

Western Australia

**Workers' Compensation and Injury  
Management Amendment Act 2011**

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As at 31 Aug 2011

No. 31 of 2011

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# Workers' Compensation and Injury Management Amendment Act 2011

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Western Australia

## **Workers' Compensation and Injury Management Amendment Act 2011**

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**No. 31 of 2011**

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

*[Assented to 31 August 2011]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This is the *Workers' Compensation and Injury Management Amendment Act 2011*.

**2. Commencement**

This Act comes into operation as follows —

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

**3. Act amended**

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

## **Part 2 — Amendments about dispute resolution**

### **Division 1 — Main amendments**

#### **4. Section 177 replaced**

Delete section 177 and insert:

#### **177. Object of this Part**

- (1) The object of this Part is to provide a fair and cost effective system for the resolution of disputes under this Act that —
  - (a) is timely; and
  - (b) is accessible, approachable and professional; and
  - (c) minimises costs to parties to disputes; and
  - (d) in the case of conciliation, leads to final and appropriate agreements between parties in relation to disputes; and
  - (e) in the case of arbitration, enables disputes not resolved by conciliation to be determined according to their substantial merits with as little formality and technicality as practicable.
- (2) Dispute resolution authorities and officers of WorkCover WA mentioned in section 181(2)(b)(ii) or 182ZO(2)(b)(ii) are to have regard to the object of this Part when they perform their functions.

**5. Part XI Division 3 heading replaced and Part XI Division 3 Subdivision 1 heading inserted**

Delete the heading to Part XI Division 3 and insert:

**Division 3 — Conciliation**

**Subdivision 1 — Workers' Compensation Conciliation Service**

**6. Section 181 replaced and Part XI Division 3 Subdivisions 2 to 5 and Part XI Division 4 inserted**

Delete section 181 and insert:

**181. Workers' Compensation Conciliation Service established**

- (1) A service called the Workers' Compensation Conciliation Service is established.
- (2) The Conciliation Service consists of —
  - (a) the Director; and
  - (b) the staff of the Conciliation Service being —
    - (i) the conciliation officers; and
    - (ii) officers of WorkCover WA assisting in the administration of the Conciliation Service and the performance of its functions.

**182A. Director**

- (1) The chief executive officer is to designate a person who is an officer of WorkCover WA as the Director, Conciliation.

- (2) The Director —
  - (a) is responsible for the administration of the Conciliation Service; and
  - (b) is to allocate work to conciliation officers; and
  - (c) without limiting the functions of the chief executive officer, is to manage and direct the staff of the Conciliation Service; and
  - (d) has, and may perform, all the functions of a conciliation officer; and
  - (e) is to provide advice as to the content of the conciliation rules; and
  - (f) has the other functions conferred on the Director by this Act or any other written law.
- (3) The Director is not subject to the management or direction of the chief executive officer as to any decision to be made, or discretion to be exercised, in relation to a particular dispute.

**182B. Conciliation officers**

- (1) The chief executive officer may designate a person who is an officer of WorkCover WA as a conciliation officer.
- (2) The chief executive officer may exercise the powers of an employing authority under the *Public Sector Management Act 1994* section 100 to engage a person to be a conciliation officer on a sessional basis.
- (3) The number of persons designated or engaged under this section is to be determined by the chief executive officer having regard to the object of this Part.
- (4) Conciliation officers are not subject to the management or direction of the chief executive officer or the Director as to any decision to be made, or discretion to be exercised, in relation to a particular dispute.

**182C. Provisions about designations**

- (1) In this section —  
*designation* means a designation under section 182A(1) or 182B(1).
- (2) A designation is to be in writing and the *Interpretation Act 1984* section 52 applies to it in the same way as that section applies to an appointment.
- (3) The designation of a person ceases to have effect if the person ceases to be an officer of WorkCover WA.

**182D. Delegation by Director**

- (1) The Director may delegate a power or duty given to the Director under this Act to an officer of WorkCover WA or a person engaged under section 182B(2).
- (2) The Director is to make the delegation in writing signed by the Director.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person 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.

**Subdivision 2 — Resolution of disputes by conciliation**

**182E. Application for conciliation**

- (1) A party to a dispute (referred to in this Division as the *dispute*) may apply to the Director in accordance with



this Act and the conciliation rules for resolution of the dispute by conciliation.

- (2) Subsection (1) and section 182ZU(1) have effect despite any other provision of this Act —
  - (a) enabling or requiring a party to make application for a dispute or matter to be heard and determined by an arbitrator; or
  - (b) authorising an arbitrator to determine a dispute or matter.

Note: For example, if an employer is ordered by the Director under section 58(2a) to make an application for an arbitrator to hear and determine the question of liability to make weekly payments, the employer must first make an application for conciliation.

**182F. Acceptance of application**

- (1) An application for conciliation cannot be accepted by the Director unless the Director is satisfied —
  - (a) that it relates to a dispute as defined in section 176; and
  - (b) that reasonable attempts have been made to resolve the dispute by negotiation with the other party or parties to the dispute.
- (2) The onus is on the applicant to satisfy the Director for the purposes of subsection (1).
- (3) The Director may reject an application for conciliation if it does not comply with the conciliation rules.
- (4) Conciliation commences when an application for conciliation is accepted by the Director.

**182G. Director to allocate dispute**

- (1) Subject to section 182H, when an application for conciliation is accepted the Director is to allocate the dispute to a conciliation officer.

- (2) The Director may reallocate the dispute to another conciliation officer at any time.
- (3) The conciliation officer to whom the dispute is allocated for the time being is referred to in this Division as the *conciliation officer*.

**182H. Director may certify that dispute is not suitable for conciliation**

The Director may, without allocating the dispute, determine that no matter in dispute is suitable for conciliation and issue a certificate to that effect.

**182I. Conciliation process**

- (1) The conciliation officer is to make all reasonable efforts to bring the parties to the dispute to an agreement acceptable to all of them.
- (2) The conciliation officer is to act —
  - (a) fairly, economically, informally and quickly; and
  - (b) according to the substantial merits of the case without regard to technicalities and legal forms.

**182J. Powers**

The conciliation officer may —

- (a) require a party to the dispute to attend at a meeting with the conciliation officer;
- (b) require a party to the dispute to attend at a conciliation conference at which the conciliation officer and any other party to the dispute is present;
- (c) require a party to the dispute, or the representative of a party, to answer questions put by the conciliation officer;

- (d) require a party to the dispute, or the representative of a party, to produce documents to the conciliation officer, or consent to another person who has relevant documents producing them to the conciliation officer.

**182K. Payment directions**

- (1) This section applies in relation to the employer and worker who are parties to the dispute.
- (2) The conciliation officer may direct that weekly payments of compensation be made by the employer to the worker if the conciliation officer considers that it would be reasonable to expect that the resolution or determination of the dispute under this Part would result in weekly payments of compensation becoming payable.
- (3) The conciliation officer is not to direct that weekly payments of compensation be made —
  - (a) for a period that exceeds 12 weeks; or
  - (b) if 2 or more directions are given: for periods the aggregate of which exceeds 12 weeks.
- (4) The conciliation officer may direct that a payment be made by the employer in respect of a compensation entitlement under clause 17 or 19 (*statutory expenses*) if the conciliation officer considers that it would be reasonable to expect that the resolution or determination of the dispute under this Part would result in statutory expenses becoming payable.
- (5) The conciliation officer is not to direct payment in respect of statutory expenses —
  - (a) of an amount that exceeds 5% of the prescribed amount; or

- (b) if 2 or more directions are given: of amounts the aggregate of which exceeds 5% of the prescribed amount.
- (6) A payment made by a party in accordance with a direction under subsection (2) or (4) —
  - (a) is not an admission of liability by the party; 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 payment had not been made.
- (7) The conciliation officer, or another conciliation officer, may, by further direction, vary, suspend or revoke a direction previously given under subsection (2) or (4) or this subsection.
- (8) When a direction under subsection (2) or (4) is revoked the obligation to pay compensation under the direction ceases.
- (9) The revocation of a direction given under subsection (2) or (4) does not affect the requirement to pay the compensation before the revocation.

**182L. Interim suspension or reduction directions**

- (1) This section applies in relation to the employer and worker who are parties to the dispute in a case where weekly payments are being made otherwise than by direction under section 182K.
- (2) The conciliation officer may direct that weekly payments of compensation are to be suspended or reduced if the conciliation officer considers that it would be reasonable to expect that the resolution or determination of the dispute under this Part would result in the payments being suspended or reduced.

- (3) The conciliation officer is not to direct the suspension or reduction of weekly payments —
  - (a) for a period that exceeds 12 weeks; or
  - (b) if 2 or more directions are given: for periods the aggregate of which exceeds 12 weeks.
- (4) The conciliation officer, or another conciliation officer, may, by further direction, amend, suspend or revoke a direction previously given under subsection (2) or this subsection.
- (5) When a direction suspending weekly payments 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 conciliation officer directs otherwise.
- (6) When a direction reducing weekly payments is revoked —
  - (a) the obligation to make weekly payments as if the direction had not been made recommences from the date on which the direction 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 direction had not been made unless the conciliation officer directs otherwise.

**182M. Provisions about directions**

- (1) In this section —

*direction* means a direction under section 182K(2), (4) or (6) or 182L(2) or (4).

- (2) The conciliation officer is not required to give reasons in writing for a direction.
- (3) A direction can be given subject to conditions.
- (4) A decision of the conciliation officer to give, or not to give, a direction is not a determination of liability.
- (5) The conciliation rules may regulate the giving of directions.

**182N. Finalising orders**

- (1) The conciliation officer may, with the consent of the parties to the dispute, issue an order of the kind that an arbitrator could issue setting out matters that have been agreed to during conciliation.
- (2) An order is not to be made under this section unless —
  - (a) the parties have lodged with the Conciliation Service a memorandum of consent that sets out the terms of the order consented to by the parties; and
  - (b) the conciliation officer is satisfied that —
    - (i) the parties have given their consent by free exercise of their will and without being induced by fraud or misrepresentation; and
    - (ii) the parties understand the effect of giving their consent; and
    - (iii) the terms of the order consented to by the parties are terms that can be given effect to under this Act.

**182O. Conclusion of conciliation and certificate of outcome**

- (1) Conciliation of the dispute ends when —
  - (a) agreement is reached by the parties on all matters in dispute; or
  - (b) the conciliation officer believes that there is minimal chance of agreement or further agreement, as the case may be, being reached; or
  - (c) the time limit for conciliation, as provided or extended under the conciliation rules, has expired.
- (2) At the end of conciliation of the dispute the conciliation officer is to issue a certificate in accordance with the conciliation rules setting out —
  - (a) the outcome of conciliation; and
  - (b) the terms of any direction currently in force under section 182K or 182L.
- (3) The terms of an agreement reached by the parties are not to be included in the conciliation officer's certificate unless they are terms that —
  - (a) are of the kind that an arbitrator could determine; and
  - (b) can be given effect to under this Act.

**Subdivision 3 — Practice and procedure**

**182P. Obtaining information**

The conciliation officer is not bound by the rules of evidence and may use any means the conciliation officer thinks fit in order to be informed about any matter.

**182Q. Scope of conciliation**

- (1) The matters that may be discussed and agreed on at conciliation or the subject of a direction under section 182K or 182L are not necessarily limited by the extent of the dispute as detailed in the application for conciliation.
- (2) However subsection (1) does not prevent the conciliation officer from determining that a matter is beyond the scope of the application for conciliation and should be the subject of another application for conciliation.

**182R. Conciliation officer may provide information to another party or a medical practitioner**

- (1) In this section —  
*information* includes a document or other material.
- (2) When information is provided to the conciliation officer by a party to the dispute or another person (whether or not pursuant to a requirement by the conciliation officer), the conciliation officer may provide the information to —
  - (a) any other party to the dispute; or
  - (b) any other party's legal representative or registered agent; or
  - (c) a medical practitioner (including a medical assessment panel).
- (3) The conciliation officer may, when providing information to another person, prohibit or restrict the disclosure of the information to another person.



**182S. Representation**

- (1) At any meeting with the conciliation officer or conciliation conference, a party to the dispute may appear in person or may be represented by —
  - (a) a legal practitioner; or
  - (b) a registered agent; or
  - (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 the *Public Sector Management Act 1994* section 3(1), a public sector employee authorised by the party to represent the party.
- (2) The conciliation officer 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 prohibited person cannot represent a party.
- (4) In subsection (3) —

*prohibited person* has the meaning given in the *Legal Profession Act 2008* section 18(1) except that it does not include a person whose name has been removed from an Australian roll (as defined in section 3 of that Act) at the person's own request.
- (5) The conciliation officer 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.
- (6) The regulations or the conciliation rules may prevent specified persons, or persons of a specified class, from representing a party.

**182T. Litigation guardian**

- (1) The conciliation rules may provide that, if a child is a party to a dispute, the conciliation officer may appoint a litigation guardian to act on the child's behalf.
- (2) The conciliation rules may provide that, if a party to a dispute is under a legal disability (otherwise than because of being a child), the conciliation officer may defer making efforts to resolve the dispute until a litigation guardian is appointed to act on the party's behalf, whether under the *Guardianship and Administration Act 1990* or otherwise.

**182U. Interpreters and assistants**

- (1) Unless the conciliation officer directs otherwise, a party to the dispute or the party's representative may be assisted in the course of a meeting or conciliation conference by an interpreter or another person necessary or desirable to make the meeting or conciliation conference intelligible to that party and to enable the party to communicate adequately.
- (2) A person may present a written submission 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.

**182V. Alternative means of participation in conciliation**

- (1) If the conciliation officer thinks it appropriate, the conciliation officer is to allow the parties and their representatives (or one or more of them) to participate in a meeting or conciliation conference by means of telephones, video links, or any other system or method of communication.

- (2) If the conciliation officer thinks it appropriate, the conciliation officer may conduct all or part of a meeting or conciliation conference entirely on the basis of documents without the parties or their representatives attending or participating in a meeting or conciliation conference.
- (3) The conciliation officer may take into account a written submission prepared by a legal practitioner or registered agent acting for a party to a dispute and submitted by or on behalf of the party, whether or not the party is represented by a legal practitioner or registered agent at a meeting or conciliation conference.

**182W. Conciliation to be in private**

Meetings with the conciliation officer and conciliation conference are to be conducted in private unless —

- (a) the conciliation officer decides that the meeting or conciliation conference should be conducted in public; or
- (b) the conciliation rules otherwise provide.

**182X. Attendance at meetings and conferences**

- (1) Notice of the time and place at which a party to the dispute is required to attend a meeting with the conciliation officer is to be given to the party in accordance with the conciliation rules.
- (2) Notice of the time and place for a conciliation conference is to be given in accordance with the conciliation rules —
  - (a) to each party to the dispute; and
  - (b) if the conciliation officer considers that it is appropriate in the circumstances for another

person to receive notice of the conference: to that other person.

- (3) If a person, including a party, to whom notice has been given in accordance with the conciliation rules fails to attend a conciliation conference, the conciliation conference may be held in the absence of that person.
- (4) The failure of a party to attend before the conciliation officer when required to do so does not prevent a direction that affects the party from being given under section 182K or 182L.

**182Y. Privilege against self incrimination**

- (1) A person is not excused from complying with a requirement under this Division to answer a question or produce a document on the ground that the answer or the production of the document 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 produced by the person to comply with the requirement was produced,

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.

**182ZA. Legal professional privilege in relation to medical reports**

- (1) A legal practitioner is not excused from complying with a requirement under this Division 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 or her 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 Division 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 or her capacity as a legal practitioner.

**182ZB. Other claims of privilege**

- (1) Unless it would be contrary to section 182Y or 182ZA, a person is excused from answering a question or producing a document under this Division if the person could not be compelled to answer the question or produce the document in proceedings in the Supreme Court.
- (2) The conciliation officer may require a person to produce a document to the conciliation officer for the purpose of determining whether or not it is a document that the conciliation officer has power to require the person to produce.

**182ZC. Dealing with documents produced**

The conciliation officer may inspect any document produced before the conciliation officer, and retain it

for as long as the conciliation officer reasonably thinks fit, and make copies of any document or any of its contents.

**182ZD. Referral of medical dispute for assessment**

- (1) If permitted by section 145A to do so, the conciliation officer may refer a question as to —
  - (a) the nature or extent of an injury; or
  - (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), it 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; and
  - (b) questions as to the degree of disability assessed in accordance with section 93D(2); and
  - (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; or
  - (b) the degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3; or
  - (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.

**Subdivision 4 — General provisions about directions, orders  
and conciliation agreements**

**182ZE. Terms used**

In this Subdivision —

*certificate of outcome* means the conciliation officer's certificate under section 182O;

*conciliation agreement* means an agreement reached by the parties to the dispute during conciliation and recorded in the certificate of outcome;

*conciliation decision* means a direction under section 182K or 182L, an order under section 182N or a referral under section 182ZD.

**182ZF. When decision or conciliation agreement has effect**

A conciliation decision or conciliation agreement comes into effect immediately after it is given or made, or at such later time as is specified in it.

**182ZG. Correcting mistakes**

The conciliation officer may correct a conciliation decision or the certificate of outcome to the extent necessary to rectify —

- (a) a clerical mistake; or
- (b) an error arising from an accidental slip or omission; or
- (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 certificate; or
- (d) a defect of form.

**182ZH. Enforcement of decisions and conciliation agreements**

- (1) A person to whom money is to be paid under a conciliation decision or a conciliation agreement may enforce the conciliation decision or conciliation agreement by filing in a court of competent jurisdiction (the *court*) —
  - (a) a copy of the conciliation decision or certificate of outcome that the Director has certified to be a true copy; and
  - (b) an affidavit as to the amount not paid under the conciliation decision or conciliation agreement.
- (2) No charge is to be made for filing the documents under subsection (1).
- (3) On the filing of the documents under subsection (1), the conciliation decision or conciliation agreement is to be taken to be an order of the court and, subject to subsection (4), may be enforced accordingly.
- (4) A conciliation agreement cannot be enforced under subsection (3) before the expiration of the period of 21 days starting on the day on which the certificate of outcome is issued.

**182ZI. Conciliation decisions not reviewable**

Subject to sections 182ZJ and 182ZK a conciliation decision is not subject to an appeal or amenable to judicial review.

**182ZJ. Provisions about revoked directions**

- (1) If a direction under section 182K(2) or (4) is revoked by an arbitrator under section 211(2), section 182K(8) and (9) apply to the revocation.



- (2) If a direction under section 182L(2) is revoked by an arbitrator under section 211(2), section 182L(5) and (6) apply to the revocation as if references in them to the conciliation officer were references to the arbitrator.

**182ZK. Recovery of payments**

If an arbitrator determines under Division 4 that a person was not liable to pay compensation by way of the weekly payments or statutory expenses that have been paid in accordance with a direction of the conciliation officer under section 182K(2) or (4), 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.

**182ZL. Director may order payment by insurer**

- (1) Without affecting section 182ZH, if an employer has failed to make a payment required by a direction under section 182K(2) or (4), the Director, on application made by the worker —
  - (a) may order the insurer to make the payment; and
  - (b) may, if the Director considers it necessary, order the insurer to make any remaining payments required under the direction.
- (2) An order under subsection (1) may be enforced in accordance with section 182ZH.

**Subdivision 5 — Miscellaneous**

**182ZM. Evidence not admissible in proceedings**

- (1) In this section —

*subsequent proceeding* means a proceeding before an arbitrator or an action brought by the worker for damages independently of this Act.
- (2) Evidence of a statement made to the conciliation officer or in a conciliation conference is not admissible in a subsequent proceeding unless the person who made the statement agrees to the evidence being admitted.
- (3) The conciliation officer is not to be called as a witness in a subsequent proceeding.

**182ZN. Payment of compensation**

A sum directed or agreed to be payable as compensation is to be paid to the person to whom it is payable under the direction or conciliation agreement unless it is paid into the custody of WorkCover WA.

## **Division 4 — Arbitration**

### **Subdivision 1 — Workers' Compensation Arbitration Service**

#### **182ZO. Workers' Compensation Arbitration Service established**

- (1) A service called the Workers' Compensation Arbitration Service is established.
- (2) The Arbitration Service consists of —
  - (a) the Registrar; and
  - (b) the staff of the Arbitration Service being —
    - (i) the arbitrators; and
    - (ii) officers of WorkCover WA assisting in the administration of the Arbitration Service and the performance of its functions.

#### **182ZP. Registrar**

- (1) The chief executive officer is to designate a person who is an officer of WorkCover WA as the Registrar, Arbitration.
- (2) A person cannot be designated under this section unless the person is a legal practitioner.
- (3) The Registrar —
  - (a) is responsible for the administration of the Arbitration Service; and
  - (b) is to allocate work to arbitrators; and
  - (c) without limiting the functions of the chief executive officer, is to manage and direct the staff of the Arbitration Service; and

- (d) has, and may perform, all the functions of an arbitrator; and
  - (e) is to provide advice as to the content of the arbitration rules; and
  - (f) has the other functions conferred on the Registrar by this Act or any other written law.
- (4) The Registrar is not subject to the management or direction of the chief executive officer as to any decision to be made, or discretion to be exercised, in relation to a particular dispute.

**182ZQ. Arbitrators**

- (1) The chief executive officer may designate a person who is an officer of WorkCover WA as an arbitrator.
- (2) The chief executive officer may exercise the powers of an employing authority under the *Public Sector Management Act 1994* section 100 to engage a person to be an arbitrator on a sessional basis.
- (3) A person cannot be designated or engaged under this section unless the person is a legal practitioner.
- (4) The number of persons designated or engaged under this section is to be determined by the chief executive officer having regard to the object of this Part.
- (5) Arbitrators are not subject to the management or direction of the chief executive officer or the Registrar as to any decision to be made, or discretion to be exercised, in relation to a particular dispute.

**182ZR. Provisions about designations**

- (1) In this section —  
*designation* means a designation under section 182ZP(1) or 182ZQ(1).

- (2) A designation is to be in writing and the *Interpretation Act 1984* section 52 applies to it in the same way as that section applies to an appointment.
- (3) The designation of a person ceases to have effect if the person ceases to be an officer of WorkCover WA.

**182ZS. Delegation by Registrar**

- (1) The Registrar may delegate a power or duty given to the Registrar under this Act to an officer of WorkCover WA or a person engaged under section 182ZQ(2).
- (2) The Registrar is to make the delegation in writing signed by the Registrar.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person 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 Registrar to perform a function through an officer or agent.

**Subdivision 2 — Determination of disputes by arbitration**

**182ZT. Application for arbitration**

If a dispute has not been resolved by conciliation, a party to the dispute may apply to the Registrar in accordance with this Act and the arbitration rules for determination of the dispute by arbitration.

**182ZU. Acceptance of application**

- (1) An application for arbitration cannot be accepted by the Registrar unless it is accompanied by —
  - (a) a certificate issued by the Director under section 182H stating that no matter in dispute is suitable for conciliation; or
  - (b) a certificate issued by a conciliation officer under section 182O identifying the matter or matters in dispute that have not been resolved by conciliation.
- (2) The Registrar may reject an application for arbitration if it does not comply with the arbitration rules.
- (3) Arbitration commences when an application for arbitration is accepted by the Registrar.

**182ZV. Registrar to allocate dispute**

- (1) When an application for arbitration is accepted the Registrar is to allocate the dispute to which the application relates to an arbitrator for determination.
- (2) The Registrar may reallocate a dispute to another arbitrator at any time.

**7. Section 185 replaced**

Delete section 185 and insert:

**185. Arbitration process**

- (1) The arbitrator to whom a dispute is allocated is to determine the matter or matters in dispute in accordance with this Act and the arbitration rules.

- (2) The arbitrator is not to attempt to resolve any matter in dispute by conciliation.
- (3) Subsection (2) applies even if there was no conciliation of any matter in dispute because the Director issued a certificate under section 182H.

**8. Section 189 amended**

- (1) In section 189 delete “The” and insert:

- (1) The

- (2) At the end of section 189 insert:

- (2) However subsection (1) does not prevent the arbitrator from determining that a matter is beyond the scope of the application for conciliation that preceded the application for arbitration and should be the subject of another application for conciliation.

**9. Section 204A inserted**

After section 203 insert:

**204A. Evidence of communication between worker and WorkCover WA employee**

Evidence of any communication between —

- (a) a worker; and
- (b) a person employed by WorkCover WA and acting in the course of that employment,

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.

**10. Section 211 amended**

Delete section 211(2) and insert:

- (2) An arbitrator may confirm, vary or revoke a direction under section 182K(2) or (4) or 182L(2).

**11. Sections 217A and 217B inserted**

At the end of Part XI Division 5 Subdivision 1 insert:

**217A. 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.

**217B. Arbitration decisions not reviewable**

- (1) Except as otherwise provided by this Act a decision of an arbitrator is final and binding on the parties and is not subject to an appeal.



- (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.

**12. Part XII deleted**

Delete Part XII.

**13. Part XIII heading amended**

In the heading to Part XIII delete “**Questions of law and appeals**” and insert:

**Appeals to District Court**

**14. Sections 245 and 246 deleted**

Delete sections 245 and 246.

**15. Section 247 amended**

- (1) Delete section 247(1) and insert:

- (1) If written reasons for an arbitrator’s decision under Part XI in respect of a dispute are given to a party to the dispute (whether as required by section 213(3) or otherwise), the party may, with the leave of the District Court, appeal to the District Court against the decision.

- (2) In section 247(2):

- (a) delete “Commissioner” (first occurrence) and insert:

District Court

- (b) in paragraph (a)(ii) delete “Commissioner,” and insert:

District Court,

- (3) Delete section 247(3).

- (4) In section 247(4) delete “making of the decision appealed against.” and insert:

day on which the written reasons for the decision appealed against were given to the party making the application.

- (5) In section 247(5) delete “against.” and insert:

against and, except as provided by this Part or section 267, is to be conducted in accordance with the rules of court of the District Court.

- (6) In section 247(6) delete “Commissioner except with the leave of the Commissioner.” and insert:

District Court except with the leave of the District Court.

- (7) In section 247(7) delete “Commissioner” (each occurrence) and insert:

District Court

**16. Sections 248 and 249 deleted**

Delete sections 248 and 249.

**17. Section 250 amended**

- (1) In section 250(1) delete “Commissioner” and insert:

District Court

- (2) In section 250(2) delete “Commissioner,” and insert:

District Court,

- (3) After section 250(2) insert:

- (3) This section does not limit the powers of the District Court under other written laws.

**18. Sections 251 to 253 deleted**

Delete sections 251 to 253.

**19. Section 254 replaced**

Delete section 254 and insert:

**254. Appeal to Court of Appeal by leave**

Under the *District Court of Western Australia Act 1969* section 79, an appeal may be made to the Court of Appeal in respect of a judgment, order or determination in proceedings in the District Court under this Part but —

- (a) the appeal must relate to a question of law; and
- (b) leave to appeal must be obtained from the Court of Appeal.

**20. Section 267 replaced**

Delete section 267 and insert:

**267. Appeal costs**

- (1) The District Court is not to make an order for costs against a worker on the ground that an appeal under Part XIII was successful.
- (2) If the appellant in an appeal under Part XIII is a worker and is unsuccessful on the appeal, the District Court is not to make an order for the payment of the appellant's costs on the appeal by any other party to the appeal.

**21. Part XVII deleted**

Delete Part XVII.

**22. Sections 293A and 293B inserted**

After section 292 insert:

**293A. Conciliation rules**

- (1) The Minister may make rules (the *conciliation rules*) prescribing all matters that are required or permitted by this Act to be prescribed by conciliation rules, or are necessary or convenient to be prescribed by conciliation rules for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), conciliation rules may make provision for or with respect to —
  - (a) the organisation and management of the business of the Conciliation Service; and
  - (b) records of the Conciliation Service; and

- (c) the practice and procedure governing the jurisdiction, functions and proceedings of conciliation officers; and
- (d) assessment of, and orders as to, costs as defined in section 261; and
- (e) the practice and procedure governing medical assessment panels.

**293B. Arbitration rules**

- (1) The Minister may make rules (the *arbitration rules*) prescribing all matters that are required or permitted by this Act to be prescribed by arbitration rules, or are necessary or convenient to be prescribed by arbitration rules for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), arbitration rules may make provision for or with respect to —
  - (a) the organisation and management of the business of the Arbitration Service; and
  - (b) records of the Arbitration Service; and
  - (c) the practice and procedure governing the jurisdiction, functions and proceedings of arbitrators; and
  - (d) assessment of, and orders as to, costs as defined in section 261; and
  - (e) 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 an arbitrator; and
  - (f) limiting the number of expert witnesses that may be called by any party in a proceeding before an arbitrator and otherwise restricting the calling of expert witnesses by a party; and

- (g) the practice and procedure governing medical assessment panels, approved medical specialist panels and specialised retraining assessment panels.

**23. Section 293 amended**

- (1) Delete section 293(1) and (2) and insert:

- (1) In this section —

- rule* means a conciliation rule or an arbitration rule and *rules* has a corresponding meaning.

- (2) In section 293(3) delete “DRD Rule” and insert:

- rule

- (3) In section 293(4) delete “DRD”.

- Note: The heading to amended section 293 is to read:

- General provisions about rules**

**24. Section 294 replaced**

Delete section 294 and insert:

**294. Practice notes**

- (1) The Director may issue conciliation practice notes about the practice and procedure of conciliation officers.
- (2) The Director is to give the Minister a copy of each conciliation practice note the Director issues as soon as practicable after issuing it.

- (3) A conciliation practice note is not a conciliation rule and does not form part of the conciliation rules.
- (4) The Registrar may issue arbitration practice notes about the practice and procedure of arbitrators.
- (5) The Registrar is to give the Minister a copy of each arbitration practice note the Registrar issues as soon as practicable after issuing it.
- (6) An arbitration practice note is not an arbitration rule and does not form part of the arbitration rules.

## **Division 2 — Consequential and miscellaneous amendments**

### **25. Section 5 amended**

- (1) In section 5(1) delete the definitions of:

*arbitrator*

*Commissioner*

*Director*

*dispute resolution authority*

*DRD*

*DRD Rules*

*officer of the DRD*

- (2) In section 5(1) insert in alphabetical order:

*application for conciliation* means an application under section 182E;

*arbitration rules* means the rules made under section 293B;

*Arbitration Service* means the Workers' Compensation Arbitration Service established under section 182ZO;

**arbitrator** means an officer of WorkCover WA designated or engaged under section 182ZQ as an arbitrator;

**conciliation officer** means a person designated or engaged under section 182B as a conciliation officer;

**conciliation rules** means the rules made under section 293A;

**Conciliation Service** means the Workers' Compensation Conciliation Service established under section 181;

**Director** means the officer of WorkCover WA designated under section 182A as the Director, Conciliation;

**dispute resolution authority** means the Director, the Registrar, a conciliation officer or an arbitrator;

**party** to a dispute means the worker, the employer or the insurer of the employer;

**Registrar** means the officer of WorkCover WA designated under section 182ZP as the Registrar, Arbitration;

**26. Section 67 amended**

In section 67(1)(a):

- (a) delete “an arbitrator,”;
- (b) delete “makes an order” and insert:

an order is made under Part XI



**27. Section 76 amended**

In section 76(6):

- (a) delete “Commissioner who shall” and insert:

Registrar who shall allocate it to an arbitrator to

- (b) delete “Commissioner thinks” and insert:

arbitrator thinks

**28. Section 91 amended**

In section 91(2) delete “DRD Rules,” and insert:

conciliation rules and the arbitration rules,

**29. Section 93D amended**

Delete section 93D(9) and (10).

**30. Section 106 amended**

- (1) In section 106(3):

- (a) after paragraph (b) insert:

(c) the costs and expenses incurred in the operation and administration of the District Court in dealing with appeals under Part XIII; and

- (b) in paragraph (e) delete “WorkCover WA and the DRD for carrying out their respective” and insert:

WorkCover WA for carrying out its

- (2) After section 106(3) insert:
- (4) The amount of the costs and expenses referred to in subsection (3)(c) is to be —
- (a) determined in the manner approved by the Treasurer after consultation with the chief executive officer of WorkCover WA and the chief executive officer of the department principally assisting the Minister in the administration of the *District Court of Western Australia Act 1969*; and
  - (b) credited to the Consolidated Account.

**31. Section 144 inserted**

At the beginning of Part VII Division 1 insert:

**144. Term used: relevant authority**

In this Division —

*relevant authority* means —

- (a) in relation to conciliation: the Director; or
- (b) in relation to arbitration: the Registrar.

**32. Section 145A amended**

- (1) In section 145A(1) delete “210” and insert:

182ZD or 210, Schedule 1 clause 18A(2ab) or  
Schedule 7 clause 6

(2) In section 145A(2) after “under section” insert:

182ZD or

**33. Section 145B amended**

In section 145B(1) delete “Director” and insert:

chief executive officer

**34. Section 145C amended**

In section 145C(1) and (4) delete “Director” and insert:

relevant authority

**35. Section 145D amended**

In section 145D(5) delete “an arbitrator” (each occurrence) and insert:

the relevant authority

**36. Section 145E amended**

(1) In section 145E(3):

(a) delete “Director,” and insert:

relevant authority,

(b) delete “Director within” and insert:

relevant authority within

(2) In section 145E(4) delete “Director” (each occurrence) and insert:

relevant authority

**37. Section 145F amended**

In section 145F(1) delete “Director” (each occurrence) and insert:

relevant authority

**38. Section 146F amended**

In section 146F(6) and (7) delete “Director” and insert:

chief executive officer

**39. Section 146M amended**

(1) In section 146M(1) delete “an arbitrator” (each occurrence) and insert:

the Registrar

(2) In section 146M(2) delete “An arbitrator” and insert:

The Registrar

**40. Section 146S amended**

In section 146S(1) delete “Director” (each occurrence) and insert:

chief executive officer

**41. Section 176 amended**

In section 176(2) delete “Part or Part XII.” and insert:

Part.

**42. Section 180 amended**

In section 180(4):

(a) delete “DRD Rules and” and insert:

conciliation rules or arbitration rules and

(b) delete “DRD Rules.” and insert:

relevant rules.

**43. Section 182 amended**

In section 182(1) delete “is accepted by the Director” and insert:

for arbitration is accepted

**44. Section 183 amended**

Delete section 183(1) and insert:

- (1) If an application for arbitration is accepted a party to the dispute must comply with the provisions of the arbitration rules as to —
  - (a) the documents, material and information that the party must provide to other parties and the Registrar; and
  - (b) the time or times at which, and manner in which, the documents, material and information must be provided.

**45. Section 184 deleted**

Delete section 184.

**46. Sections 186 and 187 deleted**

Delete sections 186 and 187.

**47. Part XI Division 4 heading deleted and Part XI Division 4 Subdivision 3 heading inserted**

Delete the heading to Part XI Division 4 and insert:

**Subdivision 3 — Practice and procedure**

**48. Section 193 amended**

In section 193(3) delete “a dispute resolution authority” and insert:

the Registrar or an arbitrator

**49. Section 194 amended**

In section 194(1) delete “Part),” and insert:

Division),

**50. Section 195 amended**

Delete section 195(3) and insert:

(3) A prohibited person cannot represent a party.

(4A) In subsection (3) —

*prohibited person* has the meaning given in the *Legal Profession Act 2008* section 18(1) except that it does not include a person whose name has been removed from an Australian roll (as defined in section 3 of that Act) at the person’s own request.

**51. Section 196 replaced**

Delete section 196 and insert:

**196. Litigation guardian**

- (1) The arbitration rules may provide that, if a child is a party or potential party to a proceeding or proposed proceeding, an arbitrator may appoint a litigation guardian to act on the child’s behalf.
- (2) The arbitration rules may provide that, if a party to a dispute is under a legal disability (otherwise than because of being a child), an arbitrator may adjourn or defer the proceeding or proposed proceeding until a litigation guardian is appointed to act on the party’s

behalf, whether under the *Guardianship and Administration Act 1990* or otherwise.

**52. Section 198 amended**

- (1) Delete section 198(1).
- (2) In section 198(2) and (3) delete “conference or”.
- (3) In section 198(4):
  - (a) after “practitioner” (each occurrence) insert:

or registered agent
  - (b) delete “conference or”.
- (4) In section 198(6) delete “a conference or”.

**53. Section 199 amended**

- (1) In section 199 delete “and conferences”.
- (2) In section 199(a) delete “or conference”.

**54. Section 204 amended**

In section 204(1) delete “Part” and insert:

Division

**55. Section 205 amended**

In section 205(1) and (3) delete “Part” and insert:

Division



**56. Part XI Division 5 heading deleted and Part XI Division 4 Subdivision 4 heading inserted**

Delete the heading to Part XI Division 5 and insert:

**Subdivision 4 — Decisions**

**57. Part XI Division 5 Subdivision 1 heading deleted**

Delete the heading to Part XI Division 5 Subdivision 1.

**58. Part XI Division 5 Subdivision 2 heading deleted**

Delete the heading to Part XI Division 5 Subdivision 2.

**59. Section 218 amended**

In section 218(1) and (4) delete “Part” and insert:

Division

**60. Part XI Division 5 Subdivision 3 heading deleted**

Delete the heading to Part XI Division 5 Subdivision 3.

**61. Part XI Division 6 heading deleted and Part XI Division 4 Subdivision 5 heading inserted**

Delete the heading to Part XI Division 6 and insert:

**Subdivision 5 — Miscellaneous**

**62. Section 255 amended**

(1) Delete section 255(2) and insert:

- (2A) Without limiting the application of subsection (1) it extends to a decision of a conciliation officer to —
- (a) make a requirement under section 182J; or
  - (b) give a direction under section 182K or 182L; or
  - (c) issue an order under section 182N.
- (2) Subsection (1) does not apply if, or to the extent that —
- (a) the person is excused by section 182ZB or 206 from complying with the decision; or
  - (b) the person has a reasonable excuse (other than an excuse mentioned in section 182Y(1), 182ZA, 204(1) or 205) for failing to comply with the decision.

(2) In section 255(3)(a) after “Director” insert:

or Registrar

**63. Section 256 replaced**

Delete section 256 and insert:

**256. Failure to comply with summons or requirement to attend**

A person must not, without reasonable excuse, fail to comply with —

- (a) a summons issued by the Registrar or an arbitrator; or

- (b) a requirement made by a conciliation officer under section 182J(a) or (b).

Penalty: a fine of \$2 000.

**64. Section 257 amended**

In section 257:

- (a) delete “a dispute resolution authority” and insert:

the Registrar or an arbitrator

- (b) in paragraph (a) delete “the dispute resolution authority” and insert:

the Registrar or an arbitrator

- (c) in paragraph (b) delete “a dispute resolution authority” and insert:

the Registrar or an arbitrator

**65. Section 259 amended**

- (1) At the beginning of section 259 insert:

- (1) In this section —

**hearing** includes —

- (a) a meeting with a conciliation officer; and  
(b) a conciliation conference.

(2) In section 259 delete “A person” and insert:

(2) A person

**66. Section 260 deleted**

Delete section 260.

**67. Section 268 amended**

In section 268(2)(c) delete “an arbitrator or another officer of the DRD.” and insert:

a conciliation officer or an arbitrator.

**68. Section 292 amended**

In section 292(1)(b):

(a) delete “DRD” and insert:

Conciliation Service and the Arbitration Service

(b) delete “DRD;” and insert:

Conciliation Service and the Arbitration Service;

**69. Section 299 amended**

(1) In section 299(a) delete “Commissioner, an arbitrator or the Director;” and insert:

Director, the Registrar, a conciliation officer or an arbitrator;

- (2) In section 299(aa) delete “Commissioner, an arbitrator or the Director,” and insert:

Director, the Registrar, a conciliation officer or an arbitrator,

**70. Section 304 amended**

Delete section 304(1)(d) and insert:

- (d) a person engaged under section 182B(2) as a conciliation officer or under section 182ZQ(2) as an arbitrator; and

**71. Section 305 amended**

Delete section 305(2)(a) and insert:

- (a) a conciliation officer when performing the functions of a conciliation officer;

**72. Section 325 inserted**

At the end of Part XX insert:

**325. Transitional provisions**

- (1) Schedule 8 sets out transitional provisions in relation to amendments to this Act.
- (2) Schedule 8 does not affect the operation of the *Interpretation Act 1984* Part V.
- (3) If Schedule 8 does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of amendments to 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.

- (4) If in the opinion of the Minister an anomaly arises in the carrying out of any provision —
- (a) of Schedule 8; or
  - (b) of the *Interpretation Act 1984* as it applies to the amendments made to this Act,
- the Governor may by regulation —
- (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.
- (5) If regulations made under subsection (3) or (4) 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.
- (6) If regulations contain a provision referred to in subsection (5), 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.

**73. Schedule 7 amended**

In Schedule 7 clause 6:

- (a) delete “permitted by section 145A to do so, an arbitrator may refer” and insert:

section 145A so permits,

- (b) delete “loss, for” and insert:

loss, may be referred for

**74. Schedule 8 replaced**

Delete Schedule 8 and insert:

**Schedule 8 — Transitional provisions**

[s. 325]

**1. Terms used**

In this Division —

***amended provisions*** means this Act as amended by the amending Act;

***amending Act*** means the *Workers' Compensation and Injury Management Amendment Act 2011*;

***commencement day*** means the day of the coming into operation of section 6 of the amending Act;

***Commissioner*** has the meaning given in section 5(1) of the former provisions;

***dispute*** has the meaning given in section 176(1);

*DRD* has the meaning given in section 5(1) of the former provisions;

*DRD Rules* has the meaning given in section 5(1) of the former provisions;

*former provisions* means this Act as enacted before the commencement day;

*pending arbitration proceeding* means a dispute —

- (a) in respect of which an application has been made under section 181 of the former provisions; and
- (b) which has not been determined by an arbitrator before the commencement day;

*pending Court of Appeal matter* means —

- (a) a case stated to the Court of Appeal under section 251 of the former provisions; or
- (b) an appeal to the Court of Appeal under section 254 of the former provisions (including an application under that section for leave to appeal),

which has not been determined by the Court of Appeal before the commencement day;

*pending Part XII application* means an application under Part XII of the former provisions which has not been determined by an arbitrator before the commencement day;

*pending Part XIII matter* means —

- (a) a reference of a question of law to the Commissioner under section 246 of the former provisions; or
- (b) an appeal to the Commissioner under section 247 of the former provisions (including an application under that section for leave to appeal),

which has not been determined by the Commissioner before the commencement day.

## **2. Pending arbitration proceedings**

- (1) Subject to subclause (2), a pending arbitration proceeding is to be dealt with and determined under Part XI Division 4 of the amended provisions.



- (2) If the Registrar certifies in writing that a pending arbitration proceeding in relation to a dispute has not been the subject of conciliation under section 185 of the former provisions before the commencement day, the dispute is taken to be the subject of an application for conciliation under the amended provisions.
- (3) The Director may give directions for the purpose of dealing with issues arising in relation to a pending arbitration proceeding to which subclause (2) applies.
- (4) Directions given under subclause (3) may modify the amended provisions, or the conciliation rules or the regulations, to such extent as is necessary or expedient to enable the dispute to be resolved by conciliation under Part XI Division 3 of the amended provisions.

**3. Pending Part XII applications**

- (1) A pending Part XII application is to continue to be dealt with and determined by an arbitrator as if the amending Act had not been enacted.
- (2) Without limiting subclause (1), Part XII of the former provisions and the DRD Rules continue to have effect in relation to pending Part XII applications despite sections 12 and 77 of the amending Act.

**4. Records**

- (1) In this clause —  
**DRD records** means records of the DRD relating to pending arbitration proceedings and pending Part XII applications.
- (2) The Director and the Registrar may make such arrangements for the disposition of DRD records between the Conciliation Service and the Arbitration Service as are necessary to facilitate the operation of clauses 2 and 3.

**5. Pending Part XIII matters**

- (1) A pending Part XIII matter is to continue to be dealt with and determined by the Commissioner as if the amending Act had not been enacted.
- (2) Without limiting subclause (1), sections 245 to 253 of the former provisions and the DRD Rules continue to have effect in relation to pending Part XIII matters despite sections 13 to 18 and 77 of the amending Act.

**6. Pending Court of Appeal matters**

- (1) A pending Court of Appeal matter is to continue to be dealt with and determined by the Court of Appeal as if the amending Act had not been enacted.
- (2) Without limiting subclause (1), section 254(3) to (6) of the former provisions continue to have effect in relation to pending Court of Appeal matters despite section 19 of the amending Act.

**7. Further Court of Appeal matters**

- (1) Despite section 19 of the amending Act, section 254 of the former provisions —
  - (a) continues to apply to a decision made by the Commissioner under Part XIII of the former provisions before the commencement day as if the amending Act had not been enacted; and
  - (b) applies to a decision made by the Commissioner after the commencement day in a pending Part XIII matter dealt with under clause 5.
- (2) The following matters may be dealt with and determined by the Court of Appeal as if the amending Act had not been enacted —
  - (a) a case stated to the Court of Appeal under section 251 of the former provisions in relation to a question of law arising in a pending Part XIII matter that is being dealt with under clause 5;

- (b) an appeal to the Court of Appeal under section 254 of the former provisions as continued or applied by subclause (1)(a) or (b).

**8. Continuation of Commissioner's appointment**

Despite section 21 of the amending Act the appointment of the Commissioner and Part XVII Division 2 of the former provisions continue to have effect for the purposes of —

- (a) clause 5(1); and
- (b) the receipt and reconsideration of matters sent back under section 254(3)(c) of the former provisions in a pending Court of Appeal matter or a matter mentioned in clause 7(2)(b).

**75. Various references to “Director” amended**

In the provisions listed in the Table delete “Director” and insert:

Registrar

**Table**

s. 146K(1)	s. 146O(2), (3) and (8) (each occurrence)
s. 146T(1) and (4)	s. 146V(3) and (4) (each occurrence)
s. 182(1)(c) and (2)	s. 202
s. 219(1)(a)	

**76. Various references to “DRD Rules” amended**

In the provisions listed in the Table delete “DRD Rules” and insert:

arbitration rules

**Table**

s. 182(4)	s. 183(7)
s. 188(2)(a)	s. 193(5)
s. 195(5)	s. 199(b)
s. 200(1) and (2)	s. 213(1)(a) and (3)(a)

**Division 3 — Workers' Compensation (DRD)  
Rules 2005 repealed**

**77. DRD Rules repealed**

The *Workers' Compensation (DRD) Rules 2005* made before the coming into operation of section 23 under the *Workers' Compensation and Injury Management Act 1981* section 293 are repealed.

## **Part 3 — Other amendments**

### **Division 1 — Amendments**

**78. Long title amended**

In the long title delete “**and a Dispute Resolution Directorate,**” and insert:

**to provide for the resolution of disputes,**

**79. Section 3 amended**

Delete section 3(a), (b), (ba) and (c) and insert:

- (a) to establish a workers' compensation scheme for Western Australia dealing with —
  - (i) compensation payable to or in respect of workers who suffer an injury; and
  - (ii) the management of workers' injuries in a manner directed at enabling injured workers to return to work; and
  - (iii) specialised retraining programs for injured workers; and
  - (iv) ancillary and related matters;and
- (b) to establish WorkCover WA to oversee the operation of the workers' compensation scheme; and
- (c) to provide for the resolution of disputes under this Act;

**80. Section 5 amended**

- (1) In section 5(1) in the definition of *industrial award* delete paragraph (d) and insert:

- (d) an award, order, agreement or other instrument —
- (i) of a class prescribed by the regulations; and
  - (ii) under a law of the State or the Commonwealth prescribed by the regulations,

- (2) In section 5(1) in the definition of *relevant employment* paragraph (b) delete “pneumoconiosis or mesothelioma,” and insert:

pneumoconiosis, mesothelioma, lung cancer or diffuse pleural fibrosis,

- (3) In section 5(1) in the definition of *worker*:

- (a) in the first paragraph of the definition delete “1892, or except as hereinafter provided in this definition a member of the employer’s family dwelling in his house;” and insert:

1892;

- (b) in the second paragraph of the definition delete the passage that begins with “injury, and any” and continues to the end of the paragraph and insert:

injury;

**81. Section 10A amended**

- (1) In section 10A(2) after “unless” insert:

and to the extent that

- (2) In section 10A(4) delete “Act — ” and insert:

Act other than section 174(1AA) —

**82. Section 24A amended**

- (1) In section 24A(2)(b)(ii):

- (a) delete “where the worker has reached the age of 65 years or on the worker’s retirement from work before that age,”;
- (b) delete “hearing.” and insert:

hearing and at the time of the subsequent election the worker is retired from work.

- (2) In section 24A(3)(a) delete “work before attaining the age of 65 years;” and insert:

work; and

- (3) In section 24A(4) delete “years.” and insert:

years if the hearing loss occurred before the day on which the *Workers' Compensation and Injury*

*Management Amendment Act 2011* section 82 comes into operation.

**83. Section 31E amended**

(1) In section 31E(3)(b)(ii) —

- (a) delete “where the worker has reached the age of 65 years or on the worker’s retirement from work before that age,”;
- (b) delete “hearing.” and insert:

hearing and at the time of the subsequent election the worker is retired from work.

(2) In section 31E(4)(a) delete “work before attaining the age of 65 years; and” and insert:

work; and

(3) In section 31E(5) delete “years.” and insert:

years if the hearing loss occurred before the day on which the *Workers' Compensation and Injury Management Amendment Act 2011* section 83 comes into operation.

**84. Section 32 amended**

In section 32 delete “or lung cancer,” and insert:

lung cancer, or diffuse pleural fibrosis,



**85. Section 33 amended**

In section 33:

- (a) in paragraph (c) delete “lung cancer,” and insert:

lung cancer; or

- (b) after paragraph (c) insert:

(d) on or after 19 September 2009, diffuse pleural fibrosis,

- (c) delete “or lung cancer,” and insert:

lung cancer or diffuse pleural fibrosis,

Note: The heading to amended section 33 is to read:

**Pneumoconiosis, mesothelioma, lung cancer or diffuse pleural fibrosis**

**86. Section 38 amended**

In section 38(1):

- (a) in paragraph (a) delete “mesothelioma or lung cancer?” and insert:

mesothelioma, lung cancer or diffuse pleural fibrosis?

- (b) in paragraph (c)(iii) delete “cancer,” and insert:

cancer; or

(c) after paragraph (c)(iii) insert:

(iv) diffuse pleural fibrosis,

(d) after each of subparagraphs (i) and (ii) insert:

or

**87. Section 41 amended**

In section 41(1) delete “or lung cancer,” and insert:

lung cancer or diffuse pleural fibrosis,

**88. Section 56 amended**

(1) In section 56 delete “Subject” and insert:

(1) Subject to subsection (2) and

(2) At the end of section 56 insert:

(2) An entitlement of a worker to weekly payments of compensation for incapacity for work resulting from an injury under this Act is not to cease under subsection (1) if the injury occurs on or after the date on which the *Workers' Compensation and Injury Management Amendment Act 2011* section 88 comes into operation.

**89. Section 57 amended**

In section 57 delete "18A(1c)." and insert:

18A(1CA) and (1C).

**90. Section 57A amended**

(1) In section 57A(1):

(a) in paragraph (a) delete "has been" and insert:

is

(b) after paragraph (a) insert:

(ba) the employer is indemnified by a policy of insurance against liability to pay the compensation claimed; and

(c) in paragraph (b) delete "has served" and insert:

serves

(d) in paragraph (b)(ii) delete "been served," and insert:

been served.

(e) delete "and the employer is indemnified by a policy of insurance against his liability to pay the compensation claimed."

(2) After section 57A(1) insert:

(2A) In the circumstances mentioned in subsection (1), before the expiration of 5 full working days the employer must claim under and in accordance with his or her policy of insurance in respect of liability to pay the compensation claimed.

Penalty: a fine of \$1 000.

(3) In section 57A(2):

(a) delete “3 full working days” and insert:

5 full working days

(b) delete “3 working days” and insert:

5 working days

(4) In section 57A(7):

(a) delete “as soon as practicable” and insert:

not later than 14 days

(b) in paragraph (a) delete “insurer; and” and insert:

insurer; or

(c) in paragraph (b) delete “the worker has complied with the requirements of sections 178 and 179 or,”;

- (d) in paragraph (b) delete “subsection notwithstanding that those requirements have not been complied with,” and insert:

subsection,

- (5) After section 57A(7) insert:

- (8A) An employer who fails to make a weekly payment by the due date under subsection (7) commits an offence.

Penalty for each weekly payment not made when due:  
a fine of \$2 000.

**91. Section 57B amended**

After section 57B(7) insert:

- (8) An employer who fails to make a weekly payment by the due date under subsection (2), (4) or (7) commits an offence.

Penalty for each weekly payment not made when due:  
a fine of \$2 000.

**92. Section 58 amended**

In section 58(1)(a) delete “17 days” and insert:

19 days

**93. Section 67 amended**

(1) Delete section 67(5) and insert:

(5) Where an order is made under subsection (1)(a) or (4), or an agreement is made under subsection (1)(b) and registered under Division 7, for the redemption of a liability for incapacity, from —

(a) the date specified in the order or agreement as the date on which weekly payments of compensation are to cease; or

(b) if no such date is specified, the date of the order or the date of registration of the agreement, as the case may be,

the worker is not entitled to further weekly payments of compensation for incapacity, and clauses 9, 10, 17, 18, 18A and 19 cease to apply to the worker.

(2) After section 67(6) insert:

(7) Where an order is made under subsection (1)(a) or (4), or an agreement is made under subsection (1)(b) and registered under Division 7, for the redemption of a liability for incapacity the employer must pay or cause to be paid the lump sum within 14 days after the date referred to in subsection (5).

Penalty: a fine of \$2 000.

**94. Section 71 amended**

(1) In section 71:

(a) delete “Where” and insert:

(1) Where

(b) delete “and to make” and insert:

and, subject to subsection (3), to make

(2) At the end of section 71 insert:

(2) Without limiting the orders that may be made under subsection (1), the arbitrator may, instead of making an order for a refund, order any person who the arbitrator determines was liable for the whole or any part of the compensation or expenses to reimburse the person who paid the compensation or expenses.

(3) If the payment of compensation or expenses was in accordance with an order of an arbitrator, the arbitrator hearing and determining an application under subsection (1) may make an order for a refund only if satisfied that the claim for the payment was fraudulent or made without proper justification.

(4) If —

(a) the arbitrator makes or, apart from subsection (3), would have made an order for a refund of an amount of compensation or expenses; or

(b) makes an order under subsection (2) in relation to such an amount,

the amount 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.

**95. Section 83 amended**

- (1) In section 83(1) delete “award or certified agreement as those terms are defined in the *Workplace Relations Act 1996* of the Commonwealth,” and insert:

prescribed Commonwealth award or agreement,

- (2) After section 83(1) insert:

- (2A) In subsection (1) —

***prescribed Commonwealth award or agreement***  
means an award, order, agreement or other  
instrument —

- (a) of a class prescribed by the regulations; and  
(b) under a law of the Commonwealth prescribed  
by the regulations.

**96. Section 93K amended**

Delete section 93K(4)(c) and “and” after it and insert:

- (c) court proceedings seeking the damages are  
commenced after the Director gives the worker  
written notice that the Director has registered  
the election; and

**97. Section 100 replaced**

Delete section 100 and insert:

**100. Functions of WorkCover WA**

The functions of WorkCover WA are to ensure the  
efficient and effective operation of the workers’



compensation scheme established by this Act and without limiting the generality of the foregoing —

- (a) to monitor compliance with the workers' compensation scheme by employers, insurers and others participating in or affected by the workers' compensation scheme; and
- (b) to control and administer the General Account and the Trust Account; and
- (c) to promote and co-ordinate the management and treatment of accidents, injuries, losses of functions and diseases in respect of which compensation may be payable under this Act; and
- (d) to fix insurance premium rates and perform the related functions conferred upon it by Part VIII; and
- (e) to resolve or assist in resolving disputes under this Act through conciliation and arbitration; and
- (f) to obtain from insurers, self insurers and others who participate in or provide services in connection with the workers' compensation scheme data enabling WorkCover WA to compile and record such statistics, records and reports as it considers necessary or desirable for the operation of the workers' compensation scheme and administration of this Act; and
- (g) to review the sufficiency of the data provided to WorkCover WA by insurers, self insurers and others who participate in or provide services in connection with the workers' compensation scheme, and whether or not criteria developed by WorkCover WA or prescribed by the regulations for assessing the performance of those persons are being met; and

- (h) to promote awareness of and disseminate information about the workers' compensation scheme; and
- (i) to undertake research to advance or support the purposes of the Act or the performance of the other functions of WorkCover WA; and
- (j) to promote the prevention of accidents, injuries, losses of functions, and diseases of a kind in respect of which compensation may be payable under this Act; and
- (k) to advise the Minister on —
  - (i) matters to do with insurance that is required by this Act; and
  - (ii) WorkCover WA's functions under this Act; and
  - (iii) the policy to be followed in the State with regard to workers' compensation; and
  - (iv) any other matter referred by the Minister to WorkCover WA for its advice.

**98. Section 101 amended**

After section 101(c) insert:

- (caa) to effect contracts of insurance providing indemnity against liability to make payments out of moneys standing to the credit of the General Account; and

**99. Section 106 amended**

(1) In section 106(2):

(a) in paragraph (d) delete “1980.” and insert:

*1980*; and

(b) after paragraph (d) insert:

(e) the proceeds of any insurance policy effected under section 101(caa).

(2) After section 106(3)(da) insert:

(db) the premiums due under any insurance policy effected under section 101(caa); and

**100. Section 146H amended**

Delete section 146H(4).

**101. Section 151 amended**

In section 151(a)(iii) delete “pneumoconiosis and mesothelioma” and insert:

pneumoconiosis, mesothelioma, lung cancer and diffuse pleural fibrosis

**102. Section 155E inserted**

After section 155D insert:

**155E. Notice of requirements of sections 155C and 155D**

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 sections 155C and 155D and their obligations under those provisions.

**103. Section 157A deleted**

Delete section 157A.

**104. Section 159 inserted**

At the beginning of Part X Division 1 insert:

**159. Terms used**

In this Part —

***compensable injury*** means an injury for which an employer is liable;

***damages*** means damages due, claimed or paid independently of this Act;

***liable***, in relation to a compensable injury, means liable to pay compensation in accordance with this Act;

*remuneration* means —

- (a) unless regulations provide that it is not to be treated as remuneration for the purposes of this definition, any amount of any of the following —
    - (i) wages;
    - (ii) salaries;
    - (iii) sums paid to workers under an agreement to perform —
      - (I) a specified quantity of work for a specified sum; or
      - (II) work on piece rates; or
      - (III) work on a bonus or commission system for payment by results;
- and
- (b) any other amount which regulations provide is to be treated as remuneration for the purposes of this definition, not being —
    - (i) an amount paid by way of compensation under this Act; or
    - (ii) an amount paid by way of damages in respect of a compensable injury.

**105. Section 160 amended**

- (1) Delete section 160(1) and (2) and insert:

- (1) Subject to this Act, every employer shall obtain from an approved insurance office and shall keep current a policy of insurance for —
  - (a) the full amount of the employer's liability to pay compensation under this Act to any worker employed by the employer including any

increase in amount occurring during currency of the policy; and

- (b) the full amount of the employer's liability to pay damages to any worker employed by the employer in respect of a compensable injury for which the employer is liable.

- (2) An employer obliged by this section to effect or renew a policy of insurance shall, on applying to an approved insurance office, for that purpose, furnish to that office an estimate, made to the best of that employer's knowledge, information and belief, of the aggregate amount of remuneration to be paid or payable over the period for which the policy is to be effected or renewed, and shall forthwith after the termination of that period —

- (a) furnish a statement of the aggregate amount of remuneration paid or payable in fact; and
- (b) include in that statement every sum paid during that period to an employee in respect of overtime worked by the employee.

- (2) In section 160(2b)(a) delete "the wages, salary and other remuneration paid" and insert:

remuneration paid or payable

- (3) In section 160(3) delete "pay compensation under this Act to all workers employed by him." and insert:

pay to all workers employed by the employer —

- (a) compensation under this Act; and

(b) damages in respect of compensable injuries for which the employer is liable.

(4) In section 160(4):

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

Act or damages in respect of compensable injuries for which the employer is liable; and

(b) in paragraph (b) delete “compensation under this Act” and insert:

such compensation or such damages

**106. Section 161A amended**

In section 161A after “Act” insert:

or damages in respect of compensable injuries for which the employer is liable

**107. Section 164 amended**

In section 164(1) delete “Act for” and insert:

Act for, or to pay damages in respect of,

**108. Section 165 amended**

(1) Delete section 165(2)(d) and insert:

(d) any change in the extent of the liability to pay compensation under this Act, or to pay

damages in respect of compensable injuries for which the employer is liable, since the last review.

- (2) In section 165(3)(a) delete “compensation; or” and insert:

compensation or damages in respect of compensable injuries for which the employer is liable; or

- (3) In section 165(4)(b):

- (a) in subparagraph (i) delete “under this Act,” and insert:

for which insurance would, but for the exemption, be required by this Act,

- (b) in subparagraph (ii) delete “under this Act.” and insert:

for which insurance would, but for the exemption, be required by this Act.

**109. Section 168 amended**

In section 168(b):

- (a) delete subparagraph (iii) and insert:

- (iii) there are no outstanding or potential claims for compensation or actions for damages in respect of an injury for which the employer is or may be liable; or



- (b) in subparagraph (iv) delete “claims for compensation,” and insert:

or potential claims or actions,

**110. Section 171 amended**

In section 171(1)(a) delete “with the insurance office concerned against liability under this Act; and” and insert:

required by this Act with the insurance office concerned; and

**111. Section 172 amended**

In section 172:

- (a) delete “wages, salary and other forms of”;  
(b) in paragraph (a) delete “wages, salary, and other forms of”.

**112. Section 173 amended**

In section 173(1):

- (a) after “currency of a contract” insert:

under this Act

- (b) delete “liability under this Act” and insert:

liability

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

insurer that the employer otherwise would have had under the contract; and

- (d) in paragraph (b) delete “the liability,” and insert:

that liability that the employer otherwise would have had to that worker and in respect of that liability.

- (e) delete “that the employer otherwise would have had under the contract.”

**113. Section 174 amended**

- (1) After section 174(1) insert:

(1AA) Where —

- (a) on or after the day on which the *Workers' Compensation and Injury Management Amendment Act 2011* section 113 comes into operation, an action for damages is brought by a worker against the worker's employer in respect of a compensable injury; and
- (b) before that day no claim for compensation under this Act has been made in respect of the same injury; and
- (c) the action —
- (i) proceeds to judgment, including the acceptance of an offer to consent to judgment, against the employer and damages are awarded to the worker against the employer; or

(ii) is settled by an agreement of the kind described in section 92(f) made between the worker and WorkCover WA, in the exercise of its powers under section 174AB(1), under which damages are to be paid to the worker;

and

(d) the employer is not insured under this Act against the employer's liability to pay damages to the worker or the case is one to which section 173(2) applies or the employer's insurer declines to indemnify the employer against the worker's claim for damages; and

(e) the employer does not pay the damages awarded or agreed within 60 days after the date payment is due under the judgment or agreement,

subject to section 174AAA, WorkCover WA is to pay to the worker from moneys standing to the credit of the General Account the amount required to satisfy the judgment or agreement and any order against the employer for costs in respect of the action.

(2) In section 174(1a) delete "under this Act in relation to the payment of that award." and insert:

in relation to the payment of that amount.

(3) In section 174(3) after "satisfy an award" insert:

of compensation in accordance with this Act

- (4) In section 174(5a) after “pay compensation” insert:

or damages

- (5) In section 174(6) after “subsection (1)” insert:

or (1AA)

- (6) In section 174(9):

(a) delete “by reason of section 175”;

(b) after “to a worker,” insert:

or to pay damages to a worker in respect of a compensable injury,

**114. Section 174AAA inserted**

After section 174 insert:

**174AAA. Setting aside judgments and agreements**

- (1) If —

(a) an action brought by a worker as described in section 174(1AA)(a) proceeds to judgment as described in section 174(1AA)(c)(i) or is settled by an agreement of the kind described in section 174(1AA)(c)(ii); and

(b) a claim on the General Account is made under section 174(1AA) in respect of any amount due under the judgment or agreement,

WorkCover WA may apply to the Supreme Court for an order setting aside the judgment or agreement.

- (2) The Supreme Court may set aside the judgment or agreement if satisfied that there are reasonable grounds for believing that the employer has not taken all reasonable steps to protect the employer's own interests.
- (3) If the Supreme Court sets the judgment or agreement aside the costs of the respondent in relation to the application are to be paid from the General Account unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make an order about costs under subsection (3) only if satisfied that it is appropriate to make the order because of the special circumstances surrounding the giving of the judgment or the making of the agreement.
- (5) If a judgment or agreement is set aside under this section —
  - (a) the judgment or agreement is taken never to have had effect for the purpose of any proceeding in any court; and
  - (b) evidence of a statement or communication, or a part of a statement or communication, tending to establish the existence of the agreement is not admissible in any proceeding in a court, unless the Supreme Court orders otherwise.
- (6) The Supreme Court may make an order under subsection (5)(b) only if satisfied that the admission of the evidence is necessary to avoid injustice to a party to the proceeding.

**115. Section 174AB amended**

(1) In section 174AB(1):

- (a) delete “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” and insert:

against whom a claim for compensation under this Act, or an action for damages in respect of a compensable injury for which the employer is liable, is brought by a worker is uninsured, WorkCover WA has all of the rights of the employer as the party against whom the claim or action is brought

(b) after paragraph (a) insert:

- (ba) consent to a judgment being given in a proceeding before a court; and

(c) in paragraph (b) delete “claim; and” and insert:

claim or compromise of the action; and

(d) in paragraph (c) delete “claim; and” and insert:

claim or action; and

(2) Delete section 174AB(2), (3) and (4).

**116. Section 174AC replaced**

Delete section 174AC and insert:

**174AC. WorkCover WA's rights of indemnity and subrogation**

If WorkCover WA has paid, or is liable to pay, from the General Account an amount as compensation or damages for which an employer is liable, WorkCover WA is subrogated to —

- (a) any right of the employer to indemnity from an insurer in respect of that payment; and
- (b) 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.

**174AD. Employer's duty to assist WorkCover WA**

- (1) Where under section 174AB or 174AC WorkCover WA has or is subrogated to any right of an employer, WorkCover WA may by notice in writing require the employer to —
  - (a) give WorkCover WA any information and assistance which WorkCover WA considers necessary or desirable in relation to the exercise or proposed exercise of the right; and
  - (b) provide to WorkCover WA any documents in the employer's possession or control which WorkCover WA considers necessary or desirable in relation to the exercise or contemplated exercise of the right; and

- (c) execute any documents or instruments which may be necessary to enable WorkCover WA to exercise the right, or to ratify or confirm any exercise or purported exercise of the right by WorkCover WA.
- (2) An employer must comply with any requirement made under subsection (1).  
Penalty: a fine of \$5 000.

**117. Section 174A amended**

In section 174A(1):

- (a) delete “claimed under this Act” and insert:

or damages in respect of a compensable injury for which the employer is liable

- (b) before “claimed,” insert:

or damages are

**118. Section 175 amended**

After section 175(7) insert:

- (8) Nothing in this section makes either a principal or a contractor liable to pay any damages which, but for this section, the principal or contractor would not be liable to pay.



**119. Section 175A amended**

- (1) In section 175A(1) delete “WorkCover WA” and insert:

The chief executive officer

- (2) In section 175A(4) delete “Chairman of WorkCover WA” and insert:

chief executive officer

- (3) After section 175A(5) insert:

(6) If, immediately before the commencement of the *Workers' Compensation and Injury Management Amendment Act 2011* section 119, a person was an inspector authorised by WorkCover WA under subsection (1), as in force at that time, the person is taken to have been authorised as an inspector by the chief executive officer.

(7) If, immediately before the commencement of the *Workers' Compensation and Injury Management Amendment Act 2011* section 119, a person authorised as an inspector held a certificate issued by the Chairman of WorkCover WA under subsection (4), as in force at that time, the person is taken to hold a certificate issued by the chief executive officer.

**120. Section 178 amended**

After section 178(1) insert:

- (2A) For the purposes of showing that the employer has not been prejudiced in defending the proceedings for

subsection (1)(d), the period from the occurrence of the injury, or from the time of death, to the time the claim is made is to be taken into account.

**121. Section 270A inserted**

After section 269 insert:

**270A. Remuneration**

- (1) A member of the Costs Committee is entitled to be paid such fees and allowances as may be determined by the Minister on the recommendation of the Public Sector Commissioner.
- (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 Account.

**122. Section 277 amended**

In section 277(1)(b) delete “*Workplace Relations Act 1996* of the Commonwealth;” and insert:

*Fair Work (Registered Organisations) Act 2009*  
(Commonwealth) or under another law of the  
Commonwealth prescribed by the regulations;

**123. Schedule 1 amended**

- (1) In Schedule 1 clause 7(4) delete “18A(1c).” and insert:

18A(1CA) and (1C).

- (2) In Schedule 1 clause 11(2) delete the definitions of:  
*Amount A*  
*Amount D*
- (3) In Schedule 1 clause 11(3)(a):
- (a) delete “Amount A” and insert:
- Amount B
- (b) delete “Amount D;” and insert:
- Amount Aa;
- (4) In Schedule 1 clause 11(3)(b):
- (a) delete “Amount Aa,” and insert:
- 85% of Amount B,
- (b) delete “Amount D.” and insert:
- Amount Aa.
- (5) Delete Schedule 1 clause 11(5) and insert:
- (5) Subject to subclause (6), the references in the definition of *Amount Aa* to allowances are references to allowances averaged over the period of one year ending at the date of incapacity.

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- (6) In Schedule 1 clause 11(6) delete “13 weeks mentioned in subclause (5),” and insert:

one year mentioned in subclause (5), or if for part of that period the worker was not in the employment that the worker is in on the date of incapacity,

- (7) In Schedule 1 clause 11(7) delete “Amount D” and insert:

Amount Aa

- (8) In Schedule 1 clause 16(2) delete “any percentage increase in wages ordered in a National Wage Decision made under the *Conciliation and Arbitration Act 1904* of the Commonwealth as a result, *inter alia*, of consumer price index movements.” and insert:

any percentage increase in minimum wages resulting from —

- (a) a national minimum wage order made under the *Fair Work Act 2009* (Commonwealth); or
- (b) any other instrument determining or regulating minimum wages prescribed by the regulations in place of national minimum wage orders.

- (9) Before Schedule 1 clause 18A(1) insert:

(1AA) In this clause —

***reasonable expenses referred to in clause 17(1)*** includes the vehicle running expenses, reasonable fares and expenses and reasonable cost of meals and lodging referred to in clause 19(1).

- (10) In Schedule 1 clause 18A(1) delete “subclauses (1c)(a) and (2),” and insert:

subclauses (1CA) and (2),

- (11) In Schedule 1 clause 18A(1a) delete “subclauses (1c)(a) and (2),” and insert:

subclauses (1CA) and (2),

- (12) In Schedule 1 clause 18A(1b) delete “subclauses (1c)(b)” and insert:

subclauses (1C)

- (13) Delete Schedule 1 clause 18A(1c) and insert:

- (1CA) In the exercise of a discretion under subclause (1) or (1a), an arbitrator is not to allow an additional sum which exceeds, or additional sums which in aggregate exceed —

(a) \$50 000; less

(b) any sum or sums in excess of the maximum amount provided by clause 17(1) that the insurer or employer has voluntarily paid in respect of reasonable expenses referred to in that clause.

- (1C) In the exercise of a discretion under subclause (1b), an arbitrator is not to allow a further additional sum which exceeds, or further additional sums which in aggregate exceed —

(a) the prescribed amount; less

(b) any sum or sums in excess of the maximum amount provided by clause 17(1) that the insurer or

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employer has voluntarily paid in respect of reasonable expenses referred to in that clause.

- (14) In Schedule 1 clause 18A(1d) delete “subclause (1c)(b) —” and insert:

subclause (1C) —

- (15) In Schedule 1 clause 18A(3)(a)(ii) delete “\$30 000;” and insert:

\$30 000, less any sum or sums in excess of the maximum amount provided by clause 17(1) that the insurer or employer has voluntarily paid in respect of reasonable expenses referred to in that clause;

- (16) In Schedule 1 clause 18A(4)(b) delete “\$30 000.” and insert:

\$30 000, less any sum or sums in excess of the maximum amount provided by clause 17(1) that the insurer or employer has voluntarily paid in respect of reasonable expenses referred to in that clause.

- (17) Before Schedule 1 clause 18D(1) insert:

- (1A) In this clause —

***reasonable expenses referred to in clause 17(1)*** includes the vehicle running expenses, reasonable fares and expenses and reasonable cost of meals and lodging referred to in clause 19(1).

(18) After Schedule 1 clause 19(2) insert:

- (3A) In any case where a worker travels for the worker's degree of impairment to be assessed by an approved medical specialist or an approved medical specialist panel, the employer is liable to pay the worker's vehicle running expenses, reasonable fares and expenses and reasonable cost of meals and lodging —
- (a) as if subclause (1), with any necessary modifications, applied to the travelling; and
  - (b) if the worker proves that the travelling was necessary in the circumstances of the case.

**124. Schedule 3 amended**

In Schedule 3 after the item relating to Diseases caused by the asphyxiants insert:

Diffuse pleural fibrosis	Any process entailing substantial exposure to asbestos dust.
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**Division 2 — Workers' Compensation and Injury Management (Specified Industrial Diseases) Order 2008 revoked**

**125. Specified Industrial Diseases Order revoked**

The *Workers' Compensation and Injury Management (Specified Industrial Diseases) Order 2008* is revoked.

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