as if references in Part XI to an arbitrator were references to the Commissioner; and

- (b) in the exercise of jurisdiction under this Part the Commissioner has and may exercise or perform all of the powers, duties, responsibilities, authorities and jurisdictions of an arbitrator.
- (2) A party to a proceeding or a witness appearing before the Commissioner has the same duties and responsibilities as a party to a proceeding or a witness appearing before an arbitrator.
- (3) A person representing a party in a proceeding before the Commissioner has the same duties and responsibilities as a person representing a party in a proceeding before an arbitrator.

**246. Reference of question of law to Commissioner**

- (1) A novel or complex question of law arising in a proceeding before an arbitrator under Part XI may be referred by the arbitrator for the determination of the Commissioner.
- (2) A question of law arising in a proceeding before an arbitrator under Part XI may, with the leave of the Commissioner, be referred by a party to the proceeding for the determination of the Commissioner.
- (3) The Commissioner is not to grant leave unless satisfied that the question involves a novel or complex question of law.
- (4) The reference of a question of law under this section may be by stating a case on a question of law.
- (5) On hearing a matter referred under this section, the Commissioner has jurisdiction to make such orders as the Commissioner thinks fit with regard to the matter and to the costs of and incidental to the hearing and determination of it.

**247. Appeal against decision of arbitrator**

- (1) A party to a dispute may, with the leave of the Commissioner, appeal to the Commissioner against a decision in respect of the dispute by an arbitrator under Part XI.
- (2) Subject to subsection (3), the Commissioner is not to grant leave to appeal unless —
  - (a) in the case of an appeal in which an amount of compensation is at issue —
    - (i) a question of law is involved and the amount at issue in the appeal is both —
      - (I) at least \$5 000 or such other amount as may be prescribed by the regulations; and
      - (II) at least 20% of the amount awarded in the decision appealed against;
    - or
    - (ii) a question of law is involved and, in the opinion of the Commissioner, the matter is of such importance that, in the public interest, an appeal should lie;

and

- (b) in any other case, a question of law is involved.
- (3) The Commissioner may grant leave to appeal from a decision of an arbitrator on a matter referred under section 93D(10) if the appeal involves a question of law.
- (4) An appeal cannot be made later than 28 days after the making of the decision appealed against.
- (5) An appeal under this section is to be by way of review of the decision appealed against.
- (6) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the decision appealed against cannot be given on an appeal to the Commissioner except with the leave of the Commissioner.
- (7) On hearing an appeal made under this section, the Commissioner may —
  - (a) affirm, vary, or quash the decision appealed against, or substitute, and make in addition, any decision that should have been made in the first instance; and
  - (b) subject to section 267, make any further or other decision, as to costs or otherwise, as the Commissioner thinks fit.

**248. Commencing appeal**

- (1) A person appealing to the Commissioner against a decision of an arbitrator is to do so in accordance with this Act.
- (2) An appeal commences when the application is accepted by the Director.

**249. Commissioner hearing to be held in public**

- (1) Unless otherwise provided under this Act, hearings of the Commissioner are to be held in public.
- (2) On the application of a party or on its own initiative the Commissioner may, in the circumstances described in subsection (3), order that a hearing or any part of it be held in private.
- (3) The Commissioner may make an order under subsection (2) if the Commissioner considers it is necessary to do so —
  - (a) to avoid prejudicing the administration of justice;
  - (b) to avoid endangering the physical or mental health or safety of any person;
  - (c) to avoid the publication of confidential information or information the publication of which would be contrary to the public interest; or
  - (d) for any other reason in the interests of justice.

**250. Effect of decision against which appeal made**

- (1) The Commissioner may, by order, stay the operation of a decision of an arbitrator pending the determination of an application for leave to appeal from the decision and of any appeal.
- (2) Subject to any order made by the Commissioner, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement the decision.

**251. Commissioner may state case**

- (1) When a question of law arises before the Commissioner, the Commissioner may state a case for the decision of the Full Court of the Supreme Court on that matter.
- (2) A case may be stated under this section despite a decision having been made or given by the Commissioner.

**252. Indemnity as to costs**

- (1) If the Commissioner has stated a case for the decision of the Full Court of the Supreme Court, the Commissioner may in the Commissioner's absolute discretion indemnify any of the parties against the costs or part of the costs of the proceedings resulting from a case being stated.
- (2) Any moneys payable to a party by reason of an indemnity under subsection (1) when certified by the Commissioner as payable are to be paid by WorkCover WA from moneys standing to the credit of the General Fund.

**253. Decisions of Commissioner**

- (1) Except as otherwise provided by this Act a decision of the Commissioner —
  - (a) is final and binding on the parties and is not subject to an appeal; and
  - (b) is not to be vitiated because of any informality or want of form.
- (2) A decision of the Commissioner or anything done under this Act in the process of coming to a decision of the Commissioner is not amenable to judicial review.
- (3) The Commissioner may reconsider any matter that has been dealt with by the Commissioner and rescind, alter or amend any decision previously made or given by the Commissioner.

**254. Appeal against decision of Commissioner**

- (1) A party to a proceeding before the Commissioner may by leave of the Supreme Court appeal to the Supreme Court from a decision of the Commissioner in the proceeding on a question of law.
- (2) The appeal is to be heard and determined by the Full Court of the Supreme Court.
- (3) The Supreme Court may —
  - (a) affirm, vary, or set aside the decision of the Commissioner;
  - (b) make any decision that the Commissioner could have made in the proceeding; or
  - (c) send the matter back to the Commissioner for reconsideration, either with or without the hearing of further evidence, in accordance with any directions or recommendations that the Court considers appropriate,and, in any case, may make any order the Court considers appropriate.

- (4) An appeal, or an application for leave to appeal, is to be made in accordance with the rules of the Supreme Court and within the period of 28 days after —
  - (a) the day on which the Commissioner's decision is given; or
  - (b) if the Commissioner gives a decision that is not in writing and the party then requests the Commissioner to give a written decision, the day on which the written reasons are given.
- (5) If leave is granted, the appeal is to be instituted in accordance with the rules of the Supreme Court and within the period of 21 days after the day on which leave is granted.
- (6) The Supreme Court may extend a time limit fixed by this section, and the extension may be given even though the time limit has passed.

## **Part XIV — Offences**

### **255. Failing to comply with decision**

- (1) A person who fails to comply with a decision of a dispute resolution authority commits an offence.  
Penalty: \$5 000.
- (2) Subsection (1) does not apply if, or to the extent that —
  - (a) the person is excused by section 206 from complying with that decision;
  - (b) the person has a reasonable excuse (other than an excuse mentioned in section 204(1) or 205) for failing to comply with the decision; or
  - (c) the decision is an order of the dispute resolution authority requiring the payment of money.
- (3) If the dispute resolution authority made the decision without giving a person an opportunity to be heard, subsection (1) only applies to that person on the person being given personally or in accordance with subsection (4) —
  - (a) a copy of the decision that the Director has certified to be a true copy; and
  - (b) a copy of this section.
- (4) If a dispute resolution authority is satisfied that it is not possible or appropriate for a person to be personally given the documents referred to in subsection (3), the dispute resolution authority may specify another method for service of the documents on the person under that subsection.

### **256. Failing to comply with summons**

A person who, without reasonable excuse, fails to comply with a summons issued by a dispute resolution authority under this Act commits an offence.

Penalty: \$2 000.

### **257. Failing to give evidence as required**

A person appearing before a dispute resolution authority commits an offence if the person —

- (a) refuses to swear an oath or make an affirmation or statutory declaration when required by the dispute resolution authority to do so; or
- (b) when required by a dispute resolution authority to give evidence that the person is competent and compellable to give, does not do so.

Penalty: \$2 000.

**258. Giving false or misleading information**

A person who gives to a dispute resolution authority information knowing it to be false or misleading in a material particular commits an offence.

Penalty: \$5 000.

**259. Misbehaviour and other conduct**

A person who —

- (a) insults, or obstructs or hinders the performance of the functions of, a dispute resolution authority;
- (b) insults, obstructs or hinders a person attending a hearing before a dispute resolution authority;
- (c) misbehaves at a hearing before a dispute resolution authority;
- (d) interrupts a hearing before a dispute resolution authority; or
- (e) obstructs or hinders a person from complying with an order or direction of a dispute resolution authority or a summons to attend before the dispute resolution authority,

commits an offence.

Penalty: \$2 000.

**260. Contempt of Commissioner**

- (1) If the Commissioner is satisfied that an act or omission of a person would constitute a contempt of the Court if a proceeding of the Commissioner were a proceeding in the Supreme Court, the Commissioner may report that act or omission to the Supreme Court and the Court has jurisdiction to deal with the matter as if it were a contempt of that Court.
- (2) If —
  - (a) subsection (1) applies to an act or omission by a person and that act or omission is also an offence under this Part; and
  - (b) the person has been dealt with under subsection (1) for the act or omission,

the person is not liable to be punished for the offence under this Act.

## **Part XV — Costs**

### **Division 1 — General**

**261. Terms used in this Part**

In this Part —

“**agent**” means a person who acts as agent for a person in connection with a dispute under this Act;

“**agent service**” means any service performed by a person —

- (a) in the person’s capacity as an agent; and
- (b) in or for the purposes of a proceeding before a dispute resolution authority;

“**costs**” means —

- (a) costs of a party (including fees, charges and disbursements);
- (b) costs of a proceeding; and
- (c) such other costs as may be prescribed by regulation;

“**costs determination**” means a determination published under section 273;

“**costs of a proceeding**” means costs of, or incidental to, a proceeding of a dispute resolution authority, other than costs of a party, or costs of the kind referred to in section 31D(5) and clause 18C(2) in relation to an approved medical specialist panel;

“**legal service**” means any service performed by a person —

- (a) in the person’s capacity as a legal practitioner; and
- (b) in or for the purposes of a proceeding before a dispute resolution authority.

**262. Costs to which this Part applies**

- (1) This Part applies to and in respect of costs payable on a party and party basis, on a practitioner and client basis or on any other basis, unless this Part or a regulation otherwise provides.
- (2) The regulations may make provision for or with respect to excluding any class of matters from any or all of the provisions of this Part.

**263. This Part prevails over *Legal Practice Act 2003***

This Part and any regulations under this Part prevail to the extent of any inconsistency with the *Legal Practice Act 2003*, and in particular Part 13 of that Act.

**Division 2 — Costs of parties in proceedings and costs of proceedings**

**264. Costs to be determined by dispute resolution authority**

- (1) Subject to this Division, costs are in the discretion of the relevant dispute resolution authority.
- (2) A dispute resolution authority may determine by whom, to whom and to what extent costs are to be paid.
- (3) A dispute resolution authority may order costs to be assessed on the basis set out in Part 13 Division 3 of the *Legal Practice Act 2003* (or in relevant regulations under section 268) or on an indemnity basis.
- (4) Any party to a proceeding may apply to a dispute resolution authority for an order as to costs.
- (5) A dispute resolution authority is not to order the payment of costs by a worker unless the dispute resolution authority is satisfied that

the costs relate to an application made by the worker that was frivolous or vexatious, fraudulent or made without proper justification.

- (6) If a dispute resolution authority is satisfied that a part only of the application was frivolous or vexatious, fraudulent or made without proper justification, the dispute resolution authority may order the worker to pay the costs relating to that part of the application.
- (7) Without limiting section 265, the regulations may make provision in relation to the making of orders for the payment by a party of the costs of another party so as to —
  - (a) promote the early settlement of issues and disputes by agreement; and
  - (b) discourage unnecessary delay, excessive attendances and excessive preparation of documentation.

**265. Costs unreasonably incurred by representative**

- (1) If in any proceeding before a dispute resolution authority or in any matter under this Act which is resolved by agreement, costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, of a legal practitioner or agent representing a party (the “**representative**”), a dispute resolution authority may make an order —
  - (a) disallowing the costs, as between the representative and the client;
  - (b) directing the representative to repay the client costs which the client has been ordered to pay to any other party to the proceeding; and
  - (c) directing the representative personally to indemnify any other person than the client against costs payable by the person indemnified.
- (2) A dispute resolution authority may by order exempt any costs or proportion of any costs from the operation of this section if of the opinion that it would be unjust not to do so because the representative concerned made all reasonable efforts to avoid unnecessary litigation in the proceeding or for any other reason should not be held responsible for the incurring of the costs concerned.

**266. Agent’s costs**

An agent is not entitled to be paid or recover any amount for an agent service unless the agent is a registered agent.

**267. Appeal costs**

Despite section 264 —

- (a) an order for costs on the ground that an appeal was successful is not to be made by the Commissioner against a worker; and
- (b) if the appellant is a worker and is unsuccessful on an appeal, the Commissioner is not to make an order for the payment of the appellant’s costs on the appeal by any other party to the appeal.



**268. Regulations for assessment of costs**

- (1) If a dispute resolution authority makes an order for the payment of costs and does not fix the amount of costs, that amount is to be assessed or settled in accordance with the regulations.
- (2) Without limiting subsection (1), the regulations may —
  - (a) make provision for or with respect to any matter for or in connection with which provision is made by Part 13 Division 3 of the *Legal Practice Act 2003*;
  - (b) adopt, with or without modification, any of the provisions of Part 13 Division 3 of the *Legal Practice Act 2003*; and
  - (c) make provision for or with respect to the assessment of costs by an arbitrator or another officer of the DRD.
- (3) To the extent that regulations under this section make provision for the costs payable to a legal practitioner, those regulations displace the provisions of the *Legal Practice Act 2003*.

**Division 3 — Maximum costs**

**269. Costs Committee**

- (1) In this section —  
“**Legal Costs Committee**” means the Legal Costs Committee established under the *Legal Practice Act 2003*.
- (2) A committee called the Costs Committee is established.
- (3) The Costs Committee is to be constituted by the following members —
  - (a) a presiding member who is to be a member of WorkCover WA;
  - (b) one or more other members of WorkCover WA; and
  - (c) 2 members of the Legal Costs Committee nominated by the chairperson of that Committee.
- (4) The members are to be appointed by WorkCover WA.
- (5) If the chairperson of the Legal Costs Committee fails to nominate a member under subsection (3)(c) within 30 days after receiving a written request from WorkCover WA, WorkCover WA may appoint a person as a member for the purposes of subsection (3)(c) in place of a member of the Legal Costs Committee.

**270. Constitution and procedure of Costs Committee**

- (1) Subject to section 269, the constitution and procedure of, and other matters relating to, the Costs Committee —
  - (a) may be prescribed by the regulations;
  - (b) if not prescribed by the regulations, may be as directed in writing by WorkCover WA.
- (2) To the extent that the procedure of the Costs Committee is not prescribed by the regulations or directed by WorkCover WA, the Costs Committee may determine its own procedure.

**271. Costs determination**

- (1) The Costs Committee may make a determination —

- (a) fixing maximum costs for legal services and agent services;
  - (b) fixing maximum costs for matters that are not legal services or agent services but are related to a claim for compensation (for example, expenses for witnesses or medical reports).
- (2) A provision of the determination —
  - (a) may authorise any matter or thing to be determined, applied or regulated by a specified person or body;
  - (b) may fix a cost or amount by reference to a cost or amount fixed by a legal costs determination under the *Legal Practice Act 2003*.
- (3) The power under this section to make a determination for services or matters includes power to make a determination that no amount is recoverable for a particular service or matter or class of services or matters, with the result that a legal practitioner or agent is not entitled to be paid or recover any amount for the service or matter concerned.
- (4) A costs determination may be amended or revoked by a subsequent costs determination.

**272. Consultation**

- (1) Before making a determination the Costs Committee may —
  - (a) publish notice of its intention and consider any submissions made to it in respect of the proposed determination; and
  - (b) make such other inquiries as it considers necessary to facilitate the making of the determination.
- (2) In making a determination the Costs Committee —
  - (a) is not bound by the rules of evidence and may inform itself as it thinks fit; and
  - (b) is not required to conduct any proceeding in a formal manner.

**273. Approval and publication of determination**

- (1) The Costs Committee is to report to the Minister —
  - (a) a determination under section 271; and
  - (b) the reasons for its decisions in respect of the determination.
- (2) If the Minister approves the determination, the determination is to be published in the *Gazette*.
- (3) A costs determination takes effect on and from —
  - (a) the day on which it is published in the *Gazette*; or
  - (b) if a later day is specified in the determination, the later day.
- (4) Judicial notice is to be taken of —
  - (a) a costs determination published in the *Gazette*; and
  - (b) the day of publication of the determination.

**274. Effect of costs determination**

- (1) A legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any maximum costs fixed for the service or matter by a costs determination.
- (2) An agent is not entitled to be paid or recover for an agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by a costs determination.
- (3) This section does not entitle a legal practitioner or agent to recover costs for a legal service or matter that a dispute resolution authority determines were unreasonably incurred.

**275. Agreement as to costs**

- (1) An agreement is not to be made for a legal practitioner or agent to receive, for any legal service or agent service, any greater reward than is provided for in a costs determination.
- (2) An agreement made contrary to this section is void.

**276. Division does not apply to Part IV proceedings**

Nothing in this Division affects the operation of section 87 in relation to an action for damages independently of this Act.

## **Part XVI — Registered agents**

**277. Who may register as an agent**

- (1) This section applies to the following persons —
  - (a) an officer of an organisation as defined in the *Industrial Relations Act 1979*;
  - (b) an officer of an association of employers or employees registered under the *Workplace Relations Act 1996* of the Commonwealth;
  - (c) a person employed by an insurer or self-insurer;
  - (d) a person (other than a legal practitioner) employed by a legal practitioner or an incorporated legal practice;
  - (e) an employee or officer of an organisation prescribed by the regulations;
  - (f) a person, or a person in a class of persons, prescribed by the regulations.
- (2) A person to whom this section applies may apply for registration as an agent in accordance with the regulations.
- (3) Regulations are to —
  - (a) provide for a scheme of registration of persons for the purposes of this section and the procedure for obtaining registration;
  - (b) prescribe the circumstances in which, and the procedures by which, a person may be refused registration, or registered subject to conditions, or the registration may be suspended or cancelled;
  - (c) provide for applications for review by the State Administrative Tribunal of decisions refusing, suspending or cancelling registration or imposing conditions upon registration; and

- (d) provide for any other matter necessary or convenient to be prescribed for the purposes of this section.
- (4) A person is not to be registered under this section unless that person can demonstrate that the person has professional indemnity insurance, or has sufficient material resources, of a kind prescribed by the regulations to provide professional indemnity.

## **Part XVII — The Dispute Resolution Directorate**

### **Division 1 — Establishment and objectives**

#### **278. DRD established**

A directorate called the Dispute Resolution Directorate is established.

#### **279. Main objectives of the DRD**

- (1) The main objectives of the DRD are —
  - (a) to provide a fair and cost effective system for the resolution of disputes under this Act;
  - (b) to reduce administrative costs across the workers' compensation system;
  - (c) to provide a dispute resolution service that —
    - (i) is timely and ensures that workers' entitlements are paid promptly;
    - (ii) meets user expectations in relation to accessibility, approachability and professionalism;
    - (iii) is effective in settling matters;
    - (iv) leads to durable agreements between the parties in accordance with this Act;and
  - (d) to establish effective communication and liaison with interested parties concerning the role of the DRD.
- (2) In exercising their functions, the Commissioner, the arbitrators, the Director, and other officers of the DRD are to have regard to the DRD's objectives.

#### **280. DRD's constitution**

The following persons constitute the DRD —

- (a) the Commissioner;
- (b) the Director;
- (c) the arbitrators;
- (d) other officers of the DRD.

### **Division 2 — Commissioner**

#### **281. Appointment of Commissioner**

- (1) A person is to be appointed as the Commissioner by the Governor on the recommendation of the Minister.
- (2) A person cannot be the Commissioner unless the person is a Judge of the District Court.

- (3) Before recommending a person for appointment as the Commissioner, the Minister is to consult the Chief Justice of Western Australia and the Chief Judge of the District Court.

**282. Terms and conditions of service**

Schedule 8 has effect with respect to the tenure, remuneration and conditions of service of the Commissioner and other matters provided for in that Schedule.

**283. Declaration of inability to act**

The Commissioner may declare himself unable to act in respect of a particular matter by reason of —

- (a) an actual or potential conflict of interest; or
- (b) having to perform other functions under this Act.

**284. Acting appointment**

- (1) The Governor may appoint a person who is a Judge of the District Court, or is eligible for appointment as a Judge of the District Court, to act in the office of Commissioner —
  - (a) during a vacancy in that office;
  - (b) during any period or during all periods when the person holding the office of Commissioner, or a person appointed under this subsection, is unable to perform the functions of that office or is absent from the State; or
  - (c) in relation to any matter in respect of which the person holding the office of Commissioner, or a person appointed under this subsection, has under section 283 declared himself unable to act.
- (2) An appointment under this section —
  - (a) may be made at any time and may be terminated at any time by the Governor; and
  - (b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (3) If a person appointed under this section is a Judge of the District Court, Schedule 8 clause 3 has effect in relation to the person.
- (4) A person acting under this section for the reason mentioned in subsection (1)(c) may perform functions of the Commissioner in relation to the matter for which the person is appointed even though the Commissioner is at the same time performing other functions of the office.
- (5) If a person is acting under this section for the reason mentioned in subsection (1)(c), a reference to the Commissioner in a provision of this Act that is relevant to the performance by that person of a function of the Commissioner in relation to the matter for which that person is appointed includes a reference to that person.
- (6) The validity of anything done by or in relation to a person purporting to act under this section is not to be called into question on the ground that —
  - (a) the occasion for an appointment under this section had not arisen;
  - (b) there is a defect or irregularity in the appointment;

- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

**285. Functions of Commissioner**

The Commissioner has the functions conferred under this Act or any other written law.

**Division 3 — Arbitrators**

**286. Arbitrators**

- (1) Arbitrators are to be officers of WorkCover WA.
- (2) A person is not to become an arbitrator without the approval of the Minister.
- (3) A person cannot be approved as an arbitrator unless the person is a legal practitioner.

**287. Control and direction of arbitrators**

- (1) An arbitrator is, in the exercise of his functions, subject to the general control and direction of the Director.
- (2) An arbitrator is not subject to direction as to the decision to be given in a particular matter.

**Division 4 — Director Dispute Resolution and staff**

**288. Director Dispute Resolution**

- (1) The Director Dispute Resolution is to be an officer of WorkCover WA.
- (2) A person is not to become the Director Dispute Resolution without the approval of the Minister.
- (3) A person is not eligible for approval as the Director Dispute Resolution unless the person is a legal practitioner.

**289. Functions and responsibilities of Director**

- (1) In addition to the Director's functions under this or any other written law, the Director has and may exercise all the functions of an arbitrator.
- (2) The Director is responsible for the administration of the DRD and the allocation of work to arbitrators.
- (3) The Director is subject to the general control and direction of the chief executive officer in relation to the administration of the DRD.
- (4) In matters concerning the resolution of disputes the Director is responsible directly to the Minister.

**290. Delegation by Director**

- (1) The Director may delegate to another officer of the DRD a power or duty given to the Director under this Act.
- (2) The Director is to make the delegation in writing signed by the Director.
- (3) An officer of the DRD to whom a power or duty is delegated under this section cannot delegate that power or duty.

- (4) An officer of the DRD exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Director to perform a function through an officer or agent.

**291. Staff of DRD**

- (1) The chief executive officer is to make officers of WorkCover WA available to assist, as officers of the DRD under the control of the Director, in the administration of the DRD and the exercise of the functions of the DRD.
- (2) Otherwise, the services and facilities of WorkCover WA may be used for the purposes of this Act on such terms as are agreed by the Director and the chief executive officer.

**Part XVIII — Regulations, rules and practice notes**

**292. Regulations**

- (1) The Governor may make regulations —
  - (a) prescribing such forms as may be necessary or expedient for the purposes of this Act;
  - (b) regulating the operations of the DRD and the persons who constitute the DRD;
  - (c) regulating the operations of medical assessment panels, approved medical specialist panels and specialised retraining assessment panels;
  - (d) with respect to matters of general or special application, which may apply to both employers and workers, for the prevention or minimising of occurrences of injuries in employment or places of employment in the State;
  - (e) providing for the allowances to be paid to witnesses, and the circumstances in which, and extent to which, they are to be paid from moneys standing to the credit of the General Fund;
  - (f) with respect to the implementation by medical practitioners who issue more than one certificate to a worker for the purposes of this Act of the code of practice (injury management) issued under section 155A(1);
  - (g) with respect to injury management and related matters;
  - (h) with respect to specialised retraining programs and related matters;
  - (i) prescribing penalties not exceeding \$1 000 for any non-compliance with or any contravention of any regulation;
  - (j) regulating the meetings and proceedings of WorkCover WA's governing body;
  - (k) prescribing the fees and expenses payable with respect to establishing and maintaining registers;
  - (l) prescribing scales of the maximum amount of commission or brokerage for insurance agents and

- brokers in respect of workers' compensation insurance business;
- (m) providing for any matters which by this Act are required or permitted to be prescribed or which may be necessary or convenient to prescribe (either generally or in any particular case) for giving effect to this Act.
- (2) The Governor, on the recommendation of WorkCover WA, may make regulations —
- (a) fixing scales of fees to be paid to —
    - (i) medical specialists and other medical practitioners;
    - (ii) dentists;
    - (iii) physiotherapists;
    - (iv) chiropractors;
    - (v) occupational therapists;
    - (vi) clinical psychologists;
    - (vii) speech pathologists; and
    - (viii) persons providing treatment of a kind approved for the purposes of the definition of “approved treatment” in section 5(1),  
for attendance on, and treatment of, workers suffering injuries that are compensable under this Act;
  - (b) fixing scales of fees to be paid to approved vocational rehabilitation providers.
- (3) The Governor, on the recommendation of WorkCover WA, may make regulations fixing scales of the maximum fees to be paid to approved medical specialists for making or attempting to make assessments referred to in Part VII Division 2.
- (4) WorkCover WA is not to recommend the making of a regulation under subsection (2) or (3) unless it has first negotiated with any body it considers has a relevant interest in the regulation.
- (5) Without limiting subsection (4), WorkCover WA is not to recommend the making of a regulation under subsection (2)(a)(i) unless it has first negotiated with the Australian Medical Association (WA) incorporated.
- (6) A regulation may require any matter or thing to be verified by statutory declaration.
- (7) Any regulations made under this section may adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act or under any Act of the Commonwealth or the United Kingdom, or any of the tables, standards, rules, codes or other specifications of any body specified in the regulations.

**293. DRD Rules**

- (1) The Commissioner may, after consultation with the Director, make rules of the DRD prescribing all matters that are required or permitted by this Act to be prescribed by the DRD Rules, or are necessary or convenient to be prescribed by the DRD Rules for giving effect to the purposes of this Act.



- (2) Without limiting subsection (1), DRD Rules may make provision for or with respect to —
  - (a) the organisation and management of the business of the DRD;
  - (b) the practice and procedure governing the jurisdiction, functions and proceedings of the Commissioner and arbitrators;
  - (c) limiting the number of medical reports in connection with a claim or any aspect of a claim and, in particular, limiting the number of medical reports that may be admitted in evidence in a proceeding before a dispute resolution authority;
  - (d) limiting the number of expert witnesses that may be called by any party and otherwise restricting the calling of expert witnesses by a party;
  - (e) the practice and procedure governing medical assessment panels, approved medical specialist panels and specialised retraining assessment panels; and
  - (f) records of the DRD.
- (3) A DRD Rule may require any matter or thing to be verified by statutory declaration.
- (4) DRD Rules —
  - (a) are rules of court under the *Interpretation Act 1984*;
  - (b) must be published in the *Gazette*;
  - (c) take effect from the date of publication or from any later date or dates that are specified in the rules; and
  - (d) must be laid before each House of Parliament within 6 sitting days of the House next following the publication of the rules.
- (5) If either House of Parliament passes a resolution, of which notice has been given at any time within 6 sitting days after the rules have been laid before it, disallowing the whole or a part of the rules, the rules or the part of it disallowed ceases to have effect.
- (6) If the whole or part of a rule is disallowed, the validity of any proceedings taken or of anything done under the rules or the part of it in the meantime is not affected.
- (7) If such a resolution is passed, notice of the fact must be published in the *Gazette* as soon as is practicable.

**294. Practice notes**

- (1) The Commissioner may issue practice notes about —
  - (a) the practice and procedure of the Commissioner;
  - (b) the practice and procedure of arbitrators; and
  - (c) the giving of orders under Part XII.
- (2) The Commissioner is to give the Minister a copy of each practice note the Commissioner issues as soon as practicable after issuing it.
- (3) A practice note is not a DRD Rule and does not form part of the DRD Rules.

”.

**132. Section 180 amended**

Section 180(a) is deleted and the following paragraphs are inserted instead —

“

- (a) the signature of a person who is, or was the Commissioner, an arbitrator or the Director;
- (aa) the fact that a person referred to in paragraph (a) is or was the Commissioner, an arbitrator or the Director, as the case requires;

”.

**134. Section 183 amended**

Section 183(1) is amended by deleting “Directorate” and inserting instead —

“ Director ”.

**136. Section 188A repealed**

Section 188A is repealed.

**139. Section 192A amended**

Section 192A(1)(b) is amended by deleting “section 93F” and inserting instead —

“ each of sections 93F and 93K ”.

**141. Schedule 1 amended**

- (1) Schedule 1 clause 1 is repealed and the following clauses are inserted instead —

“

**1. Death — dependants wholly dependent — notional residual entitlement**

- (1) Subject to subclauses (2) and (3), where death results from the injury and the worker leaves —
- (a) a dependant who —
    - (i) is not of a kind referred to in clause 1A; and
    - (ii) is wholly dependent upon the worker’s earnings;
  - or
  - (b) a child or step-child in respect of whom an election to receive the amount of a provisional apportionment has been registered under clause 1C,

or more than one of those persons, in respect and for the benefit only of all those dependants, a sum equal to the notional residual entitlement of the worker.

- (2) If death results from the injury and a worker dies leaving —
- (a) a spouse or de facto partner;
  - (b) a parent; or
  - (c) a child or step-child in respect of whom an election to receive the amount of a provisional apportionment has been registered under clause 1C,

or more than one of those persons, wholly dependent upon the worker's earnings, whether or not there are other dependants wholly dependent upon the worker's earnings, there is to be a minimum amount payable being a sum equal to the aggregate weekly payments for total incapacity of the worker at a rate calculated and varied in accordance with this Schedule as at the date of the worker's death for a period of one year after that date.

- (3) Subject to clause 1C, in the event of there being more than one dependant wholly dependent on a worker's earnings, the amount payable under this clause is to be apportioned between them as may be agreed upon or, in default of agreement, according to the respective financial losses of support suffered by them, which apportionment is to be determined on application under Part XI.

**1A. Death — dependants wholly dependent — child's allowance**

Subject to clause 1B, where death results from the injury and the worker leaves any dependants wholly dependent upon the worker's earnings —

- (a) in respect and for the benefit only of each of those dependants, if any, who is a child, or step-child, under the age of 16 years, a child's allowance weekly until the child or step-child attains the age of 16 years;
- (b) in respect and for the benefit only of each of those dependants, if any, who is a full-time student child, or step-child, and has attained the age of 16 years but is under the age of 21 years, a child's allowance weekly until the child or step-child attains the age of 21 years or ceases to be a full-time student whichever is the sooner;
- (c) in respect and for the benefit only of each of those dependants who is a child, or step-child, of any age, whether a full-time student or otherwise who, by reason of circumstances an arbitrator in the arbitrator's absolute discretion decides should receive continued support, a child's allowance weekly until such time as the arbitrator orders or until the child or step-child attains the age of 21 years whichever is the sooner.

**1B. Death — dependants wholly dependent — notional residual entitlement or child's allowance**

- (1) Where death results from the injury and the worker dies leaving —
- (a) a child or step-child of the worker wholly dependent upon the worker's earnings who, apart from this subclause, would be entitled to a child's allowance under clause 1A; and
  - (b) no spouse or de facto partner wholly dependent upon the worker's earnings,
- or where death results from the injury and the worker dies leaving —
- (c) a child or step-child of the worker wholly dependent upon the worker's earnings who, apart from this subclause, would be entitled to a child's allowance under clause 1A;

- (d) no spouse or de facto partner who is a parent of that child or step-child and who is wholly dependent upon the worker's earnings; and
- (e) a spouse or de facto partner who is not a parent of that child or step-child and who is wholly dependent upon the worker's earnings,

or more than one of those persons, in respect of and for the benefit of a dependant referred to in paragraph (a) or (c) — a child's allowance under clause 1A(a), (b) or (c) as the case may be, or an apportionment of the notional residual entitlement of the worker, as determined under clause 1C.

- (2) Where death results from the injury and the worker dies leaving a dependant wholly dependent upon the worker's earnings who —
  - (a) is not a dependant to whom subclause (1) applies; and
  - (b) apart from this clause, would be entitled to a child's allowance under clause 1A,

the compensation entitlement of that dependant is whichever of the following an arbitrator determines as likely to be in the best interests of that dependant —

- (c) a sum equal to 25% of the notional residual entitlement of the worker;
  - (d) a child's allowance under clause 1A(a), (b) or (c) as the case may be.
- (3) In the event of a sum being determined under subclause (2)(c) where there is more than one such dependant, the amount is to be apportioned between them as may be agreed or, in default of agreement, according to the respective financial losses of support suffered by them, which apportionment is to be determined by an arbitrator.

#### **1C. Determination of entitlement under clause 1B**

- (1) A dependant referred to in clause 1B(1)(a) or (c) is to be notified by the Director of the dependant's entitlement to elect to receive a child's allowance under clause 1A or an apportionment of the notional residual entitlement of the worker.
- (2) The dependant may, within 30 days of receiving the notification, elect in the manner prescribed by the regulations to receive the amount of the apportionment or a child's allowance under clause 1A.
- (3) If an election by a dependant referred to in clause 1B(1)(a) or (c) is not made under subclause (2) and registered by the Director, that dependant is to receive a child's allowance under clause 1A.
- (4) In the event of there being more than one dependant who elects to receive the apportionment under this clause, or who is otherwise entitled to receive an apportionment under clause 1, the compensation entitlement of each of those dependants is to be determined as follows —
  - (a) the amount of the notional residual entitlement is to be apportioned between them as may be agreed or, in default of agreement, an arbitrator is to determine the amount to be provisionally apportioned between each of the dependants, according to the respective financial

losses of support suffered by them and the arbitrator is to notify each of the dependants of the amount provisionally apportioned to that dependant;

- (b) any dependant referred to in clause 1B(1)(a) or (c) and notified under paragraph (a) may elect to receive the amount of the provisional apportionment or a child's allowance under clause 1A;
  - (c) if an election is not made under paragraph (b) in accordance with subclause (6) and registered by the Director —
    - (i) that dependant is to receive a child's allowance; and
    - (ii) an arbitrator is to reapportion the amounts to be paid to each dependant who is not receiving a child's allowance.
- (5) A notification for the purposes of subclause (1) or (4)(a) is to be given in the prescribed manner and form.
- (6) A dependant referred to in subclause (4)(b) may, within 30 days of receiving the notification, elect in the prescribed manner to receive the amount of the provisional apportionment or a child's allowance.
- (7) The Director may refuse to register an election of a dependant under this clause if not satisfied that the dependant has been independently advised of the financial consequences of the election.
- ”.
- (2) Schedule 1 clause 2 is amended by deleting “clause 1(2), (3), or (4)” in both places where it occurs and inserting instead —
- “ clause 1A ”.
- (3) Schedule 1 clause 3 is amended by deleting “clause 1(2), (3), or (4)” and inserting instead —
- “ clause 1A ”.
- (4) Schedule 1 clause 5 is amended as follows:
- ”;
- (b) in subclause (1)(a)(i) by deleting “if, before the *Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1999* commenced, a dispute resolution body” and inserting instead —
- “ an arbitrator ”.
- (5) Schedule 1 clause 7(4) is amended as follows:
- (b) by deleting “clause 17(1)” and inserting instead —
- “ clauses 17(1) and 18A(1c) ”.
- (6) Schedule 1 clause 7(6) is amended by deleting “a dispute resolution body made under section 157,” and inserting instead —
- “ an arbitrator made under section 156B, ”.
- (7) Schedule 1 clause 8 is amended as follows:
- (a) by deleting “satisfies a dispute resolution body” and inserting instead —

- “ satisfies an arbitrator ”;
  - (b) by deleting “a dispute resolution body may” and inserting instead —  
“ the arbitrator may ”;
  - (c) by deleting “its” and inserting instead —  
“ the arbitrator’s ”.
- (15) Schedule 1 clause 17 is amended as follows:
- (b) by inserting after subclause (1) —

“

- (1aa) the first assessment of a worker for the purposes of section 93L in respect of a particular injury and any previous attempt at an assessment that resulted in a finding that the worker’s condition had not stabilised to the extent required for a normal evaluation, as defined in section 146C to be made, but not including the cost of any travel, meals, or lodging;

”;

- (e) in subclause (5) by deleting “disablement incurred by the worker by reason of a disability” and inserting instead —  
“ effect of an injury ”.

- (16) Schedule 1 clause 18A(1) is amended as follows:

- (a) by deleting “subject to subclause” and inserting instead —  
“ subject to subclauses (1c)(a) and ”;
- (b) by deleting “it” in both places where it occurs and inserting instead —  
“ the arbitrator ”;
- (c) by deleting “, but not exceeding \$50 000,”.

- (17) Schedule 1 clause 18A(1a) is amended as follows:

- (a) by deleting “subject to subclause” and inserting instead —  
“ subject to subclauses (1c)(a) and ”;
- (b) by deleting “it” in both places where it occurs and inserting instead —  
“ the arbitrator ”;
- (c) by deleting “, but not exceeding \$50 000,”.

- (18) After Schedule 1 clause 18A(1a) the following subclauses are inserted —

“

- (1b) Where —
- (a) a worker has incurred reasonable expenses referred to in clause 17(1) in excess of the maximum amount provided for by that subclause;
  - (b) an additional sum has been allowed in the exercise of a discretion under subclause (1) or (1a) in respect of the expenses; and
  - (c) the worker is likely to incur reasonable expenses referred to in clause 17(1) in excess of the aggregate of the

maximum amount provided for by clause 17(1) and the \$50 000 allowable under subclause (1) or (1a),

an arbitrator may, subject to subclauses (1c)(b) and (2aa), allow such further additional sum or sums as the arbitrator thinks proper in the circumstances.

- (1c) An arbitrator is not to allow —
- (a) an additional sum exceeding \$50 000, or additional sums exceeding in aggregate \$50 000, in the exercise of a discretion under subclause (1) or (1a); or
  - (b) a further additional sum exceeding the prescribed amount or further additional sums exceeding in aggregate the prescribed amount, in the exercise of a discretion under subclause (1b).
- (1d) In subclause (1c)(b) —
- “prescribed amount”** means —
- (a) \$250 000; or
  - (b) if a greater amount is prescribed by the regulations, that greater amount.

”.

- (19) Schedule 1 clause 18A(2) is amended as follows:
- (a) by deleting “A dispute resolution body” and inserting instead —  
“ An arbitrator ”;
  - (b) by deleting “its” and inserting instead —  
“ a ”;
  - (c) by deleting “it” and inserting instead —  
“ the arbitrator ”.
- (20) After Schedule 1 clause 18A(2) the following subclauses are inserted —

“

- (2aa) An arbitrator is not to allow a further additional sum in the exercise of a discretion under subclause (1b) unless —
- (a) the worker and the worker’s employer agree that the worker’s degree of permanent whole of person impairment, as defined in clause 18C(3), is not less than 15%, or the worker has a certificate of an approved medical specialist given under section 146H indicating the worker has a degree of permanent whole of person impairment, as defined in clause 18C(3), of not less than 15%;
  - (b) if the employer disputes the assessment of the approved medical specialist referred to in paragraph (a), a determination is made in accordance with clause 18C that the worker’s degree of permanent whole of person impairment is not less than 15%; and
  - (c) the arbitrator determines that —
    - (i) such a sum ought to be allowed, having regard to the social and financial circumstances and the reasonable financial needs of the worker;

- (ii) the circumstances in relation to the medical and associated conditions, treatment and management of the worker are exceptional circumstances as prescribed by the regulations and satisfactory prescribed evidence of those circumstances has been produced to the arbitrator; and
  - (iii) the further additional sum is required for reasonable expenses likely to be incurred in respect of surgical attendance and treatment, hospital treatment and maintenance or post-operative health treatment or related expenses, of a kind referred to in clause 17(1), (3), (4) or (5).
- (2ab) If permitted by section 145A to do so, the arbitrator may refer a question arising under subclause (2aa)(c)(ii) to a medical assessment panel for determination.
- (2ac) No further determination under subclause (2aa)(c)(ii) is required in respect of a second or later exercise of discretion under subclause (1b) in respect of a worker if the amount allowed is for expenses likely to be incurred in the course of following a management plan, as defined in regulations made under this subclause, produced when a determination was first made in respect of the worker under subclause (2aa)(c)(ii).

”.

- (22) After Schedule 1 clause 18A(2a) the following subclause is inserted —

“

- (3) An application under subclause (1b) —
  - (a) may be made at any time after —
    - (i) an additional sum has been allowed to the worker under subclause (1) or (1a); and
    - (ii) that additional sum allowed exceeds, in whole or in aggregate, \$30 000;
  - but
  - (b) may not be made after the final day within the meaning of clause 18B.

”.

- (23) Schedule 1 clause 18A(4) is repealed and the following subclause is inserted instead —

“

- (4) The insurer of the employer, if the employer is insured in accordance with this Act, or otherwise the employer, is to —
  - (a) notify the worker when the reasonable expenses referred to in clause 17(1) incurred by the worker exceed 60% of the maximum amount provided for by that subclause; and
  - (b) notify the worker when an additional sum allowed to the worker under subclause (1) or (1a) exceeds, in whole or in aggregate, \$30 000.



Penalty: \$1 000.

(24) After Schedule 1 clause 18A the following clauses are inserted —

**18B. Final day for clause 18A(1b) application**

- (1) If a claim for compensation by way of weekly payments has been made in accordance with section 178(1)(b) with respect to an injury of a worker, the final day for making an application by that worker under clause 18A(1b) is the last day of the period of 5 years after the day on which the claim for compensation is made unless a later day is fixed under subclause (2) or (3).
- (2) If, after the expiry of the period of 3 months after the day on which the claim is made —
  - (a) an arbitrator, acting under section 58(1) or (2), determines the question of liability to make the weekly payments claimed; or
  - (b) the worker is first notified that liability is accepted in respect of the weekly payments claimed,the final day is the last day of the period 4 years and 9 months after the day of the act described in paragraph (a) or (b) that was most recently done unless a later day is fixed under subclause (3).
- (3) The Director may, in accordance with the regulations, from time to time extend the final day, but only if the Director is satisfied that —
  - (a) in the case of a worker whose final day, as determined under subclause (1) or (2), is within 8 weeks after the coming into operation of section 141(22) of the *Workers' Compensation Reform Act 2004*, the worker has, in accordance with the regulations and before the final day, requested an approved medical specialist to assess the worker's degree of permanent whole of person impairment, but the worker was not given, or it would be impracticable to give, the worker the documents required to make an application under clause 18A(1b) before the final day; or
  - (b) in any other case, the worker has, in accordance with the regulations and at least 8 weeks before the final day, requested an approved medical specialist to assess the worker's degree of permanent whole of person impairment, but the worker was not given, or it would be impracticable to give, the worker the documents required to make an application under clause 18A(1b) before the final day.
- (4) An extension under subclause (3) is to be to a day that is not more than one year after the day that would have been the final day had there been no extension under that subclause.
- (5) An extension is to be in writing and the Director is required to give the worker and employer each a copy of the extension.
- (6) An extension may be given even though the final day has passed.

**18C. Dispute as to degree of permanent whole of person impairment**

- (1) In the exercise of a discretion under clause 18A(1b), for the purposes of clause 18A(2a)(b) an arbitrator may —
    - (a) determine the degree of permanent whole of person impairment; or
    - (b) refer the question as to the degree of permanent whole of person impairment for assessment by an approved medical specialist panel in accordance with sections 146A and 146E and make a determination accordingly.
  - (2) If a determination is made that the worker's degree of permanent whole of person impairment is not less than 15%, the arbitrator may order the employer to pay all or any of the costs or expenses connected with the dispute, including expenses connected with the referral to an approved medical specialist panel.
  - (3) In this clause, and in clauses 18A and 18B —

**“degree of permanent whole of person impairment”** means the degree of permanent whole of person impairment, evaluated as described in sections 146A and 146E, resulting from the injury or injuries arising from a single event, as defined in subsection (4).
  - (4) In the definition of “degree of permanent whole of person impairment” in subclause (3) —

**“event”** means anything that results, whether immediately or not and whether suddenly or not, in an injury or injuries of a worker and the term includes continuous or repeated exposure to conditions that result in an injury or injuries of a worker.
- ”.
- (25) Before Schedule 1 clause 19 the following clause is inserted —

“

**18D. Interim payment of additional expenses**

- (1) If —
  - (a) the worker has incurred or is likely to incur reasonable expenses referred to in clause 17(1) in excess of the maximum amount provided for by that subclause; and
  - (b) an application is made under clause 18A(1) or (1a) for an additional sum in respect of those expenses,an arbitrator may, before that application is determined, allow such interim sum, but not exceeding \$2 000, as the arbitrator thinks proper in the circumstances.
- (2) For the purposes of calculating whether a sum of \$50 000 has been or will be allowed under clause 18A, an interim sum under subclause (1) in respect of an application under clause 18A(1) or (1a) is taken to be a sum allowed in the exercise of a discretion under clause 18A(1) or (1a).

”.

**142. Schedule 2 amended**

- (1) The heading to Schedule 2 is deleted and the following headings are inserted instead —

“

**Schedule 2 — Table of compensation payable**

**Part 1**

”

- (2) The heading to Schedule 2 column 1 is amended by deleting “Nature of Injury” and inserting instead —

“ **Nature of injury or impairment** ”.

- (3) At the end of Schedule 2 the following is inserted —

“

**Part 2**

**EYES**

40.	Impairment of sight of both eyes .....	100
41.	Impairment of sight of an only eye .....	100
42.	Impairment of sight of one eye .....	50
43.	Impairment of binocular vision .....	50

**HEARING**

44.	Impairment of hearing .....	75
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**SPEECH**

45.	Impairment of power of speech .....	75
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**BODY AND MENTAL**

46.	Impairment of mental capacity .....	100
47.	Impairment of spinal cord function .....	100

**SENSORY**

48.	Impairment of sense of taste and smell .....	50
49.	Impairment of sense of taste .....	25
50.	Impairment of sense of smell .....	25

**ARM**

51.	Impairment of arm at or above elbow .....	90
52.	Impairment of arm below elbow .....	80

**HAND**

53.	Impairment of both hands .....	100
54.	Impairment of hand and foot .....	100
55.	Impairment of hand or thumb and 4 fingers ...	80
56.	Impairment of thumb .....	35
57.	Impairment of forefinger .....	17
58.	Impairment of middle finger .....	13
59.	Impairment of ring finger .....	9
60.	Impairment of little finger .....	6
61.	Impairment of movement of joint of thumb ...	17
62.	Impairment of distal phalanx of thumb .....	20
63.	Impairment of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx .....	15
64.	Impairment of distal phalanx of forefinger	10

65.	Impairment of distal phalanx of	
	— middle finger .....	8
	— ring finger .....	6
	— little finger .....	4
66.	Impairment of distal phalanx of each finger of the same hand (not including the thumb) in one accident .....	31
	LEG	
67.	Impairment of leg at or above knee .....	70
68.	Impairment of leg below knee .....	65
	FEET	
69.	Impairment of both feet .....	100
70.	Impairment of foot .....	65
71.	Impairment of great toe .....	20
72.	Impairment of any other toe .....	8
73.	Impairment of 2 phalanges of any other toe ...	5
74.	Impairment of phalanx of great toe .....	8
75.	Impairment of phalanx of any other toe .....	4
	BACK, NECK AND PELVIS	
76.	Impairment of the back (thoracic spine or lumbar spine or both) .....	75
77.	Impairment of the neck (including cervical spine) .....	55
78.	Impairment of the pelvis .....	30
	MISCELLANEOUS	
79.	Impairment of genitals .....	50
80.	Impairment from facial scarring or disfigurement .....	80
81.	Impairment from bodily, other than facial, scarring or disfigurement .....	50
82.	AIDS .....	100

”.

**143. Schedule 5 amended**

- (1) Schedule 5 clause 5(1)(b) is amended by deleting “Directorate” and inserting instead —  
“ Director ”.

**144. Schedule 7 amended**

- (1) Schedule 7 clause 5(1) is amended as follows:
- (a) in paragraph (a) by inserting after “section 24A” —  
“ or 31E ”;
  - (b) in paragraph (b) by deleting “the Directorate or a compensation magistrate’s court” and inserting instead —  
“ an arbitrator ”.
- (2) Schedule 7 clause 6 is repealed and the following clause is inserted instead —

“

**6. Reference to medical assessment panel**

If permitted by section 145A to do so, an arbitrator may refer a question that arises under section 24A or 31E regarding audiometric testing or hearing loss, including whether or to what extent hearing loss is noise induced hearing loss, for determination by a medical assessment panel.

”

- (3) Schedule 7 clause 7(2) is amended by inserting after “section 24A” —  
“ or 31E ”.
- (4) Schedule 7 clause 8(3) is amended by deleting “referred to the Director for conciliation under Part IIIA” and inserting instead —  
“ dealt with as a dispute under Part XI ”.
- (5) Schedule 7 clause 8(4) is amended by inserting after “section 24A” in both places where it occurs —  
“ or 31E ”.

**145. Schedule 8 inserted**

After Schedule 7 the following Schedule is inserted —

“

**Schedule 8 — Terms and conditions of service  
of Commissioner**

[s. 282]

**1. Tenure of Commissioner’s office**

- (1) The term for which a person is appointed as the Commissioner is to be fixed in the instrument of appointment and is to be not longer than 5 years.
- (2) The Commissioner’s eligibility for reappointment or the term for which the Commissioner may be reappointed is not affected by an earlier appointment.

**2. Vacating office prematurely**

- (1) The Commissioner may resign from office by giving the Governor a signed letter of resignation.
- (2) A resignation is not effective until the Governor has accepted it.
- (3) If a resignation is accepted it takes effect when it is accepted or at any later date stated in the letter.
- (4) A person who has resigned from office as the Commissioner is not precluded from again being appointed to the office.
- (5) A person who holds office as the Commissioner does so during good behaviour but the Governor may, on the address of both Houses of Parliament, terminate the person’s term of office.
- (6) If a person who holds office as the Commissioner becomes ineligible, because of section 281(2), to hold the office, the person’s term of office terminates.

**3. Commissioner’s status as District Court Judge**

- (1) The appointment of a person as the Commissioner does not affect the person’s tenure of office as, or status as, a Judge of the District Court nor the payment of the person’s salary or allowances as a Judge nor any other rights or privileges of the person as a Judge.
- (2) A person’s service in the office of Commissioner is to be taken for all purposes to be service in the person’s office of Judge of the District Court.
- (3) Nothing in this Act prevents a person who holds office as Commissioner from doing anything in the person’s capacity as a Judge of the District Court.
- (4) A person’s resignation from office as Commissioner or the termination of a person’s term of office as Commissioner does not affect the person’s office as a Judge of the District Court.

**4. Completion of matters**

- (1) A former Commissioner may, despite the expiration of the Commissioner’s term of appointment, complete or otherwise continue to deal with any matters relating to proceedings before the Commissioner that have been heard or partly heard by the Commissioner before the expiration of that term.
- (2) While completing or otherwise dealing with matters under subclause (1), a former Commissioner is taken to have all the powers and immunities as the Commissioner that the former Commissioner had immediately before the expiration of that person’s term as the Commissioner.

”.

**146. References to a disability changed to an injury**

The Act is amended by deleting “a disability” in each place specified in the Table to this section and inserting instead —

“ an injury ”.

**Table**

s. 3(a)(i) and (ii)	s. 57B(1)(b)(ii)
s. 4(2)(a)(iv)	s. 64(1)
s. 4(2)(a)(vi) (in both places)	s. 67(1)
s. 5(1) in the definition of “employer”	s. 74A
s. 5(1) in the definition of “worker” (in both places)	s. 76(8)
s. 12(1)	s. 78
s. 13	s. 79
s. 15(1)	s. 83(1)
s. 16(1a)	s. 92
s. 18	s. 93D(11)
s. 32	s.93EC(a) (as inserted by the <i>Workers’ Compensation (Common Law Proceedings) Act 2004</i> )
s. 33	s. 197
s. 56	Sch. 1 cl. 7(3)
s. 57A(1)(b)(ii)	Sch. 1 cl. 17(4)

**147. References to disability changed to injury**

The Act is amended by deleting “disability” in each place specified in the Table to this section and inserting instead —  
“ injury ”.

**Table**

s. 4(2)(a) (after (iii))	s. 93E(8)
s. 4(2)(a)(iv) (in both places)	s. 93E(10)
s. 4(2)(a)(vi) (in the 3 <sup>rd</sup> place)	s. 93E(13) (in both places)
s. 4(2)(a)(vii)	s.93EA(3) (in both places) (as inserted by the <i>Workers’ Compensation (Common Law Proceedings) Act 2004</i> )
s. 4(2)(b)	s.93EA(4)(c) (as inserted by the <i>Workers’ Compensation (Common Law Proceedings) Act 2004</i> )
s. 5(1) in the definition of “dependants”	s.93EB(3) (in both places) (as inserted by the <i>Workers’ Compensation (Common Law Proceedings) Act 2004</i> )
s. 5(1) in the definition of “notional residual entitlement” para. (a) (in the 1 <sup>st</sup> place)	s.93EB(4)(c) (as inserted by the <i>Workers’ Compensation (Common Law Proceedings) Act 2004</i> )
s. 5(1) in the definition of “worker” (in the 2 <sup>nd</sup> place)	s.93EC (in the 2 <sup>nd</sup> and 3 <sup>rd</sup> places) (as inserted by the <i>Workers’ Compensation (Common Law Proceedings) Act 2004</i> )
s. 12(1) (in the 2 <sup>nd</sup> place)	s. 93F(1)(a)
s. 13 (in the 2 <sup>nd</sup> and 3 <sup>rd</sup> places)	s. 93F(4) (in each place)
s. 15(1) (in each place except the 1 <sup>st</sup> ), (2) (in both places), and (3) (in the 2 <sup>nd</sup> and 3 <sup>rd</sup> places)	s. 93F(5) (in each place)
s. 16(1a) (in the 2 <sup>nd</sup> place) and (2)(a) (in 3 places), (c), and (d)	s. 174(3)
s. 21	s. 174A(1)
s. 22 (in the 1st place)	s. 175(3)
s. 23 (in both places)	s. 175(7)
s. 32 (in the 2 <sup>nd</sup> place)	s. 197 (in the 2 <sup>nd</sup> and 3 <sup>rd</sup> places)
s. 33 (in the 2 <sup>nd</sup> place)	Sch. 1 cl. 2
s. 56(a) and (b) (in 3 places)	Sch. 1 cl. 3
s. 57A(1)(b) (in the 1 <sup>st</sup> place)	Sch. 1 cl. 4
s. 57B(1)(b) (in the 1 <sup>st</sup> place)	Sch. 1 cl. 5
s. 57C(4)	Sch. 1 cl. 7(1) and (2) (in each place)
s. 61(1)	Sch. 1 cl. 7(3) (in the 2 <sup>nd</sup> place)
s. 61(2)(b)	Sch. 1 cl. 8 (in both places)
s. 67(5)	Sch. 1 cl. 9
s. 73(1) (in each place)	Sch. 1 cl. 11(2) and (3) (in each

s. 73(2)	place)
s. 73(5) (in both places)	Sch. 1 cl. 12
s. 74(1) (in each place)	Sch. 1 cl. 13(1) and (2)
s. 79 (in the 2 <sup>nd</sup> place)	Sch. 1 cl. 16(1)
s. 80(2)	Sch. 1 cl. 17(1)
s. 83(1) (in the 2 <sup>nd</sup> place)	Sch. 5 cl. 1A (in each place)
s. 84 (in both places)	Sch. 5 cl. 2 (in both places)
s. 84AA	Sch. 5 cl. 3(3) (in both places)
s. 91	Sch. 5 cl. 3(4) (in both places)
s. 92(e) and (f)(ii)	Sch. 5 cl. 3(5)
s. 93(1) (in both places)	Sch. 5 cl. 3(6)
s. 93(2)(a) and (b)	Sch. 5 cl. 3(7) (in each place)
s. 93(4) (in both places)	Sch. 5 cl. 3(8) (in each place)
s. 93D(2)(a)(i) and (ii)	Sch. 5 cl. 5(1)(a)
s. 93D(3)	Sch. 5 cl. 6(b)
s. 93E(3)(b)	Sch. 5 cl. 7(b)
s. 93E(4) (in the 1 <sup>st</sup> place)	Sch. 5 cl. 8(2)
s. 93E(5)	Sch. 5 cl. 9(1)

**148. Other references to disabilities changed to injuries**

- (1) The Act is amended by deleting “disabilities” in each place specified in the Table to this subsection and inserting instead —  
“ injuries ”.

**Table**

s. 3(c)	s. 17
s. 14(4)	Sch. 5 cl. 1A
s. 16(2)	Sch. 5 cl. 3(2a), (3), (4), (5), (6) and (7)

- (2) Section 15(3) is amended by deleting “a disability or death” and inserting instead —  
“ an injury or a death ”.
- (3) Section 16(2)(a) and (c) are each amended by deleting “disabled” and inserting instead —  
“ injured ”.

**149. References to dispute resolution body changed to arbitrator**

The Act is amended by deleting “a dispute resolution body” in each place specified in the Table to this section and inserting instead —

“ an arbitrator ”.

**Table**

s. 24B(4)(b)	Sch. 1 cl. 3
s. 28	Sch. 1 cl. 5(1)(b)
s. 29	Sch. 1 cl. 5(2)(b)
s. 30	Sch. 1 cl. 7(3)
s. 33	Sch. 1 cl. 18(2) (in both places)
s. 73(5)	Sch. 1 cl. 18A(1)
s. 74(1)	Sch. 1 cl. 18A(1a)
s. 93E(2)	Sch. 5 cl. 2
Sch. 1 cl. 2	Sch. 5 cl. 7(b)(ii) and (iii)



**154. Renumbering of provisions of the Act**

- (1) The sections of the *Workers' Compensation and Rehabilitation Act 1981* set out in column 1 of the Table to this section are renumbered as set out opposite those sections in column 2 of the Table.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Section number</b>	<b>Renumbered section number</b>
177	295
177A (as inserted by s. 131 of this Act)	296
178	297
179	298
180	299
180A (as inserted by s. 133 of this Act)	300
181	301
182	302
183	303
184 (as inserted by s. 135 of this Act)	304
185 (as inserted by s. 135 of this Act)	305
186 (as inserted by s. 135 of this Act)	306
187 (as inserted by s. 135 of this Act)	307
188	308
188B (as inserted by s. 137 of this Act)	309
188C (as inserted by s. 137 of this Act)	310
189	311
190	312
191	313
192	314
192A	315
193	316
194	317
195	318
196	319
197	320
199	321
200	322
201	323
202	324

- (2) Part XII is renumbered as Part XIX.
- (3) Part XIII is renumbered as Part XX.
- (4) The provisions of the *Workers' Compensation and Rehabilitation Act 1981* are amended as set out in the Table to this section.

**Table**

**Item Provision of Act Amendment**

1	s. 5(1)(definition of “repealed Act”)	Delete “194” and insert instead — “ 317 ”.
2	s. 57A(1)(a)	Delete “84I(1)(b)” and insert instead — “ 178(1)(b) ”.
3	s. 57A(7)(b)	Delete “section 84I” and insert instead — “ sections 178 and 179 ”.
4	s. 57B(1)(a)	Delete “84I(1)(b)” and insert instead — “ 178(1)(b) ”.
5	s. 57B(6)(a)	Delete “section 84I” and insert instead — “ sections 178 and 179 ”.
6	Sch. 1 cl. 7(3)	Delete “84E” and insert instead — “ 217 ”.

## **Part 4 — Transitional provisions**

### **Division 3 — Transitional provisions relating to dispute resolution**

#### **182. Interpretation**

- (1) In this Division —
  - “**commencement day**” means the day on which section 130 of this Act comes into operation;
  - “**Director Dispute Resolution**” has the meaning given to “Director” in the amended Act;
  - “**Director of Conciliation and Review**” has the meaning given to “Director” in the principal Act;
  - “**pending proceeding**” means —
    - (a) any matter the conciliation, review or other determination of which has been sought but not commenced before a dispute resolution body; or
    - (b) any matter that has been partly or fully heard or otherwise dealt with before, but not determined by, a dispute resolution body.
- (2) The following expressions have the same meaning in this Division as they had in the principal Act before it was amended by this Act —
  - (a) “compensation magistrate’s court”;
  - (b) “conciliation officer”;
  - (c) “dispute resolution body”;
  - (d) “review officer”.
- (3) Unless the contrary intention appears, words and expressions used in this Part have the same meaning as they have in the amended Act.

#### **183. Conciliation and review**

- (1) A pending proceeding referred for conciliation under Part IIIA Division 2 of the principal Act, referred for review under Part IIIA Division 3 of that Act or otherwise referred to a conciliation officer or a review officer for determination under that Act or the subject of an application to a conciliation officer or a review officer under that Act —

- (a) is, on and from the commencement day, taken to be a proceeding pending before an arbitrator; and
  - (b) is to be heard and determined by an arbitrator as if the referral or application were an application made under the amended Act.
- (2) A dispute resolution authority to whom a pending proceeding is transferred under this section may —
  - (a) receive in evidence any transcript of evidence in a proceeding before a dispute resolution body relating to that matter; and
  - (b) adopt, as the dispute resolution authority thinks fit, any finding or decision of a dispute resolution body relating to that matter.
- (3) The Director Dispute Resolution may give directions for the purpose of dealing with issues arising when the amended Act confers on a dispute resolution authority jurisdiction to deal with a matter that, before that jurisdiction was conferred, was dealt with by a dispute resolution body.
- (4) Directions given under subsection (3) may modify the provisions of the amended Act, or the rules or regulations made under that Act, to such extent as is necessary or expedient to apply any of the general principles described in this section in a proceeding of a particular kind and to ensure a smooth transfer of proceedings from dispute resolution bodies to dispute resolution authorities.
- (5) On and from the commencement day, anything ordered, decided, or otherwise done by a conciliation officer or review officer in respect of a matter under the amended Act before the commencement day becomes of the same effect as if, and enforceable as if, it were ordered, decided or done by an arbitrator under the provisions of the amended Act authorising an arbitrator to order, decide, or do corresponding things after the commencement day.

**184. Compensation magistrate's court**

- (1) A matter referred to a compensation magistrate's court under section 84ZM of the principal Act, but which the court has not commenced to hear before the commencement day, is to be transferred to the Commissioner and is to be dealt with by the Commissioner as if it had been referred under section 246(1) of that Act as amended by this Act.
- (2) On and from the commencement day —
  - (a) any pending proceeding before a compensation magistrate's court; and
  - (b) any matter that has been determined by a review officer and —
    - (i) would have been appealable to a compensation magistrate's court had the law in force immediately before the commencement day continued to apply; or
    - (ii) was the subject of an appeal to a compensation magistrate's court that was not determined before the commencement day,

is to continue to be dealt with and determined as if the law in force immediately before the commencement day had continued in force.

- (3) The principal Act as in force before the commencement day continues to apply to the extent that is necessary to enable a compensation magistrate's court to continue to deal with and determine a matter under this section and to enable appeals to be dealt with and implemented.
- (4) Anything ordered, decided or otherwise done by a compensation magistrate's court under this section or before the commencement day is to be given effect and enforced, and is subject to appeal and may be dealt with on appeal, as if the principal Act as in force before the commencement day continued to apply.

**185. Existing summonses and warrants**

- (1) If immediately before the commencement day a summons or other process issued by a review officer under Part IIIA of the principal Act is in force, then on the commencement day the summons, warrant or other process is to be taken to be a summons or other process issued under Part XI of the amended Act.
- (2) If immediately before the commencement day a summons issued by a review officer under Part IIIA of the principal Act is in force and requires the person to attend before, or to produce documents to, a review officer, then on the commencement day the summons is to be taken to require the person to attend before, or produce the documents to, an arbitrator at the place specified in the summons.

**186. Director of Conciliation and Review**

- (1) In this section —  
“**former function**” means a function of the Director Dispute Resolution that is substantially similar to a function that before the commencement day was performed by the Director of Conciliation and Review.
- (2) On the commencement day —
  - (a) any matter involved in the performance of a former function is to be transferred to the Director Dispute Resolution;
  - (b) any application, referral or other thing made, or otherwise directed or given to the Director of Conciliation and Review to do with the performance of the former function becomes of the same effect as if it had been referred or given to the Director Dispute Resolution to be dealt with under the amended Act; and
  - (c) anything decided, or otherwise done by the Director of Conciliation and Review in the performance of a former function becomes of the same effect as if, and enforceable as if, it were decided, or done by the Director Dispute Resolution under the provisions authorising the Director Dispute Resolution to decide, or do corresponding things after the commencement day.
- (3) For the purposes of subsection (1), section 183(2), (3) and (4) apply as if a reference in that section to a dispute resolution body includes a reference to the Director of Conciliation and Review

and a reference in that section to a pending proceeding includes a reference to a matter referred to in subsection (1).

**187. Records**

- (1) All records of a dispute resolution body relating to a matter that is transferred to a dispute resolution authority under section 183 of this Act, and all records of the Director of Conciliation and Review, are to be given to the Director Dispute Resolution.
- (2) A compensation magistrate's court is to cause the Director Dispute Resolution to be given —
  - (a) a record of anything referred to in section 184 that the compensation magistrate's court orders, decides, or otherwise does; and
  - (b) all records relating to a matter that is transferred, or that the compensation magistrate's court finishes dealing with, under section 184.

**188. Deemed eligibility for approval as Director or arbitrator**

- (1) The person who, immediately before the coming into operation of section 130 of the *Workers' Compensation Reform Act 2004*, was the Director of Conciliation and Review is taken to be eligible for approval under section 288(3) of the amended Act as the Director Dispute Resolution.
- (2) An officer of WorkCover WA who, immediately before the coming into operation of section 130 of the *Workers' Compensation Reform Act 2004*, was a review officer is taken to be eligible for approval under section 286(3) of the amended Act as an arbitrator.
- (3) Subsection (2) does not apply to a person seconded to, or acting in, the office of a review officer immediately before the coming into operation of section 130 of the *Workers' Compensation Reform Act 2004*.

”.

36 On the date as at which this compilation was prepared, the *Acts Amendment (Court of Appeal) Act 2004* s. 37, which gives effect to Sch. 1, had not come into operation. It reads as follows:

“

**37. Various Acts amended**

Each Act listed in Schedule 1 is amended as set out in that Schedule.

”.

Schedule 1 Div. 2 it. 28 and 29 read as follows:

“

**Schedule 1 — Minor amendments to various Acts**

[s. 37]

## Division 1 — Amendments that may be affected by impending legislation

### 28. **Workers' Compensation and Rehabilitation Act 1981**

s. 84ZX	Delete "Full Court of the Supreme Court" and insert instead — " Court of Appeal ".
s. 84ZY	Delete "Full Court" wherever it appears and in each place insert instead — " Court of Appeal ".

### 29. **Workers' Compensation and Injury Management Act 1981**

s. 251(1) s. 252(1)	Delete "Full Court of the Supreme Court" and insert instead — " Court of Appeal ".
s. 254(1)	Delete "Supreme Court appeal to the Supreme Court" and insert instead — " Court of Appeal appeal to the Court of Appeal ".
s. 254(2)	Repeal the subsection.

37

The *Workers' Compensation Reform Act 2004* Pt. 4 (other than Div. 3) reads as follows:

“

## Part 4 — Transitional provisions

### Division 1 — General

#### 176. **Interpretation**

In this Division unless the contrary intention appears —

“**principal Act**” means the *Workers' Compensation and Rehabilitation Act 1981* as in force immediately before the coming into operation of the provision in which the term is used;

“**amended Act**” means the *Workers' Compensation and Injury Management Act 1981* as in force immediately after the coming into operation of the provision in which the term is used.

#### 177. **Application of *Interpretation Act 1984***

The provisions of this Part do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by this Act.

#### 178. **Transitional regulations**

- (1) If this Act does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of the amendments effected by this Act, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed for providing for the matter or issue.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision —
  - (a) of this Act; or

- (b) of the *Interpretation Act 1984* as it applies to the amendments made by this Act,  
the Governor may by regulations —
  - (c) modify that provision to remove that anomaly; and
  - (d) make such provision as is necessary or expedient to carry out the intention of that provision.
- (3) If regulations made under subsection (1) or (2) provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (4) If regulations contain a provision referred to in subsection (3), the provision does not operate so as —
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

**179. Power to amend subsidiary regulations**

- (1) The Governor, on the recommendation of the Minister, may make subsidiary legislation amending subsidiary legislation made under any Act.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by subsidiary legislation is necessary or desirable as a consequence of the enactment of this Act.
- (3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

**Division 2 — Transitional provisions relating to statutory entitlements**

**180. Section 217 of the *Workers' Compensation and Injury Management Act 1981***

- (1) Despite the enactment of section 217 of the amended Act, if, before the day on which section 130 of this Act comes into operation the total weekly payments by way of compensation payable under Schedule 1 clause 7 of the principal Act for that disability have reached the prescribed amount within the meaning of that Act, the total liability of the employer of a worker under section 217 of the amended Act in respect of that disability or incapacity is not to exceed the lesser of the amounts set out in section 84E(3)(a) and (b) of the principal Act as in force immediately before the coming into operation of section 130 of this Act.
- (2) If, after the coming into operation of section 130 of this Act, a claim for damages in respect of an incapacity that has been settled by agreement independently of the principal Act is disapproved

under section 92 of the amended Act, section 217 of the amended Act applies in respect of the total liability of the employer of the worker.

**181. Transitional provisions — amendments to Schedule 1**

- (1) Where the death of a worker occurred before the coming into operation of section 141(1) of this Act, Schedule 1 clause 1 of the principal Act as in force immediately before the coming into operation of section 141(1) of this Act applies in relation to the compensation entitlements of the worker as if section 141(1) of this Act had not been enacted.
- (2) Amount Aa as determined under Schedule 1 clause 11 of the amended Act as amended by subsections (9) and (12) of section 141 of this Act applies in relation to all weekly payments payable on or after the coming into operation of those subsections, but no weekly payments payable before those subsections come into operation are affected by the amendments effected by those subsections.
- (3) Schedule 1 clause 11(3) of the amended Act as amended by section 141(10) of this Act does not apply in relation to weekly earnings of a worker who, before the coming into operation of section 141(10) of this Act, has received 4 weekly payments of compensation, and Schedule 1 clause 11(3) of the principal Act applies in respect of those weekly earnings as if the amendment had not been enacted.
- (4) Schedule 1 clause 11(4) of the amended Act as amended by section 141(11) of this Act does not apply in relation to weekly earnings of a worker who, before the coming into operation of section 141(11) of this Act, has received 4 weekly payments of compensation, and Schedule 1 clause 11(4) of the principal Act applies in respect of those weekly earnings as if the amendment had not been enacted.
- (5) Schedule 1 clause 18A of the amended Act as amended by section 141 of this Act does not apply to compensation payable to a worker if, before the coming into operation of section 141(16) of this Act —
  - (a) an election by the worker under section 93E(3)(b) of the principal Act in respect of the disability has been registered;
  - (b) an order for redemption of the liability for incapacity has been made under section 67(4) of the principal Act or any order for settlement or redemption of the liability has been made under Part IIIA of that Act;
  - (c) an agreement in respect of the whole of the liability for incapacity or as to the amount of compensation payable for the incapacity has been registered under Part III Division 7 of the principal Act; or
  - (d) the worker's claim for damages in respect of the injury or incapacity has been settled by agreement independently of the principal Act.
- (6) Subsection (5)(d) does not apply if, after the coming into operation of section 141(16) of this Act, the settlement is disapproved under section 92 of the amended Act.



**Division 4 — Transitional provisions relating to  
Part VIII amendments**

**189. Transitional provisions for Part VIII amendments**

- (1) When the Part VIII amendments come into operation (the “**commencement time**”), any effect that anything done before the commencement time by the former Committee would have had if those amendments had not been made continues as if the corresponding thing had been done by WorkCover WA.
- (2) In subsection (1) —
  - “**WorkCover WA**” has the meaning given to that term by the *Workers’ Compensation and Injury Management Act 1981*;
  - “**corresponding thing**” means anything done by WorkCover WA after the commencement of the Part VIII amendments that would have substantially the same effect after the commencement as what was done by the former Committee would have had if the Part VIII amendments had not been made;
  - “**former Committee**” means the Premium Rates Committee under the *Workers’ Compensation and Rehabilitation Act 1981* as in force before the commencement of the Part VIII amendments;
  - “**Part VIII amendments**” means the amendments that sections 104 to 117 and 150 to 153 make to Part VIII of the *Workers’ Compensation and Rehabilitation Act 1981*.

”.

38 Footnote no longer applicable.

39 The *Workers’ Compensation and Rehabilitation Amendment (Cross Border) Act 2004* Pt. 2 Div. 2 reads as follows:

“

**Division 2 — Transitional**

**14. Transitional provisions**

- (1) In this section —
  - “**amendments**” means amendments made to the principal Act by this Act;
  - “**commencement day**” means the day on which this Part comes into operation;
  - “**principal Act**” means the *Workers’ Compensation and Rehabilitation Act 1981*,and other terms used have meanings consistent with the meanings they have in the principal Act.
- (2) The amendments do not apply in respect of a disability that occurred before the commencement day, and the principal Act applies in respect of such a disability as if the amendments had not been made.
- (3) If the death of a worker results from both a disability that occurred before the commencement day and a disability that occurred on or after that day, the worker is, for the purposes of the application of

the amendments to and in respect of the death of the worker, to be treated as having died as a result of the disability that occurred on or after that day.

- (4) If a period of incapacity for work resulted both from a disability that occurred before the commencement day and a disability that occurred on or after that day, the incapacity is, for the purposes of the application of the amendments to and in respect of that incapacity for work, to be treated as having resulted from a disability that occurred on or after that day.
- (5) Neither the amendments nor subsections (3) and (4) affect the apportionment of liability under Part III Division 6 of the principal Act in a case where one or more of the disabilities concerned occurred before the commencement day and one or more occurred on or after that day.
- (6) A policy of insurance that an employer has against liability under the principal Act and that is in force at the beginning of the commencement day covers the employer, for as long as the policy remains in force, for the employer's liability under the principal Act as amended by this Act.

”.