WORKERS' COMPENSATION

REFORM BILL 2004

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Workers' Compensation Reform Bill 2004 honours the Government's election commitment to reform the workers' compensation system to ensure workers are adequately compensated, provided with assistance to return to work and employers are not burdened with additional costs due to inefficiencies in the system. The reforms are wide ranging and incorporate changes to scheme design, the structure and role of the Workers' Compensation and Rehabilitation Commission (the Commission) and rectification of unintended consequences of past legislative change and legal precedents.

2. The objectives of the Workers' Compensation Reform Bill 2004 are:

- to ensure the workers' compensation system balances the interests of workers and employers;
- to establish a fair and efficient system with more stable and cost efficient protection for employers while providing improved levels of support and compensation to injured workers;
- to incorporate changes to scheme design, the structure and role of the Commission and rectification of unintended consequences of past legislative change; and
- to reduce the level of complexity, barriers and delays inherent in the current common law system.

PART 1 – PRELIMINARY

CLAUSE 1. SHORT TITLE

3. This Act may be cited as the *Workers' Compensation Reform Act 2004.*

CLAUSE 2. COMMENCEMENT

4. This Act comes into operation on a day or days to be fixed by proclamation. Different days may be fixed for different provisions of the Act.

PART 2 – AMENDMENTS TO THE WORKERS' COMPENSATION AND REHABILITATION ACT (1981)

CLAUSE 3. THE ACT AMENDED

5. This part makes amendments to the *Workers' Compensation and Rehabilitation Act 1981*.

CLAUSE 4. LONG TITLE AMENDED

6. Shifts the focus in the long title from the rehabilitation of workers suffering a disability to the management of employment related injuries. The new wording replaces the reference to the "Workers' Compensation and Rehabilitation Commission" with "WorkCover Western Australia Authority" and replaces the reference to "dispute resolution bodies" with "a Dispute Resolution Directorate".

CLAUSE 5. SECTION 1 AMENDED

7. The short title of the principal Act is amended by replacing "Rehabilitation" with "Injury Management", which reflects the focus on injury management and is a much broader concept than rehabilitation, incorporating processes to manage injuries at onset through to the return of an injured worker to work.

CLAUSE 6. SECTION 3 AMENDED

8. The purposes of the Act are amended to provide for the management of worker's injuries in a manner that is directed at enabling injured workers to return to work and to provide for specialised retraining programs for certain workers. The new reference to "return to work" replaces the current focus on rehabilitation, which aims solely at restoring a worker's capacity for gainful employment, not necessarily returning them to the workforce.

CLAUSE 7. SECTION 4 AMENDED

9. This clause makes consequential amendments regarding the general application of the principal Act, by adding to the reference to injuries mentioned in Schedule 2 the words "an impairment from injury", to reflect the terminology used in the new Schedule 2 regime. Other references to "injury" are not amended, either because they relate to the date of the accident, or to references to "injury" in the repealed Act. Also makes a consequential amendment to reflect the new injury management provisions.

CLAUSE 8. SECTION 5 AMENDED

10. Subclause (1) deletes the definitions of "approved rehabilitation provider", "Commission", "Committee", "compensation magistrate's court", "conciliation officer", "Directorate", "disability", "disabled from earning full wages", "dispute resolution body", "Executive Director, "rehabilitation", "review officer", "the Chairman of the Commission" and "vocational rehabilitation". Deleting these definitions is necessary as the terms are either no longer relevant, or have

been superseded by new terms. New additions reflect new processes and structures in the Reform Bill. Consequential amendments also reflect the appointment of arbitrators to replace review officers and conciliation officers.

Subclause (2) defines the following new terms:

"approved medical specialist". These medical specialists will provide assessments of the degree of impairment.

"approved medical specialist panel". These panels will provide final and binding assessments on the degree of impairment.

"approved vocational rehabilitation provider". Previously the definition of "approved rehabilitation provider" included the Commission. This has been deleted as WorkCover WA no longer provides rehabilitation services.

"arbitrator". "arbitrator" replaces "conciliation officer" and "review officer".

"**chief executive officer".** Replaces the existing title of "Executive Director".

"Commissioner". A "Commissioner" (with the status of a District Court Judge) replaces the "Compensation Magistrate".

"decision". Includes orders, awards, directions or determinations.

"dispute resolution authority". Includes the Director, arbitrators or the Commissioner.

"DRD". Means the Dispute Resolution Directorate under section 278.

"DRD Rules". Means rules that can be made by the Commissioner to give effect to the purposes of the Act.

"injury". The existing definition of "disability" is replaced with "injury" which is consistent with the term used in other States. It is not intended to change the meaning of the current definition, only the title.

"Injury management". Emphasises the aim of returning injured workers to work.

"medical report". Self-explanatory.

"officer of the DRD". Self-explanatory.

"participate". Intended to clarify a worker's injury management obligations.

"registered agent". Defines who may register as an agent to represent parties in proceedings before the DRD, under section 277, Part XVI.

"return to work". Clarifies the aim of injury management. Partly reflects the existing wording in section 84AA and provides that a return to work may be with the original employer or another employer. This level of specificity ensures every attempt is made to return an injured worker to appropriate employment.

"specialised retraining assessment panel". This panel will make a binding assessment as to whether the worker satisfies all of the retraining criteria required for a specialised retraining program.

"specialised retraining program". Assists eligible workers undertake further formal training if this is the only option to enable them to return to employment.

“the Chairman of WorkCover WA”. The person who chairs WorkCover WA’s governing body.

"vocational rehabilitation". Partly reflects the existing definition but provides that services which may be provided are to be prescribed based on the worker's assessed needs. It also replaces the emphasis on restoring the worker's capacity for gaining employment with the aim of enabling the worker to return to work.

"WorkCover Guides". To be used in evaluating the degree of impairment.

"WorkCover WA". Self-explanatory.

Subclause 3(a) makes a consequential amendment to the definition of "child's allowance" to reflect the changes to dependent children or step-children's entitlements under Schedule 1.

Subclause 3(b) removes the requirement for WorkCover WA to approve chiropractors. This is no longer required as the *Chiropractors Act 1964* provides that the Chiropractors' Registration Board is responsible for ensuring only suitably qualified chiropractors are registered in this State to practice chiropractic services.

Subclause 3(c) amends the definition of "Director" to reflect the change in the name of the "Conciliation and Review Directorate" to the "Dispute Resolution Directorate".

Subclause 3(d) makes a consequential amendment to the definition of "General Fund" to reflect the injury management provisions.

Subclause 3(e) deletes the existing definition of "industrial award" and replaces it with a new definition which:

- includes an industrial agreement made under statute;
- deletes the reference to the *Public Service Arbitration Act 1996*, which has been repealed;
- updates the short title of the Mining Act relevant to the *Coal Industry Tribunal of Western Australia*; and
- updates the reference to the relevant Federal industrial relations legislation.

These changes largely reflect the view taken by the Compensation Magistrate in the matter of *Anna Bradshaw –v- Education Department of Western Australia* (CM-23/00). The new definition includes an award or order made by the Industrial Relations' Commission, including an Enterprise Bargaining Agreement but does not include an Employer-Employee Agreement or Australian Workplace Agreement.

Subclause 3(f) makes a consequential amendment to the definition of "medical assessment panel" to reflect the new structure of Part VII.

Subclause 3(g) makes consequential amendments to the definition of "notional residual entitlement" to reflect the change from "disability" to "injury".

Subclause 3(h) makes a consequential amendment to the definition of "relevant employment" to reflect the change from "disability" to "injury".

Subclause 3(i) makes a consequential amendment to the definition of "Trust Fund" to reflect the injury management amendments.

Subclause 4 amends the general application provisions to provide that "personal injury by accident" refers to paragraph (a) of the definition of injury.

Subclause 5 makes a consequential amendment to sections 5(4) and 5(5) to reflect the change from "disability" to "injury".

CLAUSE 9. SECTION 7 AMENDED

11. Deletes the reference to industrial agreements, which, in this context, means the same as an "industrial award".

CLAUSE 10. SECTION 10A REPLACED

10A. Working Directors

12. Subsection (1) provides that a working director of a company will no longer be defined as a worker of that company.

Subsection (2) provides that if a company contracts to a principal to perform work for them, the principal must cover any director of the company if the work is for the purpose of the principal's trade or business and the director performs any of the work.

Subsection (3) provides that the obligation under (2) applies, regardless of the provisions of section 175.

CLAUSE 11. SECTION 12 AMENDED

13. A consequential amendment to section 12.

CLAUSE 12. HEADING TO PART III DIVISION 1 REPLACED

Division 1 – Injury: general

14. The new heading reflects the change from "disability" to "injury".

CLAUSE 13. SECTION 22 AMENDED

15. This clause makes a consequential amendment to reflect the change in the definition of "disability" to "injury".

CLAUSE 14. HEADING TO PART III DIVISION 2 REPLACED

Division 2 – Discontinued regime for lump sum payments for specified injuries

16. The new heading reflects the fact this Division only applies to an injury which occurs before the amendment day.

CLAUSE 15. SECTION 24 AMENDED

17. Subclause (1) defines **"amendment day"** as the day on which the new regime for Schedule 2 lump sum payments comes into operation.

Subclause (2) provides transitional provisions whereby the existing provisions regarding compensation will become Part 1 of the Schedule 2 table.

Subclause (3) provides transitionals under which Division 2 only applies to an injury which occurs before the amendment day; and Division 2 only applies to noise induced hearing loss shown before the amendment day.

CLAUSE 16. SECTION 24A AMENDED

18. Reflects the fact section 24A(1) only relates to Part 1 of the Schedule 2 table.

CLAUSE 17. SECTION 24B AMENDED

19. Subclause (1) is a consequential amendment associated with the new dispute resolution process which provides for forms of election to be filed with the Director, not the Directorate.

Subclause 2 is a consequential amendment to reflect that "Dispute resolution" is now under Part XI.

CLAUSE 18. SECTION 26 AMENDED

20. This clause reflects the fact subsection 26(1) only relates to Part 1 of the Schedule 2 table.

CLAUSE 19. SECTION 28 AMENDED

21. A consequential amendment regarding clause 18A which was overlooked in previous amendments.

CLAUSE 20. SECTION 31 AMENDED

22. Reflects the fact the interpretation of Schedule 2 under section 31 only applies to Part 1 of the Schedule 2 table.

CLAUSE 21. PART III DIVISION 2A INSERTED

Division 2A – New regime for lump sum payments for specified injuries

23. For the purposes of Division 2A only, the term "injury" (which currently describes the permanent loss of use of or permanent loss of the efficient use of a body part or faculty listed in Schedule 2, resulting from a personal injury by accident) is replaced by the term "impairment". The heading for Division 2A reflects the fact this new division will only apply to an injury which occurs on or after the amendment day.

31A. Application of Division

24. Subclause (1) defines "amendment day" as the day on which the new regime for Schedule 2 lump sum payments comes into operation.

Subclause (2) is a transitional provision which provides that this Division only applies to a personal injury by accident which occurs on or after the amendment day.

Subclause (3) is a transitional provision which provides that this Division only applies to noise induced hearing loss shown on or after the amendment day.

31B. Degree of permanent impairment

25. Defines **"degree of permanent impairment"** to include the degree of permanent impairment of a part or body faculty or, in relation to scarring, the degree of whole of person impairment. The latter is necessary because the WorkCover Guides provide for evaluating scarring as it affects the whole person.

31C. Compensation for impairments mentioned in Schedule 2

26. Section 31C(1) reflects existing section 24, except that in new subsection (1) "compensable personal injuries" is replaced by "permanent impairment from compensable personal injury", "an injury" is replaced by "an impairment", and "the injuries" is replaced with "the impairment. Section 31C(2) reflects existing section 24, except that "each such injury" is replaced with "such an impairment" and "such an injury" is replaced by "such an impairment".

31D. Schedule 2 impairment assessment

27. Subsection (1) partly reflects existing section 25(1).

Subsection (2) partly reflects existing section 25(1).

Subsection (3) provides for the worker to apply for a determination as to the degree of permanent impairment where the worker and employer cannot agree.

Subsection (4) enables the arbitrator to determine the dispute or refer the question as to the degree of impairment to an AMS panel for a binding assessment.

Subsection (5) provides that if the permanent impairment is assessed as being not less than that claimed, the arbitrator may order the employer to pay the costs of the dispute.

31E. Lump sum compensation for noise induced hearing loss

28. Subsection (1) reflects existing section 24A(1), except for appropriate amendments which reflect the new Schedule 2 impairment provisions of Part 2 of the Schedule 2 table.

Subsection (2) partly reflects existing section 24A(1), by explaining the calculation of the amount of compensation payable with appropriate amendments to reflect the new impairment provisions in Part 2 of the Schedule 2 table.

Subsection (3) reflects existing section 24A(2).

Subsection (4) reflects existing section 24A(3).

Subsection (5) reflects existing section 24A(4).

Subsection (6) reflects existing section 24A(5). Loss of hearing will continue to be calculated as currently.

Subsection (7) reflects existing section 24A(6).

31F. Lump sum compensation for AIDS

29. Subsection (1) provides that for the purposes of this section and the Schedule 2 table – **"AIDS"** and **"HIV"** are defined.

Subsection (2) provides that subject to this section, for the purposes of this Division – an HIV infection and the contraction of AIDS are deemed a personal injury by accident. AIDS is deemed to result in permanent impairment of 100% and the contraction of AIDS is deemed to have occurred on the date of the accident through which the worker was infected with HIV.

Subsection (3) provides that 100% of the prescribed amount is payable for an impairment caused by AIDS.

Subsection (4) provides that regulations may prescribe methods for deciding whether a worker is infected with HIV or has contracted AIDS. If no regulations are prescribed, the decision is to be based purely on the opinion of a medical practitioner.

Subsection (5) provides that sections 31C and 31D do not apply to an AIDS impairment, as it will be deemed to be 100% impairment. Therefore, the WorkCover WA impairment guidelines are not needed to assess the impairment. Further, section 26 does not apply because if compensation is paid for AIDS at 100%, there can be no further Schedule 2 entitlement for a subsequent injury.

Subsection (6) provides there is no entitlement if the AIDS is the result of illicit drug use or voluntary sexual activity.

Subsection (7) provides that the serious and wilful misconduct provisions in section 22 still apply.

Subsection (8) provides that this entitlement is prospective in that the accident by which the worker became HIV infected must have occurred on or after the amendment day.

31G. Subsequent injuries

30. Subsection (1) defines "impairment" in this section. This ensures that if a worker has already suffered a loss of the full and efficient use of a part or faculty, this may be taken into account when calculating any increase, due to a subsequent injury.

Subsection (2) reflects existing section 26(1), except that "loss of the full efficient use of" is replaced by "permanent impairment".

Subsection (3) reflects existing section 26(2), except that "loss of, or the permanent loss of the efficient use of" is replaced by "impairment".

31H. Election under section 31C or 31E

31. Subsection (1) reflects existing section 24B(1), except "relevant injury or hearing loss" is replaced by "impairments" and "Directorate" is replaced by "Director".

Subsection (2) provides that a worker can elect if the worker and employer agree or a determination has been made as to the degree of permanent impairment, or a worker has a certificate indicating he/she has contracted AIDS.

Subsection (3) reflects existing section 24B(1)(b).

Subsection (4) reflects existing section 29.

31I. Effect of election

32. Subsection (1) reflects existing section 24B(2).

Subsection (2) reflects existing section 24B(3).

Subsection (3) reflects existing section 24B(4).

Subsection (4) reflects existing section 29, except that "injuries is replaced by "impairments or losses".

31J. Limit on compensation of worker electing

33. Reflects existing section 28, except that in subsection(1), "injuries" is replaced by "impairments" and in subsection(2) "a dispute resolution body" is replaced by "an arbitrator".

31K. Compensation payable before election

34. Reflects existing section 30.

CLAUSE 22. HEADING TO PART III DIVISION 3 REPLACED

Division 3 – Injury: specified industrial diseases

35. The Division 3 heading is a consequential amendment reflecting the definition change from “disability” to “injury”.

CLAUSE 23. SECTION 32 AMENDED

36. Clause 23 makes consequential amendments to reflect the definition change from “disability” to “injury” in section 5(1).

CLAUSE 24. SECTION 33 AMENDED

37. Clause 24 makes consequential amendments to reflect the change in the definition of “disability” to “injury” in section 5(1).

CLAUSE 25. SECTION 34 AMENDED

38. Clause 25 makes consequential amendments to reflect the change in the definition of “disability” to “injury” in section 5(1).

CLAUSE 26. SECTION 35 AMENDED

39. Clause 26 makes consequential amendments to reflect the change in the definition of “disability” to “injury” in section 5(1).

CLAUSE 27. SECTION 37 AMENDED

40. A consequential amendment to reflect the new dispute resolution provisions.

CLAUSE 28. SECTION 38 AMENDED

41. A consequential amendment to reflect the change in the definition of “disability” to “injury” in section 5(1).

CLAUSE 29. SECTION 39 AMENDED

42. A consequential amendment to reflect the change in the definition of “disability” to “injury” in section 5(1).

CLAUSE 30. SECTION 40 REPLACED

43. A consequential amendment to reflect the change in the definition of “disability” to “injury” in section 5(1).

CLAUSE 31. SECTION 41 AMENDED

44. A consequential amendment to reflect the change in the definition of “disability” to “injury” in section 5(1).

CLAUSE 32. SECTION 43 AMENDED

45. A consequential amendment to reflect the change in the definition of “disability” to “injury” in section 5(1).

CLAUSE 33. SECTION 44 AMENDED

46. A consequential amendment to reflect the change in the definition of "disability" to "injury" in section 5(1).

CLAUSE 34. SECTION 47 AMENDED

47. A consequential amendment to reflect the change in the definition of "disability" to "injury" in section 5(1).

CLAUSE 35. SECTION 48 AMENDED

48. Consequential amendments to reflect the restructure of the Commission and the change in the definition of "disability" to "injury" in section 5(1).

CLAUSE 36. HEADING TO PART III DIVISION 4 REPLACED

Division 4 – Injury: specified losses of function

49. A consequential amendment to reflect the change in the definition of "disability" to "injury" in section 5(1).

CLAUSE 37. SECTION 49 REPLACED

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

50. A consequential amendment to reflect the change in the definition of "disability" to "injury" in section 5(1).

CLAUSE 38. SECTION 53 AMENDED

51. A consequential amendment to reflect the change in the definition of "disability" to "injury" in section 5(1).

CLAUSE 39. SECTION 54 AMENDED

52. A consequential amendment to reflect the change in the definition of "disability") to "injury" in section 5(1.

CLAUSE 40. SECTION 57 AMENDED

53. A consequential amendment to reflect the new provisions in Clause 18A of Schedule 1.

CLAUSE 41. SECTION 57A AMENDED

54. Subclause(1) creates new section 57A(3) to reflect the insertion of section 57BA, which specifies the presentation and content of notices issued under section 57A and 57B to the worker and employer accepting liability for weekly payments claimed, the worker and employer disputing liability for weekly payments claimed and the worker, employer and Director advising liability not able to be made within 14 days. A new penalty of $1000 has been inserted for a breach of this section. New regulations will provide an option to issue an infringement notice and apply a modified penalty.

Subclause(2) creates an offence provision with a maximum penalty of $1000 that can be levied against insurers who fail to provide the information in a machine readable format. The option exists for WorkCover WA to issue an infringement notice and modified penalty for this offence.

Subclause(3) amends section 57A(5) by deleting “to the Directorate”.

Subclause(4) provides for arbitrators to determine applications for entitlements where an employer fails to provide appropriate notification under section 57A(3). This reflects the fact arbitrators will specifically deal with applications under section 57A(5).

Subclause(5) specifies arbitrators may order commencement of payments under section 57A(7), where the employer has not commenced payments as soon as practicable after being notified the claim has been accepted.

CLAUSE 42. SECTION 57B AMENDED

55. Clause 42 inserts a new section 57B(2) which reflects the requirements under new section 57BA to issue notices in a prescribed format in regard to disputing liability for weekly payments claimed and advising the Director and worker that liability is not able to be made within 17 days. This ensures all parties are clearly informed in writing as to why a claim is disputed or pended or cannot be determined so appropriate action, if necessary, can be taken. Regulating the forms provides flexibility to insert additional requirements on insurers/self-insurers and to create offence provisions where there is failure to comply. A new penalty of $1000 is inserted for a breach of this section. New regulations will provide an option to issue an infringement notice and modified penalty.

Section 57B creates offence provisions with a maximum penalty of $1000 that can be levied against insurers which fail to notify the Director as to why a decision on liability was not able to be made within 17 days. WorkCover WA will be able to issue an infringement notice and modified penalty for this offence.

CLAUSE 43. SECTION 57BA INSERTED

57BA. Notices under sections 57A and 57B

56. Section 57BA(1) provides that 57A or 57B notices should use plain language.

Section 57BA(2) specifies the regulations may prescribe the information to be included in or to accompany section 57A or 57B notices and require information to be included in or to accompany such a notice being given to WorkCover WA, or other persons.

Section 57BA(3) provides that section 57A(3)(b) or 57B(2)(b) notices are to be as prescribed by the regulations and must state the reason for disputing liability and the Act provisions under which liability is disputed.

Section 57BA(4) specifies that section 57A(3)(b) or 57B(2)(b) notices must include —

a) a statement that the worker can apply for dispute resolution;

b) a statement that the worker may seek advice or assistance from a trade union, legal practitioner or registered agent; and

c) such other information as prescribed or, subject to the regulations, as WorkCover WA may approve and notify to insurers and, in the case of information required under a section 57B(2)(b) notice, to employers.

Section 57BA(5) provides that a statement in a notice under section 57A(3)(b) or 57B(2)(b) is given —

a) for a section 57A(3)(b) notice, subject to the insurer not being prejudiced in any subsequent proceedings; and

b) for a 57B(2)(b) notice, subject to the employer, or the insurer, not being prejudiced in any subsequent proceedings.

Section 57BA(6) provides that section 57A(3)(c) or 57B(2)(c) notices are to —

a) be in prescribed forms;

b) include a statement of the reasons why a decision regarding whether liability is accepted is not able to be made within the time allowed by section 57A(3) or 57B(2), and —

(i) if a reason is that the person giving the notice needs further medical information, a statement outlining the medical information and whether or not the notice requires written authority from the worker;

(ii) if a reason is that the person giving the notice needs further information about the worker's earnings, a statement regarding the nature and substance of the information required; and

(iii) any other particulars required to make the decision; and

c) other information as is prescribed.

CLAUSE 44. SECTION 57C AMENDED

57. Inserts a new penalty of $1000 for a breach of section 57C(2), (3) and (4). WorkCover WA will be able to issue infringement notices and modified penalties for these offences.

CLAUSE 45. SECTION 58 AMENDED

58. Consequential amendments to section 58 to reflect the new dispute resolution provisions.

CLAUSE 46. SECTION 59 AMENDED

59. A consequential amendment to section 59 to reflect the new dispute resolution provisions.

CLAUSE 47. SECTION 60 AMENDED

60. Consequential amendments to section 60 to reflect the new dispute resolution provisions.

CLAUSE 48. SECTION 61 AMENDED

61. Under new section 61(2a) it is an offence not to notify the worker of the insurer's/employer's intent to discontinue or reduce weekly compensation payments at least 21 clear days before discontinuation or reduction is applied.

WorkCover WA can elect to issue an infringement notice and modified penalty for this offence.

Section 61(4a) is amended to recognise arbitrators determine matters involving unlawful discontinuance of weekly payments under section 61. Section 61(4a) also provides that an arbitrator may, when reviewing an application by a worker disputing the employer's right to discontinue or reduce their weekly payments, take into account whether: -

(i) the employer has established a return to work program;

(ii) the program is in accordance with the Injury Management Code; and

(iii) the worker has participated in the return to work program.

The intent is to provide an incentive for workers to participate in a return to work program and for the employer to establish the program in accordance with the code.

CLAUSE 49. SECTION 62 AMENDED

62. Section 62 amended to provide that in addition to powers to discontinue, reduce or increase a worker's weekly payments arbitrators will also be empowered to suspend weekly payments from and to the date of an order.

CLAUSE 50. SECTION 63 AMENDED

63. Recognises arbitrators will determine whether lawful suspensions of compensation should be lifted.

CLAUSE 51. SECTION 64 AMENDED

64. Subclause (1) recognises it is unfair an employer alone should be able to determine what constitutes a reasonable excuse and when it is appropriate to suspend payments. The power to suspend weekly payments pursuant to an alleged breach of section 64 by the worker will now be vested in an arbitrator under new section 72A.

Subclause (2) reflects existing section 64(2), with appropriate consequential amendments to take into account the new impairment methodology that applies to Schedule 2 assessments.

Subclause (3) makes a consequential amendment.

CLAUSE 52. SECTION 65 AMENDED

65. This clause recognises it is unfair an employer alone should be able to determine what constitutes a reasonable excuse and when it is appropriate to suspend payments. The power to suspend weekly payments pursuant to an alleged breach of section 65 by the worker will now be vested in an arbitrator under new section 72A.

CLAUSE 53. SECTION 66 AMENDED

66. This clause will help address ongoing concerns in relation to doctor shopping, by clarifying an employer cannot require the worker to attend more examinations than the number prescribed by regulation.

CLAUSE 54. SECTION 66A AMENDED

66A. Additional medical examination

67. Enables an arbitrator to require the worker to submit for further medical examination(s) than may be allowed under the regulations, if the employer is able to prove further examination(s) is warranted.

CLAUSE 55. SECTION 67 AMENDED

68. Subclause (1) creates new section 67(1)(a) which empowers an arbitrator to make a consent order (worker and employer agree) to redeem by way of a lump sum for the incapacity. The order is to specify the lump sum. The order provides a formal record of the agreement. New section 67(1)(b) formalises agreements to redeem a claim by reiterating the employer and worker have agreed.

Subclause (2) makes a consequential amendment to recognise that where the worker and employer can't agree on a lump sum redemption for mesothelioma, an arbitrator can order a lump sum. Reference to Part III A is redundant as "Dispute Resolution" now comes under Part XI. It also recognises arbitrators will be able to issue orders for lump sum redemptions.

Subclause (3) makes consequential amendments reflecting the changes to clause 18A.

Subclause (4) provides flexibility by way of regulation to ensure details relevant to a consent order issued by an arbitrator, or a memorandum of agreement registered for a redemption, are appropriately recorded.

CLAUSE 56. SECTION 70 REPLACED

70. Furnishing medical reports

69. Deletes the provisions in section 70 which allow parties to request the Director to refer a lack of agreement on a medical issue to a medical assessment panel. These provisions are not consistent with section 145A, which currently provides that conciliation officers, review officers and compensation magistrates may, in certain cases, refer conflicts of medical opinion to panels.

CLAUSE 57. SECTION 71 AMENDED

70. Consequential amendments to specify arbitrators, not the "Directorate", will be empowered to make orders against a worker or dependant to recover monies to which they were not legally entitled.

CLAUSE 58. SECTION 72 REPLACED BY SECTIONS 72, 72A AND 72B

71. **72. Suspension of payments during custody**

Subclauses (1) & (2) give arbitrators discretion to determine which forms of imprisonment and custodial arrangements warrant suspension of weekly payments. This recognises arbitrators (not the Director) have the power to suspend payments for a certified period.

Subclause (3) stipulates certificates issued by arbitrators to suspend payments are binding on the worker, employer and insurer of the employer.

Subclause (4) allows arbitrators to consider grounds for suspension on the basis of documents and information, which will help to expedite proceedings and keep costs down.

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

72. This clause partly reflects existing section 72 and empowers arbitrators to suspend a worker's entitlement to compensation and prevents the worker from pursuing any proceedings under the Act where the worker fails to attend a medical examination required by an employer or an arbitrator under sections 64 or 65. Suspensions will not apply if the worker satisfies the arbitrator they had a reasonable excuse for refusing or failing to submit to a medical examination.

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

73. This clause partly reflects existing section 72 and provides that where a worker has been required to participate in a reasonable return to work program, as specified by an arbitrator under section 157 but refuses to do so, the worker's entitlement to weekly payments may be suspended under section 72 by an arbitrator during any period that the worker has been so required by an arbitrator to do so, but refuses. To safeguard the worker's entitlement and provide an incentive for employers to follow the Code, suspension will not occur unless the employer has properly followed the Code in establishing a reasonable return to work.

CLAUSE 59. SECTION 73 AMENDED

74. Subclause (1) recognises arbitrators will hear and determine applications as to which employer is wholly or partially liable to pay compensation.

Subclause (2) recognises arbitrators may make orders against the other employer for an applicant employer to be paid compensation paid to the worker and further compensation to which the worker is entitled.

Subclause (3) recognises that where there is a dispute between employers about liability to pay compensation for noise induced hearing loss, WorkCover WA shall provide an arbitrator with results of any relevant audiometric results stored by WorkCover WA.

CLAUSE 60. SECTION 74 AMENDED

75. Subclause (1) specifies arbitrators will hear and determine disputes between insurers on who is liable to indemnify an employer.

Subclause (2) specifies arbitrators are to determine liability and reimbursement issues involving insurers and issue orders accordingly.

CLAUSE 61. SECTION 75 AMENDED

76. The intent of this clause is to provide for section 75 to apply where the relevant employer is liable under (amended) section 73 to pay compensation for noise induced hearing loss where the worker is entitled to compensation from the relevant employer but there is a dispute between employers.

CLAUSE 62. SECTION 76 AMENDED

77. Subclause (1) ensures that where a memorandum of agreement has been registered it is enforceable as an award or order made by an arbitrator. Also makes consequential amendments.

Subclause (2) provides that where an employer proves a worker has returned to work and is no longer incapacitated an arbitrator is empowered to determine whether a memorandum of agreement should be registered, or registered on such terms as the arbitrator thinks fit.

Subclause (3) provides that as the Director is responsible for registering memorandums of agreement it is appropriate the Director also be responsible to rectify any mistakes and/or oversights in the register.

Subclause (4) makes consequential amendments to reflect the introduction of new sections 31C and 31E and to reflect the fact a Commissioner, with the status of a District Court Judge, replaces the compensation magistrate's court, and therefore is charged with responsibility to make appropriate orders due to fraud or other undue influence.

Subclause (5) is a consequential amendment which reflects the introduction of new sections 31C and 31E.

Subclause (6) enables the Director to nominate an approved medical specialist, except in the case of AIDS, under subsection (7). Subclause (7) recognises arbitrators will hear and determine applications and make orders in relation to memorandums of agreement obtained by fraud or undue influence, or that lump sum compensation paid under section 24 or 24A for Schedule 2 injuries or noise induced hearing loss was inadequate or excessive. It makes a consequential amendment to reflect the introduction of new sections 31C and 31E.

CLAUSE 63. SECTION 79 AMENDED

78. Consequential amendment to recognise arbitrators will hear and determine matters involving alleged wilful and false representation and may refuse, in appropriate cases, to award compensation.

CLAUSE 64. SECTION 80 AMENDED

79. Deletes the first reference to "industrial agreement" in section 80(1) because this is a reference to an agreement that is made under statute and these are now covered by the definition of "industrial award".

CLAUSE 65. SECTION 83 AMENDED

80. Subclause (1) updates the reference to the Commonwealth industrial relations legislation.

Subclause (2) ensures that where there is no agreement between the employer and the worker on the wage to be paid in relation to the worker's earning capacity, an arbitrator may determine the proportion to be applied.

CLAUSE 66. SECTION 84AB INSERTED

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

81. Subclause (1) addresses the concern certain employers may terminate the employment of a worker who has suffered a compensable injury. This amendment requires employers to notify such workers and WorkCover WA in advance of their intention to terminate the employment. This will allow WorkCover WA to advise the worker and employer of the employer's other obligations under section 84AA. An employer who does not comply commits an offence. Penalty $2 000.

Subclause (2) provides for a notice to be given in the form prescribed not less than 28 days before the dismissal is to take effect.

Subclause (3) provides that this section does not limit any other obligation or rights under this Act or any other written law.

CLAUSE 67. PART IIIA REPEALED

82. Part IIIA is repealed and a new dispute resolution system involving arbitration is created under Part XI.

CLAUSE 68. SECTION 91 AMENDED

83. Enables an assessment that is sent by the court to the DRD to be dealt with without the need for a worker to make an application under Part XI. This will expedite matters and minimise costs.

CLAUSE 69. SECTION 92 AMENDED

84. The memorandum of the terms of the settlement is sent for approval to the "Director", as opposed to the " Directorate".

CLAUSE 70. SECTION 93 AMENDED

85. Consequential amendments based on the new dispute resolution system in Part XI. Provides for arbitrators to determine workers' compensation related disputes.

CLAUSE 71. HEADING TO PART IV DIVISION 2 SUBDIVISION 1 INSERTED

Subdivision 1 – Preliminary provisions

86. Inserts a heading relating to subdivision 1 – Preliminary provisions. The provisions dealing with common law are separated into **"Subdivision 1 – Preliminary Provisions"**, **"Subdivision 2- 1993 Scheme"** and **"Subdivision 3 – 2004 scheme"**. Subdivision 1 contains preliminary provisions that apply to both the 1993 scheme and the 2004 schemes.

CLAUSE 72. SECTION 93A AMENDED

87. Definition of AMA Guides is deleted from this subdivision and moved to Subdivision 2, as the use of the AMA Guides relates specifically to assessments under the 1993 scheme.

CLAUSE 73. SECTION 93B AMENDED

88. The amendment to subsections (1) and (2) provides that this Division also applies to the awarding of damages in respect of gradual onset noise induced hearing loss, based on exposure to noise in the workplace.

The inclusion of section 93B(5) stipulates a worker will not be constrained from pursuing common law action against a principal employer and the provisions of this Division do not apply to the principal, even though they could be deemed an employer under section 175 of the Act. This is to address the problems arising out of the Supreme Court decision of Hewitt V Benale regarding the application of section 175. The Court found in the Hewitt V Benale case that the provisions of section 175, deeming certain persons to be an employer for the 'purposes of the Act', extend to all provisions of the Act, including the requirements on seeking damages at common law. It was never intended that the common law restrictions on an employer be extended to a deemed employer under section 175.

CLAUSE 74. HEADING TO PART IV DIVISION 2 SUBDIVISION 2 INSERTED

Subdivision 2 – 1993 Scheme

89. The heading of the Subdivision relating to the 1993 scheme is inserted.

CLAUSE 75. SECTIONS 93CA AND 93CB INSERTED

93CA – Meaning of "AMA Guides" in this Subdivision

90. The definition of AMA Guides has been moved to Subdivision 2 as the use of the AMA Guides relates specifically to the 1993 scheme, i.e. to a cause of action which arises before the day on which section 80 of the *Workers' Compensation Reform Act 2004* comes into operation.

93CB – Limits on application of this Subdivision

91. Section 93CB (1) provides that Subdivision 2 does not apply to any cause of action which arises on or after the day on which section 80 of the *Workers' Compensation Reform Act 2004* comes into operation. These actions will be dealt with under the new common law provisions in Subdivision 3.

Section 93CB(2) provides that the subdivision does not apply to the awarding of damages for noise induced hearing loss that is not an injury, i.e. noise induced hearing loss that is covered in Schedule 7 of the Act (the Subdivision does apply to noise induced hearing loss that is covered under paragraph (e) of the definition of "injury"). Section 93CB (2) preserves the existing position for the 1993 scheme in that it applies only if there is an injury. This statement is needed as the Division has a wider application because of Subdivision 3 (the 2004 scheme affects the ability of a court to award damages for noise induced hearing loss even if it is not an injury).

CLAUSE 76. SECTION 93D AMENDED

92. Changes result from the creation of the new dispute resolution system in part XI.

CLAUSE 77. SECTION 93E AMENDED

93. The insertion of sections 93E(6a), 93EA and 93EB are intended to redress, with retrospective application, decisions of the Supreme Court, including *Re Monger; Ex Parte Dutch & Ors* [2001] WASCA 220 and *Re Monger; Ex Parte WMC Resources & Anor* [2002] WASCA 129 which have set precedents with unintended consequences, for the operation of the existing provisions of section 93D of the *Workers' Compensation and Rehabilitation Act 1981* ("the Act"). These decisions overturned determinations by the Director of the Conciliation and Review Directorate who had accepted certain medical evidence as satisfying the requirements of section 93D(6) of the Act. The retrospective application is particularly relevant to those workers with a significant disability (i.e. not less than 16%, but less than 30%), as workers in this category are required to comply with a strict timeframe for electing and commencing proceedings. The intention of the changes is to allow workers to revalidate their referral, subject to them meeting certain criteria as provided in section 93EA.

The amendment to section 93E(5) acknowledges the new circumstance added by new subsection (6a) under which an election may be made after the termination day.

Section 93E(6a) provides that if the Director notifies the worker that the Director accepts a referral under section 93EA and that this subsection applies, the worker may make an election 14 days after they receive notification from the Director of the recording of an agreement or determination of the question.

As the existing termination day and election requirement does not apply for those workers claiming a degree of disability of not less than 30%, workers in this category will not be constrained by the time limit above (only workers with a degree of disability of at least 16% but less than 30% are required to elect to pursue common law damages by the termination day).

New section 93E(13) precludes the awarding of damages if a further additional sum has been allowed under clause 18A(1b).

CLAUSE 78. SECTIONS 93EA AND 93EB INSERTED

Section 93EA. Referring questions with fresh evidence in particular cases

94. Subclause(1) allows certain workers who were disadvantaged as a result of the *Dutch* decision through having the referral dismissed by a review officer or overturned by a superior jurisdiction, to be able to progress their referral subject to them referring a new referral of the same question and producing fresh medical evidence that complies with the requirements of section 93D. One requirement workers will need to meet for lodging a new referral will be that the worker originally sought to refer the same question on or before 30 September 2001. Referrals lodged up to this time, which was two months after the *Dutch* decision was issued, may also have been supported by medical evidence which failed to meet the medical evidence requirements of section 93D(6). It is considered that after this time, workers and medical practitioners should be sufficiently aware of these requirements, in light of the *Dutch* decision.

Subclause (2) provides that if the question relates to whether the worker's degree of disability is not less than 16%, the worker can only refer the same question if the worker produced the original medical evidence not less than 21 days before the termination day (as required by section 93E(6)) or, if another day was fixed under 93E(7), before that day. This ensures these requirements are complied with in order for the worker to refer the same question under section 93EA(3).

Subclause (3) enables the worker to refer the same question originally referred to the Director under section 93D(5). The question must relate to the same injury, as the intent of the changes is to address or validate the initial referral, not to include secondary conditions or subsequent injuries that may have occurred since that time.

Subclause (4) provides for a question to only be referred if it is in a form specified in the regulations. A new referral and supporting fresh medical evidence (if not already lodged) must be lodged with the Director within 3 months after the day on which section 78 of the Reform Act comes into operation, or if a superior jurisdiction overturns a decision of a review officer that dealt with the substance of the question, within 3 months from the date of the decision overturning the review officer's determination.

Subclause (5) makes it a requirement for the Director to notify the worker and employer as soon as practicable, as to whether the fresh medical evidence complies with the requirements of section 93D(6) and the referral is properly made. The notification will also advise whether or not the referral is accepted and if accepted will advise as to the requirement to make an election within 14 days (as required by section 93E(6a)). The term, "if relevant" is used in paragraph (b)(i) because workers with a degree of disability of at least 30% are not required to make an election under section 93E(6a).

Section 93EB. Extended time for commencing proceedings

95. Where the Director notifies a worker that a question referring fresh evidence has been accepted and any limitations in law for commencing an action for damages has run out before the day on which the Director notifies the worker, or will run out on or before 2 years after that day, an action for damages may be commenced any time up until 2 years after the notification day. This is intended to ensure workers, to whom section 93EA may apply, will not be precluded from pursuing common law damages due to time limitations on commencing an action.

CLAUSE 79. SECTION 93G AMENDED

96. Consequential amendment to ensure the regulations apply only to the 1993 scheme provisions in Subdivision 2.

CLAUSE 80. PART IV DIVISION 2 SUBDIVISION 3 INSERTED

97. Heading of the Subdivision relating to the 2004 scheme is inserted.

Subdivision 3 — 2004 scheme

93H – Terms used in this Subdivision

98. Section 93H(1). The definition of **"degree of permanent whole of person impairment"** is linked to the evaluation, as described in section 146A. The term "resulting from the injury or injuries" ensures the impairment must result from the injury or injuries as defined in section 5(1) of the Act, i.e. are work related. The term "arising from a single event" ensures injuries arising out of clearly separate events, either with the same or different employers, cannot be combined in the evaluation of whole of person impairment.

Defines **"election registration day"**. Provides that the election registration day means the day on which the Director registers the election.

Section 93H(2) defines **"event"** to ensure the degree of whole of person impairment arises from a single event. The definition may be applied to complex scenarios in which there may not be a clearly identifiable incident or date of accident by providing the term includes "continuous or repeated exposure to conditions that results in the injury or injuries". For example, exposure to asbestos dust.

93I. Application of this Subdivision

99. Provides that Subdivision 3 only applies if the cause of action arises on or after the day on which section 80 of the *Workers' Compensation Reform Act 2004* comes into operation. This ensures the new common law provisions are prospective.

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

100. Provides that damages cannot be awarded for noise induced hearing loss that is not an injury (i.e. gradual onset noise induced hearing loss that is covered in

Schedule 7 of the Act). Damages can be awarded for noise induced hearing loss that is covered under paragraph (e) of the definition of "injury".

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

101. Section 93K(1) reflects current section 93E(13) by providing that damages cannot be awarded at common law if liability has been redeemed under section 67 of the Act.

Section 93K(2) and (3) provide that damages cannot be awarded if the worker participates in a specialised retraining program or has received the additional entitlement to medical expenses under clause 18A(1b).

Section 93K(4)(a) and (b) reflects existing section 93E(3)(b) in that damages can only be awarded if the worker elects in the manner prescribed and the election is registered by the Director. Subsection (4)(c) requires the worker to commence court proceedings within 30 days after the Director gives the worker written notice that the Director has registered the election or any further time provided for in the Regulations which may require for things to be done, e.g. pre-litigation court procedures, before court proceedings are commenced. The court must also be satisfied the worker's degree of permanent whole of person impairment is at least 15%.

Section 93K(5) reflects the existing section 93F(1) by applying a cap to the awarding of damages for less severe injuries and the maximum amount can only be awarded in the most extreme of cases. The amount of damages awarded to workers with a degree of permanent whole of person impairment of less than 25% must be a proportion according to the severity of the injury or injuries of the maximum amount that can be awarded. These provisions do not apply to workers with a degree of permanent whole of person impairment of greater than 25%, as is currently the case for workers with a degree of disability of greater than 30%.

Subsection (6) reflects existing section 93F(2).

Subsection (7) reflects existing section 93F(3).

Subsection (8) reflects existing section 93F(4).

Subsection (9) reflects existing section 93F(5).

Subsection (10) reflects existing section 93F(6).

Subsection (11) reflects existing section 93F(7).

Subsection (12) reflects existing section 93F(8).

Subsection (13) provides that a court is not bound by an agreement or assessment recorded by the Director but may admit it as evidence relevant to the worker's degree of permanent whole of person impairment. This allows other types of evidence relevant to the worker's degree of permanent whole of person impairment being submitted to the court for consideration.

93L. Different finding by court as to impairment

102. The Court may order the plaintiff to pay all or any of the defendants' costs connected with the proceeding if the Court is not satisfied the worker's degree of permanent whole of person impairment is at least 15%.

93M. Election to retain right to seek damages

103. Defines **"Termination day"** in this section to have the same meaning as that given in section 93N (see comments to 93N).

Subsection (2)(a) requires either an agreement between the worker and employer that the worker's degree of permanent whole of person impairment is at least 15%, and also as to whether or not the worker's degree of permanent whole of person impairment is at least 25%. This enables the agreement to simply identify whether the worker reaches the 15% impairment threshold and whether the section 93Q provisions would apply to the worker's statutory benefits after the election is registered. Given that an employer and worker are not trained to assess the degree of permanent whole of person impairment to an exact percentage an agreement in subsection (2)(a) only requires identification of whether the 15% and 25% thresholds have been met, thereby maximising the possibility of agreement between employers and workers and minimising disputes about precise percentages, which neither party are trained to assess.

Subsection (2)(b) requires the assessment of the worker's degree of permanent whole of person impairment by an approved medical specialist to be expressed as an exact percentage, is not less than 15%.

Subsection (3) requires the Director, before recording a special evaluation, to be satisfied an approved medical specialist has certified the worker's condition has not stabilised enough for a normal evaluation.

Subsection (4) reflects the existing 93E(5).

Subsection (5) ensures only one agreement or assessment can be recorded by the Director and cannot be withdrawn.

Subsection (6) ensures only one election can be registered in respect of the same injury or injuries and cannot be withdrawn.

Subsection (7) allows for subsequent agreements or assessments to be made, after an agreement or assessment is recorded by the Director upon the worker's request. The subsequent agreement or assessment may be made before or after commencement of court proceedings or may be used in court proceedings.

Subsection (8) enables the Director to rectify any basic error that was made in recording an agreement, assessment or election.

93N. Termination day

104. Subsection (1) sets the termination day to one year after the day on which the claim by way of weekly payments for compensation is made, unless the question of liability to make weekly payments of compensation is not resolved within three months after the day on which the claim is made or the Director extended the termination day in accordance with subsection (4).

Subsection (2) defines "claim for compensation by way of weekly payments" by linking to the claim for total or partial incapacity that has been made on an employer in accordance with new section 178(1)(b).

In subsection (3) if the question of liability to make weekly payments of compensation is not resolved within three months of when the claim was served, the termination day is set at 9 months after the dispute resolution authority determines the question of liability or the worker is first notified that liability is accepted. It is intended disputes about liability be resolved within the first three months. However, in the event liability has not been resolved within three months workers are to be given an adequate timeframe in which to elect to retain the right to seek damages.

Subsection (4) provides for an extension to the termination day for specific circumstances. Paragraph (a) extends the termination day to enable a worker's condition to stabilise to the extent required for a normal evaluation in order to make an election. Paragraph (b) provides the worker with an opportunity to make an election if the worker's employer has failed to notify the worker of the termination day, it's date and significance and certain timeframes applicable in assessing the worker's degree of whole of person impairment.

The extension under paragraph (c) may be applied if the Director is satisfied the approved medical specialist required more than the prescribed time to give the worker the documents required to make an election. For example, where additional investigations are required to make an evaluation. Paragraph (d) applies where the worker has requested an assessment in accordance with the regulations but the approved medical specialist could not give the documents in the prescribed timeframe.

Subsection (6) limits extensions to the termination day to one year after the day that would have been the termination day had there been no extension, except for where the approved medical specialist has not provided the documents to the worker in the required time, in which case the Director may give an extension for as long as the Director considers necessary to give the worker an opportunity to make an election. This exception is likely to only be used in an exceptional case where an approved medical specialist is unable to make a special evaluation in the time required and the maximum limit on extensions to the termination day would expire.

Subsection (7) provides for an extension to be in writing and given to both the worker and employer. A head of power under section 93T(e) enables regulations to be made for how and when a worker may apply for the Director to extend the termination day under section 93M(4) and the period for which the Director may give an extension.

Subsection (8) is required as a situation could arise whereby the termination day has expired even before the worker is informed of it (for example, where the employer has failed to notify the worker in accordance with section 93O). It is therefore necessary to provide for an extension to be given, even though the termination day has passed.

93O. Special evaluation if condition has not sufficiently stabilised

105. Provides for a special evaluation to be made if after the expiry of 6 months after the day that would have been the termination day, had there been no extension, an approved medical specialist gives a second six-month extension because the worker's condition has not stabilised to the extent required for a normal evaluation. The provision ensures the very small minority of workers whose conditions have not stabilised at this time are given an opportunity to obtain an assessment of their degree of permanent whole of person impairment and therefore make an election before the maximum limit on time for extensions to the termination day prevents an election from being registered.

Subsection (2) enables a worker to request the approved medical specialist to make a special evaluation in accordance with the sections of the Act dealing with medical assessment.

Subsection (3) provides that the approved medical specialist who certified the worker's condition has not stabilised may make the special evaluation.

Under subsection (4) the manner in which the request is made is to be prescribed and must be made before the maximum limit on time for extensions to the termination day prevents an election from being registered. The 8-week period allows sufficient time for an approved medical specialist to arrange and carry out the special evaluation and provide the worker with the documents required for electing.

Subsection (5). In the event a worker's condition has stabilised after the time the request is made for a special evaluation, the approved medical specialist will do a normal evaluation.

Subsection (6) links the definition of "normal evaluation" to the section of the Act dealing with the evaluation of the worker's degree of permanent whole of person impairment.

93P. Employer to give worker notice of certain things

106. Subsection (1) strengthens and enshrines in the legislation the existing regulation 19P requirement for employers to notify workers about elections as to common law damages. Paragraph (d) is intended to help a worker to avoid leaving it until too late to seek an assessment. Leaving it until too late would mean that an application for extension could not succeed under section 3N(4)(d)(i). Regulations will be made about the time that an approved medical specialist could reasonably be expected to take after a request for an assessment was made.

Subsection (2) provides for the notice be given within a period of 14 days commencing on the day that is 6 months and 14 days before the termination day. If the worker is given an extension to the termination day in accordance with section 93N(4) the employer is not required to give the worker notice of the extended termination day as this information would be given to both the worker and employer by the Director.

The worker may be given an extension to the termination day in accordance with section 93N(4)(b) if the employer has failed to comply with section 93P. The period of any extension will be prescribed in the Regulations under the head of power in section 93T(e).

93Q. How election may affect statutory compensation

107. Provides that section 93Q applies unless the agreement or assessment that is registered with the worker's election identifies the worker's degree of permanent whole of person impairment is at least 25%.

Subsection (2), paragraph (a), specifies weekly payments to which the worker is entitled will continue on a step down basis for six months after election.

Paragraph (b) limits the reduced entitlement to weekly payments to six months after the election registration day.

Paragraph (c) ensures no other compensation under the Act is payable after the election registration day, as is currently the case for workers with a significant disability (16% to less than 30%).

Subsection (3) clarifies the term, "in respect of the injury or injuries".

Subsection (4) provides for the step down in weekly payments to which the worker is entitled, as described in subsection (2).

93R. Special provisions about HIV and AIDS

108. Subsection (1) provides that damages can only be awarded for the contraction of AIDS but may not be awarded for the infection of the HIV virus. Damages cannot be awarded where the worker has contracted AIDS that results from unlawful use of any prohibited drug or from voluntary sexual activity.

Subsection (2) deems a worker who has contracted AIDS as having at least 25% whole of person impairment. The provision obviates the need for an

assessment by an approved medical specialist, given the unstable and terminal nature of AIDS.

Subsection (3) provides that any medical practitioner can certify a worker has contracted AIDS and this certificate can be used by the worker to register with the Director for the purpose of electing for common law. As the worker is deemed to have at least 25% whole person impairment it is not necessary for an approved medical specialist to make the evaluation.

Subsection (4) enables regulations to be made making provision for methods of deciding whether a person has contracted AIDS. In the absence of regulations the decision will be based on the advice of the medical practitioner.

Subsection (5) provides that the requirements relating to the assessment of the worker's degree of permanent impairment do not apply, given that a worker who has contracted AIDS only requires written confirmation from a medical practitioner.

Subsection (6) provides that the cause of action of a worker who has contracted AIDS is taken to have arisen when a certificate is first given in writing by a medical practitioner to the effect the worker has contracted AIDS. This is to ensure the worker is not prevented from pursuing common law damages where any written law places a limitation on the period within which proceedings may be commenced (i.e. this may have applied if the cause of action was taken from when the worker contracted the HIV infection but contracted AIDS several years later, after the limitation period expires).

Subsection (7) stipulates the termination day, stepdowns, requirement that the condition be stable, special evaluation and requirement for employer to give worker notice do not apply in the case of an action for damages in respect of the contraction of AIDS.

Subsection (8) defines terms used in this section.

93S. Special provisions about specified industrial diseases

109. Subsection (1) provides for assessments in relation to mesothelioma, pneumoconiosis or lung cancer are to be made not by the approved medical specialist but by an industrial diseases medical pane,l as described in section 36.

Subsection (2) enables the evaluation to be settled by agreement.

Subsection (3) enables the Panel to be convened by the chief executive officer.

Subsection (4) specifies the procedures that apply when a panel is making an assessment for the purposes of a statutory claim also apply when it is making an assessment for common law purposes.

Subsection (5) is required because of the nature of these industrial diseases which would never stabilise to the extent required for a normal evaluation.

Subsection (6) provides there will not be a termination day for workers with pneumoconiosis, mesothelioma or lung cancer. The result is there will not be a time limit on the worker making an election to pursue common law damages.

Subsection (7) enables more than one panel assessment to be made and stipulates a subsequent panel is not bound by a decision of the previous panel. This is because of the unstable nature of the disease, which will become progressively worse over time (and consequently result in higher assessed degrees of whole of person impairment). Accordingly, the worker would be able to obtain further assessments which more accurately reflect their current degree of whole of person impairment, resulting from the disease.

Subsection (8) ensures assessments recorded by the Director cannot be challenged in the Courts and the Court is bound by the assessment that is recorded with the Director.

93T. Regulations

110. Enables regulations to be made supporting certain provisions in Subdivision 3, including; notification to employers and workers; the form, lodgement and recording of elections; recording of impairment assessments and applications for extensions to the termination day.

CLAUSE 81. PART V HEADING REPLACED

111. In line with amendments to restructure the Workers' Compensation and Rehabilitation Commission (the Commission), the current title of the body corporate is amended to WorkCover Western Australia Authority.

The existing Workers' Compensation and Rehabilitation Act 1981, does not appear to establish the Commission as an agent of the Crown. This is required to avoid uncertainty relating to the status, immunities and privileges of WorkCover WA and to properly establish the statutory authority as a public sector organisation. The Commission is currently listed in Schedule 2 of the Public Sector Management Act 1994 and will remain so.

CLAUSE 82. SECTION 94 AMENDED

112. Changes the name of the body corporate from the Workers' Compensation and Rehabilitation Commission to the WorkCover Western Australia Authority and provides for the Authority to have a governing body which in the name of the Authority is to perform the functions of the Authority.

CLAUSE 83. SECTION 95 REPLACED

113. Replaces section 95 with a provision to establish a governing body, with a chairman, appointed by the Governor on the recommendation of the Minister. The Chief Executive Officers of WorkCover WA and DOCEP will be on the governing body and four nominee members; one representing employers, one

workers, one insurance matters and one with experience in accounting and financial management.

CLAUSE 84. SECTION 96 AMENDED

114. Minor consequential amendments in relation to the reasons why the Governor may terminate the appointment of a nominee member.

CLAUSE 85. SECTION 97 AMENDED

115. Makes a number of minor consequential amendments to reflect the new structure and inserts a new section 97(5a) to nominate that Division IAA covers the circumstances in which a member of WorkCover WA's governing body has a material personal interest in a matter being considered, or about to be considered by the governing body.

CLAUSE 86. SECTION 98 AMENDED

116. Consequential amendment to recognise the office of a member is that of the "governing body."

CLAUSE 87. SECTION 99 AMENDED

117. Consequential amendments to sections 99(1) and (2) to replace a reference to "member" with "nominee member" and to replace "Public Service Board" with "Minister for Public Sector Management."

CLAUSE 88. SECTION 100 AMENDED

118. Deletes 100(d) as WorkCover WA no longer makes available services or assistance to employers to facilitate arranging of rehabilitation, nor acts as a rehabilitation provider.

The amendment to section 100(da) reflects WorkCover WA's role in promoting injury management and confirms it no longer has a direct role in vocational rehabilitation services.

Section 100(h) is no longer relevant as WorkCover WA is no longer involved in providing facilities for rehabilitation and re-employment of injured workers.

Replaces the reference to "rehabilitation" with "injury management", as WorkCover WA will in future promote injury management, not rehabilitation.

Section 100 (j) amended to ensure WorkCover WA is able to collect all necessary statistics and information to perform its functions and fulfil obligations.

Section 100 (k) is inserted to enable the new governing body to advise on all relevant matters, including policy issues.

CLAUSE 89. SECTION 100A AMENDED

119. Sections 100A(2) and (3) provide for at least one member of WorkCover WA's governing body to serve on an advisory committee as the presiding member.

A minor consequential amendment to section 100A(4) replaces reference to "Public Service Commissioner" with "Minister for Public Service Management".

Amendment to section 100A(6) broadens the selection of representation of employer's interests and workers' interests on an advisory committee.

Section 100A(7) is inserted to allow the governing body to appoint an expert medical advisory committee, with specific expertise in the assessment of matters of a medical nature.

CLAUSE 90. SECTION 100B INSERTED

100B. Disclosure of information

120. Section 100B(1) provides for WorkCover WA to disclose information and data to Government Departments or public authorities in WA, the Commonwealth or another State or Territory in Australia, if it is considered relevant to the functions of the department or other authority. This ensures relevant information and statistical data is provided to appropriate organisations with core responsibilities in accident prevention and workers' compensation.

Section 100B(2) requires WorkCover WA to provide information or data relevant to occupational safety and health where requested in writing by the chief executive officer of WorkSafe.

Section 100B(3) ensures information and statistical data can be provided, irrespective of what other provisions in the Act may state.

CLAUSE 91. SECTION 101 AMENDED

121. Minor consequential amendments to recognise the name WorkCover Western Australia Authority.

CLAUSE 92. SECTION 101AA INSERTED

101AA. Delegation by WorkCover WA

122. Inserts section 101 AA to provide a right and means by which WorkCover WA can delegate powers and duties to ensure it has adequate resources to fulfil its obligations and functions under the Act.

CLAUSE 93. SECTION 102 AMENDED

123. Deletes the reference to section 100(d), which is redundant as section 100(d) is to be deleted.

CLAUSE 94. SECTION 103A AMENDED

124. Empowers WorkCover WA to collect information and returns and to apply a maximum penalty of $2000 for providing information or returns that are false. This reflects the importance of the information in monitoring the system and in policy development.

CLAUSE 95. SECTION 104 AMENDED

125. Ensures the content of publications issued by WorkCover WA or information provided, cannot be construed as legal advice which is an appropriate provision for a public sector authority.

CLAUSE 96. PART V DIVISION 1AA INSERTED

Division 1AA – Personal interest

104AA. Disclosure of interests

126. Section 104AA stipulates members of WorkCover WA's governing body are not able to vote or be present when matters in which they have a personal interest, are being considered by the governing body. A maximum penalty of $10,000 applies for a breach of this provision.

104AB. Exclusion of interested member

127. Section 104AB states members of the governing body with a material personal interest in a matter cannot vote on the matter or be present while the matter is discussed. This ensures a final decision cannot be influenced by a member(s) with a vested interest.

104AC. Resolution that section 104AB inapplicable

128. Section 104AC enables the governing body to decide whether a member has a vested interest and if they should be allowed to vote.

104AD. Quorum where section 104AB applies

129. Section 104AD provides for a minimum of 3 members to constitute a quorum. This covers situations where up to 4 members may have a vested interest in a particular matter.

104AE. Minister may declare sections 104AB and 104AD inapplicable

130. Section 104AE provides for the Minister to declare in writing that section 104AB or 104AD does not apply in relation to a specified matter, either generally or in voting on particular resolutions. The Minister must within 14 sitting days after such declaration provide a copy of the declaration to be laid before the Parliament.

CLAUSE 97. PART V DIVISION 1A REPEALED

131. Repeals Part V Division 1A. A consequential amendment to remove references to the defunct Conciliation and Review Directorate.

CLAUSE 98. HEADING TO PART V DIVISION 3 AMENDED

132. A consequential amendment to reflect the new injury management provisions.

CLAUSE 99. SECTION 106 AMENDED

133. Consequential amendments to reflect the injury management and new dispute resolution provisions.

CLAUSE 100. SECTION 109 AMENDED

134. Creates penalty offences for insurers which fail to comply with sections 109(4b) or 109(6).

CLAUSE 101. HEADING TO PART V DIVISION 4 AMENDED

Injury Management

135. A consequential amendment to reflect the new injury management provisions.

CLAUSE 102. SECTION 110 AMENDED

136. Consequential amendments to section 110 to reflect the injury management provisions, dispute resolution and specialised retraining program provisions.

CLAUSE 103. SECTION 111 AMENDED

137. Specifies the Minister cannot direct WorkCover WA with respect to the performance of its functions under section 151, unless the direction is allowed by section 154AB.

CLAUSE 104. PART VI REPEALED

138. This clause repeals Part VI, which refers to compensation magistrate's courts.

CLAUSE 105. PART VII HEADING REPLACED

Part VII – Medical assessment and assessment for specialised retraining programs

Division 1 – Medical assessment panels

139. This clause makes a consequential amendment to include reference to new provisions regarding assessment of degree of impairment, approved medical specialist panels, WorkCover Guides to Impairment Assessment and specialised retraining programs.

CLAUSE 106. SECTION 145A AMENDED

140. As sections 84R, 84ZH and 84ZR are repealed, subsection 210(1) empowers an arbitrator to refer questions for determination by a medical assessment panel (MAP) in relation to nature, extent and permanency of an injury and a worker's capacity for work.

Arbitrators will be able to refer a question directly to a MAP, without having to wait for workers to make such a request.

Subsection (2) introduces criteria to evaluate eligibility of medical practitioners and the current provision to be "practicing in a clinical capacity" will be moved into the Regulations. It will ensure the process works as efficiently and as effectively as possible by making the process quicker and less onerous.

Provides the option of having stricter criteria to more closely screen acceptable practitioners.

CLAUSE 107. SECTION 145C AMENDED

141. Enables a medical assessment panel to perform a peer review regarding the medical evidence produced by the worker to support an application for a further additional sum under clause 18A(2a).

CLAUSE 108. SECTION 145D AMENDED

142. The amendment to subsection (1) ensures flexibility to control and guide the operations of medical assessment panels, where deemed appropriate.

The amendment to subsection (5) provides for an arbitrator, not the Director, to issue a certificate to suspend weekly payments of compensation.

The amendment to subsection (6) ensures that where practices and procedures are not prescribed the medical assessment panels still have sufficient flexibility to determine matters without being held up by a technicality.

CLAUSE 109. SECTION 145E AMENDED

143. The amendment to subsection (1) ensures that where there is not unanimous agreement, a final decision can be made by the Chairman where there are only two members on a panel.

The amendment to subsection (4) gives the Director 7 days, not 3 days to provide a copy of a panel determination. This provides more flexibility if the Director needs to clarify any issues.

The amendment to subsection (5) ensures medical assessment panels don't make determinations in relation to impairment assessments. This will now be done by approved medical specialist panels.

New subsection (6) stipulates determinations of medical assessment panels are final and binding, unless on the basis of new evidence the Director refers the matter to a new panel.

New subsection (7) reiterates that unless new evidence is presented and accepted under section 145F, determinations of medical assessment panels are final and binding.

New subsection (8) ensures the final and binding nature of a determination made by a medical assessment panel is not able to be overturned by a court because of any informality or want of form.

New subsection (9) ensures matters before a medical assessment panel cannot be delayed or discontinued by any legal or other challenge.

CLAUSE 110. PART VII DIVISIONS 2, 3 AND 4 INSERTED

Division 2 – Assessing degree of impairment

146. Degree of impairment

144. Defines **"degree of impairment"** in relation to the purpose and Part of the Act in which the term is used.

Defines **"secondary condition"** used in this part.

146A. Evaluation of impairment generally

145. Subsection (1) provides that the evaluation of a worker's degree of permanent impairment will be evaluated as a percentage, in accordance with the WorkCover Guides.

Subsection (2) provides that where the employer and worker cannot agree as to the degree of impairment of the worker an AMS or AMS Panel, if required, (i.e. not a general practitioner or specialist who is not an approved medical specialist) is to assess the worker. This ensures assessments are only conducted by specialists trained in assessing impairment in accordance with the WorkCover Guides. Subsection (3) requires all requests to be made in accordance with the regulations.

Subsection (4) ensures there is no deduction in the evaluation of the worker's degree of permanent impairment for any pre-existing disease that was asymptomatic before the event from which the injury arose.

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

146. This section applies to an evaluation for the purposes of a Schedule 2 entitlement.

In order for an assessment of the worker's degree of impairment to be made the worker's condition must have stabilised to the extent required for a normal evaluation, which will be defined in the WorkCover WA Guides.

Subsection (2) enables the approved medical specialist to certify a worker's condition has not stabilised to the extent required for a normal evaluation of a worker's degree of permanent impairment.

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

147. This section applies to an evaluation for the purposes of common law.

In order for an assessment of the worker's degree of impairment to be made the worker's condition must have stabilised to the extent required for a normal evaluation, which will be defined in the WorkCover WA Guides. Subsection (2) enables an approved medical specialist to certify a worker's condition has not stabilised to the extent required for a normal evaluation of the worker's degree of permanent impairment.

Subsection (3) defines **"normal evaluation"** as an evaluation that is not a special evaluation.

Subsection (4) enables a special evaluation to be done if the Act provides for it (which section 93O does) even though the worker's condition has not stabilised to the extent required for a normal evaluation. This allows a worker to obtain an assessment before the maximum time on extensions to the termination day has expired. Without this provision, if a worker's condition had not stabilised at around two years after the claim was made the worker would not be able to pursue common law damages.

Subsection (5) provides that if the evaluation of the worker's degree of whole of person impairment is assessed for the purposes of the worker making an election to pursue damages, on the basis that the worker's condition has not stabilised, it has to be a special evaluation. This provision is required because an evaluation on this basis may be needed in court (for example, if the employer has requested an evaluation for use in court but the worker's condition has still not stabilised). Section 93N does not cover such circumstances (that section is concerned with a special evaluation that a worker needs because of section 93L(2)(b) to make an election).

Subsection (6) prevents secondary psychological, psychiatric and sexual conditions from contributing to the evaluation of permanent whole of person impairment.

Subsection (7) does not prevent any secondary condition from contributing in the assessment of damages by a court.

146D. Evaluation for the purposes of Part IXA

148. This section applies to an evaluation for the purposes of the specialised retraining program.

In order for an assessment of a worker's degree of impairment to be made a worker's condition must have stabilised to the extent required for a "normal" evaluation, which will be defined in the WorkCover WA Guides. Subsection (2) enables an approved medical specialist to certify a worker's condition has not stabilised to the extent required for a normal evaluation of a worker's degree of permanent impairment.

Subsection (3) prevents secondary psychological, psychiatric and sexual conditions from contributing to the evaluation of permanent whole of person impairment.

146E. Evaluation for the purposes of clause 18A

149. This section applies to an evaluation of a worker's degree of permanent whole of person impairment for the purposes of clause 18A.

Subsection (2) provides for an evaluation (a **"special evaluation"**) to be made, even though the worker's condition has not stabilised. The assessment will be made by an approved medical specialist or, if disputed by an employer, an approved medical specialist panel. A special evaluation will always be required for payment of additional expenses under clause 18A because one eligibility criteria for the additional medical expenses is that major surgery is required, which would mean a worker's condition would not be stable.

Subsection (3) prevents secondary psychological, psychiatric and sexual conditions from contributing to the evaluation of permanent whole of person impairment.

146F. Approved medical specialist

150. Subsection (1) empowers WorkCover WA to appoint approved medical specialists trained in the use of the WorkCover WA Guides and who satisfy other criteria for designation as an approved medical specialist.

Subsection (2) ensures the criteria WorkCover WA uses to determine approved medical specialists is gazetted.

In subsection (3) the written agreement will enable appropriate regulation of approved medical specialists to ensure effective impairment assessment of workers.

Subsection (4) enables an approved medical specialist to be cancelled by order published in the Gazette.

Subsection (5) requires WorkCover WA to monitor impairment assessments by approved medical specialists to ensure effective impairment assessment of workers, and agreements with workers to ensure they comply with the Act.

Subsections (6) and (7) provide for a register of approved medical specialists to be publicly available and to be maintained by the Director.

146G. Powers of approved medical specialist

151. Subsection (1) enables approved medical specialists to call for information relevant in making an assessment and for a worker to be examined and to answer questions about the injury. Paragraph (d) enables an approved medical specialist to require the worker to submit to examination either by the approved medical specialist or as requested by them (for example, a worker may be requested to be examined by a Dentist, or other specialist for aspects of the assessment).

Subsection (2) enables regulations to be made requiring a worker who requests an assessment to produce any information for use in dealing with the request and the time within which the requirement must be met. This expedites the impairment assessment process and minimises delays in obtaining relevant information if only subsection (1) applied.

Subsection (3) imposes a fine for contravention of the requirement to produce information to the AMS when requested. An offence provision is required to prevent unnecessary delays in the AMS making an evaluation, which may jeopardise a worker's ability to make an election before the termination day for common law purposes.

A more severe sanction for non-compliance may be imposed by the court if the assessment is sought for the purposes of court proceedings. Subsection (4) provides that if the assessment is being used for the purposes of court proceedings and a person contravenes a requirement imposed by subsection (1) the court is to have discretion to order the proceedings to be stayed or struck out.

146H. Outcome of assessment

152. Subsection (1) provides for a report and certificate of the worker's degree of permanent impairment to be given to the worker and employer following the assessment. The report and certificate must be in accordance with the regulations to ensure all relevant details are recorded and to ensure consistency in reporting.

Subsection (2) provides for an approved medical specialist to issue a report and certificate in accordance with the regulations, detailing the finding certified if the worker's condition has not stabilised.

Subsection (3) ensures the certificate specifies the provisions for the purposes of which it is made.

Subsection (4) ensures the certificate cannot be used for any other purpose other than the purpose for which it was sought (for example either a Schedule 2 payment or to make an election for common law).

Subsection (5) enables the Director to order an approved medical specialist to replace documents that contain an obvious error. The Director does not however have any power to reject documents on the basis the assessment appears to be incorrect.

146I. Release of information relevant to assessment

153. Enables WorkCover WA to disclose to an approved medical specialist any information it may have, relevant to the assessment, without the consent of the worker.

146J. Decisions of approved medical specialist

154. Section 146J provides approved medical specialists with legal immunity from prerogative writs being issued against them for any assessment or decision made in evaluating a worker's degree of permanent impairment.

Division 3 - Approved medical specialist panels

146K. Panel to be constituted

155. Section 146K provides that if there is no agreement between a worker and the worker's employer as to the worker's degree of permanent whole of person impairment and the matter has been referred by an arbitrator, the Director is to select two approved medical specialists to be the panel that is to assess the degree of impairment. This provision applies for the purposes of the additional medical entitlement under clause 18A, the specialised retraining program and Schedule 2 entitlements.

Subsection (2) ensures an approved medical specialist who has treated or assessed a worker is not eligible to be a member of a panel. This will prevent a person reviewing an assessment in which they had direct involvement.

146L. Procedures

156. Subsection (1) is similar to existing section 145D(1), which applies to medical assessment panels and enables approved medical specialist panels to operate in an efficient, non-legal manner.

Subsections (2) and (3) give approved medical specialist panels the same powers given to approved medical specialists, under section 146G(1) and (2).

Subsection (4) protects the privacy of the worker.

Subsection (5) is required as the panel is determining a medical, not a legal matter.

Subsection (6) provides some flexibility for the panel to determine its own practices and procedures to the extent they are not prescribed under the Act.

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

157. Subsection (1) provides a sanction on a worker for non-compliance with requirements to attend the panel, supply certain information and submit to examination.

Subsection (2) ensures an arbitrator does not apply the sanction if there was a reasonable excuse given by the worker for failing to comply with the requirement.

Subsection (3) provides a sanction on the employer or insurer for non compliance with the requirements to supply certain information.

Subsection (4) places the onus on the employer or insurer to prove they had a reasonable excuse for failing to comply.

146N. Assessment of impairment by approved medical specialist panel

158. Section 146N requires a worker's degree of permanent impairment to be assessed in accordance with the WorkCover WA Guides and any relevant section in Division 2 that applies to the assessment.

146O. Outcome of assessment by approved medical specialist panel

159. Subsection (1) ensures assessments are carried out quickly following examination of a worker.

Subsection (2) provides for a report and certificate, specifying a worker's degree of impairment, to be given to the Director.

Subsection (3) requires the Director to provide the report and certificate to the arbitrator, worker and employer. This ensures all parties are informed of the specifics of the panel's assessment.

Subsections (4) and (5) ensure assessments by panels are final and binding on all parties and cannot be appealed. This is because the panel is not to

determine with questions related to causation and other points of law. The panel is set up to review and reassess a worker's degree of impairment and this is a specific medical matter. The panel is considered the most appropriate body to make a final and binding decision.

Subsections (6) and (7) protect the approved medical specialist panels from prerogative writs being issued against them.

Subsection (8) enables the Director to order approved medical specialist panels to replace the report or certificate if either contains an obvious error.

146P. No assessment without unanimous agreement

160. Subsections (1) and (2) provide for a another approved medical specialist panel to be selected by the Director if the first panel could not reach unanimous agreement as to a worker's degree of permanent impairment.

146Q. Remuneration

161. Section 146Q provides that the method of remunerating members of an approved medical specialist panel and the funding arrangements for panel assessments reflect existing section 145G, which applies to medical assessment panels.

Division 4 – WorkCover Guides

146R. WorkCover guides

162. Subsection (1) provides a head of power for WorkCover WA to issue directions with respect to evaluating a worker's degree of impairment. The Guides will be used by approved medical specialists and approved medical specialist panels for the purposes of Divisions 2 and 3.

Subsection (2) ensures the Guides and any amendment to them are made in consultation with a committee of medical experts trained in the evaluation of permanent impairment.

Subsection (3) enables the Guides to adopt provisions of other publications, for example relevant sections of the American Medical Association Guides' to the Evaluation of Permanent Impairment.

Subsection (4) will ensure the Guides have the status of subsidiary legislation.

CLAUSE 111. PART VII DIVISION 5 INSERTED

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

146S. Register for panel membership

164. Subsection (1) enables the Director to keep a register containing the names of approved persons who are willing to be selected for a specialised retraining assessment panel.

Subsection (2) empowers WorkCover WA to approve persons being included in the register.

146T. Panel to be constituted

165. Subsection (1) provides that on a question being referred for assessment by a specialised retraining assessment panel, the Director is to select three registered persons for the panel.

Subsection (2) provides for the panel to comprise an occupational physician who is an approved medical specialist; a person with knowledge of, and experience in, matters relating to the labour market and an officer of WorkCover WA experienced in the review of injury management.

Subsection (3) ensures a member of a panel cannot have treated or examined, had dealings with, or knowledge of, the worker.

Subsection (4) enables the Director to nominate one of the members of the panel to be its chairman.

146U. Procedures

166. Subsection (1) provides that in making an assessment a specialised retraining assessment panel is to act speedily and informally, in good conscience, without regard to technicalities or legal forms and is not bound by rules of practice nor evidence (unless specified under the Act).

Subsection (2) provides that a specialised retraining assessment panel may request the parties to attend, answer questions, produce any relevant document or authorise any person who possesses a relevant document to produce it.

Subsection (3) requires a panel to exercise its powers in private unless the worker otherwise consents.

Subsection (4) provides that a person is not entitled to be represented before a panel.

Subsection (5) provides that if the worker concerned, unreasonably refuses to comply with a request, an arbitrator may suspend the making of an assessment.

Subsection (6) provides that to the extent that the practice and procedure of a panel are not prescribed under this Act, the panel may determine them.

146V. Assessments

167. Subsection (1) provides that if the members of a panel do not all agree, the assessment is to be made by least 2 members of a panel.

Subsection (2) provides for an assessment to be made as soon as is practicable, but no later than 28 days after the panel first convenes.

Subsection (3) provides for an assessment and the reasons to be given by the chairman in a form approved by the Director, to the Director within 7 days of the assessment.

Subsection (4) requires the Director to give the assessment and reasons to the person who referred the question and the worker within 7 days.

Subsection (5) stipulates an assessment is not relevant in relation to an action for damages independently of this Act if Part IV Division 2, Subdivision 3 applies to the awarding of damages in the action.

Subsection (6) provides that an assessment is final and binding and conclusive evidence regarding the matters assessed.

Subsection (7) provides that a panel assessment cannot be vitiated because of any informality or want of form or appealed.

Subsection (8) provides that a decision of a panel or anything done by a panel under this Act is not amendable to judicial review.

Subsection (9) defines **"decision of a specialised retraining assessment panel".**

146W. Remuneration

168. Subsection (1) provides that a member of a panel who is not an officer of WorkCover WA is entitled to fees and allowances determined by the Minister.

Subsection (2) provides for the fees and allowances to be paid by WorkCover WA from the General Fund.

CLAUSE 112. PART VIII HEADING AMENDED

169. The heading to Part VIII is amended by deleting "Committee" and substituting **Premium Rates**.

CLAUSE 113. SECTIONS 147 TO 150 REPEALED

170. The Premium Rates Committee is to be disbanded and the functions of the Committee are to be taken over by WorkCover WA. The process will be managed by the governing body. The Premium Rates Committee is established under Part VIII of the Act. The Premium Rates Committee will be disbanded by repealing sections 147, 148, 149 and 150.

CLAUSE 114. SECTION 151 AMENDED

171. With reference to the transfer of the role and functions of the Premium Rates Committee to WorkCover WA, Part VIII of the Act will be retained as a separate Part and any references to "the Committee" in sections 151 to 154 will be deleted or replaced with "WorkCover WA", as appropriate.

CLAUSE 115. SECTION 152 AMENDED AND TRANSITIONAL PROVISION

172. Insurers will have to seek approval from WorkCover WA before being permitted to load a recommended premium rate by more than 75%. This will not apply to a loading to the extent it relates to a period of insurance commenced before this section comes into operation.

CLAUSE 116. SECTION 153 AMENDED

173. Deletes a requirement for WorkCover WA to receive a recommendation from the Committee before setting permissible maximum loadings.

CLAUSE 117. SECTION 154 AMENDED

174. Section 154 is amended to provide that all appeals will be made to WorkCover WA. Currently appeals may be made to either the Commission or the Premium Rates Committee.

CLAUSE 118. SECTIONS 154A AND 154AB INSERTED

154A. Regulations for provision of information

175. Subsection (1) provides for regulations to provide for an insurer to inform an employer of —

a) specified details of the premium for, and other charges relating to, the policy;

b) specified details of anything done under this Part that may be relevant to the premium; and

c) specified provisions of this Act, rights or obligations under this Act, or things done under this Act, that may be relevant to the premium.

Subsection (2) provides that in subsection (1), "employer" means an employer holding, or seeking to obtain a policy of insurance against liability to pay compensation under this Act. The term "specified" means specified in the regulations.

154AB. Special directions by Minister

176. Subsection (1) provides for the Minister to give directions in writing as to the effect that matters described in subsection (2) are to have, while the directions remain in effect, on the fixing under section 151 of recommended premium rates.

Subsection (2) provides that those matters are —

a) the extent to which the cost of paying or providing for the payment of awards of damages to which Part IV Division 2 applies has been affected by certain judicial decisions made before the commencement of section 78 of the *Workers' Compensation Reform Act 2004* and identified by the Minister in the direction; and

b) the extent to which the cost of paying compensation under this Act, as amended by *the Workers' Compensation Reform Act 2004* in respect of claims made before section 78 of the *Workers' Compensation Reform Act 2004* commenced, would differ from what it would have cost to pay compensation arising out of those claims if section 78 of the *Workers Compensation Reform Act 2004* had not commenced.

Subsection (3) provides that effect is to be given to directions under this section.

CLAUSE 119. PART IX REPLACED

PART IX — INJURY MANAGEMENT

177. This clause repeals the Part heading and substitutes a new heading, "Injury Management". The existing focus on rehabilitation is replaced by a focus on injury management to assist workers return to work.

155. Terms used in this Part

178. This new section defines the terms used in this Part: “code”, “injury management”, ”return to work program” and “treating medical practitioner.

155A. Code of practice (injury management)

179. Section 155A (1) enables WorkCover WA to issue an injury management code of practice.

Section 155A(2) provides for the code to contain provisions and guidelines regarding injury management systems, return to work programs, service delivery plans and other injury management matters.

Section 155A(3) enables the code to adopt or adapt provisions from other publications.

Section 155A (4) provides for the code to have the status of subsidiary legislation. Section 41 of the Interpretation Act(IA) requires subsidiary legislation to be published in the Gazette. Section 42 of the IA provides for the code to be subject to disallowance. The code will not need to be approved by Executive Council but will need to be submitted to the Standing Committee on Delegated Legislation. Section 43 of the IA provides, among other matters, that subsidiary legislation can be amended or repealed. Section 44 of the IA provides that words and expressions used in subsidiary legislation have the same meaning as in the Act.

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

180. Section 155B requires an employer to establish an injury management system in accordance with the code. It also creates an offence provision for employers who do not comply.

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

181. Section 155C(1) requires an employer of an injured worker to establish a return to work program if the treating medical practitioner:

a) advises that one should be established; or

b) provides a medical certificate indicating the worker has a total or partial capacity to return to work.

The intent is to facilitate the early intervention of the employer. Depending on the medical certification, this may place an obligation on the employer to begin establishing a program even before a worker is certified as having a capacity to return to suitable duties.

Section 155C(2) provides that the obligation does not apply if the worker has returned to their original position and has a total capacity to work in that position.

Section 155C(3) requires the employer to establish the return to work program in accordance with the code. An employer who does not comply with (1) or (3) commits an offence.

155D. Injury management: insurers' obligations

182. Section 155D(1) requires an insurer, must in accordance with the regulations, ensure an employer insured by them is aware of the employer's obligations under this Part.

Section 155D(2) provides that if an employer so requests, the insurer must assist the employer to comply with the employer's obligations and ensure the employer complies.

Section 155D(3) provides that if the employer so requests, the insurer must discharge the employer's obligations and comply with the employer's obligations. An insurer who does not comply with subsection (3) commits an offence.

156. Approval of vocational rehabilitation providers

183. Section 156(1) reflects the provisions in existing section 156A(1).

Section 156(2) reflects the provisions in existing section 156A(2).

Section 156(3) imposes certain conditions on an approved vocational rehabilitation provider.

156A. Vocational rehabilitation services

184. Section 156A(1) reflects existing section 157(2).

Section 156A(2) reflects existing section 157(3).

Section 156A(3) reflects existing section 157(4).

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

185. Section 156B(1) enables an employer or a worker to apply to an arbitrator for an order that the worker participate in a return to work program.

Section 156B(2) partly reflects existing section 157(1) and enables the arbitrator to order a worker to participate in a return to work program if satisfied –

a) a return to work program should be established;

b) the worker refuses or fails to participate; or

c) the program will be established in accordance with the code.

Section 156B(3) partly reflects existing section 157(1) and provides the arbitrator may order the worker to participate in a return to work program other than that proposed.

157. Information about injury management matters

186. Section 157(1) enables WorkCover WA to provide information regarding injury management.

Section 157(2) enables WorkCover WA to provide injury management information generally to the public and also to arbitrators in relation to a dispute involving an injury management matter.

Section 157(3) reflects current section 157.

Section 157(4) enables an arbitrator to request and receive information from WorkCover WA on injury management matters.

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

187. Section 157A is intended to ensure that the employer's and insurer's attention is drawn at the earliest possible time to injuries that require, or may require, management.

Section 157A(1) reflects existing section 155(2).

Section 157A(2) reflects existing section 155(3). Paragraph (b) provides the exemption from subsection (1) where the notice has already been given under this section, section 155 before this part of the *Workers' Compensation Reform Act 2004* commenced, or section 155 before 8 March 1991.

Section 157A(3) reflects existing section 155(6).

Section 157A(4) enables WorkCover WA, if it believes a worker's injury should be reviewed, to decide whether a return to work program should be established; -

a) to notify the worker, employer and employer's insurer; and

b) advise those parties of the employer's and insurer's injury management obligations.

157B. Mediation and assistance

188. Section 157B provides a head of power to enable WorkCover WA to provide mediation and guidance to workers, employers and insurers on injury management matters. The intent is to assist in the evaluation of questions or disputes before the matter is referred for arbitration.

CLAUSE 120. PART IXA INSERTED

PART IXA — SPECIALISED RETRAINING PROGRAMS

189. This clause inserts a new Part IXA to provide for Specialised Retraining Programs.

158. Meaning of "retraining criteria"

190. Section 158(1) defines in this part **"degree of permanent whole of person impairment"** and **"retraining criteria".**

Section 158(2) defines **"event"** in subsection (1). This is consistent with other provisions in this Act.

158A. Eligibility to participate in specialised retraining programs

191. Section 158A(1) enables a worker to participate in a specialised retraining program (SRP) if: -

a) the worker's injury is compensable; the injury occurred on or after the commencement of this provision; and

b) it is either agreed or determined by an arbitrator that the worker's degree of whole of person impairment is at least 10% but less than 15% and the worker satisfies all of the retraining criteria.

Section 158A(2) enables a worker to participate despite receiving weekly payments or exhausting the prescribed amount.

Section 158A(3) places certain restrictions on a worker's eligibility to participate. These relate to settling the worker's claim for statutory entitlements under the Act and/or for damages at common law.

Section 158A(4) provides that participation is subject to sections 158B and 158E.

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

192. Section 158B(1) places certain requirements on a worker's eligibility to participate. These requirements must be met by the final day.

Section 158B(2) provides that the final day is normally 2 years from the day on which the worker's claim for compensation is made.

Section 158B(3) provides that if liability for the claim is determined or the worker is first notified that liability is accepted after 3 months, the final day may become 1 year and 9 months after the claim is made, unless the Director extends it under section 158B(4).

Section 158B(4) allows the Director to extend the final day in certain circumstances.

Section 158B(5) limits an extension to no longer than 6 months.

Section 158B(6) provides how an extension may be given.

Section 158B(7) allows an extension to be given after the final day.

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

193. Section 158C(1) enables the worker to refer a question regarding the degree of whole of person impairment for determination by an arbitrator if -

a) the employer does not agree the worker has at least 10% but less than 15% WPI; and

b) the worker's WPI has been assessed by an AMS.

Section 158C(2) provides that upon referral of a question an arbitrator, may

a) determine the worker's degree of permanent whole of person impairment; or

b) refer the question for binding assessment by an approved medical specialist panel in accordance with sections 146A and 146D.

Section 158C(3) provides that if it is determined the worker has at least 10% but less than 15% WPI, an order may be made for the employer to pay the costs of the dispute.

158D. Disputes as to retraining criteria

194. Section 158D(1) provides that if there is no agreement between an employer and a worker that the worker satisfies all of the retraining criteria, the worker may refer the question to an arbitrator.

Section 158D(2) provides that upon such referral, the arbitrator must refer the question for binding assessment by a specialised retraining assessment panel.

Section 158D(3) provides that if the assessment is that the worker is suitable to participate, the employer may be ordered to pay the costs of the dispute.

158E. Specialised retraining program agreements

195. Section 158E(1) provides that participation in a SRP is subject to an eligible worker entering into an agreement with WorkCover WA by the final day.

Section 158E(2) defines the final day.

Section 158E(3) outlines the contents of the agreement.

Section 158E(4) provides that if a provision of an agreement is inconsistent with this Act, the Act's provisions prevail.

158F. Payment of funds

196. Section 158F(1) provides that after an agreement has been signed:

a) WorkCover WA is to notify the employer; and

b) the employer is to pay to WorkCover WA the equivalent of 75% of the prescribed amount.

Section 158F(2) stipulates that the General Fund may be liable for the cost of an SRP if the employer is uninsured.

Section 158F(3) provides that funds for the specialised retraining program are to be placed in the Trust Fund.

158G. Administration of payments in relation to specialised retraining programs

197. Section 158G(1) allows WorkCover WA to set, in accordance with this section and any regulations, amounts payable under a SRP.

Section 158G(2) provides that payments may include: -

a) course fees;

b) books and resource materials; and

c) weekly retraining allowance, subject to subsections (5) and (6).

Section 158G(3) provides that under certain circumstances, payments may include vocational rehabilitation expenses.

Section 158G(4) provides that vocational rehabilitation expenses are only payable if the worker exhausts their rehabilitation allowance, and cannot exceed 3% of the total payable for an SRP.

Section 158G(5) states the weekly training allowance is not payable until the worker has exhausted the prescribed amount in weekly payments.

Section 158G(6) provides that the weekly retraining allowance: -

a) is not connected to the worker's capacity to work; and

b) cannot exceed the amount the worker earned before their injury.

Section 158G(7) enables the apportionment, timing and calculation of the weekly retraining allowance to be prescribed, subject to this section.

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

198. Section 158H(1) requires WorkCover WA to conduct reviews of each participating worker.

Section 158H(2) requires WorkCover WA to review payments for each participating worker 3 months after they commence and every 3 months after that.

158I. WorkCover WA may modify, suspend, cease payments under specialised retraining programs

199. Section 158I(1) gives WorkCover WA a discretion, subject to this section, to change, suspend or cease payments for each participating worker.

Section 158I(2) allows WorkCover WA to:

a) suspend a payment if WorkCover WA believes the participating worker does not comply with the agreement under section 158E;

b) cease payments if the worker does not comply within one month of being requested; or

c) modify, suspend or cease payments if the worker fails course requirements.

Section 158I(3) provides that WorkCover WA's decisions in relation to payments are not appealable or able to be quashed in any court.

158J. Cessation of payments and refunds

200. Section 158J(1) provides that payments cease from the time:

(a) an election is registered under section 93K(4);

(b) an agreement is recorded under section 76;

(c) an order is made for a redemption;

(d) an order in respect of the whole liability has been made; or

(e) the worker's claim for damages has been settled independently by agreement.

Section 158J(2) provides that any unused payments are to be refunded.

Section 158J(3) provides that where:

(a) an insurer has loaded a premium rate; and

(b) a refund is paid, the insurer shall within 30 days, refund the amount of the loading, proportionate to the unused portion.

158K. Other effects of participation in specialised retraining program

201. Section 158K(1 to 4) outline certain other effects of a worker's participation in a specialised retraining program.

CLAUSE 121. SECTION 160 AMENDED

202. Clause (1) repeals section 160(2a).

Clause (2) creates new section 160(3a) which requires an insurer who cancels a policy to notify the employer within 14 days. Creates an offence for an insurer who does not comply.

Clause (3) creates the following new subsections in section 160: -

Subsection (5) provides that an insurer who does not indemnify an employer for liability under section 160(4) commits an offence.

Subsection (6) provides that a conviction pursuant to subsection (5) does not affect the insurer's liability to comply with subsection (4).

Subsection (7) provides that as a method of assisting the process of compliance by employers with the obligation to hold a current workers' compensation policy, employers will be required to display a certificate of currency in their principal place of business.

Subsection (8) provides that the above requirement does not apply if it is not reasonably practicable to comply.

CLAUSE 122. SECTION 162 AMENDED

203. This clause creates a new offence for any insurer, apart from the State Government Insurance Commission, which issues a policy for industrial diseases.

CLAUSE 123. SECTION 164 AMENDED

204. This clause updates the reference to the body to whom securities must be deposited.

CLAUSE 124. SECTION 165 AMENDED

205. This clause creates an offence for an employer or group of employers that does not comply with a direction to deposit securities within 21 days after being directed to do so.

CLAUSE 125. SECTION 171 AMENDED

206. Subclause (1) creates an offence for an approved insurer which does not comply with section 171(1). Subclause (2) introduces a maximum penalty of $1000.

CLAUSE 126. SECTION 174 AMENDED

207. Enables WorkCover WA to exercise the rights of the employer in relation to payments of an award regarding an insured employer. Also reinstates previously repealed provisions in the Act to allow WorkCover WA to recover money paid from the General Fund in relation to an uninsured employer.

CLAUSE 127. SECTION 174AA INSERTED

174AA. Recovery from responsible officers of body corporate

208. This clause enables WorkCover WA to sue and recover from responsible officers of a body corporate amounts paid from the General Fund in relation to an uninsured employer.

CLAUSE 128. SECTIONS 174AB AND 174AC INSERTED

174AB. WorkCover WA may exercise rights of the employer

209. Section 174AB(1) enables WorkCover WA to exercise all the rights of an employer where the employer is uninsured and is not defending a claim.

Section 174AB(2) enables WorkCover WA to exercise all the rights of an employer if the employer is uninsured and is defending a claim, unless an order is made under subsection (3).

Section 174AB(3) enables the employer to seek an order regarding which rights WorkCover WA may exercise.

Section 174AB(4) allows an arbitrator to determine an application under (3).

Section 174AB(5) enables WorkCover WA to sue and recover costs from the employer.

174AC. WorkCover WA's right of subrogation

210. Section 174AC provides that where the General Fund is liable for costs in relation to an uninsured employer's worker, WorkCover WA may have the same rights of the employer and any insurer to recover any amount paid.

CLAUSE 129. PART XA INSERTED

PART XA – INFRINGEMENT NOTICES AND MODIFIED PENALTIES

211. Part XA provides for WorkCover WA to issue infringement notices and modified penalties (to be prescribed in regulations) for offences under the Act which relate to performance of insurers and self-insurers.

This reflects the intent to enable WorkCover WA to influence insurers and self-insurers performance through fines and penalties. Given the absence of strict monetary penalties that can be easily applied to insurers and self-insurers and the complexities involved in prosecution, the only existing avenue is for WorkCover WA to record breaches and present them to the current Workers' Compensation and Rehabilitation Commission (the Commission) as part of the annual review of insurers' and self-insurers' performance.

While the Minister has discretion to remove the approval status of an insurer or self-insurer on the basis of them not having adequate resources in the State to fulfil their obligations under the Act, such action would create a substantial economic cost for the disapproved entity far in excess of any of the existing financial penalties listed in the Act. There could also be serious repercussions in relation to competition in the workers' compensation insurance market and inconvenience to insured employers who would need to obtain an insurance policy from a different insurer.

The ability for WorkCover WA to issue infringement notices with modified penalties for specified insurer/self-insurer breaches of the Act offers a more practical alternative. WorkCover WA will still retain the option of referring matters for appropriate court proceedings.

175E. Definitions

212. Section 175E defines an **"authorised officer"** as a person nominated by the chief executive officer of WorkCover WA to issue infringement notices under section 175F and clarifies the definition of **"prescribed",** as prescribed by regulation.

175F. Authorised officers

213. Section 175F(1) empowers the chief executive officer of WorkCover WA to nominate officers of WorkCover WA to issue infringement notices for prescribed offences under the Act.

Under sections 175F(2) and (3) the Chief Executive Officer must issue a certificate of authorisation to each person so authorised, which must be produced by the authorised officer when so required by the person to whom an infringement notice is to be issued.

Section 175F(4) specifies certificates are enough evidence for a court to determine whether a person is authorised to issue infringement notices.

175G. Giving of notice

214. Section 175G provides the head of power for an officer authorised under section 175F to give an infringement notice to an alleged offender within 6 months of the alleged offence having been committed.

175H. Content of notice

215. Section 175H specifies infringement notices are to contain details of the offence, amount of modified penalty, the ramifications of not paying the infringement notice and who the penalty can be paid to.

Section 175H(4) states a modified penalty cannot exceed 20% of the maximum penalty specified under the relevant section of the Act. For example, if the maximum penalty is $1000 the modified penalty stated on the infringement notice cannot exceed $200.

175I. Extension of time

216. To provide flexibility section 175I gives authorised officers the option to extend the period of 28 days in which the modified penalty must be paid.

175J. Withdrawal of notice

217. To enable an authorised officer to account for all circumstances, section 175J allows an authorised officer to withdraw an infringement notice within 60 days of it having been given.

175K. Benefit of paying modified penalty

218. Section 175K specifies that if a modified penalty is paid prosecution action before the courts is not necessary.

175L. No admission implied by payment

219. To complement section 175K, section 175L states the payment of a modified penalty is not an admission for civil or criminal proceedings.

175M. Application of penalties collected

220. Section 175M provides for modified penalties to be paid into WorkCover WA's General Fund.

CLAUSE 130. PART XI REPLACED BY PARTS XI TO XVIII

PART XI – DISPUTE RESOLUTION

Division 1 — General

176. Exclusive jurisdiction

221. New section 176 ensures workers' compensation related disputes can only be brought under Part XI and, subject to the Act, only be heard by arbitrators. This will help matters to be heard in an efficient and cost effective manner.

177. Evidence of communication between worker and injury management officer

222. The new section 177 provides that any information given by the worker to WorkCover WA's injury management officer cannot be used in proceedings before an arbitrator, unless the worker specifically agrees. This protects the worker from confidential information being released which may be prejudicial or irrelevant to their case.

Division 2 — Requirements before commencing proceeding

178. Notice of injury and claim

223. With minor changes and consequential amendments, the new section 178 reflects the existing requirements for claiming workers' compensation under sections 84I(1) and (2) of the Act. Details relating to serving a notice of injury, which is currently covered by section 84I(3), (4), (5) and (6), is now covered under the new section 179.

179. Service of notice of injury

224. With minor changes and consequential amendments, section 179 reflects the requirements and process for serving a notice of injury on an employer, contained in the existing section 84I(3), (4), (5) and (6).

180. Provision of certain documents before commencement of proceeding

225. Defines **"injury"** and **"relevant documents".**

The definition of **"relevant document"** is broadly defined to ensure relevant information relating to a dispute can be ordered to be produced. This will help to expedite disputes at a reasonable cost. Where necessary, documents not covered by section 180 can be prescribed by regulation.

Division 3 — Proceedings before an arbitrator

181. Arbitrators to determine disputes

226. The new section 181 provides a head of power for referring workers' compensation related disputes to an arbitrator, proceedings for which commence when the application is accepted by the Director.

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

227. Section 182(1) specifies that when an application for an arbitrator to determine a dispute is accepted, the applicant is required to give a copy of the application to each other party and other people mentioned by the Act or the Director. This ensures each party has the same information to help expedite a resolution.

To avoid doubling up, section 182(2) specifies the applicant is not required to provide copies of the application to other parties or persons mentioned if they have already received a copy or if an arbitrator under section 182(3) dismisses the need to provide copies.

Under section 182(4) rules can specify the time and manner in which applications must be provided.

183. Information exchange between parties

228. Section 183(1) provides that once an application to determine a dispute is made, each party to the dispute is required to exchange information, material and documents with each other and provide these to the Director. The type of documentation to be exchanged and the timing will be specified in the DRD Rules. This ensures relevant information is provided in a cost effective and timely manner to resolve disputes as quickly as possible.

Section 183(2) provides that unless contrary to sections 204 or 205, anyone who fails to exchange information as required under the Rules commits an offence and is liable to a maximum fine of $2000.

Section 183(4) states any documents, material or information not exchanged in accordance with the Rules cannot be used in proceedings before an arbitrator. This will encourage parties to submit information in a timely manner and ensure there are no unnecessary delays and associated costs in waiting for information.

Section 183(5) requires a statement to be filed for each witness who cannot attend a proceeding, unless so provided. This ensures witnesses are not called shortly before or during the hearing of a dispute which could delay the case and add to costs.

Section 183(6) provides that where a worker is not represented the worker is exempt from a fine under section 183(2) or from the application of sections 183(4) and (5), which relate to the provision of documents, material and information and the nomination of witnesses. This exemption recognises that workers who are not represented may not be aware of the requirements of the Act.

Section 183(7) provides for the Rules to make exceptions for providing documents, material or information under section 183(4) and the provision of witness statements under section 183(5). This gives arbitrators the ability to account for unusual or exceptional circumstances in order to determine a dispute as fairly as possible.

Under section 183(8) if a party does not have a reasonable excuse for not complying with section 183, an arbitrator has the option of referring the matter to WorkCover WA, note the issue in a certificate or take the matter into account when determining costs. This provides an incentive for all parties to provide documents, material and information and finalise witnesses before a hearing.

184. Interim assessment and minor claims

229. Section 184 empowers the Director to refer applications seeking determination of a dispute to be dealt with under Part XII as an interim direction or minor claim.

The procedure under Part XII will enable minor disputes to be dealt with quickly and efficiently, thereby preventing undue delays in the system overall. It is expected a large percentage of applications will be referred to and dealt with under Part XII.

185. Arbitrator to attempt conciliation

230. Section 185 requires arbitrators to initially try and resolve disputes through conciliation. Conciliation is an effective, cost efficient way to resolve disputes in a timely manner. Conciliation under the current dispute resolution system resolves approximately 70% of applications seeking a determination. Rules can also be made in relation to the conciliation process to ensure the necessary degree of flexibility and commitment to the conciliation process.

186. Arbitrator may review decision

231. Section 186(1) provides for arbitrators to review their decision on the basis of **"new information"** that was not available at the time the decision was made. Based on the new information, section 186(2) enables the arbitrator to vary or revoke the decision or make a further decision. This avoids delays and costs associated with having to relist and rehear matters.

187. Decisions of arbitrator

232. Section 187(1) stipulates arbitrator's decisions are final and binding on the parties and not subject to appeal or judicial review. Furthermore, under section 187(2) an arbitrator's decision cannot be overturned due to any informality or want of form, nor can it be challenged or overturned by any Court or Tribunal, or a proceeding restrained by injunction, prohibition etc. This ensures matters are not caught up in legal detail and challenges which has the potential to delay and add costs to the dispute resolution process.

Division 4 — Practice and procedure

188. Practice and procedure, generally

233. Section 188 establishes the practice and procedure to be followed by arbitrators, which are similar to those currently specified for review officers under existing section 84ZA. This section also provides that arbitrators are not bound by rules of natural justice and that the Evidence Act 1906 does not apply to proceedings before an arbitrator.

This will help to ensure matters are dealt with in an efficient and cost effective manner.

189. Relief or redress not restricted to claim

234. Section 189 reflects the existing wording in current section 84D of the Act.

190. Directions

235. Section 190 provides flexibility for an arbitrator to issue directions at any time in a proceeding and do whatever is necessary to ensure proceedings are conducted fairly and expediently. This is central to resolving disputes in a fair, efficient and cost effective manner.

191. Dependants

236. Section 191 provides that in determining whether a person who lives outside Western Australia is a dependant of a worker, an arbitrator requires documentary evidence, but a statutory declaration or affidavit alone are not sufficient proof of dependency. This provides a degree of assurance that persons who claim to be a dependant of a worker and live outside of the State are legitimate, as it would be impracticable for them to be called to appear before the arbitrator to give evidence.

192. Arbitrator may regard illegal contracts of employment as valid

237. Section 192 reflects existing section 84H of the Act, thus enabling an arbitrator to treat an illegal contract of employment at the time of injury as though it were valid. This recognises for example that workers may be unaware they are working under an illegal contract and as such they should not be penalised.

193. Power of arbitrator to require information

238. Section 193 empowers arbitrators to order any person to produce documents, material or information at a specified time and place. This ensures proceedings are not delayed through relevant material being delayed or withheld. Documents, material and information not provided in accordance with an arbitrator's order may be excluded from proceedings. This provides an incentive to comply and avoids delays and associated costs.

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

239. Section 194(1) provides that when any relevant documents, information or material is received by an arbitrator, it may be distributed to any party to the proceedings, another parties' legal representative or registered agent, or a medical practitioner, which includes MAP's and AMS's. This ensures relevant information is available to all parties, to avoid delays and costs.

Section 194(2) empowers arbitrators to direct that any documents, information or material that is distributed under section 194(1) cannot be released to another person. This maintains confidentiality in appropriate cases or circumstances.

195. Representation

240. Section 195(1) provides for legal practitioners to participate at all levels of proceedings which addresses inequities associated with the current exclusion of legal practitioners. A party to proceedings may also be represented by a "registered agent", a director, secretary or other officer of a corporate body or an employee of a public sector body.

To ensure equity and fairness in proceedings, where a worker is not represented, an arbitrator under section 195(2) can refuse to allow an employer/insurer to have representation.

Section 195(3) states a person struck off the roll of practitioners of the Supreme Court cannot represent a party. This is logical and prevents the person acting as an agent.

Where a registered agent does not have sufficient authority to make binding decisions, section 195(4) empowers the arbitrator to refuse to allow an agent to represent a party. Agents without sufficient authority will simply delay the process.

To ensure suitable persons represent parties in a proceeding a safety net is provided by section 195(5) to enable the regulations or Rules to exclude certain persons from representing parties.

196. Arbitrator may appoint guardian

241. To ensure a child who is a party, or potential party to a proceeding is adequately protected legally, section 196 enables an arbitrator to appoint a "litigation guardian" to conduct proceedings on the child's behalf.

197. Interpreters and assistants

242. To ensure all parties to a proceeding fully understand what is being discussed during a hearing and to enable all parties to communicate, section 197(1) provides that an interpreter or other person who can make the proceeding intelligible may attend and participate in discussions under section 197(1). This will assist all parties' level of understanding and avoid uncertainty and possible delays.

While section 197(2) enables a person to present written submissions or evidence in a language other than English, it must be accompanied by an English translation and a statutory declaration to certify accuracy. A translation into English is necessary to avoid misinterpretation which could influence the outcome.

198. Electronic hearings and proceedings without hearings

243. To expedite the dispute resolution process and minimise costs, section 198(1) enables arbitrators, where the Rules provide or where the arbitrator feels it is appropriate, to conduct an informal conference between the parties.

To minimise costs and inconvenience and keep matters informal, section 198(2) allows an arbitrator to conduct proceedings by telephone, video link or similar communication methods.

Section 198(3) enables arbitrators to conduct all or part of a proceeding on the basis of documents only, which provides flexibility and has the potential to minimise costs and expedite the process.

Sections 198(4) and (5) allow an arbitrator to take into account a written submission prepared by a legal practitioner representing a party, irrespective of whether the representative personally attends. The issue of whether the public should or should not have access to matters based on submissions is the same as if the legal practitioner had attended.

199. Hearings to be held in private

244. Section 199 provides that arbitrators are to conduct hearings and conferences in private unless the Rules otherwise specify, or the arbitrator considers it inappropriate. This discretionary power will ensure individuals or parties are afforded adequate protection where considered necessary.

200. Notice of hearings

245. Details of the time and location of a hearing or proceeding must be provided under section 200(1) in accordance with the Rules to each party or person(s) who have an involvement in the proceedings.

If a person to whom notification of a proceeding is given fails to attend, the arbitrator has the discretion under section 200(2) to conduct the hearing in the absence of that person. This will ensure there are no unnecessary delays or associated costs.

Section 200(3) states the validity of any decision made where a person or party does not attend is not affected. This ensures there are no appeals on such decisions, which would be time consuming and costly.

201. Expert or professional assistance

246. Under section 201(1), arbitrators may defer to an expert for a report on a technical or specialised matter. Examples of such experts would include references to an expert in occupational health and safety or a biomechanical engineer. This ensures an arbitrator may make informed decisions.

Where a party to proceedings so requests, the arbitrator under section 201(2) must call the expert to the proceedings to enable an examination of the report. This is a natural justice issue.

202. Summoning witnesses

247. To encourage relevant people to attend a proceeding, this section provides that a summons for attendance can be issued. This ensures the proceedings are not delayed.

203. Powers relating to witnesses

248. To ensure matters are dealt within in an open and expedient manner, arbitrators are empowered under section 203(1) to call any person to give evidence, examine any witness by oath or affirmation or by using a statutory declaration, examine a witness or require a witness to answer questions put to them.

For the purposes of natural justice, a witness is not required under section 203(2) to answer questions if they could not be compelled to answer questions or provide information, material or documents in proceedings before the Supreme Court.

A witness is also excused if they have a "reasonable excuse" for not answering a question. "Reasonable excuse" does not include concern for self-incrimination under section 204 or claiming legal professional privilege on a medical report under section 205.

204. Privilege against self-incrimination

249. To ensure relevant information is provided, section 204(1) provides that a person must answer questions or provide a document or information or material, even if it incriminates the person or makes them liable for a penalty.

However, section 204(2) makes it clear that no information given in proceedings, aside from perjury, can be used in criminal proceedings. This level of protection is designed to encourage open and honest responses.

205. No legal professional privilege in relation to medical reports

250. As medical evidence is often crucial in determining the outcome of proceedings, section 205 provides that legal practitioners cannot claim legal privilege as a reason for not answering a question in relation to a medical report or supplying a copy of a medical report.

206. Other claims of privilege

251. To ensure natural justice, section 206(1) provides that a person in a proceeding is not required to answer a question or provide a document or material or information if the person could not be compelled to do the same in the Supreme Court.

Section 206(2) empowers an arbitrator to order the production of documents or other material in order for the arbitrator to determine whether they should be produced.

207. Oaths and affirmations

252. Section 207 provides that arbitrators may take an oath or affirmation which places an obligation on parties to be honest or otherwise be subject to a penalty.

208. Authorising person to take evidence

253. Allowing arbitrators under section 208(1) to delegate the power to take evidence on behalf of the arbitrator complements the provisions relating to interim direction orders and minor claims and allows officers such as WorkCover WA compliance officers to collect evidence from insurers, employers and workers while conducting their core business.

Section 208(2) also provides flexibility to collect evidence interstate and overseas.

Section 208(4) specifies a delegated person taking evidence has the same powers as an arbitrator in relation to taking of evidence. This provides an appropriate authority and means penalties can be applied where there is a refusal to give evidence.

209. Dealing with things produced

254. To ensure there is sufficient time to review and file documents or material given to the arbitrator, section 209 allows the arbitrator to retain the documents or material for a period they consider reasonable.

210. Referral of medical dispute for assessment

255. Section 210(1) provides that where there is a conflict of medical opinion between a medical practitioner engaged by the worker and a medical practitioner engaged and paid for by the employer/insurer, the matter can be referred to a medical assessment panel for a determination of the nature, and extent of an injury and capacity for work of a worker. This will lead to an expert, binding decision on such matters.

Section 210(2) provides that MAP's will continue to determine questions on referral from an arbitrator for injuries sustained prior to the amendment day in relation to the discontinued Schedule 2 regime and the assessment of disability under the 1993 common law scheme. Paragraph (c) also enables a MAP to determine whether a person has contracted AIDS for the purposes of the new Schedule 2 regime as this specific item is not assessed by an approved medical specialist.

Section 210(3) recognises approved medical specialist panels, not medical assessment panels, will make binding assessments of impairment for the purposes of the new Schedule 2, the 2004 common law scheme, the specialised retraining program provisions under Part IXA and the further additional sum under clause 18A.

Division 5 — Decisions

Subdivision 1 — General provisions

211. Decisions generally

256. An arbitrator under section 211(1) may make a decision as long as it complies with the provisions of the Act.

In relation to interim orders and minor claims (Part XII), an arbitrator under section 211(2) may confirm/vary or revoke a direction or order. This power is central to resolving these matters in an efficient and cost effective manner.

212. Conditional and ancillary orders and directions

257. An arbitrator's ability to make an order or issue a direction is defined in section 212 as the **"primary power"**. To ensure sufficient flexibility in the decision making process, arbitrators have the power to issue an ancillary order or direction as a lead up to making the final order or direction. This may be necessary or appropriate where certain actions are necessary in the lead up to resolving the dispute.

213. Form and content of decision and reasons

258. Under section 213(1) arbitrators are only required to give a decision in writing if so required by the Rules or if requested by a party to the dispute within 14 days of the decision being handed down. Not having to write decisions on all cases ensures matters can be dealt with in a cost effective and efficient manner.

To ensure parties are fully aware of their appeal rights, section 213(2) requires any decision in writing to include information on the appeal rights available.

Section 213(3) provides that arbitrators only have to give written reasons for a decision if so required by the Rules or if requested by a party within 14 days of the decision being handed down.

Section 213(4) provides that to avoid delays and contain costs, the reasons for an arbitrator's decision need:

- only identify facts accepted by the arbitrator and the reasons;
- only identify the law applied by the arbitrator in coming to the decision and the reasons;
- not cover all evidence presented; and
- need not cover all factual and legal arguments or issues associated with the case.

For the sake of cost efficiency and to avoid delays, section 213(5) specifies that where a written transcript covers an oral decision or oral reasons, the written transcript can be treated as a written decision.

To ensure consistency in decision making, section 213(6) states decisions or reasons given orally are not to provide grounds for reversing or modifying the decision on an appeal.

214. Validity of decision

259. Section 214 specifies the validity of a decision cannot be affected if an arbitrator fails to comply with requirements under Subdivision 1 of Division 5. This ensures matters won't have to be reconsidered on a technicality.

215. When decision has effect

260. Section 215(1) provides for a decision of an arbitrator to come into effect immediately it is given or a later time as specified. This guarantees an effective date, irrespective of whether one is supplied.

Under section 215(2), the effective date an arbitrator's decision under section 216(1) does not prevent the Commissioner from ordering a stay of the operation of an arbitrator's order under section 250, until the appeal is determined.

216. Correcting mistakes

261. Section 216 ensures matters do not have to be reheard or decisions rewritten due to minor issues or mistakes by providing that arbitrators may correct a decision where there was a clerical error, or error from an accidental slip or omission or a material miscalculation involving figures or description, or a defective form.

Subdivision 2 — Particular orders

217. Order as to total liability

262. With appropriate amendments, section 217 reflects existing section 84E.

Under section 217(1) arbitrator's may make an order as to the total liability of the employer as long as: -

- the arbitrator considers the worker has a compensable injury and a permanent total incapacity for work;
- liability has not been redeemed under section 67;
- no memorandum of agreement has been recorded under section 76; and
- total weekly payments for a total or partial incapacity under clause 7 of Schedule 1 have reached the prescribed amount.

Section 217(2) empowers the arbitrator to make an order as to total liability for an incapacity that the arbitrator feels is appropriate, having regard for the particular circumstances of the case.

Section 217(3) states arbitrators are not to make an order as to total liability of the employer without regard to the social and financial circumstances and reasonable financial needs of the worker.

Workers with a permanent total incapacity will be able to seek an extension of the prescribed amount under section 217(4) to a maximum of 75% (currently $101,648) of the prescribed amount, rather than the current flat rate of $50,000. The amount which equates to 75% will increase every year in line with increases in the prescribed amount.

Section 217(5) enables an arbitrator to order weekly payments at a rate they consider appropriate to the circumstances of each case, having regard for the social and financial circumstances and reasonable financial needs of the worker. However, any weekly payments ordered cannot logically exceed the rate of weekly payments the worker was entitled to at the time when total weekly payments reached the prescribed amount.

Section 217(6) enables an arbitrator to order payment of an amount for arrears of weekly payments from the time the weekly payments reached the prescribed amount to the date of the arbitrator's order.

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

263. Section 218 reflects existing section 84F with minor consequential amendments to reflect the new dispute resolution process, and the role of arbitrators in making determinations and orders relating to payment of compensation to persons under a legal disability or who are dependants.

Subdivision 3 — Enforcement of decisions

219. Enforcement of decisions

264. Section 219(1) provides an avenue for a person to have an order for money by an arbitrator enforced by filing the arbitrator's decision and an affidavit in a court of competent jurisdiction.

Under section 219(2), there is no charge to file a copy of a decision or affidavit and section 219(3) specifies enforcement is in accordance with section 142(1) of the Supreme Court Act 1935.

Division 6 — Miscellaneous

220. Evidence not admissible in common law proceedings

265. Under section 220, statements made by a person in proceedings before an arbitrator are not, unless agreed to by that person, to be admitted in a damages action which is independent of the Act. This appropriately separates workers' compensation proceedings from common law and ensures a person's damages action is not compromised by proceedings before an arbitrator.

221. Payment of compensation awarded

266. Section 221 ensures that unless there is an order for a sum awarded as compensation to be paid into the custody of WorkCover WA, the person who is named in the agreement award or order will receive the sum direct. This

provides a safety net for WorkCover WA to look after awards in the rare circumstances that the person named is not able, or does not want the payment made directly to them.

222. Interest before order for payment

267. Section 222(1) empowers arbitrators to order interest on any sum to be paid which provides a clear inducement for monies to be paid as and when ordered by an arbitrator

Under section 222(2), the arbitrator is to calculate interest in accordance with the rate prescribed or determined by the regulations.

Section 222(3) prevents an arbitrator from ordering interest on interest and stipulates interest does not apply in relation to a debt.

223. Interest after order for payment

268. Unless otherwise ordered by an arbitrator, interest under section 223(1) is not payable on that component of the sum ordered by the arbitrator that remains unpaid.

Interest is calculated at a rate prescribed by regulation from the date of the order or a date specified by an arbitrator, but under section 223(2) does not include payment of interest on interest.

Under section 223(3) interest is not payable on an amount ordered where that amount is paid in full within the period prescribed.

224. Interest on agreed payment of lump sum compensation

269. Where any lump sum agreed to be paid remains outstanding under section 224(1), an arbitrator, in accordance with the regulations, may order interest. This provides an incentive to pay lump sums within a reasonable time.

Under section 224(2) interest is calculated from the date of agreement or if not specified 21 days after the date of agreement in accordance with the date prescribed by regulation. Interest on interest cannot be ordered.

225. Regulations may exclude interest

270. Section 225 provides flexibility to specify circumstances in the regulations where interest is not payable before and after an order for payment and on payment of lump sum compensation.

PART XII — INTERIM ORDERS AND MINOR CLAIMS

Division 1 — Preliminary

226. Interpretation

271. Section 226 defines “Statutory expenses” as a sum payable in relation to medical and other expenses under Schedule 1, clause 17.

227. Exercise of functions under this Part

272. To expedite proceedings and minimise costs, arbitrators under section 227(1) may make decisions on disputes relating to interim orders and minor claims on the basis of documents and information provided when the application was made and based on advice given to the arbitrator by dispute resolution officers.

To expedite proceedings and minimise costs, section 227(2) specifies arbitrators are not to conduct a formal hearing for matters relating to interim orders and minor claims.

Section 227(3) provides that matters determined in this way will not require arbitrators to provide written reasons for a decision. Not having to produce written decisions means these matters can be dealt with in an efficient and cost effective manner.

To ensure matters relating to interim orders and minor claims are dealt with in an efficient, cost effective manner, section 227(4) states such decisions are not open to appeal or judicial review.

228. Provisions of Part XI apply

273. Section 228 provides that provisions relating to dispute resolution proceedings under Part XI apply unless otherwise specified under interim orders or minor claims, Part XII or under the Rules.

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

274. Under section 229, an arbitrator is able to direct that matters relating to interim directions and minor claims under Part XII or a matter referred for an interim assessment and minor claim under section 184 can be dealt with formally as a dispute under Part XI. Ensures matters that should be dealt with formally as a dispute can be so referred by an arbitrator.

230. DRD Rules apply

275. Under section 230(1), applications relating to interim directions and minor claims must be handled in accordance with the Rules.

Directions and orders relating to interim directions and minor claims must be in accordance to the Rules, as specified by section 230(2).

These provisions ensure that where appropriate Rules apply in relation to interim order matters and minor claims and they are referred to and complied with.

Division 2 —Interim payment orders

231. Application for interim payment order

276. Under section 231(1), once a claim is lodged a worker or employer can apply for an interim payment of weekly payments up to a maximum of 12 weeks.

This will provide financial relief where claims for compensation are not processed within the timeframes prescribed by the Act.

Under section 231(2), once a claim is lodged a worker or employer can apply for an interim payment of medical and related expenses up to a maximum of 5% of the prescribed amount ($6,777). This will help ensure workers receive appropriate treatment where claims for compensation are not processed within the timeframes prescribed by the Act.

232. Orders for interim weekly payments

277. If 21 days after a claim is lodged weekly payments have not commenced, section 232(1) provides for an arbitrator to issue an interim payment direction, for a maximum period of 12 weeks. This provides financial relief to the worker, where the arbitrator considers it is justified. Under section 232(2) such orders are referred to as an "interim payment order".

Under section 232(3) an arbitrator is not to issue an interim payment direction for weekly payments where the claim has a minimal chance of succeeding, there is insufficient medical evidence to support the claim or the Rules indicate an interim payment direction should not be issued. This establishes a benchmark for arbitrators in relation to determining whether an interim payment direction is appropriate.

Section 232(4) gives an arbitrator flexibility to apply conditions to an interim payment.

Further interim payment orders can be made under section 232(5) once an earlier interim payment order has expired. This ensures pressure can be maintained in appropriate cases to resolve the matter and also accounts for changing circumstances.

233. Orders for interim payment of statutory expenses

278. Under section 233(1) if 21 days after a claim is lodged statutory payments for medical and related costs have not been received, an arbitrator can issue an interim payment direction up to a maximum of 5% (currently $6,777) of the prescribed amount for medical and related expenses. This will finalise many applications and ensure workers promptly receive payments for statutory expenses up to the 5% threshold.

Orders issued under section 233(1) are referred to in section 233(2) as an "**interim payment order**".

Section 233(3) states an arbitrator is not to make an interim payment order for statutory expenses where the claim has a minimal chance of succeeding, there is insufficient medical evidence to support the claim or the Rules indicate an interim payment order should not be issued.

Section 233(4) provides for an arbitrator to apply conditions to an interim payment order.

Further interim payment orders can be made under section 233(5) after an earlier order has expired. This enables an arbitrator to consider changing circumstances and act accordingly.

234. Limits on interim payment orders

279. Section 234(1) specifies interim payments ordered by an arbitrator are not to exceed 12 weeks weekly payments of compensation, or under section 234(3) 5% of the prescribed amount for medical and related expenses incurred. These limits will enable a large number of minor claims to be resolved by way of interim payment orders.

Section 234(2) specifies that while an arbitrator can order weekly payments during a period that is before an interim payment order is made, the period ordered is not to exceed 10 weeks.

Section 234(3) precludes an arbitrator from making an interim order for statutory expenses for more than 5% of the prescribed amount.

235. Effect of interim payment order

280. Under section 235(1), where an arbitrator issues an interim payment direction this does not mean the worker's compensation claim by the worker has been accepted, nor does it prevent a question from being heard by the DRA under sections 58(1) or (2).

Under section 235(2), a refusal by an arbitrator to issue an interim payment order does not represent a refusal to accept liability. As the name suggests this is only an "interim" order.

236. Recovery of payments

281. Under section 236, if after issuing an interim payment direction for weekly payments or medical or related expenses, an arbitrator determines the worker is not entitled, the worker retains the payments unless otherwise ordered by the arbitrator.

However, if the arbitrator believes the claim was fraudulent or without justification, the arbitrator may order the worker or other person to refund the whole or part of the payments which formed the interim payment direction.

Where an order to reimburse the person who made the payments is made, such payments are to be excluded from the claims experience of the employer in regard to determining premium payable. This is fair if the claim was fraudulent or without justification.

237. Revocation of interim payment order

282. Arbitrators under section 237(1) may revoke an interim payment direction at any time. This recognises that if new information comes before an arbitrator, he/she may act on it.

Section 237(2) logically provides that as soon as an interim payment direction is revoked the obligation to make any further payment ceases.

Section 237(3) makes it clear that where an arbitrator revokes an interim payment order this does not affect the requirement to pay the compensation before the order was revoked. This is fair as the earlier period may have nothing to do with the period actually revoked.

Section 237(4) provides that where an interim payment order is revoked or an arbitrator refuses to revoke an order neither decision has any impact in relation to the question of liability. Liability issues are determined under Part XI.

Division 3 — Interim suspension or reduction orders

238. Interim suspension or reduction order

283. Under section 238(1) and (2), an employer may seek a direction from an arbitrator that weekly payments awarded to a worker be either suspended or reduced but by no more that 12 weeks. This enables the arbitrator to consider new information that is made available after the direction order is issued.

Suspensions or reductions are referred to under section 238(3) as an **"interim suspension order"** and **"interim reduction order"**.

Under section 238(4) arbitrators are not to issue interim suspension or reduction orders if the application has a minimal chance of succeeding under Part XI or circumstances are prescribed in the Rules which clearly make it inappropriate for the arbitrator to make an order.

Section 238(5) enables an arbitrator to make interim suspension or reduction orders subject to conditions the arbitrator considers are appropriate to specific cases. This provides a necessary degree of flexibility for cases to be treated on their individual merits.

Section 238(6) enables an arbitrator to issue further interim or suspension orders as long as an earlier order has expired. This may be appropriate if there are any delays in a final determination being made.

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

284. Section 239(1) provides that where a worker's weekly payments are suspended by an arbitrator for 12 weeks or less and an application on the same matter is dismissed under the dispute resolution proceedings of Part XI, the weekly payments suspended under an interim direction are to be paid to the worker.

Under section 239(2), where an arbitrator issues an interim suspension order to suspend a workers' weekly payments and subsequently orders weekly payments be increased or reduced under the dispute resolution proceedings of Part XI, the weekly payments that were suspended are to be reimbursed in

full or part, as if the order under Part XI had effect during the period of suspension.

Section 239(3) provides that where an arbitrator issues an interim reduction order to reduce a worker's weekly payments and the arbitrator subsequently dismisses the application under Part XI, the weekly payments that were reduced are to be repaid for the appropriate period.

Section 239(4) is self-explanatory.

240. Revocation of interim suspension or reduction order

285. Section 240(1) ensures arbitrators can revoke an interim suspension or reduction order at any time where such orders are not appropriate. This enables an arbitrator to account for changing circumstances.

Section 240(2) provides for weekly payments to recommence from the date the arbitrator revokes an interim suspension order and unless otherwise ordered are to be repaid to the worker. This ensures workers receive weekly entitlements from the date an interim suspension order is revoked.

Section 240(3) provides for weekly payments to recommence from the date the arbitrator revokes an interim reduction order, and unless otherwise ordered, is to be repaid to the worker.

Under section 240(4), liability is in no way determined by an arbitrator revoking or refusing to revoke an interim suspension or reduction order. Liability issues are determined under Part XI.

Division 4 — Expedited determination of minor claims

241. Application for determination of minor claim

286. Section 241(1) provides that before an application for weekly payments under a minor claim can be made, a claim for weekly payments supported by a medical certificate must be served by the worker on their employer. This ensures a genuine claim and associated circumstances can be considered in determining a minor claim for weekly payments.

Section 241(2) provides that before an application for medical and related expenses under a minor claim can be made, the worker must have served on their employer a claim form supported by a medical certificate, stating the costs incurred are reasonable. This ensures a genuine claim and associated circumstances can be considered in determining a minor claim for statutory expenses.

Section 241(3) provides that if after 21 days from the date of lodging a claim and associated medical certificate a worker has not received weekly payments or statutory expenses, an arbitrator may consider and make a determination on an application for a minor claim. Twenty-one days is considered long enough for an employer and insurer to process a claim and make a determination on liability.

Section 241(4) provides that in determining a minor claim for weekly payments an arbitrator must be satisfied the claim has a reasonable chance of succeeding, sufficient medical evidence supporting the worker exists and any order made would be in accordance with the Rules. These guidelines establish a benchmark to help ensure appropriate determinations are made and for applications to be finalised in a fair and efficient manner.

Section 241(5) provides that in determining a minor claim for medical and related expenses, an arbitrator must be satisfied the claim has a reasonable chance of succeeding, there is sufficient medical evidence to support the reasonableness of the expenses claimed and any order would be in accordance with the Rules. These guidelines establish a benchmark to help ensure appropriate determinations are made in a fair and efficient manner.

242. Limits on minor claims orders

287. Section 242(1) provides that where, for example, an application under a minor claim seeks 6 weeks weekly payments, an arbitrator cannot make an order for more than 6 weeks.

Section 242(2) provides that where, for example, an application under a minor claim seeks 3% of medical and related expenses incurred, an arbitrator cannot make an order for more than 3%.

243. No recovery of compensation

288. Section 243 provides that monies received by a worker for weekly payments and/or medical and related expenses under a minor claims order cannot be ordered to be refunded. This ensures the worker is not disadvantaged by such an order being made by an arbitrator.

244. Production of documents

289. Section 244 provides for workers and employers to seek an order from an arbitrator in relation to the release under section 70 or 180 of medical reports and documents that are relevant to a proceeding. This addresses circumstances where a person or a party may be reluctant to release a medical report or documents that are admissible and relevant to the proceedings.

PART XIII — QUESTIONS OF LAW AND APPEALS

245. Application of Part XI

290. Section 245(1) stipulates the dispute resolution provisions that apply under Part XI also apply to the Commissioner in relation to appeals on questions of law. This provision avoids the need to reproduce Part XI specifically for the Commissioner to hear and determine appeals.

Section 245(2) provides that a party to a proceeding or a witness before the Commissioner have the same duties and responsibilities as if they were appearing before an arbitrator. This avoids having to redraft provisions specifically in relation to the Commissioner.

Section 245(3) provides that a person representing a party before the Commissioner has the same duties and responsibilities as if appearing before an arbitrator. This avoids having to duplicate provisions specifically in relation to the Commissioner.

246. Reference of question of law to Commissioner

291. Section 246(1) provides for novel or complex questions of law which arise in arbitration to be referred by an arbitrator for determination by the Commissioner. This helps to ensure decisions made at arbitration are correct, thereby reducing the number of potential appeals to the Commissioner, which create costs and delays.

Section 246(2) provides that Commissioners are empowered to reject a referral, which ensures the Commissioner will not be overwhelmed by inappropriate referrals.

Section 246(3) ensures only those matters that involve a novel or complex question of law are referred to the Commissioner, who has discretion to grant leave. This will control the number of appeals and ensure inappropriate matters are not granted leave to proceed.

Section 246(4) provides that questions of law may be referred by stating a case on a question of law.

Section 246(5) empowers the Commissioner to make orders in relation to the matter and on costs.

247. Appeal against decision of arbitrator

292. Section 247(1) provides that an appeal to the Commissioner against a decision of an arbitrator is by leave of the Commissioner. This will ensure only appropriate matters are dealt with on appeal.

Section 247(2) provides leave can only be granted where:

- in the case where the amount of compensation is an issue, there must be a question of law involved and at least $5000 or such other amount prescribed by regulation and at least 20% of the amount ordered in the decision, or
- a question of law is involved and the Commissioner believes an appeal should be heard because the matter is of such importance there are issues of public interest, or
- in any other case, a question of law is involved.

This provision will ensure minor matters are excluded, as it is considered these should be capable of being resolved at the arbitration stage.

Section 247(3) provides that where a matter is referred under section 93D(10) and an arbitrator makes a decision in relation to an assessment of an injury for common law purposes, the Commissioner may grant leave to appeal.

Section 247(4) provides that appeals on novel or complex questions of law must be made 28 days or less after an arbitrator has made a decision. This is sufficient time to review the arbitrator's decision and decide whether an appeal is appropriate.

Section 247(5) states appeals are to be by way of review of the decision appealed against.

Section 247(6) provides that the Commissioner can determine whether fresh evidence or additional evidence is admissible in an appeal hearing. This ensures only relevant and appropriate evidence is considered.

Section 247(7) provides that with an appeal the Commissioner can affirm, vary or quash the appealed decision or make any other decision deemed appropriate. This reflects the Commissioner's standing as a District Court Judge.

248. Commencing appeal

293. Section 248 stipulates an appeal to the Commissioner must be made in accordance with the Act and commences when an application is accepted by the Director.

249. Commissioner hearing to be held in public

294. Under section 249(1), hearings before a Commissioner are generally to be held in public though the Commissioner has the power to conduct the whole or part of the hearing in private.

Sections 249(2) and (3) provide that the flexibility to conduct a hearing in private relates to the proper administration of justice to avoid endangering the physical or mental health or safety of a person and to avoid confidential information being published or information being released that would be contrary to the public interest.

250. Effect of decision against which appeal made

295. Section 250(1) provides that decisions of an arbitrator may be put on hold by a Commissioner until it is determined that an appeal can proceed or a decision is made. This is appropriate in cases where it appears obvious to the Commissioner that an error relating to a question of law has been made.

Under section 250(2), unless the Commissioner stays a decision of an arbitrator, the arbitrator's decision can still be implemented. This provides flexibility to take into account all relevant circumstances of the case.

251. Commissioner may state case

296. Sections 251(1) and (2) provide that should a question of law arise in a matter before the Commissioner, the Commissioner has the option of stating a case for the decision of the Full Court of the Supreme Court, irrespective of whether the Commissioner has made a decision on the matter. This will help ensure decisions by the Commissioner are on points of law, thereby helping to avoid inappropriate appeals on the Commissioner's decisions, which have the potential to clog the system.

252. Indemnity as to costs

297. Section 252(1) provides that where the Commissioner has stated a case to the Full Court of the Supreme Court the Commissioner may use his/her absolute discretion to indemnify any of the parties against the costs or part of the costs of the proceedings based on a case being stated.

Section 252(2) provides that where a party has been indemnified by the Commissioner and moneys are payable these moneys are to be paid from WorkCover WA's General Fund, when the Commissioner certifies the monies are payable.

253. Decisions of Commissioner

298. Sections 253(1) and (2) ensure that in order to minimise appeals, unless there is a question of law involved, a decision of the Commissioner is final and binding and not subject to appeal and is not subject to judicial review.

Section 253(3) provides that to ensure fairness and avoid having to rehear a matter the Commissioner is empowered to reconsider any matter he/she has dealt with and accordingly overturn, alter or amend any previous decision.

254. Appeal against decision of Commissioner

299. Section 254(1) provides that a decision by the Commissioner can be appealed to the Supreme Court where a question of law is involved.

Section 254(2) provides that the appeal can only be heard if the Supreme Court grants leave.

Section 254(3) ensures that if leave is granted the Supreme Court can confirm, vary or set aside the Commissioner's decision, make another determination or send the matter back to the Commissioner for reconsideration.

Section 254(4) provides that appeals are to be made in accordance with the rules of the Supreme Court and within 28 days of the Commissioner's decision or if the decision is in writing within 28 days of the day the written reasons are given.

Section 254(5) provides that where leave is granted the appeal must be instituted 21 days after leave is granted.

Section 254(6) empowers the Supreme Court to extend the 28 or 21 days which enables individual circumstances and cases to be taken into account.

PART XIV — OFFENCES

255. Failing to comply with decision

300. Section 255(1) provides that a maximum penalty of $5,000 can be applied to a person who fails to comply with a decision of an arbitrator, the Director or the Commissioner.

Section 255(2) provides that a person may use as a defense any reasonable excuse for not complying, including not being compelled to produce documents, material or information in proceedings in the Supreme Court.

Section 255(3) provides that a person cannot be considered to have committed an offence under section 255(1) if a decision was made without giving the person an opportunity of being heard unless that person was given a copy of the decision or copy of section 255.

Section 254(4) provides that if it is not possible or appropriate for the person to be personally given the documents the dispute resolution authority may specify another method to serve the documents.

256. Failing to comply with summons

301. Section 256 provides that a person commits an offence and is subject to a maximum penalty of $2000 where they fail to comply with a summons issued by a dispute resolution authority.

257. Failing to give evidence as required

302. Section 257 provides that where a person appearing before an arbitrator, the Director or the Commissioner refuses to swear an oath or make an affirmation or statutory declaration they are deemed to have committed an offence and may be subject to a maximum penalty of $2,000. This serves as a deterrent.

258. Giving false or misleading information

303. Section 258 provides that a person giving false or misleading information to a dispute resolution authority is deemed to have committed an offence and may be subject to a maximum fine of $5,000. This serves as a deterrent.

259. Misbehaviour and other conduct

304. Section 259 provides that a person is deemed to have committed an offence and may be subject to a maximum fine of $2,000 if, in a matter before a dispute resolution authority, they are insulting or obstructive, or misbehave or interrupt a hearing.

260. Contempt of Commissioner

305. Section 260(1) provides that the Commissioner may report an act or omission considered to be contempt of the Court to the Supreme Court, which is to be dealt with by the Supreme Court as though it were a contempt of that Court. This serves as a deterrent to such behaviour.

PART XV — COSTS

Division 1 — General

261. Terms used in this Part

306. 405. Section 261 defines for this part the terms **"agent," "agent service," "costs," "costs determination" "costs of proceeding"** and **"legal service"**.

262. Costs to which this Part applies

307. Section 262(1) specifies costs are payable on any basis unless otherwise provided by Part XV or the regulations.

Section 262(2) provides that regulations may exclude any class of matters from all or any provisions of Part XV.

263. This Part prevails over *Legal Practice Act 2003*

308. Section 263 provides that if there is any inconsistency with the Legal Practice Act 2003, Part XV and any regulations made under Part XV prevail and apply.

This ensures a discrete process and procedure for handling workers' compensation related disputes.

Division 2 — Costs of parties in proceedings and costs of proceedings

264. Costs to be determined by dispute resolution authority

309. Under section 264(1), costs are determined at the discretion of an arbitrator, the Director or the Commissioner.

Under section 264(2) the authority may determine by whom, to whom and to what extent costs are to be paid.

Under section 264(3) the authority has the flexibility to order costs to be assessed in accordance with the *Legal Practice Act 2003*, relevant regulations or on an indemnity basis.

Under section 264(4), parties to a proceeding may apply to the authority for an order as to costs.

Under section 264(5), an order to pay the costs of a worker is not to be made if the worker's application was frivolous, vexatious, fraudulent or not made without proper justification. This ensures costs are only awarded where appropriate.

Under section 264(6), if part of an application is deemed to be frivolous, vexatious, fraudulent or made without proper justification costs may be ordered by the authority against that part or parts.

Under section 264(7), regulations may provide for making of orders for the payment by a party of the costs of another party to promote early settlement of disputes by assessment and discourage unnecessary delays.

265. Costs unreasonably incurred by representative

310. Under section 265, a dispute resolution authority may by way of an order disallow costs claimed by a legal practitioner or agent representing a party. This will act as a deterrent to legal practitioners and agents and help to establish a benchmark for efficient and effective representation.

266. Agent's costs

311. Section 266 provides that unless a person is registered as an agent they cannot claim or recover any costs or charges associated with representing a party before a dispute resolution authority. This ensures only appropriately qualified persons operate as agents.

267. Appeal costs

312. Section 267 provides that even though a decision for costs may have been made under section 264, the Commissioner cannot award costs against a worker where a decision on an appeal goes against the worker. Likewise, if the worker appeals a decision to the Commissioner and does not win the appeal, the Commissioner cannot award costs in favour of the worker.

268. Regulations for assessment of costs

313. Section 268(1) provides that if an order for costs does not specify an amount to be paid the amounts specified in the Regulations for the appropriate services are to apply. This ensures there is no dispute over the ordered costs.

Sections 268(2),(3) provides that where regulations are made under subsection (2) they override the provisions of the *Legal Practice Act 2003.*

Division 3 – Maximum costs

269. Costs Committee

314. Section 269(1) defines **"Legal Costs Committee".**

Section 269(2) and (3) establish a Costs Committee comprising a member or members of WorkCover WA, one of whom is to chair meetings and two members are to be from the Legal Costs Committee.

Section 269(4) provides that members are to be appointed by WorkCover WA.

Section 269(5) provides that where the Legal Costs Committee fails to nominate a member or members to the Costs Committee within 30 days of receiving a written request, WorkCover WA may make alternative appointments from another source.

270. Constitution and procedure of Costs Committee

315. Section 270 provides that the constitution and procedures of the Costs Committee may be prescribed by Regulations or as directed in writing by WorkCover WA, or otherwise by the Costs Committee itself.

271. Costs determination

316. Section 271 provides that, the Costs Committee, for matters under the Act, are to fix maximum costs for legal services and agent services and for matters associated with a claim for compensation such as expenses for witnesses or medical reports.

272. Consultation

317. Section 272 provides that in making a determination of costs the Costs Committee may accept submissions or make inquiries to help determine the costs. The Costs Committee is not bound by rules of evidence and does not have to conduct proceedings in a formal manner.

273. Approval and publication of determination

318. Section 273 provides that when the Costs Committee determines costs it must report to the Minister for approval. Once approved the costs are to be published in the Gazette.

274. Effect of costs determination

319. Under section 274 legal, practitioners and agents are not entitled to recover for their services any greater maximum amount or amounts fixed by the Costs Committee. This is designed to maintain fees at an appropriate level linked to services provided, which is fair to all parties.

275. Agreement as to costs

320. Arrangements or agreements for costs cannot be made outside the costs determined by the Costs Committee. This ensures all legal practitioners and all registered agents operate on the same fee structure.

276. Division does not apply to Part IV proceedings

321. Section 276 provides that Division 3, relating to maximum costs, does not apply to or affect any action in relation to damages taken independently of this Act.

PART XVI – REGISTERED AGENTS

277. Who may register as an agent

322. Section 277(1) to (3) specify the persons who are eligible to register as an agent in order to represent an individual or parties under the Act. The

registration is to be done in accordance with the Regulations which ensures flexibility to maintain a relevant and up to date registration procedure.

Section 277(4) provides that a person must have professional indemnity insurance or sufficient material resources of a type prescribed by regulation in order to provide professional indemnity. This ensures both the agent and the party they are representing are covered in the event of a professional indemnity breach.

PART XVII — THE DISPUTE RESOLUTION DIRECTORATE

Division 1 — Establishment and objectives

278. DRD established

323. Section 278 establishes the Dispute Resolution Directorate.

279. Main objectives of the DRD

324. Section 279(1) establishes the DRD's self-explanatory objectives.

Section 279(2) provides that the Commissioner, the arbitrators, the Director, and other officers of the DRD are to have regard to the DRD's objectives.

280. DRD's constitution

325. Section 280 constitutes the DRD as the Commissioner, the Director, the arbitrators and other officers of the DRD.

Division 2 — Commissioner

281. Appointment of Commissioner

326. Section 281 establishes self-explanatory minimum criteria and requirements for appointment of the Commissioner.

282. Terms and conditions of service

327. Section 282 provides that Schedule 8 has effect with respect to the terms and conditions of service of the Commissioner, including remuneration.

283. Declaration of inability to act

328. Section 283 enables the Commissioner to declare himself/herself unable to act in respect of a particular matter by reason of —

a) an actual or potential conflict of interest; or

b) having to perform other functions under the Act.

284. Acting appointment

329. Section 284 provides for an acting appointment in the event there is a vacancy in the office of Commissioner or where the Commissioner is unable to perform

the functions for which he or she was appointed. This section also provides that appointments may be terminated at any time by the Governor.

285. Functions of Commissioner

330. Section 285 provides that the Commissioner has the functions conferred under this Act or any other written law.

Division 3 — Arbitrators

286. Arbitrators

331. Section 286 provides that arbitrators are to be officers of WorkCover WA, legally qualified and are not to be appointed without the approval of the Minister.

287. Control and direction of arbitrators

332. Section 287 provides for arbitrators to be under the general control and direction of the Director, but not in relation to decisions given in a particular matter or matters.

This ensures arbitrators are completely independent when making decisions on disputed matters.

Division 4 — Director Dispute Resolution and staff

288. Director Dispute Resolution

333. Under section 288, the Director is to be an officer of WorkCover WA, a legal practitioner and is not to be appointed without the approval of the Minister.

289. Functions and responsibilities of Director

334. Section 289(1) provides that as the Director is conferred specific arbitral functions under the amended Act, the Director is able to exercise all the functions of an arbitrator.

Section 289(2) provides for the Director to be responsible for the administration of the DRD and the allocation of work to arbitrators.

Section 289(3) provides that the Director is subject to the general control and direction of the chief executive officer in relation to the administration of the DRD. Decisions made by arbitrators and the Commissioner are exempt.

Section 289(4) provides that in matters concerning the resolution of disputes, the Director is responsible directly to the Minister. This is to ensure there is a clear separation and independence from WorkCover WA's governing body.

290. Delegation by Director

335. Section 290 provides for the Director to delegate to another officer a power or duty, in writing. However, the officer to whom the power of duty is delegated cannot delegate that power or duty.

291. Staff of DRD

336. Section 291 ensures the DRD has staff available for the proper administration of the DRD and the exercise of the functions of the DRD, and that services and facilities of WorkCover WA may be used for the purposes of this Act on such terms as are agreed by the Director and the chief executive officer.

PART XVIII — REGULATIONS, RULES AND PRACTICE NOTES

292. Regulations

337. Section 292(1) enables the Governor to make regulations to ensure the efficient operation of the scheme in accordance with the Act, and reflects existing section 176.

Section 292(2) enables the Governor, on the recommendation of WorkCover WA, to make regulations fixing scales of fees to be paid to medical specialists, allied health and approved vocational rehabilitation providers, and reflects existing section 176(1a).

Section 292(3) enables the Governor, on the recommendation of WorkCover WA, to make regulations fixing scales of the maximum fees to be paid to approved medical specialists.

Section 292(4) ensures that WorkCover WA negotiates with any body it considers has a relevant interest in the regulation before making a recommendation to the Governor.

Section 292(5) reflects existing section 176(2).

Section 292(6) reflects existing section 176(5).

293. DRD Rules

338. Section 293(1) provides a head of power for DRD Rules to be made, giving effect for the purposes of the Act.

Section 293(2) identifies the matters for which the Rules may make provision.

Section 293(3) ensures a thing made under a DRD rule may be supported by a statutory declaration.

Sections 293(4), (5) and (6) give the DRD Rules the status of subsidiary legislation and provide for disallowance by Parliament.

294. Practice notes

339. Section 294 enables practice notes to be issued by the Commissioner for practices and procedures of the Commissioner and arbitrators, and the giving of interim payment directions. Practice notes do not have the status of a DRD Rule.

CLAUSE 131. SECTION 177A INSERTED

177A. Delegation by chief executive officer

340. Subclause (1) provides for the delegation of powers and duties from the chief executive officer to another officer of WorkCover WA, except for a power or duty that has been delegated from the governing body to the chief executive officer.

Subclause (2) provides that the delegation must be in writing and signed by the chief executive officer.

Subclause (3) provides that a delegated power cannot be redelegated by the officer to whom it was delegated.

Subclause (4) enables an exercise of power to be done in accordance with the delegation.

Subclause (5) provides that section 177A does not limit or restrict the chief executive officer from performing a function through an officer or agent.

CLAUSE 132. SECTION 180 AMENDED

341. The amendment to section 180 ensures all courts and all persons acting judicially take notice of the signature of a person who is, or was the Commissioner, an arbitrator or the Director.

CLAUSE 133. SECTION 180A INSERTED

180A. District Court to provide information to WorkCover WA

342. New section 180A enables WorkCover WA to collect information from the District Court in relation to actions for damages. This is important for monitoring the system and identifying policy issues and possible need for change.

CLAUSE 134. SECTION 183 AMENDED

343. This clause makes a consequential amendment which is self-explanatory.

CLAUSE 135. SECTION 184 REPEALED AND SECTIONS 184 TO 187 INSERTED INSTEAD

184. Protection from liability

344. Section 184 protects WorkCover WA and persons performing functions under the Act from any action in tort.

185. Immunity

345. Section 185 provides protection and immunity to persons performing a function in the DRD, a party to a proceeding or a person representing a party to a proceeding.

186. Protection from compliance with this Act

346. Section 186 protects a person from civil and criminal liability for complying in good faith with a requirement under the Act. For example, providing a document or material required by the Act whether the liability would arise under a contract or otherwise.

187. Proceedings for defamation not to lie

347. Section 187 protects the State, a Minister or a person employed or engaged by the State against civil or criminal proceedings, in respect of the printing or publishing of a transcript of a proceeding before a dispute resolution authority or a decision, or reasons for a decision, of a dispute resolution authority.

CLAUSE 136. SECTION 188A REPEALED

348. Section 188A is repealed, as it relates to the jurisdiction of a Compensation Magistrate's Court which will no longer exist.

CLAUSE 137. SECTIONS 188B AND 188C INSERTED

188B. Who can take proceedings for offences

349. Section 188B provides for certain persons authorised by the chief executive officer to take proceedings for offences.

188C. Time limit for taking proceedings

350. Section 188C places a time limit of 2 years for taking proceedings for an offence against the Act.

CLAUSE 138. SECTION 192 AMENDED

351. This clause makes consequential amendments to specify "WorkCover WA" includes the chief executive officer.

CLAUSE 139. SECTION 192A AMENDED

352. Consequential amendment which provides that "Amount A" (the cap on damages at common law) applies for both the 1993 and 2004 schemes.

CLAUSE 140. SECTION 198 REPEALED

353. Section 198 is repealed.

CLAUSE 141. SCHEDULE 1 AMENDED

354. Subclause (1) amends the provisions in clause (1) to introduce a new entitlement for certain wholly dependent children or step-children.

1 Death — dependants wholly dependent — notional residual entitlement

New clause 1(1) partly reflects existing clause 1(1)(a). Provides that a wholly dependent dependant or dependants, excluding a child or step-child who is only entitled to the child's allowance and including a child or step-child for whom an election to receive a provisional apportionment has been registered is entitled to the notional residual entitlement.

New clause 1(2) partly reflects existing subclause 1(1)(b) and provides that if a worker dies leaving a wholly dependent spouse, de facto partner, parent, child or step-child in relation to whom an election to receive a provisional appointment has been registered, they are entitled to the minimum amount (worker's earnings for one year).

New clause 1(3) Partly reflects existing subclause 1(1)(c). Provides that where there is more than one wholly dependent dependant, the amount is apportioned between them according to their respective financial losses of support as agreed or if the dependants cannot agree, as determined on application to the Directorate.

1A. Death — dependants wholly dependent — child's allowance

355. Paragraphs (a), (b) & (c) reflect existing clauses 1(2), 1(3) & 1(4) respectively regarding the child's allowance, except that these paragraphs are now subject to clause 1B and (c) provides that an arbitrator may not order a child's weekly allowance weekly beyond the child or step-child's 21st birthday.

1B. Death – dependants wholly dependent — notional residual entitlement or child's allowance

356. This new clause provides for certain wholly dependent children or step-children to receive either an apportionment of the notional residual entitlement or the child's allowance.

1C. Determination of entitlement under clause 1B

357. New clause 1C(1) provides for notification to certain children or step-children of their entitlement to receive either an apportionment of the notional residual entitlement or the child's allowance, timeframes for electing, consequences of electing or not electing, reapportionment of the notional residual entitlement between dependants after the time for elections has passed and registration of elections.

New clause 1C(2) makes a small consequential amendment to reflect the shifting of the child's allowance provisions in existing clauses 1(2), 1(3), and 1(4) of the existing Schedule 1 to new clause 1A of the Bill. Existing clause 2 of Schedule 1 has not been otherwise amended because most children will be wholly dependent and entitled to a child's allowance.

New clause 1C(3) makes a small consequential amendment to reflect the shifting of the child's allowance provisions in existing clauses 1(2), 1(3), and 1(4) to new clause 1A.

Subclause (2) of the Bill makes a consequential amendment to existing clause (2) of Schedule 1.

Subclause (3) of the Bill makes a consequential amendment to existing clause (3) of Schedule 1.

Subclause (4) of the Bill make a consequential amendment to existing clause (5) of Schedule 1.

Subclause (5) of the Bill makes consequential amendments to existing clause 7(4) by adding references to clause 18A and new clause 18A(1c) of Schedule 1.

Subclause (6) of the Bill makes a consequential amendment to existing clause 7(6) of Schedule 1 to reflect the new dispute resolution and injury management provisions.

Subclause (7) of the Bill makes consequential amendments to clause 8 of Schedule 1 to reflect the new dispute resolution provisions.

Subclause (8) of the Bill makes a consequential amendment to clause 9 of Schedule 1 by adding a reference to clause 18A.

Subclause (9) of the Bill makes the following changes to existing clause 11(2) of Schedule 1;

a) amends the calculation of weekly earnings in “Amount Aa” so that for workers whose earnings are prescribed by an industrial award, weekly earnings payable under this step down provision will, in addition to the current entitlements in Amount Aa, also include any allowances paid on a regular basis as part of the worker’s earnings related to the number or pattern of hours worked, and any other allowances prescribed by the regulations (these other allowances do not have to be paid on a regular basis or be related to the number or pattern of hours worked).

b) to ensure more injured workers are eligible to receive entitlements similar to their pre-injury earnings, the cap on weekly earnings (“Amount C”) is increased to twice the Average Weekly Earnings (AWE) index published by the Australian Statistician.

Subclause (10) of the Bill further ensures more injured workers are able to receive entitlements similar to their pre-injury earnings, by providing that step downs for weekly payments for award workers will occur after the 13th week, not as currently after the 4th week.

Subclause (11) of the Bill provides the same as subclause (10) of the Bill above, except it applies to non award workers.

Subclause (12) of the Bill amends existing clause (5) of Schedule 1 to provide that the current averaging provisions which apply to any overtime, bonus or allowance paid under Amount A will also apply to any allowance referred to in paragraph (b) of “Amount Aa”.

Subclause (13) of the Bill corrects a drafting error.

Subclause (14) of the Bill makes a consequential amendment reflecting the fact that the step down for weekly payments will occur after the 13th week, not the 4th week.

Subclause (15)(a) of the Bill amends existing clause 17 of Schedule 1 to enable an order to be made for payment of medical and other expenses even if the cost has not yet been incurred. This will assist the worker in situations where currently the employer/insurer may refuse to give an undertaking to pay for, say, necessary medical treatment on the basis the cost has not yet been incurred.

Subclause (15)(b) of the Bill provides that a sum is payable under the statutory system for the cost of the worker's first assessment of WPI and any previous attempt that resulted in a finding that the condition had not stabilised. A sum is payable for 'previous attempts' to ensure a worker whose condition has not stabilised is not financially disadvantaged compared to a worker whose condition is stable.

Subclause (15)(c) of the Bill increases the base maximum amount in clause 17(2) of Schedule 1 for funeral expenses to $7,000 and provides for this amount to be increased under regulation.

Subclause (15)(d) of the Bill makes a consequential amendment to reflect the change in the definition of "disability" to "injury".

Subclause (15)(e) of the Bill makes a consequential change to reflect the change in the definition of "disability" to "injury".

Subclause (16) of the Bill amends clause 18A(1) of Schedule 1 to provide for an arbitrator to allow an additional sum, subject to newly inserted subclauses (1c)(a) and (2) from subclause (1) of this Bill, where a worker has incurred expenses.

Subclause (17) of the Bill amends clause 18A(1a) of Schedule 1 to provide for an arbitrator to allow an additional sum.

Subclause (18) of the Bill inserts the following new subclauses into the principal Act after Schedule 1 clause 18A(1a):

(1b) Subject to the requirements in subclauses (1c)(b) and (2aa), an arbitrator has discretion to allow a further additional sum or sums if:

a) a worker has incurred reasonable expenses under clause 17(1) beyond the maximum set by that subclause;

b) an additional sum has been allowed under subclause (1) or (1a); and

c) the worker is likely to incur reasonable expenses under clause 17(1) in excess of the maximum amount under that clause and the additional $50,000.

(1c) This new subclause constrains an arbitrator from allowing –

a) an additional sum or sums exceeding a total of $50,000 under subclause (1) or (1a); or

b) a further additional sum or sums exceeding the prescribed amount.

(1d) This new subclause defines "prescribed amount" to mean in total $250,000, or any greater amount which may be prescribed by the regulations.

Subclause (19) of the Bill makes consequential amendments to reflect the new dispute resolution provisions.

Subclause (20) of the Bill inserts the following new subclauses into the principal Act after Schedule 1 clause 18A(2):

(2aa) An arbitrator cannot allow a further additional sum under subclause (1b) unless –

a) it is agreed or assessed by an AMS that the worker's WPI is not less than 25%; or

b) if the employer disputes the AMS assessment, it is subsequently determined under clause 18C that the worker's WPI is not less than 25%; and

c) the arbitrator determines that –

(i) the sum should be allowed, taking into account the worker's social and financial circumstances and reasonable financial needs;

(ii) the worker's medical condition, treatment and management are exceptional conditions as prescribed by the regulations and evidence of those circumstances has been given to the arbitrator; and

(iii) the further additional sum is needed for reasonable expenses likely to be incurred for certain medical and other expenses

(2ab) The arbitrator may refer a question arising under subclause (2aa)(c)(ii) to a medical assessment panel for determination.

(2ac) If a determination has been made under subclause (2aa)(c)(ii), no further determination will be needed for the purposes of allowing another further additional sum provided the sum applied for is for expenses incurred in following a management plan produced under subclause (2aa)(b)(ii).

Subclause (21) of the Bill amends clause 18A(2A) of Schedule 1 to allow an application for an additional sum under clause (1a) to be made when the worker reaches 60% of their medical entitlement under clause 17(1) of Schedule 1.

Subclause (22) of the Bill inserts a new subclause to provide that:

(3) An application for a further additional sum or sums:

a) may be made at any time after –

(i) an additional sum has been allowed under subclause (1) or (1a); and

(ii) that additional sum exceeds in total $30,000; and

b) may not be made after the final day.

Subclause (23) of the Bill replaces this subclause with the following:

(4) the worker is to be notified

a) when the worker reaches 60% of their medical entitlement under clause 17(1); and

b) when an additional sum allowed exceeds in total $30,000.

Subclause (24) of the Bill inserts the following clauses into the current Act:

18B – Final day for clause 18A(1b) application

358. New clause 18B(1) in Schedule 1 sets a final day for making an application as the last day of the period of 5 years after a claim for compensation is made, unless the question of liability to make weekly payments is not resolved within 3 months after the day on which the claim was made or the Director has extended the final day in accordance with sub-clause (4).

New clause 18B(2) in Schedule 1 provides that if the question of liability to make weekly payments is not resolved within 3 months of when the claim was made, the final day may be a later date.

New clause 18B(3)(a) in Schedule 1 provides that if the worker has asked for the assessment at least 8 weeks before the final day, the worker can ask for an extension. This implicitly places a requirement on the worker to seek an assessment at least 8 weeks before the final day otherwise there is no possibility of extension. There is no 'final day' implication if the matter is referred to an AMS panel because it is the date of application, not referral, that is significant.

New clause 18B(3)(b) in Schedule 1 provides that workers whose final day falls within 2 months of the coming into operation of the new provisions will have to request an AMS assessment before the final day (but not necessarily 8 weeks before the final day) and if the application is so made the arbitrator can extend the final day.

New clause 18B(4) in Schedule 1 provides that an extension may be given of up to one year.

New clause 18B(5) in Schedule 1 provides how an extension is to be given.

New clause 18B(6) in Schedule 1 allows an extension to be given beyond the final day.

18C. Dispute as to degree of permanent whole of person impairment

359. New subclause 18C(1) in Schedule 1 provides that for the purposes of clause 18A (2aa)(b) in Schedule 1 an arbitrator may-

a) determine the question of the degree of WPI; or

b) refer the question as to the degree of WPI for binding assessment by an approved medical specialist panel.

New subclause 18C(2) in Schedule 1 provides that as a sanction against an employer who frivolously disputes an approved medical specialist assessment the arbitrator may order the employer to pay costs associated with the dispute if the determination is that the worker's degree of WPI is not less than 25%.

New subclause 18C(3) in Schedule 1 defines "degree of permanent whole of person impairment" in this clause.

New subclause 18C(4) in Schedule 1 defines "event" in the definition of "degree of permanent whole of person impairment" in subclause (3).

Subclause (25) of the Bill inserts a new clause 18D into Schedule 1 of the principal Act:

18D. Interim payment of additional expenses

360. New clause 18D(1) provides that if-

a) the worker has incurred or is likely to incur reasonable expenses under clause 17(1) in excess of the maximum amount under that subclause; and

b) an application is made for an additional sum,

an arbitrator has a discretion, before determining the application, to allow an interim sum, to a maximum of $2000.

This clause is intended to provide for injured workers who exhaust their medical entitlements to continue to receive medical treatment without compromising the medical management of their injury, while they apply for an extension under clause 18A.

New clause 18D(2) provides that this interim sum shall be taken into account when calculating whether $50,000 has been or will be allowed for additional expenses under clause 18A.

CLAUSE 142. SCHEDULE 2 AMENDED

Schedule 2 – Table of compensation payable

361. Subclause (1) of the Bill divides Schedule 2 into parts. To provide a transitional arrangement whereby Part 1 provides for Schedule 2 compensation payable under the discontinued regime for injuries which occur before the "amendment day" and Part 2 provides for compensation payable for injuries which occur on or after the "amendment day".

Under subclause (2) of the Bill the Schedule 2 heading, Column 1 is amended to refer to 'Nature of injury or impairment' rather than 'Nature of injury'. This reflects the changes to Schedule 2, which will address a current lack of consistency in medical assessment methodologies. It is necessary to refer to "injury" for items 1-39, which will continue to provide for lump sum payments under the discontinued regime, and to refer to "impairment" for items 40 to 82 for payments under the new regime.

In subclause (3) the wording in Column 1 for new items 40 to 81 under new Part 2 generally reflects the existing wording in items 1 to 39, except that changes mentioned hereunder have been made to reflect the shift to an impairment based methodology for evaluating an entitlement under Schedule 2. These changes include:

- References to "loss" have been replaced with "impairment".
- The word "Total" has been deleted, as it will be redundant in view of the fact that impairment may be evaluated in terms of the degree of impairment of the body part or faculty mentioned in column 1. An evaluation may either be made as 100% impairment of that item or a degree which reflects a partial impairment of the body part or faculty.
- Replaces "loss" of certain body parts or faculties with "impairment" of these.
- Replaces "deemed loss" with "deemed impaired".
- Replaces "useless" with "impaired".
- New item 76. This allows for separate or combined evaluations of the thoracic and lumbar spine.
- Also provides for the figure in column 2 for impairment of the back has been increased from '60' to '75'.
- New item 77. The figure in column 2 for impairment of the neck to be increased from '40' to '55'.
- New item 78. The figure in column 2 for impairment of the pelvis has been increased from '15' to '30'.
- New item 80. Amends the existing wording in item 38 to reflect the fact that facial scarring or disfigurement will be evaluated in terms of whole person impairment due to facial scarring or disfigurement. The current wording would not be consistent with an impairment based evaluation methodology.

- New item 81. Similar changes to new item 80, except this item amends the existing wording in item 39 to reflect that this new item now provides for whole person impairment due to bodily, other than facial scarring or disfigurement.
- New item 82. Inserts an item for AIDS, for which the column 2 figure will be '100'.

CLAUSE 143. SCHEDULE 5 AMENDED

362. Makes consequential amendments to Schedule 5, clause 5(1)(b) to reflect the new dispute resolution provisions and changes to clause 18A.

CLAUSE 144. SCHEDULE 7 AMENDED

363. Subclause (1) of the Bill makes consequential amendments to Schedule 7 clause 5(1) to reflect the new impairment provisions regarding Schedule 2 and the new dispute resolution provisions.

Subclause (2) of the Bill amends Schedule 7 clause 6 to give arbitrators discretion to refer a dispute regarding noise induced hearing loss to a medical assessment panel.

Subclause (3) of the Bill makes a consequential amendment to Schedule 7 clause 7(2) to reflect the new impairment provisions regarding Schedule 2.

Subclause (4) of the Bill makes a consequential amendment to Schedule 7 clause 8(3) to reflect the new dispute resolution provisions.

Subclause (5) of the Bill makes a consequential amendment to Schedule 7 clause 8(4) to reflect the new impairment provisions regarding Schedule 2.

CLAUSE 145. SCHEDULE 8 INSERTED

Schedule 8 — Terms and conditions of service of Commissioner

1.Tenure of Commissioner's office

364. Clause 1(1) establishes the maximum period of appointment as 5 years.

Clause 1(2) enables a Commissioner's eligibility for reappointment not to be affected by an earlier appointment.

2. Vacating office prematurely

365. Clauses 2(1) to (6) apply to a situation where the Commissioner vacates his/her office prematurely.

3. Commissioner's status as District Court Judge

366. Clauses 3(1) to (4) relate to the Commissioner's status as a District Court Judge.

4. Completion of matters

367. Clauses 4(1) to (2) provide for completion of matters in the transition between appointments of the Commissioner and former Commissioner.

CLAUSE 146. REFERENCES TO A DISABILITY CHANGED TO AN INJURY

368. This clause makes consequential amendments to the Act by deleting “a disability” in each place specified in the Table and substituting “an injury”.

CLAUSE 147. REFERENCES TO DISABILITY CHANGED TO INJURY

369. This clause makes consequential amendments to the Act by deleting “disability” in each place specified in the Table and substituting “injury”.

CLAUSE 148. OTHER REFERENCES TO DISABILITIES CHANGED TO INJURIES

370. This clause makes consequential amendments to the Act by deleting “disabilities” in each place specified in the Table and substituting“ injuries ”.

CLAUSE 149. REFERENCES TO DISPUTE RESOLUTION BODY CHANGED TO ARBITRATOR

371. This clause makes consequential amendments to the Act by deleting “a dispute resolution body” in each place specified in the Table and substituting “an arbitrator ”.

CLAUSE 150. REFERENCES TO COMMISSION CHANGED TO WORKCOVER WA

372. This clause makes consequential amendments to the Act by deleting “The Commission” or “the Commission” in each place where it occurs as specified in the Table and substituting “ WorkCover WA”.

CLAUSE 151. REFERENCES TO COMMISSION CHANGED TO WORKCOVER WA’S GOVERNING BODY

373. This clause makes consequential amendments to the Act by deleting “The Commission” or “the Commission” in each place where it occurs as specified in the Table and substituting “ WorkCover WA’s governing body ”.

CLAUSE 152. REFERENCES TO EXECUTIVE DIRECTOR CHANGED TO CHIEF EXECUTIVE OFFICER

374. This clause makes consequential amendment to the Act by deleting “Executive Director” in each place where it occurs that is specified in the Table and substituting “chief executive officer ”.

CLAUSE 153. REFERENCES TO COMMITTEE CHANGED TO WORKCOVER WA

375. This clause makes consequential amendments to the Act by deleting "The Committee" or "the Committee" in each place where it occurs that is specified in the Table and substituting "WorkCover WA ".

CLAUSE 154. RENUMBERING OF PROVISIONS OF THE ACT

376. This clause makes consequential amendments to renumber sections of the Workers' Compensation and Rehabilitation Act 1981.

PART 3 — CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

CLAUSE 155*. ACTS AMENDMENT (ICWA) ACT 1996*

377. Makes consequential amendments to the *Acts Amendment (ICWA) Act 1996*.

CLAUSE 156*. BLOOD DONATION (LIMITATION OF LIABILITY) ACT 1985*

378. Makes consequential amendments to the *Blood Donation (Limitation of Liability) Act 1985*.

CLAUSE 157*. CONSTITUTION ACTS AMENDMENT ACT 1899*

379. Makes consequential amendments to the *Constitution Acts Amendment Act 1899*.

CLAUSE 158*. EMPLOYERS' INDEMNITY POLICIES (PREMIUM RATES) ACT 1990*

380. Make consequential amendments to the *Employer's Indemnity Policies (Premium Rates) Act 1990*.

CLAUSE 159*. EMPLOYERS' INDEMNITY SUPPLEMENTATION FUND ACT 1980*

381. Makes consequential amendments to the *Employers' Indemnity Supplementation Fund Act 1980*.

CLAUSE 160*. FINANCIAL ADMINISTRATION AND AUDIT ACT 1985*

382. Makes consequential amendments to the *Financial Administration and Audit Act 1985*.

CLAUSE 161*. HOSPITALS AND HEALTH SERVICES ACT 1927*

383. Makes consequential amendments to the *Hospitals and Health Services Act 1927*.

CLAUSE 162*. LAW REPORTING ACT 1981*

384. Makes consequential amendments to the *Law Reporting Act 1981*.

CLAUSE 163*. LEGAL PRACTICES ACT 2003*

385. Makes consequential amendments to the *Legal Practices Act 2003*.

CLAUSE 164*. LIMITATION ACT 1935*

386. Makes consequential amendments to the *Limitation Act 1935.*

CLAUSE 165*. LOCAL GOVERNMENT ACT 1995*

387. Makes consequential amendments to the *Local Government Act 1995.*

CLAUSE 166*. MINER'S PHTHISIS ACT 1922*

388. Makes consequential amendments to the *Miner's Phthisis Act 1922*.

CLAUSE 167*. POLICE ASSISTANCE COMPENSATION ACT 1964*

389. Makes consequential amendments to the *Police Assistance Compensation Act 1964.*

CLAUSE 168*. PUBLIC SECTOR MANAGEMENT ACT 1994*

390. Makes consequential amendments to the *Public Sector Management Act 1994.*

CLAUSE 169*. SENTENCING ACT 1995*

391. Makes consequential amendments to the *Sentencing Act 1995*.

CLAUSE 170*. WATERFRONT WORKERS' (COMPENSATION FOR ASBESTOS RELATED DISEASES) ACT 1986*

392. Makes consequential amendments to the *Waterfront Workers' (Compensation for Asbestos Related Diseases) Act 1986*.

CLAUSE 171*. WORKERS' COMPENSATION AND REHABILITATION (ACTS OF TERRORISM) ACT 2001*

393. Makes consequential amendments to the *Workers' Compensation and Rehabilitation (Acts of Terrorism) Act 2001*.

CLAUSE 172*. WORKERS' COMPENSATION AND REHABILITATION AMENDMENT ACT 1993*

394. Makes consequential amendments to the *Workers' Compensation and Rehabilitation Amendment Act 1993.*

CLAUSE 173. WORKER'S COMPENSATION AND REHABILITATION ACT 1981 REPLACED WITH *WORKERS' COMPENSATION AND INJURY MANAGEMENT ACT 1981*

395. Makes consequential amendments to the provisions of written laws that are set out in the table to this section by deleting "Workers' Compensation and Rehabilitation Act 1981" and substituting "Workers' Compensation and Injury Management Act 1981".

CLAUSE 174*. WORKER'S COMPENSATION ACT 1912"* ETC REPLACED WITH *"WORKERS' COMPENSATION AND INJURY MANAGEMENT ACT 1981*

396. Makes consequential amendments to the provisions of written laws that are set out in the table to this section by deleting "Workers' Compensation Act 1912" or "Workers' Compensation Act" and inserting instead — "Workers' Compensation and Injury Management Act 1981".

PART 4 — TRANSITIONAL PROVISIONS

Division 1 — General

CLAUSE 175. INTERPRETATION

397. Defines “principal Act” and ”amended Act” in this Division.

CLAUSE 176. APPLICATION OF *INTERPRETATION ACT 1984*

398. This clause specifies that the provisions of this Part do not prejudice or affect the application of the Interpretation Act 1984.

CLAUSE 177. TRANSITIONAL REGULATIONS

399. This clause allows for any matter of a transitional nature that arises from the amendments made by this Act, or any matter that is consequential or incidental to these amendments to be dealt with in regulations. Such regulations could amend the principal Act.

CLAUSE 178. POWER TO AMEND SUBSIDIARY REGULATIONS

400. This clause allows regulations to be made amending subsidiary legislation made pursuant to any Act.

Division 2 — Transitional provisions relating to statutory entitlements

CLAUSE 179. SECTION 217 OF THE *WORKERS’ COMPENSATION AND INJURY MANAGEMENT ACT 1981*

401. Subclause (1) of the Bill provides that the new maximum amount payable under amended section 84E does not apply if, before section 130 comes into operation weekly payments under the Act have been exhausted.

Subclause (2) of the Bill provides that if, after section 130 comes into operation, a claim for damages that has be settled, is disapproved under section 92, the new maximum amount payable under amended section 84E is payable.

CLAUSE 180. TRANSITIONAL PROVISIONS — AMENDMENTS TO SCHEDULE 1

402. Subclause (1) of the Bill provides that where a worker dies before clause 141(1) of the Bill comes into operation, the new provisions regarding entitlements for certain wholly dependent children or step children do not apply.

Subclause (2) of the Bill provides that the new step down amount in “Amount Aa” applies immediately for workers who, at the time clause 141 of the Bill comes into operation, have already been paid 4 weekly payments (they have already stepped down) and at 14 weeks for others.

Subclause (3) of the Bill provides that if the weekly payments of a worker whose earnings are prescribed by an award have, at the time clause 141 of the Bill comes into operation, already stepped down after the 4th weekly payment, then the weekly payments will be paid at the (new) stepped down rate, even though the worker has not had 13 weekly payments.

Subclause (4) of the Bill provides that if the weekly payments of a worker whose earnings are not prescribed by an award have, at the time clause 141 of the Bill comes into operation, already stepped down after the 4th weekly payment, then the weekly payments continue to be paid at the stepped down rate (85% of Amount B),even though the worker has not had 13 weekly payments.

Subclause (5) of the Bill provides that the new further additional sum for medical and other expenses is not payable if, before clause 141 of the Bill comes into operation –

a) a section 93E(3)(b) election has been registered;

b) a redemption order under section 67(4) or any order for settlement under Part IIIA has been made;

c) an agreement has been registered; or

d) a damages claim has been settled via agreement.

Subclause (6) of the Bill provides that if after clause 141 of the Bill comes into operation, a settlement is disapproved under section 92, the new further additional sum for medical and other expenses is payable.

Division 3 — Transitional provisions relating to dispute resolution

CLAUSE 181. INTERPRETATION

403. Subclause (1) defines **"commencement day", "Director Dispute Resolution", "Director of Conciliation and Review"** and **"pending proceeding"**.

Subclauses (2) & (3) ensure the words and expressions relating to the former dispute resolution system used in the new Division have the same meaning they had in the Principal Act before it was amended.

CLAUSE 182. CONCILIATION AND REVIEW

404. Subclause (1) enables pending proceedings under the old dispute resolution system to be transferred to an arbitrator to be heard by the arbitrator as if they were an application made under the amended Act.

Subclause (2) enables the dispute resolution authority to whom a pending proceeding is transferred to receive evidence, findings or decisions of the former dispute resolution body, and adopt this as it sees fit.

Subclause (3) provides that the Director Dispute Resolution may give directions for the purpose of dealing with issues that were dealt with by the former dispute resolution system.

Subclause (4) enables the Act provisions, rules or regulations made under the amended Act to be modified by the Director if necessary to apply the principles in this section, to ensure a smooth transfer of proceedings from the previous dispute resolution body.

Subclause (5) provides that, from the commencement day, anything ordered by a conciliation or review officer regarding something under the amended Act before the commencement day has the same effect as something ordered by an arbitrator under the amended Act after the commencement day.

CLAUSE 183. COMPENSATION MAGISTRATE'S COURT

405. Subclause (1) enables pending proceedings under the old dispute resolution system to be transferred to the Commissioner as if they were a referral made under the amended Act.

Subclause (2) enables certain pending proceedings before a compensation magistrate's court or matter determined by a review officer to be dealt with under the amended Act as if the old dispute resolution system were still in force.

Subclause (3) provides that compensation magistrate's court will be able to continue to deal with certain matters.

Subclause (4) provides that decisions of the compensation magistrate's court maybe appealed as if the old dispute resolution system were still in force.

CLAUSE 184. EXISTING SUMMONSES AND WARRANTS

406. Subclause (1) provides that a summons issued before the commencement day by a review officer is taken to have been issued under the amended Act.

Subclause (2) provides that a summons issued by a review officer before the commencement day is taken to be enforceable for attendances before an arbitrator.

CLAUSE 185. DIRECTOR OF CONCILIATION AND REVIEW

407. Subclause (1) defines **"former function"** in this section.

Subclause (2) provides that on the commencement day:

a) matters related to former functions are to be transferred to the Director Dispute Resolution.

b) Applications etc., made or given to the Director of Conciliation and Review is to be treated as if it were decided or done by the Director Dispute Resolution after the commencement day.

Subclause (3) provides that for the purposes of subsection (1), sections 182(2),(3) & (4) apply as if the dispute resolution body referred to were the Director of Conciliation and Review.

CLAUSE 186. RECORDS

408. Subclause (1) provides that records transferred from the current dispute resolution system to the new one are to be given to the Director Dispute Resolution.

Subclause (2) provides that compensation magistrate's court records are to be given to the Director Dispute Resolution.

CLAUSE 187. DEEMED ELIGIBILITY FOR APPROVAL AS DIRECTOR OR ARBITRATOR

409. Subclause (1) enables the Director to be able to apply for the new position.

Subclause (2) enables review officers to be able to apply for an arbitrator's position.

Subclause (3) ensures a review officer under the old system must have been appointed on a permanent basis to be eligible for approval as an arbitrator in the new system.

Division 4 – Transitional provisions relating to Part VIII amendments

CLAUSE 188. TRANSITIONAL PROVISIONS FOR PART VIII AMENDMENTS

410. Subclause (1) ensures anything done by the premium rates committee before the Part VIII amendments come into operation continue to have effect.

Subclause (2) defines: **"WorkCover WA"**, **"corresponding thing"**, **"former committee"** and **"Part VIII amendments"**.