

- ~~— (7) The Commission may, where a worker suffers a disability compensable under this Act, require the employer of that worker to take reasonable steps to facilitate the rehabilitation of the worker.~~

~~— [Section 155 inserted by No. 96 of 1990 s. 33.]~~

156. Further inquiries

- ~~— The Commission may make such further inquiries and obtain such information as it thinks appropriate regarding the worker's disability, his incapacity, and the prognosis in respect of that disability or incapacity.~~

~~— [Section 156 amended by No. 44 of 1985 s. 32.]~~

156A. Approval of rehabilitation providers

- ~~— (1) The Commission may, in writing, and subject to such conditions, if any, as it sees fit to impose, approve as a rehabilitation provider any person the Commission considers capable of satisfactorily providing vocational rehabilitation, and may revoke any such approval.~~
- ~~— (2) In considering whether or not to approve a person as a rehabilitation provider, to impose conditions on any such approval, or to revoke any such approval, the Commission —~~
- ~~— (a) may have regard to performance criteria established by an advisory committee under section 100A, and to the advice of such a committee in a particular case; and~~
- ~~— (b) shall, in the case of the revocation of an approval that is subject to conditions, have regard to whether or not there had been compliance with the conditions.~~

~~— [Section 156A inserted by No. 96 of 1990 s. 34.]~~

157. — Rehabilitation of workers

- ~~— (1) A dispute resolution body may at any time require a worker who is incapacitated to undergo rehabilitation as specified by a dispute resolution body and, without limiting the matters that may be specified by a dispute resolution body under this subsection, a dispute resolution body may specify that the worker undergo vocational rehabilitation provided by a different rehabilitation provider selected by the worker.~~
- ~~— (2) The Commission shall, upon request, provide to workers, employers and other persons information as to the persons who, under section 156A, are approved rehabilitation providers.~~
- ~~— (3) Where a person providing vocational rehabilitation —~~
- ~~— (a) is not an approved rehabilitation provider; or~~
- ~~— (b) is an approved rehabilitation provider but contravenes a condition imposed in respect of his approval,~~
- ~~— the amount of any fee or other reward paid in respect thereof shall not be regarded as a reasonable expense incurred in respect of vocational rehabilitation for the purposes of clause 17(1a).~~
- ~~— (4) Where a fee or other reward is paid for the provision of vocational rehabilitation mentioned in subsection (3) by a person who —~~
- ~~— (a) not being approved as a rehabilitation provider, held himself out as being so approved; or~~
- ~~— (b) being approved as a rehabilitation provider subject to any condition, contravenes any such condition,~~
- ~~— the person who paid the fee or other reward may recover as a debt due from that person the amount of the fee or other reward paid.~~
- ~~— [Section 157 inserted by No. 96 of 1990 s. 35; No. 48 of 1993 s. 28.]~~

158. — Further vocational rehabilitation payments may be authorised

~~Where a worker has no further entitlement under clause 17 to compensation in respect of expenses incurred in undergoing vocational rehabilitation, the Commission may authorise payment from the General Fund of so much of the costs of any further vocational rehabilitation as it thinks fit, but not exceeding in a particular case an amount of \$2 000.~~

~~[Section 158 inserted by No. 96 of 1990 s. 36.]~~

158A. — Rehabilitation services by employers

~~The Commission may encourage and promote the establishment by an employer or a group of employers of rehabilitation services for workers of that employer, or workers of any employer of that group, as the case requires, and may authorise payment from the General Fund of such amount as it thinks fit in a particular case, on such terms as it thinks fit, on providing support and incentives to the establishment of such services.~~

~~[Section 158A inserted by No. 96 of 1990 s. 36.]~~

158B. — Rehabilitation policy and guidelines

~~The Commission shall promote the establishment by employers or groups of employers of rehabilitation policies and vocational rehabilitation guidelines.~~

~~[Section 158B inserted by No. 96 of 1990 s. 36.]~~

159. — Coordinating facilities

~~The Commission may make arrangements with other persons or authorities for the use of facilities for the training and treatment of workers and for coordinating the use of available facilities.~~

Part IX — Injury management

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 118 (as amended in Committee).]*

155. Terms used in this Part

In this Part —

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

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

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

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

*[Section 155 inserted by the Workers' Compensation Reform
Bill 2004 cl. 118 (as amended in Committee).]*

155A. Code of practice (injury management)

(1) WorkCover WA may issue a code of practice (injury
management).

(2) The code may include provisions and guidelines in relation
to —

(a) the establishment, content and implementation of injury
management systems;

(b) the establishment, content and implementation of return
to work programs;

(c) the development by approved vocational rehabilitation
providers of service delivery plans and the contents of,
and other requirements in relation to, those plans;

(d) such other matters relating to injury management as WorkCover WA considers appropriate.

(3) The code may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.

(4) Sections 41, 42, 43 and 44 of the *Interpretation Act 1984* apply to the code as if the code were regulations.

[Section 155A inserted by the Workers' Compensation Reform Bill 2004 cl. 118 (as amended in Committee).]

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

Each employer is to ensure that —

(a) an injury management system is established in relation to the employer's workers; and

(b) the establishment, content and implementation of the injury management system are in accordance with the code.

Penalty: \$2 000.

[Section 155B inserted by the Workers' Compensation Reform Bill 2004 cl. 118 (as amended in Committee).]

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

(1) An employer of a worker who has suffered an injury compensable under this Act must ensure that a return to work program is established for the worker as soon as practicable after either of the following occurs —

(a) the worker's treating medical practitioner advises the employer in writing that a return to work program should be established for the worker;

(b) the worker's treating medical practitioner signs a medical certificate to the effect that the worker has a total or partial capacity to return to work.

(2) Subsection (1) does not require a return to work program to be established for a worker —

(a) who has returned to the position held by the worker immediately before the injury occurred; and

(b) who has a total capacity to work in that position.

(3) An employer must ensure that the establishment, content and implementation of a return to work program are in accordance with the code.

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

[Section 155C inserted by the Workers' Compensation Reform Bill 2004 cl. 118 (as amended in Committee).]

155D. Injury management: insurers' obligations

(1) An insurer must take such action as is prescribed by the regulations in relation to making each employer who is insured by the insurer aware of the employer's obligations under sections 155B and 155C(1) and (3).

(2) If an insured employer requests the insurer to assist the employer to comply with any of the employer's obligations under section 155B or 155C(1) or (3), the insurer must take such action as is reasonable —

(a) to assist the employer to comply with the employer's obligations that are the subject of the employer's request; and

(b) to ensure that the employer complies with the employer's obligations that are the subject of the employer's request.

(3) If an insured employer requests the insurer to discharge the employer's obligations under section 155C(1) or (3) on behalf of the employer, the insurer must take such action as is reasonable —

(a) to discharge the employer's obligations that are the subject of the employer's request; and

(b) to comply with the employer's obligations that are the subject of the employer's request,

within such time as is reasonable in the circumstances.

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

[Section 155D inserted by the Workers' Compensation Reform Bill 2004 cl. 118 (as amended in Committee).]

156. Approval of vocational rehabilitation providers

(1) WorkCover WA may, in writing —

(a) subject to such conditions, if any, as it sees fit to impose, approve as a vocational rehabilitation provider any person WorkCover WA considers capable of satisfactorily providing vocational rehabilitation; and

(b) revoke any such approval.

(2) In considering whether or not to approve a person as a vocational rehabilitation provider, to impose conditions on any such approval, or to revoke any such approval, WorkCover WA —

(a) may have regard to performance criteria established by an advisory committee under section 100A, and to the advice of such a committee in a particular case; and

(b) in the case of the revocation of an approval that is subject to conditions, is to have regard to whether or not there has been compliance with the conditions.

(3) An implied and non-revocable condition of a person's approval as a vocational rehabilitation provider is that the person is to comply with the code in relation to —

(a) the development and content of service delivery plans;

(b) other requirements in relation to service delivery plans; and

(c) other requirements applicable to vocational rehabilitation providers.

[Section 156 inserted by the Workers' Compensation Reform Bill 2004 cl. 118 (as amended in Committee).]

156A. Vocational rehabilitation services

(1) WorkCover WA, upon request, is to provide to workers, employers and other persons information as to the persons who are approved vocational rehabilitation providers.

(2) If a person providing vocational rehabilitation —

(a) is not an approved vocational rehabilitation provider; or

(b) is an approved vocational rehabilitation provider but contravenes a condition imposed in respect of the person's approval,

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

(3) If a fee or other reward is paid for the provision of vocational rehabilitation mentioned in subsection (2) by a person who —

(a) not being approved as a vocational rehabilitation provider, held himself or herself out as being so approved; or

(b) being approved as a vocational rehabilitation provider subject to any condition, contravenes any such condition,

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

[Section 156A inserted by the Workers' Compensation Reform Bill 2004 cl. 118 (as amended in Committee).]

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

(1) The employer of a worker, or a worker, may apply for an order of an arbitrator requiring the worker to participate in a return to work program.

(2) The arbitrator may require the worker to participate in a return to work program if satisfied that —

(a) a return to work program is required under section 155C(1) to be established for the worker;

(b) the worker, without reasonable excuse, refuses or has failed to participate in a return to work program; and

(c) the establishment, content and implementation of the return to work program are, or will be, in accordance with the code.

(3) The arbitrator may require the worker to participate in a return to work program other than that proposed by or on behalf of a party to the application.

[Section 156B inserted by the Workers' Compensation Reform Bill 2004 cl. 118 (as amended in Committee).]

157. Information about injury management matters

(1) WorkCover WA is to provide information and advice on injury management generally.

(2) WorkCover WA is to make available, upon request, to employers, workers and other persons such information or other assistance as it considers appropriate to facilitate the arranging of injury management.

(3) WorkCover WA may make arrangements with other persons or authorities for the use of facilities for providing information about injury management and related matters.

(4) An arbitrator may request WorkCover WA to provide information on injury management or related matters, and WorkCover WA is to provide that information to the arbitrator.

[Section 157 inserted by the Workers' Compensation Reform Bill 2004 cl. 118 (as amended in Committee).]

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

(1) An insurer or a self-insurer shall, not later than the expiration of 7 days after acquiring the knowledge referred to in paragraph (a) or (b), give to WorkCover WA notice in writing, containing the prescribed particulars, with respect to —

(a) a worker whose period of incapacity the insurer or self-insurer knows to have exceeded 4 consecutive weeks; or

(b) a worker whose periods of incapacity during any period of 12 months or less the insurer or self-insurer knows to have exceeded, in sum, 12 weeks.

Penalty: \$1 000.

(2) Subsection (1) does not apply —

(a) to an insurer or self-insurer who is exempted under subsection (3) and who is acting in accordance with the exemption; or

(b) in relation to a period of incapacity with respect to which notice has already been given under —

(i) this section;

(ii) section 155 as in force before section 118 of the Workers' Compensation Reform Act 2004 came into operation; or

(iii) section 155 as in force before 8 March 1991, being the day on which section 33 of the Workers' Compensation and Assistance Amendment Act 1990 came into operation.

(3) WorkCover WA may, in writing, exempt an insurer or a self-insurer from the requirement to comply with subsection (1), either absolutely or subject to such conditions as it sees fit to impose, and any such exemption has effect according to its tenor until revoked by WorkCover WA.

(4) If WorkCover WA is of the opinion that a worker's injury should be reviewed to determine whether a return to work program should be established for the worker, WorkCover WA may —

(a) notify the worker, the worker's employer and the employer's insurer of that opinion; and

(b) inform those persons of the requirements of section 155C and 155D and their obligations under those provisions.

[Section 157A inserted by the Workers' Compensation Reform Bill 2004 cl. 118 (as amended in Committee).]

157B. Mediation and assistance

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

[Section 157B inserted by the Workers' Compensation Reform Bill 2004 cl. 118 (as amended in Committee).]

Part IXA — Specialised retraining programs

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

158. Meaning of “retraining criteria”

(1) In this Part —

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

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

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

(2) In the definition of “degree of permanent whole of person impairment” in subsection (1) —

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

[Section 158 inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

158A. Eligibility to participate in specialised retraining programs

(1) A worker may participate in a specialised retraining program if —

(a) the worker has suffered an injury that is compensable under this Act;

(b) the injury occurred on or after the day on which section 119 of the Workers' Compensation Reform Act 2004 comes into operation;

(c) either —

(i) the worker and the worker's employer agree that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%; or

(ii) an arbitrator has determined that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%;

and

(d) either —

(i) the worker and the worker's employer agree that the worker satisfies all of the retraining criteria; or

(ii) an arbitrator has determined that the worker satisfies all of the retraining criteria.

(2) A worker is eligible to participate in a specialised retraining program even if —

(a) the worker is receiving weekly payments under clause 7 or other compensation under Schedule 1; or

(b) the weekly payments paid for periods of the incapacity arising from the worker's injury have reached the prescribed amount.

(3) Despite having suffered an injury referred to in subsection (1)(a) and (b), a worker is not eligible to participate in a specialised retraining program if —

(a) an election by the worker under section 93K(4) in respect of the injury has been registered;

(b) an agreement in respect of the whole of the liability for the incapacity or impairment arising from the injury has been registered under Part III Division 7;

(c) an order for redemption of the liability for incapacity arising from the injury has been made under section 67(1)(a) or (4);

(d) an order in respect of the whole of the liability for the incapacity or impairment arising from the injury has been made under Part XI; or

(e) the worker's claim for damages in respect of the injury or the incapacity or impairment arising from the injury has been settled by agreement independently of this Act and has not been disapproved under section 92(f).

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

[Section 158A inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

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

- (1) A worker is not eligible to participate in a specialised retraining program unless, on or before the final day referred to in subsection (2) —
- (a) either —
- (i) the Director has, at the written request of the worker, recorded in accordance with the regulations an agreement as to the worker's degree of permanent whole of person impairment; or
- (ii) if there is not agreement between the worker and the worker's employer as to the worker's degree of permanent whole of person impairment, the worker has applied under section 158C to have the matter in dispute determined by an arbitrator;
- and
- (b) either —
- (i) the Director has, at the written request of the worker, recorded in accordance with the regulations an agreement that the worker satisfies all of the retraining criteria; or
- (ii) if there is not agreement between the worker and the worker's employer that the worker satisfies all of the retraining criteria, the worker has applied under section 158D to have the matter in dispute determined by an arbitrator.
- (2) If a claim for compensation by way of weekly payments has been made on an employer in accordance with section 178(1)(b) with respect to an injury of a worker, the final day for purposes of subsection (1) is the last day of the period of 2 years after the day on which the claim for compensation is made unless a later day is fixed under subsection (3) or (4).

(3) If, after the expiry of the period of 3 months after the day on which the claim is made —

(a) an arbitrator, acting under section 58(1) or (2), determines the question of liability to make the weekly payments claimed; or

(b) the worker is first notified that liability is accepted in respect of the weekly payments claimed,

the final day is the last day of the period 1 year and 9 months after the day of the act described in paragraph (a) or (b) that was most recently done unless a later day is fixed under subsection (4).

(4) The Director may, in accordance with the regulations, from time to time extend the final day, but only if the Director is satisfied that the worker has, in accordance with the regulations and at least 8 weeks before the final day requested an approved medical specialist to assess the worker's degree of permanent whole of person impairment, but the worker could not take, or it would be impracticable for the worker to take, the action referred to in subsection (1) before the final day referred to in subsection (2).

(5) An extension under subsection (4) is to be to a day that is not more than 6 months after the day that would have been the final day had there been no extension under that subsection.

(6) An extension is to be in writing and the Director is required to give the worker and the employer each a copy of the extension.

(7) An extension may be given even though the final day has passed.

[Section 158B inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

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

(1) If —

(a) there is not agreement between a worker and the worker's employer that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%; and

(b) the worker's degree of permanent whole of person impairment has been assessed by an approved medical specialist under sections 146A and 146D as at least 10% but less than 15%,

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

(2) An arbitrator to whom an application to determine a question is made under subsection (1) may —

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

(b) refer the question as to the worker's degree of permanent whole of person impairment for assessment by an approved medical specialist panel in accordance with sections 146A and 146D.

(3) If a determination or assessment is made that the worker's degree of permanent whole of person impairment is at least 10% but less than 15%, the arbitrator may order the employer to pay all or any of the costs or expenses connected with the dispute, including expenses connected with the referral to an approved medical specialist panel.

[Section 158C inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

158D. Disputes as to retraining criteria

- (1) If there is not agreement between a worker and the worker's employer that the worker satisfies all of the retraining criteria, the worker may apply to have the question as to whether the worker satisfies all of the retraining criteria determined by an arbitrator.
- (2) An arbitrator to whom an application to determine a question is made under subsection (1) is to refer the question for assessment by a specialised retraining assessment panel in accordance with section 146V.
- (3) If an assessment is made that the worker is suitable to participate in a specialised retraining program, the arbitrator may order the employer to pay all or any of the costs or expenses connected with the dispute, including expenses connected with the referral to a specialised retraining assessment panel.

[Section 158D inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

158E. Specialised retraining program agreements

- (1) A worker who is eligible under sections 158A and 158B to participate in a specialised retraining program cannot participate in the program unless —
 - (a) the worker has entered into an agreement with WorkCover WA in relation to the program; and
 - (b) the agreement is entered into on or before the final day referred to in subsection (2).
- (2) The final day for the purposes of subsection (1) is the later of —
 - (a) the day that is 30 days after the day on which —
 - (i) the worker is notified of the recording of an agreement referred to in section 158B(1)(a)(i) as

to the worker's degree of permanent whole of person impairment; or

(ii) the worker is given the decision of an arbitrator as to the worker's degree of permanent whole of person impairment,

as is relevant to the case; and

(b) the day that is 30 days after the day on which —

(i) the worker is notified of the recording of an agreement referred to in section 158B(1)(b)(i) that the worker satisfies all of the retraining criteria; or

(ii) the worker is given the decision of an arbitrator as to whether the worker satisfies all of the retraining criteria,

as is relevant to the case.

(3) An agreement is to make provision in relation to —

(a) course attendance requirements;

(b) the worker's role in relation to reviews under section 158H including attendances and communications with WorkCover WA and providing information in relation to the performance and cooperation of the worker in the specialised retraining program;

(c) acknowledgement by the worker of the effects of this Part relating to the modification, suspension and cessation of amounts payable in respect of the worker's participation in the program.

(4) Any provision of an agreement that is inconsistent with a provision of this Act is of no effect to the extent of the inconsistency.

[Section 158E inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

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

(1) As soon as practicable after an agreement under section 158E has been signed by the worker and WorkCover WA, WorkCover WA is to notify the following persons of the agreement —

(a) the worker's employer; and

(b) if the employer is insured against liability to pay compensation under this Act, the employer's insurer.

(2) The total of the amounts payable in respect of a worker's participation in a specialised retraining program is the amount equal to 75% of the prescribed amount calculated as at the date on which the worker signed the agreement.

(3) WorkCover WA may, as it sees fit, but subject to this section and any regulations under subsection (10), give a written direction to the worker's employer or the employer's insurer to make a payment in respect of a worker's participation in a specialised retraining program.

(4) A direction may be for periodic payments or for a particular payment.

[Section 158F inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

158G. Obligations of employers, insurers

(1) An employer or insurer who receives a direction under section 158F or 158I must comply with the direction within the time specified in the direction, or such longer period as may be subsequently specified by WorkCover WA but not exceeding 30 days.

(2) An employer or insurer must not modify, suspend or cease an amount payable under a direction under section 158F or affected

by a direction under section 158I unless WorkCover WA has given the employer or insurer written approval to do so.

(3) A reference in section 174(1)(c) to the obtaining of an award by the worker includes a reference to the receipt by an employer or insurer of a direction under section 158F or 158I.

(4) Nothing in section 174 prevents moneys standing to the credit of the General Fund from being paid in accordance with a direction under section 158F or 158I within 30 days of the direction being received if —

(a) the direction relates to a payment in respect of a particular specialised retraining program; and

(b) moneys have already been paid from the General Fund in respect of that program.

[Section 158G inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

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

(1) WorkCover WA is to conduct, at the times set out in subsection (2), a review of —

(a) the performance and cooperation of each worker who is participating in a specialised retraining program; and

(b) the payments directed to be made in respect of each worker who is participating in a specialised retraining program.

(2) The first review in respect of a worker is to be conducted 3 months after the day on which the worker commences participation in the specialised retraining program, and subsequent reviews are to be at 3 monthly intervals.

[Section 158H inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

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

(1) WorkCover WA may, as it sees fit, but subject to this Part and any regulations in relation to the administration of funds for specialised retraining programs, and having regard to the results of a review under section 158H in relation to a worker, give a written direction to the worker's employer or the employer's insurer to modify, suspend or cease the amounts payable in respect of the worker's participation in the program.

(2) Without affecting subsection (1) WorkCover WA may give a written direction to the worker's employer or the employer's insurer to do any of the following —

(a) suspend any entitlement that a worker has under an agreement under section 158E if WorkCover WA is of the opinion that the worker has not complied, or is not complying, with a provision of the agreement;

(b) cease the entitlement if the worker does not, within one month of being requested in writing by WorkCover WA to do so, comply with the provision;

(c) modify, suspend or cease the amounts payable in respect of the worker's participation in the program if the worker fails a course requirement or does not achieve the results that, in the opinion of WorkCover WA, are required for the course to be successfully completed.

[Section 158I inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

158J. Cessation of payments

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

[Section 158J inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

158K. Directions not open to challenge etc.

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

[Section 158K inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

158L. Other effects of participation in specialised retraining program

- (1) The amount referred to in section 158F(2) is in addition to and separate from any other compensation that a worker is entitled to under this Act in relation to an injury.
- (2) A worker's participation in a specialised retraining program is not, of itself, a ground for the suspension, discontinuance, reduction or increasing, under this Act, of payments of other compensation that the worker receives in respect of the injury.
- (3) A worker's participation in a specialised retraining program is not, of itself, a ground for an arbitrator to require or not require, under section 156B, the worker to participate in a return to work program.

- (4) No part of the specialised retraining program entitlement can be taken into account in the calculation of any other compensation to which the worker is entitled under this Act.

[Section 158L inserted by the Workers' Compensation Reform Bill 2004 cl. 119 (as amended in Committee).]

Part X — Insurance

Division 1 — Liability of employers and insurers

160. Employer to obtain insurance

- (1) Subject to this Act, every employer shall obtain from an approved insurance office and shall keep current a policy of insurance for the full amount of his liability to pay compensation under this Act to any worker employed by him including any increase in amount occurring during currency of the policy.
- (2) An employer obliged by this section to effect or renew a policy of insurance shall, on applying to an approved insurance office, for that purpose, furnish to that office an estimate, made to the best of that employer's knowledge, information and belief, of the aggregate amount of wages, salaries, or other remuneration to be paid to the employer's workers not including any amount paid by way of compensation under this Act but including any amounts paid to workers employed under an agreement to perform —
 - (a) a specified quantity of work for a specified sum;
 - (b) work on piece rates; or
 - (c) work on a bonus or commission system for payment by results,

over the period for which the policy is to be effected or renewed; and shall forthwith after the termination of that period furnish a statement of the aggregate amount of those wages paid in fact and shall include in that statement every sum paid during that period to an employee in respect of overtime worked by the employee.

~~—(2a) Where, under section 10A, an employer that is a company applies to an approved insurance office under subsection (2) on the basis that any director of the company is a worker, that~~

~~employer shall, in relation to each such director, furnish to that office, in addition to the information required to be furnished under subsection (2) —~~

~~(a) the name of the director; and~~

~~(b) in relation to that director in particular, the information, verified as required under subsection (2), that the employer is required under that subsection to furnish in relation to the employer's workers.~~

[(2a) repealed]

- (3) An approved insurance office shall insure any employer requesting it for the full amount of the liability of the employer to pay compensation under this Act to all workers employed by him.

Penalty: \$2 000.

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

Penalty: \$1 000.

- (4) Where a policy or contract of insurance obtained by an employer from an approved insurance office under this section has lapsed, and —

- (a) the employer is not insured against his liability to pay compensation under this Act;
- (b) the employer has incurred liability to pay compensation under this Act after the lapsing of the policy or contract of insurance; and
- (c) not more than 7 days have elapsed from the time when ~~the Commission~~ WorkCover WA received from that

approved insurance office a statement in respect of the
lapsed policy or contract under section 171(1)(b),

the approved insurance office shall, notwithstanding the lapse of
the policy or contract of insurance, be liable to indemnify the
employer in respect of that liability as if the liability were
incurred during the term of the policy or contract of insurance.

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

Penalty: \$2 000.

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

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

Penalty: \$2 000.

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

[Section 160 amended by No. 44 of 1985 s. 34; No. 85 of 1986
s. 10; No. 96 of 1990 s. 37; No. 34 of 1999 s. 42; the Workers'
Compensation Reform Bill 2004 cl. 120 (as amended in
Committee) and 150.]

161A. Penalty — issue or renewal of policy without approval

An incorporated insurance office shall not issue or renew a policy insuring an employer against his liability to pay compensation under this Act unless the incorporated insurance office is approved by the Minister under section 161 and the approval is not suspended at the time of the issue or renewal of the policy or has not been revoked by the Minister.

Penalty: \$5 000.

[Section 161A inserted by No. 44 of 1985 s. 35; amended by No. 34 of 1999 s. 57.]

161. Approvals

- (1) For the purpose of this Part “**incorporated insurance office**” includes any duly incorporated company carrying on business in the State under the *Insurance Act 1973* of the Commonwealth.
- (2) The requirements for an incorporated insurance office to be approved under this section are that it is able to meet the requirements mentioned in subsection (3).
- (3) The requirements for an incorporated insurance office that is approved under this section to remain so approved are that it —
 - (a) has material and financial resources available to it that the Minister, on the advice of ~~the Commission~~ WorkCover WA, considers sufficient to enable it to discharge its obligations for the purposes of this Act;
 - (b) maintains in the State an office having such resources and authority as the Minister considers satisfactory for the expeditious handling of claims;
 - (c) provides a standard of service to employers and, on behalf of employers, to workers that the Minister, on the advice of ~~the Commission~~ WorkCover WA, considers satisfactory;

- (d) complies with the time limits and other requirements imposed under this Act and the *Employers' Indemnity Supplementation Fund Act 1980*;
 - (e) consistently maintains a standard of detail and accuracy in the information required under this Act to be provided by it that is satisfactory to the Minister; and
 - (f) otherwise discharges its obligations under or for the purposes of this Act to a standard that the Minister, on the advice of the ~~Commission~~ WorkCover WA, considers satisfactory.
- (4) Where an incorporated insurance office applies to the Minister for the grant or renewal of approval under this section, the Minister may, if he is satisfied that it meets the requirements for an incorporated insurance office to be or remain approved, as the case may be, grant or renew the approval, as the case requires, and, in granting or renewing the approval, attach such conditions, if any, as he sees fit to the approval.
- (5) Subject to subsection (6), an approval under this section ceases to have effect, unless sooner renewed, at the expiration of 5 years after the day on which the approval was granted or, where it has been previously renewed under this section, at the expiration of 5 years after the day on which it was last renewed.
- (6) Notwithstanding subsection (5) but subject to subsection (7), an approval granted or deemed to be granted under this section and current immediately before the day of the commencement of section 38 of the *Workers' Compensation and Assistance Amendment Act 1990*¹ continues to have effect for a period of one year after that day and, unless renewed under this section, thereafter is of no effect.
- (7) Where an approved insurance office —
 - (a) fails in the opinion of the Minister to meet the requirements mentioned in subsection (3) or to comply with any condition attached to its approval; or

(b) so requests,

the Minister may revoke or suspend his approval under this section of that office, but may not do so in any other case.

[Section 161 amended by No. 96 of 1990 s. 38; the Workers' Compensation Reform Bill 2004 cl. 150.]

162. The State Government Insurance Commission sole insurer against certain industrial diseases

- (1) The State Government Insurance Commission ⁹ is the only insurer authorised to issue or renew a policy insuring an employer against his liability to pay compensation under this Act for any industrial disease of the kinds referred to in section 151(a)(iii).

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

Penalty: \$1 000.

- (2) Nothing in subsection (1) affects the rights and liabilities of the parties to any contract of insurance existing immediately before the day on which this Part comes into operation for the period of the contract unexpired immediately before that day.

[Section 162 amended by No. 51 of 1986 s. 46(2); the Workers' Compensation Reform Bill 2004 cl. 121 (as amended in Committee).]

163. Payment of industrial disease premium and issue of policy

An employer required to pay an industrial disease premium under this Act shall pay that premium to the State Government Insurance Commission ⁹ which is bound to issue a policy insuring the employer against his liability to pay compensation under this Act for any industrial disease of the kinds referred to in section 151(a)(iii).

[Section 163 amended by No. 51 of 1986 s. 46(2).]

164. Exempt employer

- (1) Notwithstanding section 160 if an employer or group of employers has deposited at the Treasury given to the State securities approved by the Commission ~~WorkCover WA~~ that are charged with all payments to become due under the employer's or group's liability for which insurance would, if there were no exemption, be required by this Act, the Governor may exempt such employer or group from the obligation to insure pursuant to this Act except for the obligation to insure against liability to pay compensation under this Act for any industrial disease of the kinds referred to in section 151(a)(iii).
- (1a) In deciding whether an exemption should be given under subsection (1), regard may be had to the number of workers employed and the category of the insurable risks of the business or businesses of the employer or group, whether the employer or group has established a fund for insurance against liability for which insurance would, if there were no exemption, be required by this Act, and the material and financial resources available in the State to the employer, or each employer of the group, to comply with the requirements of this Act or the *Employers' Indemnity Supplementation Fund Act 1980*.
- (2) An exemption granted under section 13 of the repealed Act and current immediately before the day on which this Part comes into operation is deemed to be an exemption granted under this Part and subject to review as provided by section 165.

[Section 164 amended by No. 96 of 1990 s. 39; the Workers' Compensation Reform Bill 2004 cl. 122 (as amended in Committee) and 150.]

165. Review of exemptions

- (1) On or before 30 June 1982 and thereafter at least once in each period of one year and also when so required by the Minister ~~the Commission-WorkCover WA~~ shall review all exemptions granted pursuant to section 164.

- (2) After a review the Minister may require an increase or permit a decrease in the value of the securities ~~deposited at the Treasury~~ given to the State pursuant to section 164(1) by an employer or group of employers having regard to —
- (a) the number of workers then employed by the employer or group;
 - (b) the current category of the insurable risks of the business or businesses of the employer or group;
 - (ba) whether or not the employer or group is maintaining a fund for insurance against liability for which insurance would, but for the exemption, be required by this Act;
 - (bb) the material and financial resources available in the State to the employer, or each employer of the group, to comply with the requirements of this Act or the *Employers' Indemnity Supplementation Fund Act 1980*;
 - (c) the claims experience since the last review of the employer or group; or
 - (d) any change in the extent of the liability to pay compensation under this Act since the last review.
- (3) The Minister may after a review recommend to the Governor that an exemption be cancelled —
- (a) for any reason which seems to him to justify doing so in the interests of securing the workers' entitlements to compensation; or
 - (b) because of a failure to ~~deposit at the Treasury~~ give to the State any securities directed by the Minister to be ~~deposited~~ given under subsection (4)(b),
- and the Governor may then cancel the exemption.
- (4) Where —
- (a) under subsection (2) the Minister permits a decrease in the value of the securities ~~deposited at the Treasury~~ given to the State by an employer or group of employers the Minister may order that those securities no longer

required to be ~~deposited at the Treasury~~ given to the State be discharged from the charge and returned to the employer or the group, as the case may be;

- (b) the Minister requires an increase in the value of securities deposited by an employer or group of employers —
- (i) the Minister may direct the employer or group to ~~deposit at the Treasury~~ give to the State such securities charged with all payments to become due under the employer's or group's liability under this Act, in addition to the securities already ~~deposited~~ given, as the Minister determines; or
 - (ii) the Minister may direct that the securities deposited at the Treasury by that employer or group of employers be discharged from the charge and returned to the employer or group and that the employer or group ~~deposit at the Treasury~~ give to the State further securities to the value determined by the Minister charged with all payments to become due under the employer's or group's liability under this Act.

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

(a) the employer; or

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

as the case may be, commits an offence.

Penalty: \$1 000.

[Section 165 amended by No. 44 of 1985 s. 36; No. 96 of 1990 s. 40; the Workers' Compensation Reform Bill 2004 cl. 123 (as amended in Committee) and 150.]

166. Other cancellations

Where an employer who is exempt, or who is one of a group of employers who is exempt, under section 164, fails or refuses to comply with the requirements of this Act or the *Employers' Indemnity Supplementation Fund Act 1980*¹⁶, the Governor may cancel the exemption of or in respect of that employer.

167. Effect of cessation of exemption

Each employer including a member of a group of employers who ceases to be exempt under section 164 shall forthwith insure as required by section 160.

168. Cessation of exemption

Where an employer or group of employers which is exempt under section 164 —

- (a) applies to the Minister for a revocation of such exemption and for the return of securities ~~lodged by it or them with the Treasury given by it or them to the State~~ discharged from the charge referred to in section 164(1); or
- (b) proves to the satisfaction of the Minister that —
 - (i) the employer or group, as the case may be, has ceased to employ workers; or
 - (ii) he or they have obtained from an approved insurance office a policy of insurance in compliance with section 160(1),and that —
 - (iii) there are no outstanding claims for compensation; or

- (iv) satisfactory provision has been made for discharging any outstanding claims for compensation,

the Governor may by Order in Council revoke the exemption and order that the securities be discharged from the charge and returned to the employer or the group, as the case may be.

[Section 168 amended by No. 96 of 1990 s. 41; the Workers' Compensation Reform Bill 2004 cl. 124.]

169. Forms of policy

The Governor may, on the recommendation of the ~~Commission~~ WorkCover WA, determine the form in which any policy of insurance made obligatory under this Act is to be effected and upon a form being so determined any policy in respect of which it is determined shall insofar as it relates to insurance or indemnity under this Act be effected, or in the case of an existing policy, renewed in that form.

[Section 169 amended by No. 96 of 1990 s. 42; the Workers' Compensation Reform Bill 2004 cl. 150.]

170. Penalty — uninsured worker

- (1) An employer who —
 - (a) fails to comply with section 160(1) or (2); or
 - (b) gives in an estimate or statement furnished under section 160(2) any information or particular that he knows to be false in any material particular,

commits an offence and is liable to a penalty of \$5 000 in respect of each worker employed by him to whom the offence relates; and that employer commits a separate and further offence in respect of each week after the day of conviction during which section 160(1) or (2), as the case may be, is not complied with by him in respect of a worker to whom the original offence related, and is liable in respect of each such

separate and further offence to a penalty of \$5 000 for each such worker; and in addition subsection (2) applies.

- (2) The court convicting an employer of an offence under subsection (1) shall, in addition to any other penalty imposed in respect of the offence under subsection (1) but subject to subsection (2a), order that the employer pay to the General Fund an amount equal to the total of any insurance premiums payment of which the court is satisfied the employer has, at any time during the period of 5 years before the conviction, avoided by failing to obtain insurance as required by section 160(1), failing to furnish an estimate or statement as required by section 160(2), or giving any false information or particular in any such estimate or statement.
- (2a) In making an order under subsection (2) requiring the payment of an amount determined by reference to insurance premiums payment of which has been avoided, an amount that has been taken into account in making a previous such order shall not be again taken into account.
- (2b) If an order is made under subsection (2) requiring a body corporate convicted of an offence to pay an amount to the General Fund but all or any of the amount required to be paid remains unpaid, ~~the Commission~~ WorkCover WA may sue and recover from a responsible officer the unpaid amount, whether or not the responsible officer has been convicted under subsection (5).
- (2c) If there are 2 or more responsible officers, they are jointly and severally liable for the payment of the unpaid amount.
- (2d) The amount required to be paid under the order is reduced by any amount recovered under subsection (2b).
- (3) A complaint for an offence under this section may be made at any time within 2 years from the time when the matter of complaint arose.

- (4) In any prosecution for an offence under this section, proof that the employer, not being a self-insurer —
- (a) was required under section 175B(1)(c) to produce for inspection a policy of insurance referred to in section 160(1) obtained by the employer and in force at a specified date or between specified dates; and
 - (b) did not produce that policy as required,
- is prima facie evidence that at that specified date or between those specified dates, as the case may be, the employer failed to comply with section 160(1), and the burden of showing that the employer complied with section 160(1) rests on the employer.
- (5) Where a body corporate commits an offence mentioned in subsection (1), every responsible officer commits the like offence.
- (6) In subsections (2b), (2c), and (5) “**responsible officer**”, in relation to the commission of an offence by a body corporate, means a person who is a director or other officer concerned in the management of the body corporate and who does not prove that —
- (a) the offence was committed without the person’s consent or connivance; and
 - (b) the person exercised all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person’s functions and to all the circumstances.

[Section 170 amended by No. 44 of 1985 s. 37; No. 33 of 1986 s. 7; No. 86 of 1986 s. 5; No. 96 of 1990 s. 43; No. 34 of 1999 s. 43 and 57; the Workers' Compensation Reform Bill 2004 cl. 150.]

171. Insurance offices to furnish certain statements

- (1) Every approved insurance office shall within 14 days of the close of each calendar month transmit to ~~the Commission~~ WorkCover WA —
- (a) a statement in the prescribed form giving details of each employer who has during the month in question effected or renewed a policy or contract of insurance with the insurance office concerned against liability under this Act;
 - (b) a statement in the prescribed form giving details of each employer in respect of whom the insurance office concerned has during the month in question marked in its books as lapsed (or, where WorkCover WA has permitted cancellation, cancelled) a policy or contract of insurance under this Act; and
 - (c) where ~~the Commission~~ WorkCover WA has requested the insurance office to do so, a means specified by ~~the Commission~~ WorkCover WA for conveying to ~~the Commission~~ WorkCover WA, in a machine-readable form so specified, the details referred to in paragraphs (a) and (b), together with a statement certifying the accuracy of the details so conveyed.
- (2) Such a statement shall be signed by a responsible officer of the insurance office concerned.
- (3) Subject to subsection (3a), a person, except with the express authority of ~~the Commission~~ WorkCover WA, shall not have access to, inspect, or peruse any such statement, and the information contained therein shall be treated as strictly confidential and shall not, except for the purposes of this Act, be disclosed to any person.

Penalty: \$1 000.

Penalty: \$2 000.

- (3a) A person who is a principal within the meaning of that term in section 175 may, in writing, request ~~the Commission~~ WorkCover WA to disclose information as to the currency of a policy or contract of insurance required by this Act for the liability of a person who is, in relation to the person requesting the information, a contractor within the meaning of that term in that section, and ~~the Commission~~ WorkCover WA may, where it is satisfied that the information is not to be used for a purpose unconnected with the objects of this Act, in writing, disclose the information requested (which may include information as to the period for which the policy or contract, if any, remains in force).
- (4) If any statement required by this section is false in any particular to the knowledge of any person who signs it, that person commits an offence.

Penalty: \$2 000.

[Section 171 amended by No. 44 of 1985 s. 38; No. 96 of 1990 s. 44; No. 34 of 1999 s. 57; the Workers' Compensation Reform Bill 2004 cl. 125 and 150.]

172. Commission may pass on certain information to insurer

Whenever as a result of an inspection or otherwise it is shown that an employer has either wilfully or inadvertently understated to the employer's insurer the aggregate amount of wages, salary and other forms of remuneration paid, or the number of employees engaged, and has thereby become liable to pay by way of premium a lesser amount than would otherwise have been payable, then ~~the Commission~~ WorkCover WA may —

- (a) provide to the insurer information as to the wages, salary, and other forms of remuneration paid by, and the number of employees engaged by, the employer and the category for the purpose of premium rates in which those employees are engaged; and

(b) sue and recover from the employer —

- (i) the full amount of the premium that could have been charged; less
- (ii) any amount already paid to the insurer in respect of such insurance,

and pay any moneys so recovered, less any reasonable costs incurred in the recovery, to the insurer.

[Section 172 inserted by No. 34 of 1999 s. 45; amended by the Workers' Compensation Reform Bill 2004 cl. 150.]

[172A. Repealed by No. 34 of 1999 s. 44.]

173. Worker's rights against insurer

- (1) Where during the currency of a contract between an employer and an insurer in respect of the employer's liability under this Act to a worker the employer dies, or in the case of a corporation has commenced to be, or is, wound up, ceases to exist or the employer cannot be found or no longer resides in Australia or in a Territory within Australia or has ceased to carry on the business, or business of the kind, to which that contract related, then in any such circumstance —
 - (a) the worker has the same rights and remedies against the insurer; and
 - (b) the insurer has, to the extent of his liability under the contract, the same liability to the worker and the same rights and remedies in respect of the liability,that the employer otherwise would have had under the contract.
- (2) Where, under subsection (1), the liability of the insurer of an employer is less than that which the liability of the employer to the worker would have been, the worker may proceed for the balance against the employer, or in the bankruptcy or

liquidation of the employer, or against the personal representative of the employer.

[Section 173 amended by No. 72 of 1992 s. 19.]

174. Payment to worker from General Fund

(1) Where —

- (a) compensation in accordance with this Act is due by an employer to a worker (other than a worker in respect of whom refusal of insurance is permitted pursuant to this Act);
- (b) the employer is not insured against his liability to pay compensation to the worker under this Act or the case is one to which section 173(2) applies or the employer's insurer declines to indemnify the employer against the worker's claim for compensation; and
- (c) the employer does not pay the compensation due within 30 days of the obtaining of an award by the worker or his representative,

~~the Commission~~ WorkCover WA shall pay to the worker from moneys standing to the credit of the General Fund the amount required to satisfy the award and any award for costs in respect thereof, ~~and the Commission may sue and recover that amount from the employer and, until it so recovers that amount, may exercise any rights of the employer under this Act in relation to the payment of that award.~~

~~(1a)~~ Without limiting section 174AB, until the amount paid to a worker under this section is recovered under this section or section 174AA, WorkCover WA may exercise any rights of the employer under this Act in relation to the payment of that award.

~~(2) Where by reason of section 175 more than one person is liable as an employer to pay compensation under this Act to a worker, the reference in subsection (1) to the employer shall be read as a~~

~~reference to each person so liable, and the rights of the Commission against the employer under that subsection are exercisable against those persons jointly and severally and a judgment obtained against one is not a bar to proceedings against the other except to the extent that the judgment has been satisfied.~~

~~[(2) repealed]~~

(3) Where a worker suffers ~~disability injury~~ of a kind mentioned in section 32 or 33 and compensation in accordance with this Act is due by an employer to the worker but —

- (a) the identity of the employer's insurer, if any, is not known; or
- (b) the employer's insurer has ceased to operate in Australia,

an order may be made under ~~Part IIIA~~ Part XI that the ~~Commission~~ WorkCover WA pay to the worker from moneys standing to the credit of the General Fund the amount required to satisfy an award obtained by the worker or the worker's representative and any award for costs in respect of the award.

(4) If the identity of the insurer is ascertained after payment has been made under subsection (3), ~~the Commission~~ WorkCover WA may sue and recover the amount paid from the insurer, to the extent that its insured may have sued for and recovered that amount under the policy of insurance.

(5) The payment mentioned in subsection (3) shall be made to the worker or the worker's representative within 30 days of the date of the award.

~~— (6) Where an employer is or may be uninsured and —~~

- ~~(a) is not defending a claim brought by a worker, the Commission has a right to become a party to the proceedings and if it does so, may exercise the rights of the employer under this Act in those proceedings; or~~

-
- ~~———— (b) is defending a claim brought by a worker, the Commission has a right to intervene in the proceedings and if it does so, shall assist in the determination.~~
- ~~———— (7) The Commission may sue for and recover from the employer fees, costs and charges incurred by the Commission under subsection (6)(a), whether or not the Commission was successful in the proceedings.~~
- (6) Where WorkCover WA has paid from the General Fund an amount under subsection (1) WorkCover WA may file in a court of competent jurisdiction a certificate of WorkCover WA showing the amount paid.
- (7) No charge is to be made for filing a copy of a certificate under this section.
- (8) On filing, the certificate is to be taken to be a judgment of that court for a debt payable by the employer of the worker to WorkCover WA of the same amount as the amount stated in the certificate, and may be enforced accordingly, and section 142(1) of the *Supreme Court Act 1935* applies to the amount specified in the certificate as if it were payable under a judgment of the court.
- (9) Where by reason of section 175 more than one person is liable as an employer to pay compensation under this Act to a worker, the reference in subsection (8) to the employer is to be read as a reference to each person so liable, and the judgment may be enforced against those persons jointly and severally.

[Section 174 amended by No. 85 of 1986 s. 11; No. 96 of 1990 s. 46; No. 72 of 1992 s. 20; No. 48 of 1993 s. 41; No. 49 of 1996 s. 64; the Workers' Compensation Reform Bill 2004 cl. 126, 147 and 150.]

174AA. Recovery from responsible officers of body corporate

- (1) If none, or some but not all, of an amount paid from the General Fund under section 174 is recovered from a body corporate

liable to pay the amount under that section, WorkCover WA may sue and recover the unpaid amount from a responsible officer of the body corporate.

(2) A person is a responsible officer of a body corporate if —

(a) the body corporate has contravened section 160(1) in respect of a policy of insurance or otherwise failed to ensure that it had a sufficient policy of insurance that would have covered the body corporate for the liability to which the payment made under section 174 related (whether or not the body corporate has been proceeded against or convicted of an offence for the contravention);

(b) at the time of the contravention or failure the person was a director or other officer concerned in the management of the body corporate; and

(c) the person does not prove that —

(i) the contravention or failure occurred without the person's consent or connivance; and

(ii) the person exercised all such due diligence to prevent the contravention or failure as ought to have been exercised having regard to the nature of the person's functions and to all the circumstances.

(3) If there are 2 or more responsible officers of a body corporate they are jointly and severally liable for the payment of the unpaid amount recoverable under subsection (1).

[Section 174AA inserted by the Workers' Compensation Reform Bill 2004 cl. 127.]

174AB. WorkCover WA may exercise rights of employer

(1) If an employer is uninsured and is not defending a claim brought by a worker, WorkCover WA has all of the rights of the

employer under this Act in place of the employer including the right to —

- (a) consent to an award or order being made in a proceeding before a dispute resolution authority;
- (b) enter into an agreement as to redemption of the claim;
- (c) become a party to proceedings in relation to the claim;
- (d) exercise the rights of the employer in relation to injury management; and
- (e) require the worker to submit himself for examination under sections 64 and 65.

(2) If an employer —

- (a) is uninsured and is defending a claim brought by a worker; or
- (b) may be uninsured and a worker has brought a claim, irrespective of whether or not the employer is defending the claim,

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

(3) The employer may apply under Part XI for an order as to the rights WorkCover WA may exercise under subsection (2) and the exercise of those rights.

(4) An arbitrator may hear and determine an application under subsection (3) and may make such orders in relation to the application as the arbitrator thinks fit.

(5) WorkCover WA may sue for and recover from the employer fees, costs and charges incurred by WorkCover WA under this section, whether or not WorkCover WA was successful in any proceedings.

[Section 174AB inserted by the Workers' Compensation Reform Bill 2004 cl. 128.]

174AC. WorkCover WA's right of subrogation

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

[Section 174AC inserted by the Workers' Compensation Reform Bill 2004 cl. 128.]

174A. Insurer may not refuse to indemnify in certain circumstances

- (1) If under a policy of insurance the insurer may refuse, but for this section, to indemnify an employer against the employer's liability to pay compensation claimed under this Act on the ground of an act or omission by or on behalf of the employer but the act or omission did not cause or contribute to the ~~disability-injury~~ for which compensation is claimed, the insurer may not refuse to indemnify the employer but the insurer's liability to indemnify the employer is reduced by the amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of the act or omission.
- (2) The onus of proving that the insurer's interests were prejudiced by the act or omission by or on behalf of the employer and the extent of that prejudice is on the insurer.

[Section 174A inserted by No. 72 of 1992 s. 21; the Workers' Compensation Reform Bill 2004 cl. 147.]

**Division 2 — Insurance by principals, contractors, and
sub-contractors**

175. Principal contractor and sub-contractor deemed employers

- (1) Where a person (in this section referred to as the principal) contracts with another person (in this section referred to as the contractor) for the execution of any work by or under the contractor and, in the execution of the work, a worker is employed by the contractor, both the principal and the contractor are, for the purposes of this Act, deemed to be employers of the worker so employed and are jointly and severally liable to pay any compensation which the contractor if he were the sole employer would be liable to pay under this Act.
- (2) The principal is entitled to indemnity from the contractor for the principal's liability under this section.
- (3) The principal is not liable under this section unless the work on which the worker is employed at the time of the occurrence of the ~~disability-injury~~ is directly a part or process in the trade or business of the principal.
- (4) Where the principal and the contractor are jointly and severally liable under this section, a judgment obtained against one is not a bar to proceedings against the other except to the extent that the judgment has been satisfied.
- (5) Where compensation is claimed from or proceedings are taken against the principal, in the application of this Act a reference to the employer shall be read as a reference to the principal except where, for the purpose of calculating the amount of compensation, a reference is made to the earnings of a worker, the reference shall be read as a reference to the earnings of the worker under the contractor.
- (6) For the purposes of this section, where sub-contracts are made —
 - (a) **“principal”** includes the original principal for whom the work is being done and each contractor who constitutes

himself a principal with respect to a sub-contractor by contracting with him for the execution by him of the whole or any part of the work;

- (b) “**contractor**” includes the original contractor and each sub-contractor; and
- (c) a principal’s right to indemnity is a right against each contractor standing between the principal and the worker.

- (7) Where the ~~disability-injury~~ does not occur in respect of premises on which the principal has undertaken to execute the work or which are otherwise under his control or management, subsections (1) to (6) inclusive do not apply.

[Section 175 amended by the Workers' Compensation Reform Bill 2004 cl. 147.]

Division 3 — Inspectors

[Heading inserted by No. 34 of 1999 s. 46(1).]

175A. Authorisation

- (1) ~~The Commission~~ WorkCover WA may authorise persons as inspectors for the purposes of this Act.
- (2) Before performing any function of an inspector under this Act, a person authorised as an inspector is required to take and subscribe before a justice of the peace an oath or affirmation to the effect that the person will not, except for the purposes of this Act, and the exercise of the person’s duties under this Act, disclose to any person any information acquired as an inspector.
- (3) A person who wilfully discloses any information contrary to an oath taken under subsection (2) commits an offence.
Penalty: \$2 000.
- (4) The Chairman of ~~the Commission~~ WorkCover WA is to issue to each person authorised as an inspector a certificate stating that the person is so authorised.

- (5) The inspector is to produce the certificate whenever required to do so by a person in respect of whom the inspector has exercised, or is about to exercise, a power under this Act.

[Section 175A inserted by No. 34 of 1999 s. 46(1); amended by the Workers' Compensation Reform Bill 2004 cl. 150.]

175B. Powers

- (1) An inspector may, for the purposes of this Act —
- (a) at all reasonable times of the day or night, enter, inspect, and examine any place where it is suspected that workers may be employed or books, accounts, documents or records required to be inspected may be held;
 - (b) conduct such examination and inquiry as appears necessary to ascertain whether there has been compliance with this Act;
 - (c) require the production of, examine, and take copies or extracts of, any books, accounts, documents or records;
 - (d) interview, either in private or otherwise, as the inspector considers appropriate, any person who the inspector has reasonable grounds to believe is able to provide information that may assist the inspector to perform a function under this Act;
 - (e) require any person interviewed under paragraph (d) to answer any question and, if the inspector considers it appropriate, to verify any such answer by statutory declaration;
 - (f) require an employer to provide within 28 days a certificate from an auditor containing a statement as to —
 - (i) the number of workers employed by the employer during a specified period; and

- (ii) the amount of wages, salary, and other forms of remuneration paid by the employer to each worker during that period;
 - (g) require any person to state the person's name and address;
 - (h) require an employer or any of the employer's workers to assist the inspector in the performance of a function under this Act, as the inspector considers necessary;
 - (i) exercise such other powers as may be conferred by the regulations or as may be necessary for the performance of any function under this Act.
- (2) In subsection (1) —
- “**auditor**” means a person who is registered as an auditor under Part 9.2 of the *Corporations Act 2001* of the Commonwealth.
- (3) In exercising any power under this Act an inspector may be accompanied by any other person whose assistance the inspector considers necessary, and that person may do such things as are necessary to assist the inspector in the performance of the inspector's functions, and anything so done is deemed to have been done by the inspector.

[Section 175B inserted by No. 34 of 1999 s. 46(1); amended by No. 10 of 2001 s. 219.]

175C. Interpreters

- (1) Where an inspector considers it necessary for the effective performance of a function under this Act, the inspector may be accompanied by an interpreter.
- (2) Any inquiry or requirement made to any person by an interpreter on behalf of an inspector is deemed to have been made by the inspector and any answer given to the interpreter is deemed to have been given to the inspector.

[Section 175C inserted by No. 34 of 1999 s. 46(1).]

175D. Offences

- (1) A person who —
- (a) obstructs or interferes with the performance by an inspector of any of the inspector's functions under this Act;
 - (b) contravenes a requirement made by an inspector under this Act;
 - (c) provides to an inspector an answer or information that is false or misleading in a material particular;
 - (d) gives any information that is false or misleading in a certificate referred to in section 175B(1)(f); or
 - (e) directly or indirectly prevents another person from complying with a requirement under this Act,

commits an offence.

Penalty: \$5 000.

- (2) A person is not excused from complying with a requirement to answer any question on the ground that the answer to the question might be incriminating or render the person liable to a penalty, but an answer given by the person is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this section arising out of the false or misleading nature of that answer.

[Section 175D inserted by No. 34 of 1999 s. 46(1).]

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

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 129]*

175E. Definitions

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

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

“prescribed” means prescribed by the regulations.

*[Section 175E inserted by the Workers' Compensation Reform
Bill 2004 cl. 129.]*

175F. Authorised officers

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

*[Section 175F inserted by the Workers' Compensation Reform
Bill 2004 cl. 129.]*

175G. Giving of notice

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

[Section 175G inserted by the Workers' Compensation Reform Bill 2004 cl. 129.]

175H. Content of notice

- (1) An infringement notice is to be in the prescribed form.
- (2) An infringement notice is to —
 - (a) contain a description of the alleged offence;
 - (b) specify the amount of the modified penalty for the offence;
 - (c) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, that amount may be paid to an authorised officer within the period of 28 days after the giving of the notice; and
 - (d) inform the alleged offender as to who are authorised officers for the purpose of receiving payment of modified penalties.
- (3) The amount specified under subsection (2)(b) is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.
- (4) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

[Section 175H inserted by the Workers' Compensation Reform Bill 2004 cl. 129.]

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175I. Extension of time

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

[Section 175I inserted by the Workers' Compensation Reform Bill 2004 cl. 129.]

175J. Withdrawal of notice

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

(2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

[Section 175J inserted by the Workers' Compensation Reform Bill 2004 cl. 129.]

175K. Benefit of paying modified penalty

(1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.

(2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

[Section 175K inserted by the Workers' Compensation Reform Bill 2004 cl. 129.]

175L. No admission implied by payment

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

[Section 175L inserted by the Workers' Compensation Reform Bill 2004 cl. 129.]

175M. Application of penalties collected

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

[Section 175M inserted by the Workers' Compensation Reform Bill 2004 cl. 129.]

Part XI—Regulations

[Heading amended by No. 34 of 1999 s. 47.]

176.—Regulations, rules and practice notes

- ~~—(1) The Governor with respect to any of the following purposes may make regulations —~~
 - ~~—(a) prescribing such forms as may be necessary or expedient for the purposes of this Act;~~
 - ~~—[(b) (f) deleted]~~
 - ~~—(g) with respect to matters of general or special application, which may apply to both employers and workers, for the prevention or minimizing of occurrences of disability in employment or places of employment within the State;~~
 - ~~—(h) providing for the allowances to be paid to witnesses, and the circumstances in which, and extent to which, they are to be paid from moneys standing to the credit of the General Fund;~~
 - ~~—(i) prescribing penalties not exceeding \$1 000 for any non-compliance with or any contravention of any regulation;~~
 - ~~—(j) regulating the meetings and proceedings of the Commission and the Committee;~~
 - ~~—(k) providing for the fees and expenses payable with respect to establishing and maintaining registers;~~
 - ~~—(l) prescribing scales of the maximum amount of commission or brokerage for insurance agents and brokers in respect of workers' compensation insurance business;~~
 - ~~—[(m) and (n) deleted]~~
 - ~~—(o) providing for any matters which by this Act are required or permitted to be prescribed or which may be necessary~~

or convenient to regulate (either generally or in any particular case) for giving effect to this Act.

~~(1a) The Governor, on the recommendation of the Commission, may make regulations —~~

~~— (a) fixing scales of fees to be paid to —~~

~~— (i) medical specialists and other medical practitioners;~~

~~— (ii) dentists;~~

~~— (iii) physiotherapists;~~

~~— (iv) chiropractors;~~

~~— (v) occupational therapists;~~

~~— (vi) clinical psychologists;~~

~~— (vii) speech therapists; and~~

~~— (viii) persons providing treatment of a kind approved for the purposes of the definition of “approved treatment” in section 5(1),~~

~~— for attendance on, and treatment of, workers suffering disabilities that are compensable under this Act;~~

~~— (b) fixing scales of fees to be paid to approved rehabilitation providers.~~

~~(1b) The Commission shall not recommend the making of any regulation under subsection (1a) unless it has first negotiated with the relevant body, if any, and, for that purpose, where the regulation is in respect of fees to be paid to —~~

~~— (a) medical specialists or other medical practitioners, the relevant body is the Australian Medical Association Western Australian Branch;~~

~~— (b) dentists, the relevant body is the Australian Dental Association (W.A. Branch);~~

~~— (c) physiotherapists, the relevant body is the Western Australian Branch of the Physiotherapists Association;~~

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- ~~———— (d) chiropractors, the relevant body is the Chiropractors Registration Board;~~
- ~~———— (e) occupational therapists, the relevant body is the Western Australian Association of Occupational Therapists (Inc);~~
- ~~———— (f) clinical psychologists, the relevant body is the Australian Psychological Society;~~
- ~~———— (g) speech therapists, the relevant body is the Australian Association of Speech and Hearing;~~
- ~~———— (h) persons providing treatment of a kind approved for the purposes of the definition of “approved treatment” in section 5(1), the relevant body is such body, if any, as is prescribed by regulations;~~
- ~~———— (i) approved rehabilitation providers, the relevant body is such body, if any, as is prescribed by regulations.~~
- ~~— (2) A regulation may require any matter or thing to be verified by statutory declaration.~~

~~{(3), (4) repealed}~~

- ~~— (5) Any regulations made pursuant to subsection (1) may adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act or under any Act of the Parliament of the Commonwealth or the United Kingdom, or any of the tables, standards, rules, codes or specifications of the bodies known as Standards Australia, the British Standards Institution, the International Standards Organization, the National Acoustics Laboratory, or other like body specified in the regulations.~~

~~———— [Section 176 amended by No. 44 of 1985 s. 40; No. 86 of 1986 s. 5; No. 65 of 1987 s. 34; No. 96 of 1990 s. 47; No. 72 of 1992 s. 22; No. 48 of 1993 s. 28; No. 34 of 1999 s. 48 and 57; No. 74 of 2003 s. 134(3).]~~

Part XI — Dispute resolution

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

Division 1 — General

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

176. Exclusive jurisdiction

(1) In this Part —

“dispute” means —

- (a) a dispute in connection with a claim for compensation, or the liability to pay compensation, under this Act;
- (b) a dispute in connection with an obligation imposed under Part IX;
- (c) any other dispute or matter for which provision is made under this Act for determination by an arbitrator;
- (d) any other matter of a kind prescribed by the regulations.

(2) A proceeding for the determination of a dispute is not capable of being brought other than under this Part or Part XII.

(3) Subject to this Act, arbitrators have exclusive jurisdiction to examine, hear and determine all disputes.

*[Section 176 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

177. Evidence of communication between worker and injury management officer

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

[Section 177 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Division 2 — Requirements before commencing proceeding

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

178. Notice of injury and claim

(1) Proceedings for the recovery under this Act of compensation for an injury are not maintainable unless —

- (a) a notice of the occurrence of the injury has been given under section 179 in writing containing substantially the information required by subsection (2) as soon as practicable after the occurrence; and
- (b) the claim for compensation with respect to such injury has been made within 12 months from the occurrence of the injury or, in case of death, within 12 months from the time of death,

but —

- (c) the want of or any defect or inaccuracy in such notice is not a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in defending the proceedings by the want, defect or inaccuracy, or that such want, defect or

inaccuracy was occasioned by mistake, absence from the State, or other reasonable cause; and

- (d) the failure to make a claim within the period mentioned in paragraph (b) is not a bar to the maintenance of such proceedings, if it is shown that the employer has not been prejudiced in defending the proceedings by such failure, or if it is found that the failure was occasioned by mistake, absence from the State, or other reasonable cause.

(2) Notice in respect of an injury under this Act is to state —

- (a) the name and address of the person injured;
(b) in ordinary language the cause of the injury; and
(c) the date and place at which the injury occurred,

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

[Section 178 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

179. Service of notice of injury

- (1) Notice in respect of an injury under this Act is to be served on the employer, or, if there is more than one employer, upon one of such employers.
- (2) The notice may be served by delivering it at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.
- (3) When the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering it at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there is more than one office, any one of the offices of such body.

(4) When the employer is —

(a) the State, notice in respect of an injury under this Act is to be served on the State Solicitor, at Perth, or the manager of the work on which the worker was employed at the time the injury occurred;

(b) the Governor under the *Governor's Establishment Act 1992*, notice in respect of an injury under this Act is to be served on the Official Secretary within the meaning of that Act;

(c) the President of the Legislative Council, notice in respect of an injury under this Act is to be served —

(i) in the case of a worker who is a member of the Department of the Legislative Council, on the Clerk of the Legislative Council; or

(ii) in the case of a worker who is an electorate officer, on the Director-General;

(d) the Speaker of the Legislative Assembly, notice in respect of an injury under this Act is to be served —

(i) in the case of a worker who is a member of the Department of the Legislative Assembly, on the Clerk of the Legislative Assembly; or

(ii) in the case of a worker who is an electorate officer, on the Director-General;

or

(e) the President of the Legislative Council and the Speaker of the Legislative Assembly, acting jointly, notice in respect of an injury under this Act is to be served, in the case of a worker who is a member of —

(i) the Department of the Parliamentary Reporting Staff, on the Chief Hansard Reporter;

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

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

as the case requires.

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

[Section 179 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

180. Provision of certain documents before commencement of proceeding

(1) In this section —

“injury” includes alleged injury;

“relevant document” means any of the following —

- (a) a contract of service or apprenticeship to which the worker is a party;
- (b) a contract for service to which the worker is a party;
- (c) records of wages or other remuneration paid to the worker;
- (d) a report relevant to the injury by a medical practitioner who has treated the worker for the injury;
- (e) a report by a medical practitioner who has conducted tests or investigations on the worker in relation to the injury;
- (f) a report by a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (d) or (e) in connection with treatment of, or tests related to, the injury;
- (g) a report by an approved vocational rehabilitation provider in relation to the worker;

- (h) a notice of occurrence of the injury made in accordance with section 178(1)(a);
 - (i) a claim for compensation with respect to the injury made in accordance with section 178(1)(b);
 - (j) a document of a kind prescribed by the regulations.
 - (2) A worker who has suffered an injury, or the worker's legal practitioner or agent, may request the worker's employer at the time the injury occurred, or that employer's insurer, to provide the person making the request with a copy of such relevant documents as are in the possession of or under the control of the employer and the insurer.
 - (3) If a worker has made a claim for compensation with respect to noise induced hearing loss in accordance with section 178(1)(b), the worker's employer or that employer's insurer may request WorkCover WA to provide the person making the request with a copy of any documents in the possession of or under the control of WorkCover WA that —
 - (a) are of a kind described in paragraph (d), (e) or (f) of the definition of "relevant document" in subsection (1); or
 - (b) relate to the worker's employment history or the worker's exposure to noise.
 - (4) A request under subsection (2) or (3) is to be made in accordance with the DRD Rules and within the time prescribed by the DRD Rules.
 - (5) An employer or insurer requested to provide a copy of a relevant document under subsection (2) or (3) that fails to comply with the request within the period referred to in subsection (4) commits an offence.
- Penalty: \$1 000.

- (6) An arbitrator may make an order requiring the production of documents under this section.

[Section 180 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Division 3 — Proceedings before an arbitrator

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

181. Arbitrators to determine disputes

- (1) A party to a dispute may apply to the Director in accordance with this Act and the DRD Rules for determination of the dispute by an arbitrator.

- (2) A proceeding before an arbitrator commences when the application is accepted by the Director.

[Section 181 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

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

- (1) When an application is accepted by the Director the applicant is to give a copy of the application to —

(a) each other party;

(b) any other person entitled under this Act to a copy of, or notice of, the application; and

(c) any person to whom the applicant is directed by the Director to give a copy of the application.

- (2) Subsection (1) does not require the applicant to give a copy of the application to a person mentioned in subsection (1) (a “notifiable person”) if —

(a) the Director has undertaken to give a copy of the application to the notifiable person; or

(b) under subsection (3) an arbitrator dispenses with the requirement to give a copy of the application to a notifiable person.

(3) An arbitrator may make an order dispensing with the requirement to give a copy of an application to a notifiable person specified in the order if satisfied —

(a) that the applicant has made all reasonable attempts to give a copy of the application to the notifiable person but has been unsuccessful; or

(b) that the hearing of the application without notice to the notifiable person would not cause injustice.

(4) The DRD Rules may provide for the manner in which and time within which subsection (1) is to be complied with.

[Section 182 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

183. Information exchange between parties

(1) When, and at times prescribed by the DRD Rules after, an application is made for a determination of a dispute by an arbitrator, each party to the dispute must provide to the other party and to the Director, in accordance with the DRD Rules, such documents, material and information as the DRD Rules require.

(2) Subject to section 206, a party to a dispute who fails to comply with a requirement of subsection (1) commits an offence.

Penalty: \$2 000.

(3) Where a worker, after an injury has occurred, makes a statement in writing, in relation to the injury to the employer of the worker or to an insurer or to any person acting on behalf of the employer or insurer, that statement is not to be admitted in evidence if tendered by the employer or insurer or used by the employer or insurer in a proceeding before an arbitrator unless

the employer or insurer has supplied to the worker or to a legal practitioner or agent acting on behalf of the worker in the proceeding a copy in writing of the statement.

- (4) Any document, material or information that a party to a dispute has failed to provide in contravention of subsection (1) cannot be admitted on behalf of the party in a proceeding on the dispute before an arbitrator.
- (5) A witness cannot appear in a proceeding on a dispute before an arbitrator if a party to the dispute has failed to file a statement from that witness in contravention of this section.
- (6) Subsections (2), (4) and (5) do not apply if the party is a worker unless it is established that the worker was represented by a legal practitioner or agent (as defined in section 261) at the relevant time.
- (7) The DRD Rules may provide for exceptions to subsections (4) and (5) and may authorise an arbitrator to permit —
 - (a) the admission in a proceeding before the arbitrator in specified circumstances of any document, material or information that would otherwise be not admissible under subsection (4); or
 - (b) the appearance in a proceeding before the arbitrator in specified circumstances of a witness who would otherwise not be permitted to appear under subsection (5).
- (8) If an arbitrator is satisfied that a party has failed without reasonable excuse to comply with a requirement of this section, the arbitrator may do any one or more of the following —
 - (a) refer the matter to WorkCover WA;
 - (b) note the matter in a certificate issued by the arbitrator in respect of the dispute (together with details of the documents, material or information to which the failure relates);

- (c) order that a specified amount or proportion of the costs that would otherwise be recoverable by the party in connection with the application to the arbitrator are not recoverable.

[Section 183 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

184. Interim assessment and minor claims

When an application is made under this Part, the Director may refer the application or any part of the application to be dealt with under Part XII if the application or that part of the application could have been made under that Part, and may defer determination of a dispute under this Part while the matter referred is being dealt with under that Part.

[Section 184 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

185. Arbitrator to attempt conciliation

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

[Section 185 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

186. Arbitrator may review decision

(1) In this section —

“new information” means information relevant to a decision that, although available to a party at the time the decision was made, was not available to the arbitrator and, in the opinion of the arbitrator, justifies reconsideration of the matter.

(2) If new information becomes available after an arbitrator makes a decision, the arbitrator may reconsider the decision and —

(a) vary or revoke the decision previously made; or

(b) make any further decision,

as the arbitrator considers appropriate having regard to the new information.

[Section 186 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

187. Decisions of arbitrator

(1) Except as otherwise provided by this Act a decision of an arbitrator —

(a) is final and binding on the parties and is not subject to an appeal; and

(b) is not to be vitiated because of any informality or want of form.

(2) A decision of an arbitrator or anything done under this Act in the process of coming to a decision of an arbitrator is not amenable to judicial review.

[Section 187 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Division 4 — Practice and procedure

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

188. Practice and procedure, generally

- (1) An arbitrator is bound by rules of natural justice except to the extent that this Act authorises, whether expressly or by implication, a departure from those rules.
- (2) The Evidence Act 1906 does not apply to proceedings before an arbitrator and an arbitrator —
 - (a) is not bound by the rules of evidence or any practice or procedure applicable to courts of record, except to the extent that the DRD Rules make them apply; and
 - (b) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (3) An arbitrator may inform himself on any matter as the arbitrator thinks fit.
- (4) An arbitrator may —
 - (a) receive in evidence any transcript of evidence in proceedings before a court or other person or body acting judicially and draw any conclusion of fact from the transcript; and
 - (b) adopt, as the arbitrator thinks fit, any finding, decision, or judgment of a court or other person or body acting judicially that is relevant to the proceeding.
- (5) To the extent that the practice and procedure of an arbitrator are not prescribed under this Act, they are to be as the arbitrator determines.

*[Section 188 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

189. Relief or redress not restricted to claim

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

[Section 189 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

190. Directions

(1) An arbitrator may give directions at any time in a proceeding and do whatever is necessary for the speedy and fair conduct of the proceeding.

(2) An arbitrator may give directions on the initiative of the arbitrator or on the application of a party.

(3) A directions hearing conducted by an arbitrator may be held for the purposes of this section before the hearing of the proceeding.

[Section 190 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

191. Dependants

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

[Section 191 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

192. Arbitrator may regard illegal contracts of employment as valid

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

[Section 192 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

193. Power of arbitrator to require information

(1) An arbitrator may order any person (whether or not a party to a dispute before the arbitrator) —

- (a) to produce, at a time and place specified in the order, the documents or material specified in the order; or
- (b) to furnish specified information within a time specified in the order.

(2) The order may require the documents or material to be produced or the information to be furnished —

- (a) to the arbitrator or to another party to a dispute before the arbitrator, in the case of an order given to a party to the dispute; or
- (b) to the arbitrator in the case of an order given to a person who is not a party to a dispute before the arbitrator.

(3) If a person fails without reasonable excuse to produce a document or material or furnish information in compliance with an order given to the person under this section, the person cannot as a party to a proceeding before a dispute resolution authority have the document, material or information admitted in the proceeding.

- (4) An arbitrator may exercise powers under this section at the request of a party to a dispute before an arbitrator or of the arbitrator's own motion.
- (5) The regulations or DRD Rules may make provision for or with respect to any of the following matters —
- (a) exempting specified kinds of documents, material or information from the operation of this section;
 - (b) specifying cases and circumstances in which an arbitrator is required to exercise the arbitrator's powers under this section;
 - (c) specifying cases and circumstances in which an arbitrator is not to exercise the arbitrator's powers under this section.
- (6) An arbitrator may order a person to produce a document, material or information despite any rule of law relating to privilege or the public interest in relation to the production of documents.

[Section 193 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

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

- (1) When a document or other material or information relevant to a proceeding before an arbitrator is produced or furnished to the arbitrator by a party to the proceeding or another person (whether or not pursuant to a requirement under this Part), the arbitrator may produce or furnish the document, material or information to —
- (a) any other party to the proceeding;
 - (b) any other party's legal representative or registered agent; or
 - (c) a medical practitioner (including a medical assessment panel and an approved medical specialist panel).

- (2) The arbitrator may, when producing or furnishing documents, material or information, to another person direct that the person must not cause or permit disclosure of the information, or information in the documents or material, or any specified part of that information, to another person.

[Section 194 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

195. Representation

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

[Section 195 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

196. Arbitrator may appoint guardian

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

[Section 196 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

197. Interpreters and assistants

(1) Unless the arbitrator directs otherwise, a party or a party's representative may be assisted in the course of a proceeding by an interpreter or another person necessary or desirable to make the proceeding intelligible to that party and to enable the party to communicate adequately.

(2) A person may present a written submission or evidence in a language other than English if it is accompanied by a translation into English and a statutory declaration by the translator to the effect that the translation accurately reproduces in English the contents of the original document.

[Section 197 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

198. Electronic hearings and proceedings without hearings

(1) A proceeding before an arbitrator need not be conducted by formal hearing and may, if the DRD Rules so provide or if the arbitrator thinks it appropriate, be conducted by way of a conference between the parties.

(2) If an arbitrator thinks it appropriate, the arbitrator is to allow the parties and their representatives and any witnesses (or one or more of them) to participate in a conference or hearing of a proceeding by means of telephones, video links, or any other system or method of communication.

- (3) If an arbitrator thinks it appropriate, the arbitrator may conduct all or part of a proceeding entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a conference or hearing.
- (4) An arbitrator may take into account a written submission prepared by a legal practitioner acting for a party to a proceeding and submitted by or on behalf of the party, whether or not the party is represented by a legal practitioner at any conference or hearing of the proceeding.
- (5) If an arbitrator conducts a proceeding in accordance with this section, the arbitrator is to take steps to ensure that the public has access to, or is precluded from access to, matters disclosed in the proceeding to the same extent as if the proceeding had been heard before the arbitrator with the attendance in person of all persons involved in the proceeding.
- (6) Provisions of this Act applying to hearings apply with any necessary modifications in relation to a conference or proceeding conducted in accordance with subsection (3).

[Section 198 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

199. Hearings to be held in private

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

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

[Section 199 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

200. Notice of hearings

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

[Section 200 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

201. Expert or professional assistance

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

[Section 201 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

202. Summoning witnesses

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

[Section 202 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

203. Powers relating to witnesses

(1) In any proceeding before an arbitrator, the arbitrator may —

- (a) call any person to give evidence;
- (b) examine any witness on oath or affirmation, or by use of a statutory declaration;
- (c) examine or cross-examine any witness to such extent as the arbitrator thinks proper; and
- (d) require any witness to answer questions put to the witness.

(2) Nothing in subsection (1) enables an arbitrator to require a witness to answer a question if the witness —

- (a) is excused by section 206(1) from answering the question; or
- (b) has a reasonable excuse (other than on the ground mentioned in section 204(1) or 205) for refusing to answer the question.

[Section 203 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

204. Privilege against self-incrimination

(1) A person is not excused from complying with a requirement under this Part to answer a question, produce a document or other material, or furnish information, on the ground that the answer, the production of the document or other material, or the furnishing of the information, might incriminate the person or render the person liable to a penalty.

(2) However neither —

- (a) an answer given by that person that was given to comply with the requirement; nor

(b) the fact that a document or other material produced by the person, or information furnished by the person, to comply with the requirement was produced or furnished,

is admissible in evidence in any criminal proceedings against the person other than proceedings for perjury or for an offence against this Act arising out of the false or misleading nature of an answer.

[Section 204 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

205. Legal professional privilege in relation to medical reports

(1) A legal practitioner is not excused from complying with a requirement under this Part to answer a question in relation to a medical report or produce a medical report on the ground that the answer to the question would disclose, or the report contains, a privileged communication made by or to the legal practitioner in his capacity as a legal practitioner.

(2) Subsection (1) does not apply in respect of a question that does not relate directly to the treatment, or nature or extent of impairment, or assessment of degree of impairment, of a worker.

(3) A medical report may be produced by the legal practitioner in compliance with a requirement under this Part with the omission of passages that —

(a) do not relate directly to the treatment, or nature or extent of impairment, or assessment of degree of impairment, of a worker; and

(b) contain a privileged communication made by or to the legal practitioner in his capacity as a legal practitioner.

[Section 205 inserted by the Workers' Compensation Reform Bill 2004 cl. 130 (as amended in Committee).]

206. Other claims of privilege

- (1) Unless it would be contrary to section 204 or 205 or an order under section 193, a person is excused from answering a question or producing or furnishing a document, material or information in a proceeding if the person could not be compelled to answer the question or produce or furnish the document, material or information in proceedings in the Supreme Court.
- (2) An arbitrator may require a person to produce a document or other material to the arbitrator for the purpose of determining whether or not it is a document or material that the arbitrator has power to require the person to produce.

[Section 206 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

207. Oaths and affirmations

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

[Section 207 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

208. Authorising person to take evidence

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

- (5) Evidence taken under this section is to be regarded as having been given to the arbitrator.

[Section 208 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

209. Dealing with things produced

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

[Section 209 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

210. Referral of medical dispute for assessment

- (1) If permitted by section 145A to do so, an arbitrator may refer a question as to —

- (a) the nature or extent of an injury;
- (b) whether an injury is permanent or temporary; or
- (c) a worker's capacity for work,

for determination by a medical assessment panel.

- (2) Without limiting subsection (1), that subsection applies to —

- (a) questions as to the permanent or other loss of the efficient use of any part or faculty of the body for the purposes of Part III Division 2, or to the degree of that loss;
- (b) questions as to the degree of disability assessed in accordance with section 93D(2);
- (c) questions for the purposes of section 31F as to whether a worker has contracted AIDS.

(3) Subsection (1) does not apply to questions as to —

- (a) the permanent or other impairment of the efficient use of any part or faculty of the body for the purposes of Part III Division 2A, or to the degree of that impairment;
- (b) the degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3;
- (c) the degree of whole of person impairment for the purposes of Part IXA; or
- (d) the degree of permanent whole of person impairment for the purposes of clause 18A.

[Section 210 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Division 5 — Decisions

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Subdivision 1 — General provisions

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

211. Decisions generally

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

[Section 211 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

212. Conditional and ancillary orders and directions

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

[Section 212 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

213. Form and content of decision and reasons

(1) A decision of an arbitrator is to be given in writing to a party to a proceeding if —

(a) the DRD Rules state that the decision is to be given in writing to that party; or

(b) within 14 days after the arbitrator makes the decision, the party requests that the decision be given in writing.

(2) An arbitrator's decision in writing is to include information as to appeal rights that may be available to the parties under this Act.

(3) The reasons for a decision of an arbitrator are to be given in writing to a party to a proceeding if —

(a) the DRD Rules state that the reasons are to be given in writing to that party; or

(b) within 14 days after the arbitrator makes the decision, the party requests that the reasons for the decision be given in writing.

(4) The reasons for an arbitrator's decision —

(a) need only identify the facts that the arbitrator has accepted in coming to the decision and give the reasons for doing so;

(b) need only identify the law that the arbitrator has applied in coming to the decision and give the reasons for doing so;

(c) need not canvass all the evidence given in the case; and

(d) need not canvass all the factual and legal arguments or issues arising in the case.

(5) A written transcript of the part of the proceeding in which a decision is given orally or reasons are given orally is sufficient compliance with the requirement for the decision or reasons to be in writing.

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

[Section 213 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

214. Validity of decision

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

[Section 214 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

215. When decision has effect

(1) A decision of an arbitrator comes into effect immediately after it is given, or at such later time as is specified in it.

(2) Subsection (1) does not prevent a stay of the effect of the decision from being given under section 250.

[Section 215 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

216. Correcting mistakes

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

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

[Section 216 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Subdivision 2 — Particular orders

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

217. Order as to total liability

(1) This section applies where —

- (a) an arbitrator considers that an injury to a worker that is compensable under this Act has resulted in the permanent total incapacity for work of the worker;
- (b) an order for redemption of the liability for the incapacity has not already been made under section 67;
- (c) no memorandum of agreement for the payment of a lump sum in redemption of the liability for the incapacity has been recorded under section 76; and
- (d) the total weekly payments by way of compensation payable under clause 7 for that injury have reached the prescribed amount.

(2) If this section applies, the arbitrator may, subject to this section, make any order as to the total liability of the employer for the incapacity that the arbitrator thinks proper in the circumstances.

(3) An arbitrator is not to make an order under subsection (2) unless the arbitrator considers an order ought to be made, having regard to the social and financial circumstances and the reasonable financial needs of the worker.

(4) The total liability of the employer ordered under this section is not to exceed the lesser of —

(a) an amount equal to 75% of the prescribed amount; or

(b) weekly payments at the rate to which the worker was entitled at the time when the total weekly payments for the injury of the worker reached the prescribed amount —

(i) for the period of the expectation of life of the worker; or

(ii) if section 56 or Schedule 5 clause 2 applies in respect of the incapacity, up to the date when weekly payments would cease by reason of age,

whichever is the shorter.

(5) An arbitrator is to deal with the payment of the final liability by ordering weekly payments at such rate as the arbitrator thinks proper in the circumstances, having regard to the matters referred to in subsection (3), but not at a rate that exceeds the rate to which the worker was entitled at the time when the total weekly payments for the injury of the worker reached the prescribed amount.

(6) In making an order as to final liability under this section an arbitrator may order payment of an amount for arrears of such weekly payments from the time when the total weekly payments for the worker's injury reached the prescribed amount to the date of the order.

[Section 217 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

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

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

[Section 218 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Subdivision 3 — Enforcement of decisions

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

219. Enforcement of decisions

(1) A person to whom money is to be paid under a decision of an arbitrator may enforce the decision by filing in a court of competent jurisdiction —

(a) a copy of the decision that the Director has certified to be a true copy; and

(b) an affidavit as to the amount not paid under the decision.

(2) No charge is to be made for filing a copy of a decision or affidavit under this section.

(3) On filing, the decision is to be taken to be an order of that court, and may be enforced accordingly, and section 142(1) of the Supreme Court Act 1935 applies to the amount not paid under the decision as if it were payable under a judgment of the court.

*[Section 219 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

Division 6 — Miscellaneous

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

220. Evidence not admissible in common law proceedings

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

*[Section 220 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

221. Payment of compensation awarded

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

[Section 221 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

222. Interest before order for payment

(1) In any proceeding before an arbitrator, the arbitrator may order that there is to be included, in any sum to be paid, interest on the whole or any part of the sum for the whole or any part of the period before the sum is payable.

(2) Interest payable under an order made under subsection (1) is to be calculated at a rate prescribed by or determined under the regulations.

(3) This section does not —

(a) authorise the giving of interest upon interest; or

(b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.

[Section 222 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

223. Interest after order for payment

(1) Unless an arbitrator orders in any particular case that interest is not payable, interest is payable on so much of the amount of any sum ordered to be paid by an arbitrator as is from time to time unpaid.

(2) Interest payable under subsection (1) in respect of any sum ordered to be paid —

(a) is to be calculated as from the date when the order was made or from such later date as an arbitrator in any particular case fixes;

(b) is to be calculated at a rate prescribed by or determined under the regulations; and

(c) forms part of the sum ordered to be paid, but not so as to require the payment of interest on interest.

(3) Despite subsections (1) and (2), where an amount ordered to be paid is paid in full within the period prescribed or determined under the regulations, interest is not payable on the amount so paid.

[Section 223 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

224. Interest on agreed payment of lump sum compensation

(1) An arbitrator may order, in accordance with the regulations, that interest is payable on so much of the amount of any sum agreed to be paid under this Act as is from time to time unpaid.

(2) Interest payable under subsection (1) in respect of any sum so agreed to be paid —

(a) is to be calculated as from the date provided by the agreement as the date when the sum is due to be paid or, if the agreement does not so provide, the date that is 21 days after the date the agreement was made;

(b) is to be calculated at a rate prescribed by or determined under the regulations; and

(c) forms part of the sum agreed to be paid, but not so as to require the payment of interest on interest.

[Section 224 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

225. Regulations may exclude interest

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

[Section 225 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]

Part XII — Interim orders and minor claims

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

Division 1 — Preliminary

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

226. Interpretation

In this Part —

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

*[Section 226 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

227. Exercise of functions under this Part

(1) Without limiting section 198, an arbitrator may make a decision
under this Part on the basis of —

(a) documents and information provided when the relevant
application was made; and

(b) advice given to the arbitrator by an officer of the DRD.

(2) An arbitrator is not to conduct a formal hearing under this Part.

(3) An arbitrator is not required to give reasons in writing for a
decision under this Part.

(4) A decision under this Part is not subject to an appeal or
amenable to judicial review.

*[Section 227 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

228. Provisions of Part XI apply

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

[Section 228 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

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

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

[Section 229 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

230. DRD Rules apply

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

[Section 230 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Division 2 — Interim payment orders

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

231. Application for interim payment order

- (1) An application for an order as to payment of weekly payments before liability for those weekly payments is otherwise

determined under this Act may be made under this Division by a worker at any time after —

(a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 178(1)(b); and

(b) the worker suffering the injury has served on the employer a certificate signed by a medical practitioner —

(i) in or to the effect prescribed by the regulations containing substantially the information sought in the form; or

(ii) to the effect that the worker is unfit for work because of a recurrence of an injury in respect of which a certificate as first referred to has previously been served.

(2) An application for an order as to payment of statutory expenses before liability for those expenses is otherwise determined under this Act may be made by a worker at any time after —

(a) a claim for compensation by way of payment of statutory entitlements has been made on an employer in accordance with section 178(1)(b); and

(b) the worker suffering the injury has served on the employer a certificate in or to the effect prescribed and signed by a medical practitioner to the effect that the expenses claimed are expenses incurred by the worker for treatment or services required in relation to the injury.

[Section 231 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

232. Orders for interim weekly payments

(1) Subject to section 234, if —

(a) a period of not less than 21 days has elapsed since a worker served on the worker's employer the documents referred to in section 231(1); and

(b) the worker has not received the first of the weekly payments claimed,

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

(2) An order under subsection (1) is referred to in this Division as an **"interim payment order"**.

(3) An arbitrator may make an interim payment order for weekly payments of compensation on an application under this Division unless it appears to the arbitrator that —

(a) the claim concerned would have minimal prospects of success under Part XI;

(b) insufficient medical evidence is available concerning the nature or period of incapacity of the worker; or

(c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.

(4) An interim payment order can be made subject to conditions.

(5) A further interim payment order can be made after the expiry of any earlier order.

[Section 232 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

233. Orders for interim payment of statutory expenses

(1) Subject to section 234, if —

(a) a period of not less than 21 days has elapsed since a worker served on the worker's employer the documents referred to in section 231(2); and

(b) the worker has not received the statutory expenses claimed,

an arbitrator may order the employer to pay statutory expenses to the worker.

(2) An order under subsection (1) is referred to in this Division as an **"interim payment order"**.

(3) An arbitrator may make an interim payment order for statutory expenses unless it appears to the arbitrator that —

(a) the claim concerned would have minimal prospects of success under Part XI;

(b) insufficient evidence is available as to whether or not the expenses claimed are reasonable; or

(c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.

(4) An interim payment order can be made subject to conditions.

(5) A further interim payment order can be made after the expiry of any earlier order.

[Section 233 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

234. Limits on interim payment orders

(1) An arbitrator is not to order the payment of weekly payments of compensation for a period that exceeds 12 weeks.

(2) An arbitrator may order payment of weekly payments during a period that is before the order is made, but that period is not to exceed 10 weeks.

(3) An arbitrator is not to make an interim payment order for payment of statutory expenses for an amount that is more than 5% of the prescribed amount.

[Section 234 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

235. Effect of interim payment order

(1) The payment of compensation in accordance with an interim payment order —

(a) is not an admission of liability by the person paying the compensation; and

(b) does not prevent a question of liability from being heard and determined on an application under section 58 or otherwise under this Act as if the compensation had not been paid.

(2) Refusal to make an interim payment order is not a finding as to liability in respect of the matter concerned.

[Section 235 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

236. Recovery of payments

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

(a) the worker or other person who received that compensation is not required to refund the compensation unless the arbitrator otherwise orders under paragraph (b);

- (b) if the arbitrator is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, the arbitrator may order the worker or other person concerned to refund the whole or a specified part of the compensation;
- (c) the arbitrator may (instead of making an order for a refund) order any other person whom the arbitrator determines was liable for the whole or any part of the compensation to reimburse the person who paid the compensation;
- (d) the compensation is to be excluded from any determinations of the claims experience of the employer for the purposes of calculating the premium payable by the employer for a policy of insurance.

[Section 236 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

237. Revocation of interim payment order

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

[Section 237 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Division 3 — Interim suspension or reduction orders

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

238. Interim suspension or reduction order

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

*[Section 238 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

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

(1) If —

(a) an interim suspension order is made under section 238(2); and

(b) an arbitrator dismisses the Part XI application,

the weekly payments of the worker during the period of suspension are to be paid.

(2) If —

(a) an interim suspension order is made under section 238(2); and

(b) on the Part XI application an arbitrator orders that the weekly payments be increased or reduced,

the weekly payments of the worker during the period of suspension are to be paid as if the order under Part XI had effect during that period.

(3) If —

(a) an interim reduction order is made under section 238(2); and

(b) on the Part XI application an arbitrator dismisses the application or orders that the weekly payments be increased,

the weekly payments of the worker during the period of reduction are to be paid as if the order under Part XI had effect during that period.

(4) Nothing in this Division affects the operation of section 71 in relation to a determination under Part XI of an application in respect of the same matter as an application that has been dismissed under this Division.

[Section 239 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

240. Revocation of interim suspension or reduction order

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

[Section 240 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Division 4 — Expedited determination of minor claims

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

241. Application for determination of minor claim

- (1) An application for an order as to payment of not more than 12 weekly payments in respect of a period prior to the application

may be made under this Division by a worker at any time after —

(a) a claim for compensation by way of weekly payments for total or partial incapacity has been made on an employer in accordance with section 178(1)(b); and

(b) the worker suffering the injury has served on the employer a certificate signed by a medical practitioner —

(i) in or to the effect prescribed by the regulations containing substantially the information sought in the form; or

(ii) to the effect that the worker is unfit for work because of a recurrence of an injury in respect of which a certificate as first referred to has previously been served.

(2) An application for an order as to payment of statutory expenses not exceeding 5% of the prescribed amount may be made by a worker at any time after —

(a) a claim for compensation under this Act by way of payment of statutory entitlements has been made on an employer in accordance with section 178(1)(b); and

(b) the worker suffering the injury has served on the employer a certificate in or to the effect prescribed by the regulations and signed by a medical practitioner to the effect that the expenses claimed are expenses incurred by the worker for treatment or services required in relation to the injury.

(3) If —

(a) a period of not less than 21 days has elapsed since a worker served on the worker's employer the documents referred to in subsection (1) or (2), as the case requires;

(b) the worker has not received the first of the weekly payments or the statutory expenses claimed; and

- (c) an arbitrator is satisfied that the worker is entitled to some or all of the compensation claimed,
- the arbitrator may order the employer to pay the compensation to which it appears to the arbitrator the worker is entitled.
- (4) An arbitrator may make an order for weekly payments of compensation unless it appears to the arbitrator that —
- (a) the claim would have minimal prospects of success under Part XI;
- (b) insufficient medical evidence is available concerning the nature or period of incapacity of the worker; or
- (c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.
- (5) An arbitrator may make an order for payment of statutory expenses unless it appears to the arbitrator that —
- (a) the claim concerned would have minimal prospects of success under Part XI;
- (b) insufficient evidence is available as to whether or not the expenses claimed are reasonable; or
- (c) circumstances exist that are prescribed by the DRD Rules as circumstances in which such an order is not to be made.
- [Section 241 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

242. Limits on minor claims orders

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

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

[Section 242 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

243. No recovery of compensation

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

[Section 243 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

244. Production of documents

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

[Section 244 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Part XIII — Questions of law and appeals

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

245. Application of Part XI

- (1) Unless the contrary intention appears in this Part —
 - (a) the provisions of Part XI apply to and in relation to the exercise of jurisdiction of the Commissioner under this Part as if references in Part XI to an arbitrator were references to the Commissioner; and
 - (b) in the exercise of jurisdiction under this Part the Commissioner has and may exercise or perform all of the powers, duties, responsibilities, authorities and jurisdictions of an arbitrator.
- (2) A party to a proceeding or a witness appearing before the Commissioner has the same duties and responsibilities as a party to a proceeding or a witness appearing before an arbitrator.
- (3) A person representing a party in a proceeding before the Commissioner has the same duties and responsibilities as a person representing a party in a proceeding before an arbitrator.

[Section 245 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

246. Reference of question of law to Commissioner

- (1) A novel or complex question of law arising in a proceeding before an arbitrator under Part XI may be referred by the arbitrator for the determination of the Commissioner.
- (2) A question of law arising in a proceeding before an arbitrator under Part XI may, with the leave of the Commissioner, be referred by a party to the proceeding for the determination of the Commissioner.

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(3) The Commissioner is not to grant leave unless satisfied that the question involves a novel or complex question of law.

(4) The reference of a question of law under this section may be by stating a case on a question of law.

(5) On hearing a matter referred under this section, the Commissioner has jurisdiction to make such orders as the Commissioner thinks fit with regard to the matter and to the costs of and incidental to the hearing and determination of it.

[Section 246 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

247. Appeal against decision of arbitrator

(1) A party to a dispute may, with the leave of the Commissioner, appeal to the Commissioner against a decision in respect of the dispute by an arbitrator under Part XI.

(2) Subject to subsection (3), the Commissioner is not to grant leave to appeal unless —

(a) in the case of an appeal in which an amount of compensation is at issue —

(i) a question of law is involved and the amount at issue in the appeal is both —

(I) at least \$5 000 or such other amount as may be prescribed by the regulations;
and

(II) at least 20% of the amount awarded in the decision appealed against;

or

(ii) a question of law is involved and, in the opinion of the Commissioner, the matter is of such importance that, in the public interest, an appeal should lie;

and

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

[Section 247 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

248. Commencing appeal

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

[Section 248 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

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249. Commissioner hearing to be held in public

- (1) Unless otherwise provided under this Act, hearings of the Commissioner are to be held in public.
- (2) On the application of a party or on its own initiative the Commissioner may, in the circumstances described in subsection (3), order that a hearing or any part of it be held in private.
- (3) The Commissioner may make an order under subsection (2) if the Commissioner considers it is necessary to do so —

 - (a) to avoid prejudicing the administration of justice;
 - (b) to avoid endangering the physical or mental health or safety of any person;
 - (c) to avoid the publication of confidential information or information the publication of which would be contrary to the public interest; or
 - (d) for any other reason in the interests of justice.

[Section 249 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

250. Effect of decision against which appeal made

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

[Section 250 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

251. Commissioner may state case

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

[Section 251 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

252. Indemnity as to costs

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

[Section 252 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

253. Decisions of Commissioner

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

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- (3) The Commissioner may reconsider any matter that has been dealt with by the Commissioner and rescind, alter or amend any decision previously made or given by the Commissioner.

[Section 253 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

254. Appeal against decision of Commissioner

- (1) A party to a proceeding before the Commissioner may by leave of the Supreme Court appeal to the Supreme Court from a decision of the Commissioner in the proceeding on a question of law.

- (2) The appeal is to be heard and determined by the Full Court of the Supreme Court.

- (3) The Supreme Court may —

(a) affirm, vary, or set aside the decision of the Commissioner;

(b) make any decision that the Commissioner could have made in the proceeding; or

(c) send the matter back to the Commissioner for reconsideration, either with or without the hearing of further evidence, in accordance with any directions or recommendations that the Court considers appropriate,

and, in any case, may make any order the Court considers appropriate.

- (4) An appeal, or an application for leave to appeal, is to be made in accordance with the rules of the Supreme Court and within the period of 28 days after —

(a) the day on which the Commissioner's decision is given;
or

(b) if the Commissioner gives a decision that is not in writing and the party then requests the Commissioner to

give a written decision, the day on which the written reasons are given.

(5) If leave is granted, the appeal is to be instituted in accordance with the rules of the Supreme Court and within the period of 21 days after the day on which leave is granted.

(6) The Supreme Court may extend a time limit fixed by this section, and the extension may be given even though the time limit has passed.

[Section 254 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Part XIV — Offences

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

255. Failing to comply with decision

- (1) A person who fails to comply with a decision of a dispute resolution authority commits an offence.

Penalty: \$5 000.

- (2) Subsection (1) does not apply if, or to the extent that —

(a) the person is excused by section 206 from complying with that decision;

(b) the person has a reasonable excuse (other than an excuse mentioned in section 204(1) or 205) for failing to comply with the decision; or

(c) the decision is an order of the dispute resolution authority requiring the payment of money.

- (3) If the dispute resolution authority made the decision without giving a person an opportunity to be heard, subsection (1) only applies to that person on the person being given personally or in accordance with subsection (4) —

(a) a copy of the decision that the Director has certified to be a true copy; and

(b) a copy of this section.

- (4) If a dispute resolution authority is satisfied that it is not possible or appropriate for a person to be personally given the documents referred to in subsection (3), the dispute resolution authority may specify another method for service of the documents on the person under that subsection.

*[Section 255 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

256. Failing to comply with summons

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

Penalty: \$2 000.

[Section 256 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

257. Failing to give evidence as required

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

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

Penalty: \$2 000.

[Section 257 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

258. Giving false or misleading information

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

Penalty: \$5 000.

[Section 258 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

259. Misbehaviour and other conduct

A person who —

- (a) insults, or obstructs or hinders the performance of the functions of, a dispute resolution authority;

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(b) insults, obstructs or hinders a person attending a hearing before a dispute resolution authority;

(c) misbehaves at a hearing before a dispute resolution authority;

(d) interrupts a hearing before a dispute resolution authority; or

(e) obstructs or hinders a person from complying with an order or direction of a dispute resolution authority or a summons to attend before the dispute resolution authority,

commits an offence.

Penalty: \$2 000.

[Section 259 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

260. Contempt of Commissioner

(1) If the Commissioner is satisfied that an act or omission of a person would constitute a contempt of the Court if a proceeding of the Commissioner were a proceeding in the Supreme Court, the Commissioner may report that act or omission to the Supreme Court and the Court has jurisdiction to deal with the matter as if it were a contempt of that Court.

(2) If —

(a) subsection (1) applies to an act or omission by a person and that act or omission is also an offence under this Part; and

(b) the person has been dealt with under subsection (1) for the act or omission,

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

[Section 260 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Part XV — Costs

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

Division 1 — General

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

261. Terms used in this Part

In this Part —

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

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

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

“costs” means —

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

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

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

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

- (a) in the person's capacity as a legal practitioner; and

- (b) in or for the purposes of a proceeding before a dispute resolution authority.

[Section 261 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

262. Costs to which this Part applies

- (1) This Part applies to and in respect of costs payable on a party and party basis, on a practitioner and client basis or on any other basis, unless this Part or a regulation otherwise provides.
- (2) The regulations may make provision for or with respect to excluding any class of matters from any or all of the provisions of this Part.

[Section 262 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

263. This Part prevails over *Legal Practice Act 2003*

This Part and any regulations under this Part prevail to the extent of any inconsistency with the *Legal Practice Act 2003*, and in particular Part 13 of that Act.

[Section 263 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Division 2 — Costs of parties in proceedings and costs of proceedings

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

264. Costs to be determined by dispute resolution authority

- (1) Subject to this Division, costs are in the discretion of the relevant dispute resolution authority.
- (2) A dispute resolution authority may determine by whom, to whom and to what extent costs are to be paid.

-
- (3) A dispute resolution authority may order costs to be assessed on the basis set out in Part 13 Division 3 of the *Legal Practice Act 2003* (or in relevant regulations under section 268) or on an indemnity basis.
- (4) Any party to a proceeding may apply to a dispute resolution authority for an order as to costs.
- (5) A dispute resolution authority is not to order the payment of costs by a worker unless the dispute resolution authority is satisfied that the costs relate to an application made by the worker that was frivolous or vexatious, fraudulent or made without proper justification.
- (6) If a dispute resolution authority is satisfied that a part only of the application was frivolous or vexatious, fraudulent or made without proper justification, the dispute resolution authority may order the worker to pay the costs relating to that part of the application.
- (7) Without limiting section 265, the regulations may make provision in relation to the making of orders for the payment by a party of the costs of another party so as to —
- (a) promote the early settlement of issues and disputes by agreement; and
- (b) discourage unnecessary delay, excessive attendances and excessive preparation of documentation.

[Section 264 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

265. Costs unreasonably incurred by representative

- (1) If in any proceeding before a dispute resolution authority or in any matter under this Act which is resolved by agreement, costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, of a legal practitioner or agent representing a party (the

“representative”), a dispute resolution authority may make an order —

- (a) disallowing the costs, as between the representative and the client;
- (b) directing the representative to repay the client costs which the client has been ordered to pay to any other party to the proceeding; and
- (c) directing the representative personally to indemnify any other person than the client against costs payable by the person indemnified.

- (2) A dispute resolution authority may by order exempt any costs or proportion of any costs from the operation of this section if of the opinion that it would be unjust not to do so because the representative concerned made all reasonable efforts to avoid unnecessary litigation in the proceeding or for any other reason should not be held responsible for the incurring of the costs concerned.

[Section 265 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

266. Agent's costs

An agent is not entitled to be paid or recover any amount for an agent service unless the agent is a registered agent.

[Section 266 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

267. Appeal costs

Despite section 264 —

- (a) an order for costs on the ground that an appeal was successful is not to be made by the Commissioner against a worker; and
- (b) if the appellant is a worker and is unsuccessful on an appeal, the Commissioner is not to make an order for the

payment of the appellant's costs on the appeal by any other party to the appeal.

[Section 267 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

268. Regulations for assessment of costs

- (1) If a dispute resolution authority makes an order for the payment of costs and does not fix the amount of costs, that amount is to be assessed or settled in accordance with the regulations.
- (2) Without limiting subsection (1), the regulations may —
- (a) make provision for or with respect to any matter for or in connection with which provision is made by Part 13 Division 3 of the Legal Practice Act 2003;
 - (b) adopt, with or without modification, any of the provisions of Part 13 Division 3 of the Legal Practice Act 2003; and
 - (c) make provision for or with respect to the assessment of costs by an arbitrator or another officer of the DRD.
- (3) To the extent that regulations under this section make provision for the costs payable to a legal practitioner, those regulations displace the provisions of the Legal Practice Act 2003.

[Section 268 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Division 3 — Maximum costs

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

269. Costs Committee

- (1) In this section —
- “Legal Costs Committee”** means the Legal Costs Committee established under the Legal Practice Act 2003.

(2) A committee called the Costs Committee is established.

(3) The Costs Committee is to be constituted by the following members —

(a) a presiding member who is to be a member of WorkCover WA;

(b) one or more other members of WorkCover WA; and

(c) 2 members of the Legal Costs Committee nominated by the chairperson of that Committee.

(4) The members are to be appointed by WorkCover WA.

(5) If the chairperson of the Legal Costs Committee fails to nominate a member under subsection (3)(c) within 30 days after receiving a written request from WorkCover WA, WorkCover WA may appoint a person as a member for the purposes of subsection (3)(c) in place of a member of the Legal Costs Committee.

[Section 269 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

270. Constitution and procedure of Costs Committee

(1) Subject to section 269, the constitution and procedure of, and other matters relating to, the Costs Committee —

(a) may be prescribed by the regulations;

(b) if not prescribed by the regulations, may be as directed in writing by WorkCover WA.

(2) To the extent that the procedure of the Costs Committee is not prescribed by the regulations or directed by WorkCover WA, the Costs Committee may determine its own procedure.

[Section 270 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

271. Costs determination

- (1) The Costs Committee may make a determination —
- (a) fixing maximum costs for legal services and agent services;
 - (b) fixing maximum costs for matters that are not legal services or agent services but are related to a claim for compensation (for example, expenses for witnesses or medical reports).
- (2) A provision of the determination —
- (a) may authorise any matter or thing to be determined, applied or regulated by a specified person or body;
 - (b) may fix a cost or amount by reference to a cost or amount fixed by a legal costs determination under the *Legal Practice Act 2003*.
- (3) The power under this section to make a determination for services or matters includes power to make a determination that no amount is recoverable for a particular service or matter or class of services or matters, with the result that a legal practitioner or agent is not entitled to be paid or recover any amount for the service or matter concerned.
- (4) A costs determination may be amended or revoked by a subsequent costs determination.

[Section 271 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

272. Consultation

- (1) Before making a determination the Costs Committee may —
- (a) publish notice of its intention and consider any submissions made to it in respect of the proposed determination; and

(b) make such other inquiries as it considers necessary to facilitate the making of the determination.

(2) In making a determination the Costs Committee —

(a) is not bound by the rules of evidence and may inform itself as it thinks fit; and

(b) is not required to conduct any proceeding in a formal manner.

[Section 272 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

273. Approval and publication of determination

(1) The Costs Committee is to report to the Minister —

(a) a determination under section 271; and

(b) the reasons for its decisions in respect of the determination.

(2) If the Minister approves the determination, the determination is to be published in the *Gazette*.

(3) A costs determination takes effect on and from —

(a) the day on which it is published in the *Gazette*; or

(b) if a later day is specified in the determination, the later day.

(4) Judicial notice is to be taken of —

(a) a costs determination published in the *Gazette*; and

(b) the day of publication of the determination.

[Section 273 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

274. Effect of costs determination

(1) A legal practitioner is not entitled to be paid or recover for a legal service or other matter an amount that exceeds any

maximum costs fixed for the service or matter by a costs determination.

(2) An agent is not entitled to be paid or recover for an agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by a costs determination.

(3) This section does not entitle a legal practitioner or agent to recover costs for a legal service or matter that a dispute resolution authority determines were unreasonably incurred.

[Section 274 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

275. Agreement as to costs

(1) An agreement is not to be made for a legal practitioner or agent to receive, for any legal service or agent service, any greater reward than is provided for in a costs determination.

(2) An agreement made contrary to this section is void.

[Section 275 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

276. Division does not apply to Part IV proceedings

Nothing in this Division affects the operation of section 87 in relation to an action for damages independently of this Act.

[Section 276 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Part XVI — Registered agents

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

277. Who may register as an agent

(1) This section applies to the following persons —

- (a) an officer of an organisation as defined in the *Industrial Relations Act 1979*;
- (b) an officer of an association of employers or employees registered under the *Workplace Relations Act 1996* of the Commonwealth;
- (c) a person employed by an insurer or self-insurer;
- (d) a person (other than a legal practitioner) employed by a legal practitioner or an incorporated legal practice;
- (e) an employee or officer of an organisation prescribed by the regulations;
- (f) a person, or a person in a class of persons, prescribed by the regulations.

(2) A person to whom this section applies may apply for registration as an agent in accordance with the regulations.

(3) Regulations are to —

- (a) provide for a scheme of registration of persons for the purposes of this section and the procedure for obtaining registration;
- (b) prescribe the circumstances in which, and the procedures by which, a person may be refused registration, or registered subject to conditions, or the registration may be suspended or cancelled;
- (c) provide for applications for review by the State Administrative Tribunal of decisions refusing,

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suspending or cancelling registration or imposing
conditions upon registration; and

(d) provide for any other matter necessary or convenient to
be prescribed for the purposes of this section.

(4) A person is not to be registered under this section unless that
person can demonstrate that the person has professional
indemnity insurance, or has sufficient material resources, of a
kind prescribed by the regulations to provide professional
indemnity.

[Section 277 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]

Part XVII — The Dispute Resolution Directorate

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

Division 1 — Establishment and objectives

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

278. DRD established

A directorate called the Dispute Resolution Directorate is
established.

*[Section 278 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

279. Main objectives of the DRD

(1) The main objectives of the DRD are —

(a) to provide a fair and cost effective system for the
resolution of disputes under this Act;

(b) to reduce administrative costs across the workers'
compensation system;

(c) to provide a dispute resolution service that —

(i) is timely and ensures that workers' entitlements
are paid promptly;

(ii) meets user expectations in relation to
accessibility, approachability and
professionalism;

(iii) is effective in settling matters;

(iv) leads to durable agreements between the parties
in accordance with this Act;

and

(d) to establish effective communication and liaison with interested parties concerning the role of the DRD.

(2) In exercising their functions, the Commissioner, the arbitrators, the Director, and other officers of the DRD are to have regard to the DRD's objectives.

[Section 279 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

280. DRD's constitution

The following persons constitute the DRD —

- (a) the Commissioner;
- (b) the Director;
- (c) the arbitrators;
- (d) other officers of the DRD.

[Section 280 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Division 2 — Commissioner

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

281. Appointment of Commissioner

(1) A person is to be appointed as the Commissioner by the Governor on the recommendation of the Minister.

(2) A person cannot be the Commissioner unless the person is a Judge of the District Court.

(3) Before recommending a person for appointment as the Commissioner, the Minister is to consult the Chief Justice of Western Australia and the Chief Judge of the District Court.

[Section 281 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

282. Terms and conditions of service

Schedule 8 has effect with respect to the tenure, remuneration and conditions of service of the Commissioner and other matters provided for in that Schedule.

[Section 282 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

283. Declaration of inability to act

The Commissioner may declare himself unable to act in respect of a particular matter by reason of —

- (a) an actual or potential conflict of interest; or
- (b) having to perform other functions under this Act.

[Section 283 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

284. Acting appointment

- (1) The Governor may appoint a person who is a Judge of the District Court, or is eligible for appointment as a Judge of the District Court, to act in the office of Commissioner —

- (a) during a vacancy in that office;
- (b) during any period or during all periods when the person holding the office of Commissioner, or a person appointed under this subsection, is unable to perform the functions of that office or is absent from the State; or
- (c) in relation to any matter in respect of which the person holding the office of Commissioner, or a person appointed under this subsection, has under section 283 declared himself unable to act.

- (2) An appointment under this section —

- (a) may be made at any time and may be terminated at any time by the Governor; and

-
- (b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (3) If a person appointed under this section is a Judge of the District Court, Schedule 8 clause 3 has effect in relation to the person.
- (4) A person acting under this section for the reason mentioned in subsection (1)(c) may perform functions of the Commissioner in relation to the matter for which the person is appointed even though the Commissioner is at the same time performing other functions of the office.
- (5) If a person is acting under this section for the reason mentioned in subsection (1)(c), a reference to the Commissioner in a provision of this Act that is relevant to the performance by that person of a function of the Commissioner in relation to the matter for which that person is appointed includes a reference to that person.
- (6) The validity of anything done by or in relation to a person purporting to act under this section is not to be called into question on the ground that —
- (a) the occasion for an appointment under this section had not arisen;
 - (b) there is a defect or irregularity in the appointment;
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

[Section 284 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

285. Functions of Commissioner

The Commissioner has the functions conferred under this Act or any other written law.

[Section 285 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Division 3 — Arbitrators

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

286. Arbitrators

- (1) Arbitrators are to be officers of WorkCover WA.
- (2) A person is not to become an arbitrator without the approval of the Minister.
- (3) A person cannot be approved as an arbitrator unless the person is a legal practitioner.

*[Section 286 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

287. Control and direction of arbitrators

- (1) An arbitrator is, in the exercise of his functions, subject to the general control and direction of the Director.
- (2) An arbitrator is not subject to direction as to the decision to be given in a particular matter.

*[Section 287 inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

Division 4 — Director Dispute Resolution and staff

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

288. Director Dispute Resolution

- (1) The Director Dispute Resolution is to be an officer of WorkCover WA.
- (2) A person is not to become the Director Dispute Resolution without the approval of the Minister.

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- (3) A person is not eligible for approval as the Director Dispute Resolution unless the person is a legal practitioner.

[Section 288 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

289. Functions and responsibilities of Director

- (1) In addition to the Director's functions under this or any other written law, the Director has and may exercise all the functions of an arbitrator.
- (2) The Director is responsible for the administration of the DRD and the allocation of work to arbitrators.
- (3) The Director is subject to the general control and direction of the chief executive officer in relation to the administration of the DRD.
- (4) In matters concerning the resolution of disputes the Director is responsible directly to the Minister.

[Section 289 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

290. Delegation by Director

- (1) The Director may delegate to another officer of the DRD a power or duty given to the Director under this Act.
- (2) The Director is to make the delegation in writing signed by the Director.
- (3) An officer of the DRD to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) An officer of the DRD exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

- (5) Nothing in this section limits the ability of the Director to perform a function through an officer or agent.

[Section 290 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

291. Staff of DRD

- (1) The chief executive officer is to make officers of WorkCover WA available to assist, as officers of the DRD under the control of the Director, in the administration of the DRD and the exercise of the functions of the DRD.

- (2) Otherwise, the services and facilities of WorkCover WA may be used for the purposes of this Act on such terms as are agreed by the Director and the chief executive officer.

[Section 291 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

Part XVIII — Regulations, rules and practice notes

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 130.]*

292. Regulations

- (1) The Governor may make regulations —
- (a) prescribing such forms as may be necessary or expedient for the purposes of this Act;
 - (b) regulating the operations of the DRD and the persons who constitute the DRD;
 - (c) regulating the operations of medical assessment panels, approved medical specialist panels and specialised retraining assessment panels;
 - (d) with respect to matters of general or special application, which may apply to both employers and workers, for the prevention or minimising of occurrences of injuries in employment or places of employment in the State;
 - (e) providing for the allowances to be paid to witnesses, and the circumstances in which, and extent to which, they are to be paid from moneys standing to the credit of the General Fund;
 - (f) with respect to the implementation by medical practitioners who issue more than one certificate to a worker for the purposes of this Act of the code of practice (injury management) issued under section 155A(1);
 - (g) with respect to injury management and related matters;
 - (h) with respect to specialised retraining programs and related matters;
 - (i) prescribing penalties not exceeding \$1 000 for any non-compliance with or any contravention of any regulation;

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- (j) regulating the meetings and proceedings of WorkCover WA's governing body;
 - (k) prescribing the fees and expenses payable with respect to establishing and maintaining registers;
 - (l) prescribing scales of the maximum amount of commission or brokerage for insurance agents and brokers in respect of workers' compensation insurance business;
 - (m) providing for any matters which by this Act are required or permitted to be prescribed or which may be necessary or convenient to prescribe (either generally or in any particular case) for giving effect to this Act.
- (2) The Governor, on the recommendation of WorkCover WA, may make regulations —
- (a) fixing scales of fees to be paid to —
 - (i) medical specialists and other medical practitioners;
 - (ii) dentists;
 - (iii) physiotherapists;
 - (iv) chiropractors;
 - (v) occupational therapists;
 - (vi) clinical psychologists;
 - (vii) speech pathologists; and
 - (viii) persons providing treatment of a kind approved for the purposes of the definition of "approved treatment" in section 5(1),
for attendance on, and treatment of, workers suffering injuries that are compensable under this Act;
 - (b) fixing scales of fees to be paid to approved vocational rehabilitation providers.

- (3) The Governor, on the recommendation of WorkCover WA, may make regulations fixing scales of the maximum fees to be paid to approved medical specialists for making or attempting to make assessments referred to in Part VII Division 2.
 - (4) WorkCover WA is not to recommend the making of a regulation under subsection (2) or (3) unless it has first negotiated with any body it considers has a relevant interest in the regulation.
 - (5) Without limiting subsection (4), WorkCover WA is not to recommend the making of a regulation under subsection (2)(a)(i) unless it has first negotiated with the Australian Medical Association (WA) incorporated.
 - (6) A regulation may require any matter or thing to be verified by statutory declaration.
 - (7) Any regulations made under this section may adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act or under any Act of the Commonwealth or the United Kingdom, or any of the tables, standards, rules, codes or other specifications of any body specified in the regulations.
- [Section 292 inserted by the Workers' Compensation Reform Bill 2004 cl. 130 (as amended in Committee).]

293. DRD Rules

- (1) The Commissioner may, after consultation with the Director, make rules of the DRD prescribing all matters that are required or permitted by this Act to be prescribed by the DRD Rules, or are necessary or convenient to be prescribed by the DRD Rules for giving effect to the purposes of this Act.

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(2) Without limiting subsection (1), DRD Rules may make provision for or with respect to —

(a) the organisation and management of the business of the DRD;

(b) the practice and procedure governing the jurisdiction, functions and proceedings of the Commissioner and arbitrators;

(c) limiting the number of medical reports in connection with a claim or any aspect of a claim and, in particular, limiting the number of medical reports that may be admitted in evidence in a proceeding before a dispute resolution authority;

(d) limiting the number of expert witnesses that may be called by any party and otherwise restricting the calling of expert witnesses by a party;

(e) the practice and procedure governing medical assessment panels, approved medical specialist panels and specialised retraining assessment panels; and

(f) records of the DRD.

(3) A DRD Rule may require any matter or thing to be verified by statutory declaration.

(4) DRD Rules —

(a) are rules of court under the *Interpretation Act 1984*;

(b) must be published in the *Gazette*;

(c) take effect from the date of publication or from any later date or dates that are specified in the rules; and

(d) must be laid before each House of Parliament within 6 sitting days of the House next following the publication of the rules.

(5) If either House of Parliament passes a resolution, of which notice has been given at any time within 6 sitting days after the rules have been laid before it, disallowing the whole or a part of

the rules, the rules or the part of it disallowed ceases to have effect.

(6) If the whole or part of a rule is disallowed, the validity of any proceedings taken or of anything done under the rules or the part of it in the meantime is not affected.

(7) If such a resolution is passed, notice of the fact must be published in the *Gazette* as soon as is practicable.

[Section 293 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

294. Practice notes

(1) The Commissioner may issue practice notes about —

(a) the practice and procedure of the Commissioner;

(b) the practice and procedure of arbitrators; and

(c) the giving of orders under Part XII.

(2) The Commissioner is to give the Minister a copy of each practice note the Commissioner issues as soon as practicable after issuing it.

(3) A practice note is not a DRD Rule and does not form part of the DRD Rules.

[Section 294 inserted by the Workers' Compensation Reform Bill 2004 cl. 130.]

~~Part XII~~Part XIX — Miscellaneous

*[Part XIX, formerly Part XII, renumbered as Part XIX by the
Workers' Compensation Reform Bill 2004 cl. 154(2).]*

~~177~~295. Public Service

- (1) For the purpose of carrying out the powers, duties and obligations conferred or imposed upon ~~the Commission~~ WorkCover WA by this Act or any other Act, ~~the Commission~~ WorkCover WA with the approval of the employing authority, within the meaning of the *Public Sector Management Act 1994*, of the officers and employees may make use of the services of any of the officers and employees of the Public Service.
- (2) The ~~Executive Director~~ chief executive officer and other officers of ~~the Commission~~ WorkCover WA shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*.
- (3) The duties of the officers of ~~the Commission~~ WorkCover WA shall include such duties as are prescribed and as are directed by ~~the Commission~~ WorkCover WA.

[Section 295, formerly ~~Section 177~~, amended by No. 86 of 1986 s. 5; No. 72 of 1992 s. 16(5); No. 32 of 1994 s. 19; renumbered as section 295 and amended by the Workers' Compensation Reform Bill 2004 cl. 150, 152 and 154(1).]

~~177A~~296. Delegation by chief executive officer

- (1) The chief executive officer may delegate to another officer of WorkCover WA any power or duty of the chief executive officer under another provision of this Act, but not a power or duty that WorkCover WA has delegated to the chief executive officer under section 101AA.
- (2) The delegation must be in writing signed by the chief executive officer.

(3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the chief executive officer to perform a function through an officer or agent.

[Section 296 inserted by the Workers' Compensation Reform Bill 2004 cl. 131 as section 177A and renumbered as section 296 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

178297. Agreements and receipts under this Act exempt from stamp duty

Any agreement in writing and any memorandum of agreement (whether under seal or not) as to any matter under this Act, or the repealed Act, and any receipt given for or upon the payment of any money payable under this Act, or the repealed Act, or under any such agreement, shall be exempt from all stamp duties chargeable under the *Stamp Act 1921*.

[Section 297, formerly section 178, renumbered as section 297 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

179298. Order for detention of ship

(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river in the State or in any waters within the territorial jurisdiction of the State, the District Court may, upon its being shown to the court by ~~the Commission~~ WorkCover WA applying summarily that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the State, issue an order directed to the bailiff of that court requiring him to detain the ship until such

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time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security to be approved by the District Court to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon.

- (2) The bailiff may detain the ship in accordance with the order.
- (3) In any legal proceedings to recover such compensation, the person giving security may be made the defendant, and the production of the order of the District Court made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.
- (4) If the owner of a ship is a corporation, such corporation shall, for the purpose of this section, be deemed to reside in the State if it has an office in the State at which service of process can be effected.
- (5) If a ship after detention in pursuance of this section, or after service on the master of any notice of an order for detention under this section, proceeds to sea before the ship is released by competent authority, the master of the ship, and also the owner and any person who sends the ship to sea, if that owner or person is party or privy to the offence, commits an offence.
Penalty: \$5 000.
- (6) If the master proceeds to sea with the ship in contravention of this section, and takes to sea any person required to detain the ship, the owner and the master of the ship shall each be liable to pay a further penalty at the rate of \$200 for every day until such person returns to the place from which he was taken, or until the expiration of such time as would enable him after leaving the ship to return to such place.

[Section 298, formerly sSection 179, amended by No. 34 of 1999 s. 57; renumbered as section 298 and amended by the Workers' Compensation Reform Bill 2004 cl. 150 and 154(1).]

180299. Judicial notice

All courts and all persons acting judicially shall take notice of —

- ~~_____ (a) the seal of a compensation magistrate's court;~~
- ~~_____ (a) the signature of a person who is, or was the Commissioner, an arbitrator or the Director;~~
- ~~_____ (aa) the fact that a person referred to in paragraph (a) is or was the Commissioner, an arbitrator or the Director, as the case requires;~~
- (b) the seal of the Commission WorkCover WA;
- (c) the official signature of a person holding or acting in —
 - (i) an office under any provision of the *Workers' Compensation Act 1912* in force from time to time before the repeal of that Act; or
 - (ii) an office under any provision of this Act in force from time to time,
 and the appointment and official character of any such person.

[Section 299, formerly sSection 180, amended by No. 48 of 1993 s. 28; renumbered as section 299 and amended by the Workers' Compensation Reform Bill 2004 cl. 132, 150 and 154(1).]

180A300. District Court to provide information to WorkCover WA

WorkCover WA may make a written request to the Registrar of the District Court to provide WorkCover WA with such information concerning actions to which Part IV applies as WorkCover WA specifies and the Registrar of the District Court is to provide that information to WorkCover WA.

[Section 300 inserted by the Workers' Compensation Reform Bill 2004 cl. 133 as section 180A and renumbered as section 300 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

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181301. Prohibition of contracting out

Except as provided by this Act, its provisions apply notwithstanding any contract to the contrary.

[Section 301, formerly section 181, renumbered as section 301 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

182302. Deductions towards compensation not lawful

- (1) An employer or any person on his behalf, or an insurer or any person on its behalf, shall not, directly or indirectly, take or receive any money from any worker whether by way of deduction from wages or otherwise, in respect of any liability of an employer to pay compensation under this Act.
- (2) Where money is so taken or received from any worker, whether with the consent of such worker or not, he may sue and recover the amount of that money from the employer, insurers, or person who took or received it.
- (3) A person contravening subsection (1) commits an offence.
Penalty: \$2 000.

[Section 302, formerly sSection 182, amended by No. 34 of 1999 s. 49; renumbered as section 302 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

183303. Payments not assignable

- (1) A payment of compensation, or a sum paid by way of redemption thereof, is not capable of being assigned, charged or attached, and shall not pass to another person by operation of the law, nor shall any claim be set off against such payment or sum, except in respect of voluntary advances of future compensation made by an employer or insurer with the approval of the ~~Directorate~~ Director.

- (2) A person who purports or agrees to do anything the doing of which is prevented by subsection (1) commits an offence and is liable to a fine of \$5 000.

[Section 303, formerly sSection 183, amended by No. 48 of 1993 s. 28; No. 34 of 1999 s. 50; renumbered as section 303 and amended by the Workers' Compensation Reform Bill 2004 cl. 134 and 154(1).]

~~184.~~ Protection of officials

~~Neither the Commission nor a dispute resolution body nor any member of either of them or any person discharging any duty in pursuance of this Act is liable to any suit or action or to pay any claim or demand made or brought by or on behalf of any person with respect to anything lawfully done or omitted by the Commission or a dispute resolution body or the member or the person discharging the duty in pursuance of this Act.~~

~~*[Section 184 amended by No. 48 of 1993 s. 28.]*~~

~~*[185-187. Repealed by No. 48 of 1993 s. 28.]*~~

184304. Protection from liability

- (1) This section applies to —

- (a) WorkCover WA;
- (b) a member of the governing body of WorkCover WA;
- (c) an officer of WorkCover WA;
- (d) the Commissioner;
- (e) a member of a medical assessment panel;
- (f) an approved medical specialist;
- (g) a member of a specialised retraining assessment panel;
and
- (h) any other person performing a function under this Act.

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- (2) An action in tort does not lie against a person to whom this section applies for anything that the person does or omits to do in good faith in the performance of a function under this Act.
- (3) The Crown is also relieved of any liability that it might otherwise have had for a person having done anything as described in subsection (2).
- (4) The protection given by this section applies even though the thing done as described in subsection (2) may have been capable of being done whether or not this Act had been enacted.
- (5) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 304 inserted by the Workers' Compensation Reform Bill 2004 cl. 135 as section 184 and renumbered as section 304 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

185305. Immunity

- (1) To the extent that this section is inconsistent with anything expressly stated in another provision of this Act, this section does not apply.
- (2) Each of the following persons has the same protection and immunity as a Judge of the District Court has in the performance of his duties as a Judge —

 - (a) the Commissioner when performing the functions of a Commissioner;
 - (b) an arbitrator when performing the functions of an arbitrator.
- (3) A person representing a party in a proceeding before a dispute resolution authority has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the District Court.
- (4) A party to a proceeding before a dispute resolution authority has the same protection and immunity as a party to proceedings in the District Court.

- (5) A person appearing as a witness before a dispute resolution authority has the same protection and immunity as a witness has in proceedings in the District Court.

[Section 305 inserted by the Workers' Compensation Reform Bill 2004 cl. 135 as section 185 and renumbered as section 305 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

186306. Protection for compliance with this Act

- (1) No civil or criminal liability attaches to a person for compliance, or purported compliance, in good faith, with a requirement of this Act.
- (2) In particular, if a person produced a document or other material as required under this Act, no civil liability attaches to the person for producing the document or material, whether the liability would arise under a contract or otherwise.

[Section 306 inserted by the Workers' Compensation Reform Bill 2004 cl. 135 as section 186 and renumbered as section 306 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

187307. Proceedings for defamation not to lie

No action or proceeding, civil or criminal, lies against the State, against a Minister or against a person employed or engaged by the State, 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.

[Section 307 inserted by the Workers' Compensation Reform Bill 2004 cl. 135 as section 187 and renumbered as section 307 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

188308. Fraud

A person who fraudulently obtains or fraudulently attempts to obtain any benefit under this Act, by malingering or by making any false claim or statement, and any person who, by a false

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statement or other means, aids or abets a person in so obtaining or attempting to obtain, commits an offence.

Penalty: \$5 000.

[Section 308, formerly Section 188, amended by No. 34 of 1999 s. 51; renumbered as section 308 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

~~188A. Exclusive jurisdiction for offences~~

- ~~— (1) A compensation magistrate's court has jurisdiction to hear and determine under the *Justices Act 1902* complaints for any offences against this Act; and that jurisdiction is exclusive of any other court except where an appeal lies to that other court.~~
- ~~— (2) Part VIII of the *Justices Act 1902* applies to matters referred to in subsection (1).~~
- ~~— (3) Unless otherwise prescribed, the practice and procedure of a court of summary jurisdiction apply to and in relation to the exercise of the powers and jurisdiction of a compensation magistrate's court under this section.~~
- ~~— (4) An order or other decision of a compensation magistrate's court made in the exercise of its jurisdiction under this section is to be enforced in accordance with the *Justices Act 1902*.~~

~~— *[Section 188A inserted by No. 48 of 1993 s. 26.]*~~

~~*[188A. Repealed by the Workers' Compensation Reform Bill 2004 cl. 136.]*~~

188B309. Who can take proceedings for offences

- (1) Proceedings for an offence against this Act may be taken by a person authorised by the chief executive officer to do so.
- (2) An authorisation under subsection (1) may be given generally or in relation to a specified offence or specified offences.

- (3) If a complaint alleging an offence against this Act purports to be made or sworn by a person authorised by the chief executive officer to take proceedings for offences of that kind, it is to be presumed, in the absence of proof to the contrary, that the complaint was made or sworn by such a person.

[Section 309 inserted by the Workers' Compensation Reform Bill 2004 cl. 137 as section 188B and renumbered as section 309 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

188C310. Time limit for taking proceedings

Proceedings for an offence against this Act cannot be commenced more than 2 years after the date on which the offence is alleged to have been committed.

[Section 310 inserted by the Workers' Compensation Reform Bill 2004 cl. 137 as section 188C and renumbered as section 310 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

189311. General penalty

A person who commits an offence against this Act for which no special penalty is provided by this Act is liable to a penalty of \$2 000.

[Section 311, formerly §section 189, amended by No. 34 of 1999 s. 57; renumbered as section 311 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

190312. Fines

A penalty imposed for an offence against this Act shall be paid to the General Fund for use by ~~the Commission~~ WorkCover WA.

[Section 312, formerly §section 190, amended by No. 78 of 1995 s. 138; renumbered as section 312 and amended by the Workers' Compensation Reform Bill 2004 cl. 150 and 154(1).]

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191313. Penalties not affected

Nothing in this Act affects any proceedings for a fine or penalty under the enactments relating to mines, factories, or workshops, or the application of such a fine or penalty.

[Section 313, formerly section 191, renumbered as section 313 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

192314. Commission may specify alternative form of sending information

- (1) Notwithstanding any other provision of this Act, a person who is required or permitted under this Act to send or otherwise provide information to ~~the Commission~~ WorkCover WA by means of any notice, notification, particulars, return or other document shall, if ~~the Commission~~ WorkCover WA so requests, send or otherwise provide the information in any form specified by ~~the Commission~~ WorkCover WA in which it is able to be read, whether with the use of a device or otherwise.

- (2) In subsection (1) —

~~“Commission” includes the Executive Director.~~

~~“WorkCover WA” includes the chief executive officer.~~

[Section 314, formerly ~~Section 192~~, inserted by No. 34 of 1999 s. 52; renumbered as section 314 and amended by the Workers' Compensation Reform Bill 2004 cl. 138, 150 and 154(1).]

192A315. Publication of prescribed amount and average weekly earnings

- (1) On or before the 1 July on which a financial year begins the Minister is to publish a notice in the *Gazette* setting out, in relation to the financial year —
- (a) the prescribed amount;
 - (b) Amount A for the purposes of ~~section 93F~~ each of sections 93F and 93K; and

- (c) Amount C for the purposes of Schedule 1 clause 11.
- (2) Publication under subsection (1) is for public information only and the operation of this Act is not affected by a failure to publish or a delay or error in publication.

[Section 315, formerly ~~S~~ection 192A, inserted as 193 by No. 34 of 1999 s. 32(11); renumbered as 192A by No. 74 of 2003 s. 134(4); renumbered as section 315 and amended by the Workers' Compensation Reform Bill 2004 cl. 139 and 154(1).]

~~Part XIII~~Part XX — Repeal, savings, and transitional

*[Part XX, formerly Part XIII, renumbered as Part XX by the
Workers' Compensation Reform Bill 2004 cl. 154(3).]*

~~193~~316. Definitions

In this Part —

“former Board” means the Workers' Compensation Board
constituted under the repealed Act;

“former Supplementary Board” means the Workers'
Compensation Supplementary Board constituted under the
repealed Act;

“new Board” means the Workers' Compensation Board
continued and constituted under this Act;

“new Supplementary Board” means the Workers'
Compensation Supplementary Board continued and
constituted under this Act;

“proclaimed date” means the date on which this Part comes
into operation ¹.

*[Section 316, formerly section 193, renumbered as section 316
by the Workers' Compensation Reform Bill 2004 cl. 154(1).]*

~~194~~317. Repeal

The *Workers' Compensation Act 1912* is repealed.

*[Section 317, formerly section 194, renumbered as section 317
by the Workers' Compensation Reform Bill 2004 cl. 154(1).]*

~~195~~318. Operation of *Interpretation Act 1918*

The *Interpretation Act 1918*¹⁸, and in particular sections 15 and
16 of that Act, apply to and in respect of the repealed Act except
to the extent that this Act provides otherwise.

*[Section 318, formerly section 195, renumbered as section 318
by the Workers' Compensation Reform Bill 2004 cl. 154(1).]*

~~196~~319. No renewal of liability or entitlement

Nothing in this Act renews a liability that had been discharged, or an entitlement which had been extinguished, under the repealed Act.

[Section 319, formerly section 196, renumbered as section 319 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

~~197~~320. Moneys paid under repealed Act taken into account

Where by virtue of section 4 there is under this Act —

- (a) liability to pay compensation or to pay for the provision of other benefits, or both; and
- (b) entitlement to receive compensation or other benefits, or both,

for or in relation to ~~a disability~~ an injury, in determining that liability and the extent of it and that entitlement and the extent of it, moneys paid or required to be paid under the repealed Act for or in relation to the same ~~disability~~ injury shall be taken into account and deemed to be moneys paid or required to be paid under this Act, the intention being that for or in relation to the same ~~disability~~ injury a liability and an entitlement under the 2 Acts merge into a liability and entitlement under and subject to this Act.

[Section 320, formerly section 197, renumbered as section 320 and amended by the Workers' Compensation Reform Bill 2004 cl. 146, 147 and 154(1).]

~~198.~~ Weekly payments after the age of 64

~~Notwithstanding sections 4 and 56 and Schedule 5 clause 2 but subject to Schedule 5 clause 3, where a worker who is aged 64 or more on the date on which those sections come into operation, has been in receipt of, or was entitled to receive, weekly payments of compensation for incapacity resulting from disability under the repealed Act until immediately before that date, in respect of any incapacity resulting from that disability~~

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~~on or after that date, that worker is entitled to weekly payments of compensation until —~~

~~—— (a) the amount of the total of weekly payments under the repealed Act and this Act becomes equal to the prescribed amount; or~~

~~—— (b) one year after sections 4 and 56 come into operation, whichever is the sooner.~~

[198. Repealed by the Workers' Compensation Reform Bill 2004 cl. 140.]

199321. Compensation for injuries mentioned in Schedule 2

Where on or after the date on which section 4 comes into operation a worker elects under section 24 in respect of an injury which was caused by an accident that occurred before that date the compensation payable for the injury shall be in accordance with the amount indicated in column 2 of the Second Schedule of the repealed Act in respect of that injury at the date of the accident, but otherwise Division 2 of Part III applies to and in respect of compensation payable for that injury.

[Section 321, formerly section 199, renumbered as section 321 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

200322. Child's allowance

Where any weekly amount is payable on or after the proclaimed date under Item (II), (III) or (IV) of clause 1(a)(i) of the First Schedule of the repealed Act, that weekly amount shall be increased to be at each time when it is so payable the equivalent of a child's allowance payable under this Act at that time.

[Section 322, formerly section 200, renumbered as section 322 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

201323. Continuation

- (1) On and after the proclaimed date —
- (a) each person who, immediately before the proclaimed date, held office on the former Board or the former Supplementary Board shall be deemed to have been appointed under and subject to this Act to the corresponding office on the new Board or the new Supplementary Board, as the case may be, and shall be deemed to have been so appointed on the day on which he was appointed to that office under the repealed Act, and —
 - (i) a person who, immediately before the proclaimed date, held office as Chairman of the former Board, is a Judge of the new Board and shall be deemed to have been appointed as such under and subject to this Act; and
 - (ii) a person who, immediately before the proclaimed date, held office as Chairman of the former Supplementary Board, is a Judge of the new Supplementary Board and shall be deemed to have been appointed as such under and subject to this Act;
 - (b) a person referred to in paragraph (a) is not required to take oaths or affirmations as provided by section 112 or 113 before performing his duties under this Act;
 - (c) each registration of a memorandum of agreement which, immediately before the proclaimed date, was in force under the repealed Act shall be deemed to have been made under this Act and shall continue in force under this Act subject to the repealed Act;
 - (d) a memorandum of agreement made but not registered for the purposes of the repealed Act may be registered under this Act and if it is registered shall have force under this Act subject to the repealed Act;

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- (e) each award, order, or decision which, immediately before the proclaimed date, was in force under the repealed Act shall continue in force under this Act subject to the repealed Act;
- (f) a memorandum of agreement continued in force under paragraph (c) or having force under paragraph (d), or an award or order or a decision continued in force under paragraph (e), may be reviewed under this Act subject to the repealed Act;
- (g) all applications, matters, and proceedings commenced under the repealed Act pending or in progress immediately before the proclaimed date may be continued, completed, or enforced under this Act subject to the repealed Act and subject to section 4 of this Act;
- (h) applications, matters, and proceedings in respect of rights, duties, obligations, and liabilities arising under the repealed Act before the proclaimed date may be instituted, continued, completed, or enforced under this Act subject to the repealed Act and subject to section 4 of this Act;
- (i) all moneys which, pursuant to applications, matters, and proceedings completed under paragraphs (g) or (h), would have been payable to the Workers' Compensation Board Fund under section 27 of the repealed Act shall be paid to ~~the Commission-WorkCover WA~~ for the General Fund;
- (j) all moneys which, pursuant to applications, matters, and proceedings completed under paragraphs (g) or (h), would have been payable into the custody of the Board under clause 1A of the repealed Act shall be paid into the custody of ~~the Commission-WorkCover WA~~ for the benefit of those entitled in accordance with the order of the Board, and ~~the Commission-WorkCover WA~~ shall place the moneys in the Trust Fund;

- (k) all policies of insurance in respect of liability for compensation and other benefits which, immediately before the proclaimed date, were in force shall be deemed to have been obtained in respect of liability for compensation and other benefits under this Act and shall, subject to this Act, continue in force accordingly until the expiry date specified in the policy.
- (2) Where a person is deemed to have been appointed under subsection (1), he shall continue to retain his existing and accruing rights including his rights, if any, under the *Judges' Salaries and Pensions Act 1950* or the *Superannuation and Family Benefits Act 1938*^{19, 20} as if his service under and subject to the repealed Act were service under and subject to this Act.

[Section 323, formerly section 201, renumbered as section 323 and amended by the Workers' Compensation Reform Bill 2004 cl. 150 and 154(1).]

~~202~~324. References to the Board, the Supplementary Board or officers

A reference, however expressed, in any other Act or in any regulation, notice, or statutory instrument of any kind made, published, or in force under this or any other Act to the Workers' Compensation Board, the Workers' Compensation Supplementary Board, or to officers of those former Boards shall, unless the contrary intention appears, be read and construed as a reference to the corresponding term in this Act.

[Section 324, formerly section 202, renumbered as section 324 by the Workers' Compensation Reform Bill 2004 cl. 154(1).]

[203. Omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 1 Compensation entitlements

Schedules
Schedule 1 — Compensation entitlements

1. ~~Death—dependants wholly dependent~~

~~Where death results from the disability and the worker leaves any dependants wholly dependent upon his earnings—~~

~~(1) (a) in respect and for the benefit only of all those dependants, if any, who are not of the kind referred to in subclause (2), (3), or (4) a sum equal to the notional residual entitlement of the worker;~~

~~but if a worker dies leaving—~~

~~(b) a spouse, de facto partner or parent, or more than one of those persons, wholly dependent upon his earnings, whether or not there are other dependants wholly dependent upon his earnings, there shall be a minimum amount payable being a sum equal to the aggregate weekly payments for total incapacity of the worker at a rate calculated and varied in accordance with this Schedule as at the date of the worker's death for a period of one year after that date;~~

~~(c) in the event of there being more than one dependant wholly dependent on his earnings the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by a dispute resolution body;~~

~~(2) in respect and for the benefit only of each of those dependants, if any, who is a child, or step child, under the age of 16 years, a child's allowance weekly until the child attains that age;~~

~~(3) in respect and for the benefit only of each of those dependants, if any, who is a full time student child or step child, and has attained the age of 16 years but is under the age of 21 years, a child's allowance weekly until the child attains the age of 21 years or ceases to be a full time student, whichever is the sooner;~~

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- ~~(4) in respect and for the benefit only of each of those dependants who is a child, or step child, of any age, whether a full time student or otherwise who, by reason of circumstances a dispute resolution body in its absolute discretion decides, should receive continued support, a child's allowance weekly until such time as a dispute resolution body orders,~~
- ~~but if a worker dies leaving —~~
- ~~(5) only a dependant or dependants wholly dependent upon his earnings who, apart from this subclause, would be entitled to a child's allowance under subclause (2), (3), or (4), the compensation entitlement of that dependant or those dependants is whichever of the following —~~
- ~~(a) a sum equal to 25% of the notional residual entitlement of the worker;~~
- ~~(b) a child's allowance under subclause (2), (3), or (4) as the case may be,~~
- ~~a dispute resolution body determines as likely to be in the best interests of that dependant or those dependants, and —~~
- ~~(c) in the event of a dispute resolution body determining a sum under paragraph (a) and there is more than one such dependant the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by a dispute resolution body.~~
- ~~[Clause 1 amended by No. 28 of 2003 s. 215(a).]~~

1. Death — dependants wholly dependent — notional residual entitlement

- (1) Subject to subclauses (2) and (3), where death results from the injury and the worker leaves —
- (a) a dependant who —
- (i) is not of a kind referred to in clause 1A; and
- (ii) is wholly dependent upon the worker's earnings;
- or

Schedule 1 Compensation entitlements

(b) a child or step-child in respect of whom an election to receive the amount of a provisional apportionment has been registered under clause 1C,

or more than one of those persons, in respect and for the benefit only of all those dependants, a sum equal to the notional residual entitlement of the worker.

(2) If death results from the injury and a worker dies leaving —

(a) a spouse or de facto partner;

(b) a parent; or

(c) a child or step-child in respect of whom an election to receive the amount of a provisional apportionment has been registered under clause 1C,

or more than one of those persons, wholly dependent upon the worker's earnings, whether or not there are other dependants wholly dependent upon the worker's earnings, there is to be a minimum amount payable being a sum equal to the aggregate weekly payments for total incapacity of the worker at a rate calculated and varied in accordance with this Schedule as at the date of the worker's death for a period of one year after that date.

(3) Subject to clause 1C, in the event of there being more than one dependant wholly dependent on a worker's earnings, the amount payable under this clause is to be apportioned between them as may be agreed upon or, in default of agreement, according to the respective financial losses of support suffered by them, which apportionment is to be determined on application under Part XI.

[Clause 1 inserted by the Workers' Compensation Reform Bill 2004 cl. 141(1).]

1A. Death — dependants wholly dependent — child's allowance

Subject to clause 1B, where death results from the injury and the worker leaves any dependants wholly dependent upon the worker's earnings —

(a) in respect and for the benefit only of each of those dependants, if any, who is a child, or step-child, under the age

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of 16 years, a child's allowance weekly until the child or step-child attains the age of 16 years;

(b) in respect and for the benefit only of each of those dependants, if any, who is a full-time student child, or step-child, and has attained the age of 16 years but is under the age of 21 years, a child's allowance weekly until the child or step-child attains the age of 21 years or ceases to be a full-time student whichever is the sooner;

(c) in respect and for the benefit only of each of those dependants who is a child, or step-child, of any age, whether a full-time student or otherwise who, by reason of circumstances an arbitrator in the arbitrator's absolute discretion decides should receive continued support, a child's allowance weekly until such time as the arbitrator orders or until the child or step-child attains the age of 21 years whichever is the sooner.

[Clause 1A inserted by the Workers' Compensation Reform Bill 2004 cl. 141(1).]

1B. Death — dependants wholly dependent — notional residual entitlement or child's allowance

(1) Where death results from the injury and the worker dies leaving —

(a) a child or step-child of the worker wholly dependent upon the worker's earnings who, apart from this subclause, would be entitled to a child's allowance under clause 1A; and

(b) no spouse or de facto partner wholly dependent upon the worker's earnings,

or where death results from the injury and the worker dies leaving —

(c) a child or step-child of the worker wholly dependent upon the worker's earnings who, apart from this subclause, would be entitled to a child's allowance under clause 1A;

(d) no spouse or de facto partner who is a parent of that child or step-child and who is wholly dependent upon the worker's earnings; and

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(e) a spouse or de facto partner who is not a parent of that child or step-child and who is wholly dependent upon the worker's earnings,

or more than one of those persons, in respect of and for the benefit of a dependant referred to in paragraph (a) or (c) — a child's allowance under clause 1A(a), (b) or (c) as the case may be, or an apportionment of the notional residual entitlement of the worker, as determined under clause 1C.

(2) Where death results from the injury and the worker dies leaving a dependant wholly dependent upon the worker's earnings who —

(a) is not a dependant to whom subclause (1) applies; and

(b) apart from this clause, would be entitled to a child's allowance under clause 1A,

the compensation entitlement of that dependant is whichever of the following an arbitrator determines as likely to be in the best interests of that dependant —

(c) a sum equal to 25% of the notional residual entitlement of the worker;

(d) a child's allowance under clause 1A(a), (b) or (c) as the case may be.

(3) In the event of a sum being determined under subclause (2)(c) where there is more than one such dependant, the amount is to be apportioned between them as may be agreed or, in default of agreement, according to the respective financial losses of support suffered by them, which apportionment is to be determined by an arbitrator.

[Clause 1B inserted by the Workers' Compensation Reform Bill 2004 cl. 141(1).]

1C. Determination of entitlement under clause 1B

(1) A dependant referred to in clause 1B(1)(a) or (c) is to be notified by the Director of the dependant's entitlement to elect to receive a child's allowance under clause 1A or an apportionment of the notional residual entitlement of the worker.

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- (2) The dependant may, within 30 days of receiving the notification, elect in the manner prescribed by the regulations to receive the amount of the apportionment or a child's allowance under clause 1A.
- (3) If an election by a dependant referred to in clause 1B(1)(a) or (c) is not made under subclause (2) and registered by the Director, that dependant is to receive a child's allowance under clause 1A.
- (4) In the event of there being more than one dependant who elects to receive the apportionment under this clause, or who is otherwise entitled to receive an apportionment under clause 1, the compensation entitlement of each of those dependants is to be determined as follows —

 - (a) the amount of the notional residual entitlement is to be apportioned between them as may be agreed or, in default of agreement, an arbitrator is to determine the amount to be provisionally apportioned between each of the dependants, according to the respective financial losses of support suffered by them and the arbitrator is to notify each of the dependants of the amount provisionally apportioned to that dependant;
 - (b) any dependant referred to in clause 1B(1)(a) or (c) and notified under paragraph (a) may elect to receive the amount of the provisional apportionment or a child's allowance under clause 1A;
 - (c) if an election is not made under paragraph (b) in accordance with subclause (6) and registered by the Director —

 - (i) that dependant is to receive a child's allowance; and
 - (ii) an arbitrator is to reapportion the amounts to be paid to each dependant who is not receiving a child's allowance.
- (5) A notification for the purposes of subclause (1) or (4)(a) is to be given in the prescribed manner and form.
- (6) A dependant referred to in subclause (4)(b) may, within 30 days of receiving the notification, elect in the prescribed manner to receive the amount of the provisional apportionment or a child's allowance.

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- (7) The Director may refuse to register an election of a dependant under this clause if not satisfied that the dependant has been independently advised of the financial consequences of the election.

[Clause 1C inserted by the Workers' Compensation Reform Bill 2004 cl. 141(1).]

2. Death — partial dependants who are not children

Where death results from the ~~disability~~ injury and the worker does not leave a dependant wholly dependent upon his earnings (other than a dependant of a kind referred to in ~~clause 1(2), (3), or (4)~~ clause 1A) but leaves a dependant (other than of a kind referred to in ~~clause 1(2), (3), or (4)~~ clause 1A) in part dependent on his earnings, such sum to each such dependant in part dependent on him as may be agreed upon or in default of agreement may be determined by a ~~dispute resolution body~~ an arbitrator by proceedings under this Act to be reasonable and proportionate to the loss of any necessary financial support suffered by that dependant but such sum or the total of such sums, as the case requires, shall not exceed a sum equal to the notional residual entitlement.

[Clause 2 amended by the Workers' Compensation Reform Bill 2004 cl. 141(2), 147 and 149.]

3. Death — partial dependants who are children

Where death results from the ~~disability~~ injury and the worker does not leave a dependant wholly dependent upon his earnings but leaves a dependant of a kind referred to in ~~clause 1(2), (3), or (4)~~ clause 1A, partly dependent on his earnings, such weekly sum only for each such dependant in part dependent on him as may be agreed upon or in default of agreement may be determined by a ~~dispute resolution body~~ an arbitrator by proceedings under this Act to be reasonable and proportionate to the loss of any necessary financial support suffered by that dependant but such weekly sum shall not in any case exceed the child's allowance which would be payable weekly if the dependant were wholly dependent.

[Clause 3 amended by the Workers' Compensation Reform Bill 2004 cl. 141(3), 147 and 149.]

4. Death — no dependant

Where death results from the ~~disability injury~~ and the worker leaves no dependant, the reasonable expenses of his medical attendance and also funeral expenses, including all cemetery board charges, but, in the case of funeral expenses, not exceeding the amount applying in accordance with section 5A, the cost of which may be awarded to and upon the application of any person by whom the expenses were properly incurred, or to whom the whole or any part of the expenses is owed.

[Clause 4 amended by the Workers' Compensation Reform Bill 2004 cl. 147.]

5. Death — where not resulting from the ~~disability injury~~ but weekly payments had been made

Where a worker has been in receipt of, or was entitled to receive, weekly payments for not less than 6 months immediately preceding his death ~~and an order for redemption has not been made pursuant to section 67, an order for redemption has not been made under section 67 and no memorandum of agreement for payment of a lump sum in redemption has been recorded under section 76, and the~~ worker dies but the death does not result from the ~~disability injury~~ —

- (1) and the worker leaves any spouse, de facto partner, child, or step-child wholly dependent upon his earnings —
 - (a) in respect of and for the benefit only of all those dependants —
 - (i) the amount, if any, which would have been payable as a lump sum ~~if, before the Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1999 commenced, a dispute resolution body~~ an arbitrator had ordered redemption pursuant to section 67 immediately before the worker's death; or
 - (ii) the aggregate of weekly payments for total incapacity of the worker at a rate calculated and varied as at the date of the worker's

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death for a period of one year after the
worker's death,

whichever is the greater; and

- (b) in the event of there being more than one such dependant the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by ~~a dispute resolution body~~ an arbitrator;

- (2) and if the worker does not leave any spouse, de facto partner, child, or step-child wholly dependent upon, or supported by, his earnings but leaves any spouse, de facto partner, child or step-child in part dependent upon his earnings —

- (a) in respect of and for the benefit only of all those dependants —
 - (i) such sum as may be agreed upon, or in default of agreement, may be determined by proceedings under this Act, to be reasonable and proportionate to the total of the loss of any necessary financial support suffered by all those dependants; or
 - (ii) the amount which would have been payable if subclause (1) applied,

whichever is the less, and

- (b) in the event of there being more than one such dependant, the amount is to be apportioned between them according to the respective losses of any necessary financial support suffered by them, which apportionment is to be determined by ~~a dispute resolution body~~ an arbitrator.

[Clause 5 amended by No. 28 of 2003 s. 215(b) and (c); the Workers' Compensation Reform Bill 2004 cl. 141(4), 147 and 149.]

[6. repealed]

7. Amount of compensation in case of total or partial incapacity

- (1) Subject to section 56 and subclause (3) when total incapacity for work results from the ~~disability-injury~~ a weekly payment during the incapacity equal to the weekly earnings of the worker calculated and varied in accordance with this Schedule.
- (2) Subject to section 56 and subclause (3), where partial incapacity for work results from the ~~disability-injury~~, a weekly payment during the partial incapacity equal to the amount by which the total weekly earnings of the worker calculated and varied in accordance with this Schedule would exceed the weekly amount exclusive of payments for overtime or any bonus or allowance which he is earning or is able to earn in some suitable employment or business after the occurrence of the ~~disability-injury~~.
- (3) An entitlement of a worker to weekly payments for a ~~disability-an injury~~ under this Act ceases if and when the total weekly payments for that ~~disability-injury~~ reaches the prescribed amount, unless a ~~dispute resolution body-an arbitrator~~ makes an order to the contrary under section ~~84E217~~, and there shall be no revival of, or increase in, that entitlement upon any subsequent increase in the prescribed amount.
- (4) Nothing in subclause (3) affects the liability of an employer for, and the entitlement of a worker to, expenses as are provided for in clauses 9, 17, 18, ~~18A~~, and 19 but subject to the limitations on those expenses as provided in ~~clause 17(1)~~ clauses 17(1) and 18A(1c).
- (5) Unless otherwise authorised by ~~the Commission~~ WorkCover WA, compensation shall be paid by the employer to the worker at the employer's usual place of payment of wages on the employer's usual pay days or, at the request of the worker shall be sent by prepaid post to the worker's address.
- (6) A worker when fulfilling any requirement of a ~~dispute resolution body made under section 157~~, an arbitrator made under section 156B, is deemed for the purposes of this clause to be totally incapacitated.

[Clause 7 amended by the Workers' Compensation Reform Bill 2004 cl. 141(5) and (6), 146, 147, 149, 150 and 154(4).]

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8. Deemed total incapacity

Where a worker who has so far recovered from his ~~disability injury~~ as to be fit for employment of a certain kind ~~satisfies a dispute resolution body~~ satisfies an arbitrator that he has taken all reasonable steps to obtain, and has failed to obtain, that employment and that the failure is a consequence, wholly or mainly, of the ~~disability injury~~, ~~a dispute resolution body may~~ the arbitrator may, without limiting ~~its~~ the arbitrator's powers of review, order that the worker's incapacity be treated, or continue to be treated, as total incapacity, for such period, and subject to such conditions, as the order may provide.

[Clause 8 amended by the Workers' Compensation Reform Bill 2004 cl. 141(7) and 147.]

9. No incapacity — medical expenses

Where a total or partial incapacity for work does not result from the ~~disability injury~~ but the worker is obliged to obtain medical or surgical, dental, physiotherapy or chiropractic advice or treatment, clauses 17, 18, 18A, and 19 apply in so far as they may be made applicable.

[Clause 9 amended by the Workers' Compensation Reform Bill 2004 cl. 141(8) and 147.]

10. Absence from work for medical attendance

Where absence from work arises from a necessary attendance for a medical or like purpose that is authorised or required under this Act or from an unavoidable delay in the provision, repair, or replacement of any artificial aid of the kinds referred to in clause 17 and without which the worker is unable to work, the employer shall pay a weekly payment or portion thereof at a rate equivalent to the rate that applies for total or partial incapacity.

11. Weekly earnings

- (1) Subject to clauses 12 to 16, for the purposes of this Schedule “**weekly earnings**” has the meaning given by this clause.

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(2) In this Schedule —

“Amount A” means the rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation, plus —

- (a) any over award or service payments paid on a regular basis as part of the worker's earnings;
- (b) overtime; and
- (c) any bonus or allowance;

“Amount Aa” means the rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation, ~~plus any over award or service payments paid on a regular basis as part of the worker's earnings; plus —~~

- (a) any over award or service payments paid on a regular basis as part of the worker's earnings;
- (b) any allowance paid on a regular basis as part of the worker's earnings and related to the number or pattern of hours worked by the worker; and
- (c) any other allowance prescribed by the regulations;

“Amount B” means the worker's average weekly earnings (including overtime and any bonus or allowance) over the period of one year ending on the day before the ~~disability-injury~~ occurs in the employment that the worker is in when the ~~disability-injury~~ occurs or, if the worker is then in more than one employment at the end of that period, the sum of the average weekly earnings (including overtime and any bonus or allowance) in each employment, but if the worker has been in an employment for a period of less than one year, the worker's average weekly earnings in that employment are to be determined over that lesser period;

“Amount C” means, during a financial year —

- (a) the amount obtained by multiplying by ~~1.5~~ 2 the average of the amounts that the Australian Statistician published as the all employees average weekly total earnings in

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Western Australia for pay periods ending in the months of May, August, November and February preceding the financial year; or

- (b) if any relevant amount of earnings is not published, the amount obtained by varying Amount C for the preceding financial year in accordance with the regulations;

Note: During the financial year ending on 30 June 2000 Amount C is \$852.52.

“Amount D” means the minimum rate of weekly earnings payable, at the time of the incapacity, for the appropriate classification under the relevant industrial award, or which would have been payable if the relevant industrial award were still in operation;

“Amount E” means the minimum weekly earnings to which the worker would have been entitled, at the time of the incapacity, under the *Minimum Conditions of Employment Act 1993*;

“bonus or allowance” means any bonus or incentive, shift allowance, week-end or public holiday penalty allowance, district allowance, industry allowance, meal allowance, living allowance, clothing allowance, travelling allowance, or other allowance;

“earnings” includes wages, salary and other remuneration;

“overtime” means any payment for the hours in excess of the number of ordinary hours which constitute a week's work.

- (3) In the case of a worker whose earnings are prescribed by an industrial award when the ~~disability-injury~~ occurs, weekly earnings are —
 - (a) for the 1st to the 4th~~13~~th weekly payments: Amount A but not more than Amount C or less than Amount D;
 - (b) for weekly payments after the 4th~~13~~th: Amount Aa, or a lesser amount determined in accordance with the regulations, but not more than Amount C or less than Amount D.
- (4) In the case of a worker to whom ~~subsection~~ subclause (3) does not apply, weekly earnings are —
 - (a) for the 1st to the 4th~~13~~th weekly payments: Amount B but not more than Amount C or less than Amount E;

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- (b) for weekly payments after the ~~4th~~ 13th: 85% of Amount B, or a lesser amount determined in accordance with the regulations, but not more than Amount C or less than Amount E.

~~(5) Subject to subsection (6), the references in the definition of Amount A in subsection (2) to overtime and any bonus or allowance are references to those items averaged over the period of 13 weeks ending at the time of the incapacity.~~

(5) Subject to subclause (6) —

- (a) the references in the definition of Amount A in subclause (2) to overtime and any bonus or allowances; and
- (b) the references in the definition of Amount Aa in subclause (2) to allowances,

are references to those items averaged over the period of 13 weeks ending at the date of incapacity.

- (6) If the worker was totally or partially incapacitated from working or for any other reason did not work during any part of the period of 13 weeks mentioned in ~~subsection~~ subclause (5), that part is to be disregarded in calculating the average amount per week that the worker was paid over that period.
- (7) Regulations made for the purposes of ~~subsection~~ subclause (3)(b) or (4)(b) may provide for lesser amounts (but not less than Amount D or E, whichever is applicable) to be determined in respect of weekly payments after the ~~4th, 12th~~ 13th, 26th or 52nd, or after such other numbers of weekly payments as are prescribed.

[Clause 11 amended by the Workers' Compensation Reform Bill 2004 cl. 141(9)-(14) and 147.]

[11A. *deleted*]

12. Part-time worker

In respect of employment to which clause 11(3) applies, in the case of a part-time worker employed solely in the employment in which the ~~disability injury~~ occurs, a proportionate deduction shall be made in such weekly earnings to the extent that the hours worked by him

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each week are less than the number of hours stated in the industrial award as ordinary hours which constitute a week's work.

[Clause 12 amended by the Workers' Compensation Reform Bill 2004 cl. 147.]

13. Concurrent contracts

In respect of employment to which clause 11(3) applies, in the case of a worker who had entered into concurrent contracts of service with 2 or more employers under which he worked at one time for one such employer and at another time for another such employer and —

- (1) under which the total number of hours worked each week by him are less than the number of hours stated in the industrial award relating to the employment in which the ~~disability~~ injury occurs as ordinary hours which constitute a week's work, a proportionate deduction shall be made in such weekly earnings to the extent the total number of hours worked by him are so less; or
- (2) under which the total number of hours worked by him, discounting in respect of each of the employments overtime or any bonus or allowance, are equal to or more than the number of hours stated in the industrial award relating to the employment in which the ~~disability~~ injury occurs as ordinary hours which constitute a week's work, no deduction shall be made.

[Clause 13 amended by the Workers' Compensation Reform Bill 2004 cl. 147.]

14. Casual or seasonal worker

In the case of a casual or a seasonal or other worker who is ordinarily employed for only part of the year, “**weekly earnings**” means that fraction of the worker's weekly earnings calculated and varied in accordance with this Schedule as represents the same ratio that the number of weeks that he normally works each year bears to 52.

15. Board and lodging

Where the remuneration of a worker consists of wages with board or board and lodging, the wages or the earnings of the worker shall, for the purposes of this Act, be deemed to be the amount of the wages with the addition of the value of such board or board and lodging to be assessed, but such board or board and lodging shall not be assessed at a sum exceeding the amount applying in accordance with section 5A.

16. Variation of weekly payments

- (1) The weekly earnings of the worker calculated in accordance with other applicable clauses shall be varied from the date and to the extent of any variation in the provisions of the relevant industrial award made after the ~~disability-injury~~ occurs, or, where weekly earnings are calculated under clause 11(4), the weekly earnings shall be varied from the date and to the extent of any variation the worker would have been entitled to receive in the normal course of his employment.
- (2) Where a relevant industrial award becomes redundant or obsolete the weekly earnings of the worker calculated in accordance with other applicable clauses shall be varied from the date and to the extent of any percentage increase in wages ordered in a National Wage Decision made under the *Conciliation and Arbitration Act 1904* ⁵ of the Commonwealth as a result, *inter alia*, of consumer price index movements.

[Clause 16 amended by the Workers' Compensation Reform Bill 2004 cl. 147.]

17. Payment of medical and other expenses

In addition to weekly payments of compensation payable, a sum is payable equal to the reasonable expenses incurred or likely to be incurred in respect of —

- (1) first aid and ambulance or other service to carry the worker to hospital or other place for medical treatment; medicines and medical requisites; medical or surgical attendance and treatment, including where necessary, medical or surgical attendance and treatment by specialists; dental attendance and

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treatment; physiotherapy or chiropractic attendance and treatment; attendance and treatment that is approved treatment; charges for hospital treatment and maintenance, in accordance with clause 18 but not including charges for a nursing home unless a medical practitioner certifies that the worker is totally and permanently incapacitated and requires continuing medical treatment and maintenance which cannot be administered in the worker's domestic environment; the provision of hearing aids, artificial teeth, artificial eyes, and where the ~~disability-injury~~ renders their use necessary, spectacles or contact lenses, in so far as that attendance, treatment, or other item does not include vocational rehabilitation, but not exceeding, in the aggregate, a sum equal to 30% of the prescribed amount, unless clause 18A applies, and there shall be no revival of, or increase in, the entitlement to such expenses upon any subsequent increase in the prescribed amount;

(1aa) the first assessment of a worker for the purposes of section 93L in respect of a particular injury and any previous attempt at an assessment that resulted in a finding that the worker's condition had not stabilised to the extent required for a normal evaluation, as defined in section 146C to be made, but not including the cost of any travel, meals, or lodging;

(1a) vocational rehabilitation up to, but not exceeding, in the aggregate, a sum equal to 7% of the prescribed amount, and there shall be no revival of, or increase in, the entitlement under this subclause upon any subsequent increase in the prescribed amount;

~~(2) funeral expenses, including all cemetery board charges, in the event of the death of the worker, but not exceeding the amount applying in accordance with section 5A;~~

(2) funeral expenses, including all cemetery board charges, in the event of the death of the worker, but not exceeding —

(a) the amount prescribed by the regulations for the purposes of this subclause; or

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(b) \$7 000,

whichever is the greater amount;

- (3) the repair or replacement, including such services by way of consultations, examinations, or prescriptions as are reasonably rendered by medical practitioners, dentists, or other qualified persons in connection with the repair or replacement of a hearing aid, an artificial limb, artificial teeth, artificial eyes, spectacles, or contact lenses damaged or destroyed by accident arising out of or in the course of the worker's employment, or whilst the worker is acting under the employer's instructions, whether or not, except in the case of artificial teeth, ~~personal injury is caused to the worker; the~~ worker suffers a personal injury by accident;
- (4) the purchase or supply of a wheeled chair or similar appliance, where the worker has suffered the loss of both legs or is paralysed in both legs by reason of ~~a disability~~ an injury suffered by a worker but not exceeding the amount applying in accordance with section 5A;
- (5) the cost of any surgical appliance or of an artificial limb that complies with the standards laid down by the Commonwealth Repatriation Artificial Limb and Appliance Centre, if such an appliance or artificial limb is capable of relieving any ~~disablement incurred by the worker by reason of a disability~~ effect of an injury suffered by a worker; and
- (6) in the case of personal injury by accident arising out of or in the course of the worker's employment, or whilst acting under the employer's instructions, the reasonable cost of any necessary repair or replacement of clothing damaged or destroyed at the time of the accident.

[Clause 17 amended by the Workers' Compensation Reform Bill 2004 cl. 141(15) (as amended in Committee), 146 and 147.]

18. Hospital charges

- (1) The hospital charges mentioned in clause 17(1) for treatment and maintenance of the worker in a hospital shall, subject to subclause (2), be as provided under the *Hospitals and Health Services Act 1927* in relation to such cases.

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- (2) Where, on the reasonable medical advice in the interests of the health of the worker or where by reason of the unavailability of hospital accommodation, or in the discretion of ~~a dispute resolution body~~ an arbitrator in any other case, the worker occupies more expensive hospital accommodation than that to which the prescribed charges refer ~~a dispute resolution body~~ an arbitrator may, on the application of the worker, determine that a rate higher than those prescribed shall be the rate for hospital charges.

[Clause 18 amended by the Workers' Compensation Reform Bill 2004 cl. 149.]

18A. Payment of additional expenses

- (1) Where the worker has incurred reasonable expenses referred to in clause 17(1) in excess of the maximum amount provided for by that subclause, ~~a dispute resolution body~~ an arbitrator may, ~~subject to subclause~~ subject to subclauses (1c)(a) and (2), if it ~~the arbitrator~~ considers that the maximum amount is inadequate, allow such additional sum, ~~but not exceeding \$50 000, as it~~ the arbitrator thinks proper in the circumstances.
- (1a) Where the worker is likely to incur reasonable expenses referred to in clause 17(1) in excess of the maximum amount provided for by that subclause, ~~a dispute resolution body~~ an arbitrator may, ~~subject to subclause~~ subject to subclauses (1c)(a) and (2), if it ~~the arbitrator~~ considers that the maximum amount is likely to be inadequate, allow such specific additional sum, ~~but not exceeding \$50 000, as it~~ the arbitrator thinks proper in the circumstances.
- (1b) Where —
- (a) a worker has incurred reasonable expenses referred to in clause 17(1) in excess of the maximum amount provided for by that subclause;
 - (b) an additional sum has been allowed in the exercise of a discretion under subclause (1) or (1a) in respect of the expenses; and
 - (c) the worker is likely to incur reasonable expenses referred to in clause 17(1) in excess of the aggregate of the maximum

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amount provided for by clause 17(1) and the \$50 000 allowable under subclause (1) or (1a),

an arbitrator may, subject to subclauses (1c)(b) and (2aa), allow such further additional sum or sums as the arbitrator thinks proper in the circumstances.

(1c) An arbitrator is not to allow —

(a) an additional sum exceeding \$50 000, or additional sums exceeding in aggregate \$50 000, in the exercise of a discretion under subclause (1) or (1a); or

(b) a further additional sum exceeding the prescribed amount or further additional sums exceeding in aggregate the prescribed amount, in the exercise of a discretion under subclause (1b).

(1d) In subclause (1c)(b) —

“prescribed amount” means —

(a) \$250 000; or

(b) if a greater amount is prescribed by the regulations, that greater amount.

(2) ~~A dispute resolution body~~ An arbitrator shall not allow an additional sum in the exercise of its a discretion under subclause (1) or (1a) unless it the arbitrator considers that such a sum ought to be allowed, having regard to the social and financial circumstances and the reasonable financial needs of the worker.

(2aa) An arbitrator is not to allow a further additional sum in the exercise of a discretion under subclause (1b) unless —

(a) the worker and the worker's employer agree that the worker's degree of permanent whole of person impairment, as defined in clause 18C(3), is not less than 25%, or the worker has a certificate of an approved medical specialist given under section 146H indicating the worker has a degree of permanent whole of person impairment, as defined in clause 18C(3), of not less than 25%;

(b) if the employer disputes the assessment of the approved medical specialist referred to in paragraph (a), a determination is made in accordance with clause 18C that the

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worker's degree of permanent whole of person impairment is not less than 25%; and

(c) the arbitrator determines that —

(i) such a sum ought to be allowed, having regard to the social and financial circumstances and the reasonable financial needs of the worker;

(ii) the circumstances in relation to the medical and associated conditions, treatment and management of the worker are exceptional circumstances as prescribed by the regulations and satisfactory prescribed evidence of those circumstances has been produced to the arbitrator; and

(iii) the further additional sum is required for reasonable expenses likely to be incurred in respect of surgical attendance and treatment, hospital treatment and maintenance or post-operative health treatment or related expenses, of a kind referred to in clause 17(1), (3), (4) or (5).

(2ab) If permitted by section 145A to do so, the arbitrator may refer a question arising under subclause (2aa)(c)(ii) to a medical assessment panel for determination.

(2ac) No further determination under subclause (2aa)(c)(ii) is required in respect of a second or later exercise of discretion under subclause (1b) in respect of a worker if the amount allowed is for expenses likely to be incurred in the course of following a management plan, as defined in regulations made under this subclause, produced when a determination was first made in respect of the worker under subclause (2aa)(c)(ii).

(2a) An application under subclause (1a) may be made at any time after the reasonable expenses referred to in clause 17(1) incurred by the worker exceed ~~75%~~ 60% of the maximum amount provided for by that subclause.

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(3) An application under subclause (1b) —

(a) may be made at any time after —

(i) an additional sum has been allowed to the worker under subclause (1) or (1a); and

(ii) that additional sum allowed exceeds, in whole or in aggregate, \$30 000;

but

(b) may not be made after the final day within the meaning of clause 18B.

~~—[(3) repealed]~~

~~—(4) The insurer of the employer, if the employer is insured in accordance with this Act, or otherwise the employer, shall notify the worker when the reasonable expenses referred to in clause 17(1) incurred by the worker exceed 75% of the maximum amount provided for by that subclause.~~

(4) The insurer of the employer, if the employer is insured in accordance with this Act, or otherwise the employer, is to —

(a) notify the worker when the reasonable expenses referred to in clause 17(1) incurred by the worker exceed 60% of the maximum amount provided for by that subclause; and

(b) notify the worker when an additional sum allowed to the worker under subclause (1) or (1a) exceeds, in whole or in aggregate, \$30 000.

Penalty: \$1 000.

[Clause 18A amended by the Workers' Compensation Reform Bill 2004 cl. 141(16)-(23) and 149.]

18B. Final day for clause 18A(1b) application

(1) If a claim for compensation by way of weekly payments has been made in accordance with section 178(1)(b) with respect to an injury of a worker, the final day for making an application by that worker under clause 18A(1b) is the last day of the period of 5 years after the day on which the claim for compensation is made unless a later day is fixed under subclause (2) or (3).

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(2) If, after the expiry of the period of 3 months after the day on which the claim is made —

(a) an arbitrator, acting under section 58(1) or (2), determines the question of liability to make the weekly payments claimed; or

(b) the worker is first notified that liability is accepted in respect of the weekly payments claimed,

the final day is the last day of the period 4 years and 9 months after the day of the act described in paragraph (a) or (b) that was most recently done unless a later day is fixed under subclause (3).

(3) The Director may, in accordance with the regulations, from time to time extend the final day, but only if the Director is satisfied that —

(a) in the case of a worker whose final day, as determined under subclause (1) or (2), is within 8 weeks after the coming into operation of section 141(22) of the *Workers' Compensation Reform Act 2004*, the worker has, in accordance with the regulations and before the final day, requested an approved medical specialist to assess the worker's degree of permanent whole of person impairment, but the worker was not given, or it would be impracticable to give, the worker the documents required to make an application under clause 18A(1b) before the final day; or

(b) in any other case, the worker has, in accordance with the regulations and at least 8 weeks before the final day, requested an approved medical specialist to assess the worker's degree of permanent whole of person impairment, but the worker was not given, or it would be impracticable to give, the worker the documents required to make an application under clause 18A(1b) before the final day.

(4) An extension under subclause (3) is to be to a day that is not more than one year after the day that would have been the final day had there been no extension under that subclause.

(5) An extension is to be in writing and the Director is required to give the worker and employer each a copy of the extension.

(6) An extension may be given even though the final day has passed.

[Clause 18B inserted by the Workers' Compensation Reform
Bill 2004 cl. 141(24).]

18C. Dispute as to degree of permanent whole of person impairment

(1) In the exercise of a discretion under clause 18A(1b), for the purposes
of clause 18A(2aa)(b) an arbitrator may —

(a) determine the degree of permanent whole of person
impairment; or

(b) refer the question as to the degree of permanent whole of
person impairment for assessment by an approved medical
specialist panel in accordance with sections 146A and 146E
and make a determination accordingly.

(2) If a determination is made that the worker's degree of permanent
whole of person impairment is not less than 25%, the arbitrator may
order the employer to pay all or any of the costs or expenses
connected with the dispute, including expenses connected with the
referral to an approved medical specialist panel.

(3) In this clause, and in clauses 18A and 18B —

“degree of permanent whole of person impairment” means the
degree of permanent whole of person impairment, evaluated as
described in sections 146A and 146E, resulting from the injury
or injuries arising from a single event, as defined in
subsection (4).

(4) In the definition of “degree of permanent whole of person
impairment” in subclause (3) —

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

[Clause 18C inserted by the Workers' Compensation Reform
Bill 2004 cl. 141(24).]

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18D. Interim payment of additional expenses

(1) If —

(a) the worker has incurred or is likely to incur reasonable expenses referred to in clause 17(1) in excess of the maximum amount provided for by that subclause; and

(b) an application is made under clause 18A(1) or (1a) for an additional sum in respect of those expenses,

an arbitrator may, before that application is determined, allow such interim sum, but not exceeding \$2 000, as the arbitrator thinks proper in the circumstances.

(2) For the purposes of calculating whether a sum of \$50 000 has been or will be allowed under clause 18A, an interim sum under subclause (1) in respect of an application under clause 18A(1) or (1a) is taken to be a sum allowed in the exercise of a discretion under clause 18A(1) or (1a).

[Clause 18D inserted by the Workers' Compensation Reform Bill 2004 cl. 141(25).]

19. Travelling

- (1) Where a worker is required by his employer, his employer's duly authorised agent or medical, or like adviser, or is advised by his own medical or like adviser, to travel from the place where he resides to a hospital or other place for treatment, or attendance of a kind referred to in clause 17; then, in addition to the compensation payable to such worker under this Schedule, the employer shall pay the worker's vehicle running expenses, if any, at the prescribed rate and any other reasonable fares and expenses incurred by the worker in such travelling and return, and the reasonable cost of meals and lodging necessarily incurred by the worker while away from his home for the purpose of such treatment, massage, or medical examination not exceeding the amount or amounts applying in accordance with section 5A.
- (2) In any case where no medical or like adviser is available and a worker travels for treatment, or attendance of a kind referred to in clause 17 without being so required or advised, the employer shall be liable as

Compensation entitlements Schedule 1

prescribed in subclause (1), if the worker proves such travelling was necessary in the circumstances of the case.

- (3) The amounts to cover the cost of meals and lodging shall not be payable to any worker who has no dependants, unless a worker has incurred costs for meals and lodging in excess of that which he would have incurred had he remained at his home, and then only to the amount of that excess.

[Schedule 1 amended by No. 44 of 1985 s. 41; No. 85 of 1986 s. 12; No. 96 of 1990 s. 48; No. 72 of 1992 s. 23; No. 48 of 1993 s. 19 and 28; No. 103 of 1994 s. 18; No. 33 of 1999 s. 8; No. 34 of 1999 s. 32(12) to (19) and 53; No. 28 of 2003 s. 215; by the Workers' Compensation Reform Bill 2004 cl. 141, 146, 147, 149, 150 and 154(4).]

Schedule 2 Table of compensation payable

~~Schedule 2 — Table of compensation payable~~

Schedule 2 — Table of compensation payable

[Heading inserted by the Workers' Compensation Reform

Bill 2004 cl. 142(1).]

Part 1

[Heading inserted by the Workers' Compensation Reform

Bill 2004 cl. 142(1).]

Column 1		Column 2
Item	Nature of Injury <u>Nature of injury or impairment</u>	Ratio which the sum payable herein bears to the prescribed amount.
		%
	EYES	
1.	Total loss of sight of both eyes	100
2.	Total loss of sight of an only eye	100
3.	Total loss of sight of one eye	50
4.	Total loss of sight of one eye and serious diminution of the sight of the other eye	75
5.	Loss of binocular vision	50
	HEARING	
6.	Total loss of hearing	75
	SPEECH	
7.	Total loss of power of speech	75
	BODY AND MENTAL	
8.	Permanent and incurable loss of mental capacity resulting in total inability to work	100
9.	Total and incurable paralysis of the limbs or of mental powers	100

Table of compensation payable Schedule 2

Column 1		Column 2
Item	<u>Nature of Injury</u> <u>Nature of injury or impairment</u>	Ratio which the sum payable herein bears to the prescribed amount. %
	SENSORY	
10.	Total loss of sense of taste and smell	50
11.	Total loss of taste	25
12.	Total loss of smell	25
	ARM	
13.	Loss of arm at or above elbow	90
14.	Loss of arm below elbow	80
	HAND	
15.	Loss of both hands	100
16.	Loss of a hand and foot	100
17.	Loss of hand or thumb and 4 fingers	80
18.	Loss of thumb	35
19.	Loss of forefinger	17
20.	Loss of middle finger	13
21.	Loss of ring finger	9
22.	Loss of little finger	6
23.	Total loss of movement of joint of thumb	17
24.	Total loss of distal phalanx of thumb	20
25.	Total loss of portion of terminal segment of thumb involving one-third of its flexor surface without loss of distal phalanx	15
26.	Total loss of distal phalanx of forefinger	10

Schedule 2 Table of compensation payable

• Item	Column 1	Column 2
	Nature of Injury <u>Nature of injury or impairment</u>	Ratio which the sum payable herein bears to the prescribed amount.
		%
27.	Total loss of distal phalanx of	
	— middle finger	8
	— ring finger	6
	— little finger	4
27A.	Total loss of distal phalanx of each finger of the same hand (not including the thumb) in one accident	31
	LEG	
28.	Loss of leg at or above knee	70
29.	Loss of leg below knee	65
	FEET	
30.	Loss of both feet	100
31.	Loss of foot	65
32.	Loss of great toe	20
33.	Loss of any other toe	8
34.	Loss of 2 phalanges of any other toe	5
35.	Loss of phalanx of great toe	8
36.	Loss of phalanx of any other toe	4
	BACKS, NECK AND PELVIS	
36A.	Permanent loss of the full efficient use of the back (including thoracic and lumbar spine).....	60
36B.	Permanent loss of the full efficient use of the neck (including cervical spine)	40
36C.	Permanent loss of the full efficient use of the pelvis	15

Table of compensation payable Schedule 2

• Item	Column 1	Column 2
	<u>Nature of Injury</u> <u>Nature of injury or impairment</u>	<u>Ratio which the sum payable herein bears to the prescribed amount.</u> %
	MISCELLANEOUS	
37.	Loss of genitals	50
38.	Severe facial scarring or disfigurement to a maximum of	80
39.	Severe bodily, other than facial, scarring or disfigurement to a maximum of	50

Part 2

[Heading inserted by the Workers' Compensation Reform Bill 2004 cl. 142(3).]

	<u>EYES</u>	
40.	<u>Impairment of sight of both eyes</u>	<u>100</u>
41.	<u>Impairment of sight of an only eye</u>	<u>100</u>
42.	<u>Impairment of sight of one eye</u>	<u>50</u>
43.	<u>Impairment of binocular vision</u>	<u>50</u>
	<u>HEARING</u>	
44.	<u>Impairment of hearing</u>	<u>75</u>
	<u>SPEECH</u>	
45.	<u>Impairment of power of speech</u>	<u>75</u>
	<u>BODY AND MENTAL</u>	
46.	<u>Impairment of mental capacity</u>	<u>100</u>
47.	<u>Impairment of spinal cord function</u>	<u>100</u>
	<u>SENSORY</u>	
48.	<u>Impairment of sense of taste and smell</u>	<u>50</u>
49.	<u>Impairment of sense of taste</u>	<u>25</u>

Schedule 2 Table of compensation payable

<u>50.</u>	<u>Impairment of sense of smell</u>	<u>25</u>
	<u>ARM</u>	
<u>51.</u>	<u>Impairment of arm at or above elbow</u>	<u>90</u>
<u>52.</u>	<u>Impairment of arm below elbow</u>	<u>80</u>
	<u>HAND</u>	
<u>53.</u>	<u>Impairment of both hands</u>	<u>100</u>
<u>54.</u>	<u>Impairment of hand and foot</u>	<u>100</u>
<u>55.</u>	<u>Impairment of hand or thumb and 4 fingers ...</u>	<u>80</u>
<u>56.</u>	<u>Impairment of thumb</u>	<u>35</u>
<u>57.</u>	<u>Impairment of forefinger</u>	<u>17</u>
<u>58.</u>	<u>Impairment of middle finger</u>	<u>13</u>
<u>59.</u>	<u>Impairment of ring finger</u>	<u>9</u>
<u>60.</u>	<u>Impairment of little finger</u>	<u>6</u>
<u>61.</u>	<u>Impairment of movement of joint of thumb ...</u>	<u>17</u>
<u>62.</u>	<u>Impairment of distal phalanx of thumb</u>	<u>20</u>
<u>63.</u>	<u>Impairment of portion of terminal segment of</u> <u>thumb involving one-third of its flexor surface</u> <u>without loss of distal phalanx</u>	<u>15</u>
<u>64.</u>	<u>Impairment of distal phalanx of forefinger</u>	<u>10</u>
<u>65.</u>	<u>Impairment of distal phalanx of</u> <u>— middle finger</u>	<u>8</u>
	<u>— ring finger</u>	<u>6</u>
	<u>— little finger</u>	<u>4</u>
<u>66.</u>	<u>Impairment of distal phalanx of each finger of</u> <u>the same hand (not including the thumb) in one</u> <u>accident</u>	<u>31</u>
	<u>LEG</u>	
<u>67.</u>	<u>Impairment of leg at or above knee</u>	<u>70</u>
<u>68.</u>	<u>Impairment of leg below knee</u>	<u>65</u>
	<u>FEET</u>	
<u>69.</u>	<u>Impairment of both feet</u>	<u>100</u>
<u>70.</u>	<u>Impairment of foot</u>	<u>65</u>
<u>71.</u>	<u>Impairment of great toe</u>	<u>20</u>

Table of compensation payable Schedule 2

<u>72.</u>	<u>Impairment of any other toe</u>	<u>8</u>
<u>73.</u>	<u>Impairment of 2 phalanges of any other toe ...</u>	<u>5</u>
<u>74.</u>	<u>Impairment of phalanx of great toe</u>	<u>8</u>
<u>75.</u>	<u>Impairment of phalanx of any other toe</u>	<u>4</u>
	<u>BACK, NECK AND PELVIS</u>	
<u>76.</u>	<u>Impairment of the back (thoracic spine or lumbar spine or both)</u>	<u>75</u>
<u>77.</u>	<u>Impairment of the neck (including cervical spine)</u>	<u>55</u>
<u>78.</u>	<u>Impairment of the pelvis</u>	<u>30</u>
	<u>MISCELLANEOUS</u>	
<u>79.</u>	<u>Impairment of genitals</u>	<u>50</u>
<u>80.</u>	<u>Impairment from facial scarring or disfigurement</u>	<u>80</u>
<u>81.</u>	<u>Impairment from bodily, other than facial, scarring or disfigurement</u>	<u>50</u>
<u>82.</u>	<u>AIDS</u>	<u>100</u>

[Schedule 2 amended by No. 44 of 1985 s. 42; No. 48 of 1993 s. 20; No. 34 of 1999 s. 54; the Workers' Compensation Reform Bill 2004 cl. 142.]

Schedule 3 Specified industrial diseases

Schedule 3 — Specified industrial diseases

Column 1	Column 2
Description of Disease	Description of Process
* Arsenic, phosphorus, lead, mercury or other mineral poisoning	Any employment involving the use or handling of arsenic, phosphorus, lead, mercury, or other mineral, or their preparations or compounds.
* Anthrax	Wool-combing; wool-sorting; handling of hides, skins, wool, hair, bristles, or carcasses; loading and unloading or transport of merchandise.
Communicable diseases	Employment in an occupation or in a situation exposing the worker to infection by the intermediate hosts of any communicable disease or by agencies transmitting any communicable disease, where within a reasonable period of incubation, specific infection has followed demonstrable action of the particular vectors or agents concerned in the transmission of that disease, or where that action can be reasonably presumed.
* Poisoning by trinitrotoluene or by benzol or its nitro and amido derivatives (dinitrobenzol, aniline and others)	Any process involving the use of trinitrotoluene or of the nitro and amido derivatives of benzol or its preparations or compounds.
Poisoning by a homologue of benzol	Any process involving the use of homologue of benzol.
* Poisoning by carbon bisulphide	Any process involving the use of carbon bisulphide or its preparations or compounds.
Poisoning by a halogen derivative of a hydrocarbon of the aliphatic series	Any process involving the use of a halogen derivative or a hydrocarbon of the aliphatic series.
* Poisoning by nitrous fumes	Any process in which nitrous fumes are evolved.

Specified industrial diseases Schedule 3

Column 1	Column 2
Description of Disease	Description of Process
*Poisoning by fluorine	Any process in which fluorine is used.
*Poisoning by cyanogen compounds	Any process in which cyanogen compounds are used.
*Poisoning by carbon monoxide	Any process in which carbon monoxide is used, or evolved.
*Leptospirosis; endemic typhus, scrub typhus, Brill's disease, swineherds disease, plague, mite dermatitis and scrub itch	Employment in an occupation or in a situation exposing the worker to infection with a specific disease transmissible from animal to man where the specific infection associated with occupation or situation develops within its known incubation period and can be reasonably presumed to have occurred in the course of such employment.
*Chrome ulceration	Any process involving the use of chromic acid or bichromate of ammonium, potassium, or sodium, or their preparations.
Effects of insolation	Work entailing prolonged exposure to sunlight.
Effects of electrical currents	Workers exposed to electrical currents.
Any dermatosis, ulceration or injury to the skin or ulceration or injury to the mucous membranes of the mouth or nose wholly or partly produced or aggravated by contact with or inhalation or ingestion of irritating dusts, solids, gases or fumes or mineral or vegetable irritants or ray burn	Any industrial process.

Schedule 3 Specified industrial diseases

Column 1	Column 2
Description of Disease	Description of Process
Epitheliomatous cancer or ulceration of skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of those substances.	Handling of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products, or residues of those substances.
*Pneumoconiosis	Any process entailing exposure to mineral dusts harmful to the lungs.
Mesothelioma	Any process entailing substantial exposure to asbestos dust.
Pathological manifestation due to —	Any process involving exposure to the action of radium, radioactive substances, X-rays or lasers.
(a) radium and other radioactive substances	
(b) X-rays;	
(c) lasers.	
Hepatitis B	Employment in a hospital or other medical centre or a dental hospital or dental centre or employment associated with a blood bank.
Lung cancer	Any process entailing heavy exposure to asbestos dust.
Bronchopulmonary diseases caused by cotton, flax, hemp or sisal dust	Any process entailing exposure to cotton, flax, hemp or sisal dust.
Occupational asthma caused by sensitizing agents or irritants inherent to the work process	Any process entailing exposure to sensitizing agents or irritants inherent to that process
Extrinsic allergic alveolitis caused by the inhalation of organic dusts	Any process entailing exposure to organic dusts.
Diseases caused by alcohols, glycols or ketones	Any process entailing exposure to alcohols, glycols or ketones.
Diseases caused by the asphyxiants carbon monoxide, hydrogen cyanide or its toxic derivatives or hydrogen sulfide	Any process in which carbon monoxide, hydrogen cyanide or its toxic derivatives or hydrogen sulfide is used.

* See section 48(2)

[Schedule 3 amended by No. 44 of 1985 s. 43; No. 48 of 1993 s. 42.]

Specified losses of functions Schedule 4

Schedule 4 — Specified losses of functions

Column 1	Column 2
Loss of Function	Description of Process
Noise induced hearing loss	Any work process involving continued exposure to excessive noise.
Effects of vibration (including Raynaud's phenomenon and dead hand)	Use of vibratory tools, implements and appliances.
Compressed air illness	Any process carried on in compressed air.

Schedule 5 Exceptions to cessation of weekly payments by reason of age

**Schedule 5 — Exceptions to cessation of weekly payments
by reason of age**

[Section 56]

1. Definitions

(1) In this Schedule —

“proclaimed date” means the date on which this Schedule comes into operation;

“redemption amount” means —

- (a) the sum of \$20 000 varied annually on 1 July, commencing 1 July 1983 and thereafter on the accumulative sum in accordance with such percentage change in the weighted average minimum award rate for adult males under the Western Australian State Awards published by the Australian Bureau of Statistics as occurs between 1 April in the calendar year preceding the variation and 31 March in the calendar year of the variation, or if the relevant minimum award rates are not published, the accumulative sum (in the form of the nearest whole number of dollars) obtained by varying the accumulative sum applying on the previous 1 July in accordance with the regulations (with an amount that is 50 cents more than a whole number of dollars being rounded off to the next highest whole number of dollars);
or

- (b) a sum equivalent to the prescribed amount less the amount of weekly payments made,

whichever is the less;

“supplementary amount” means —

- (a) in relation to a worker with a dependent spouse or dependent de facto partner, or both, the sum of \$34.50;
 - (b) in relation to a worker without a dependent spouse or dependent de facto partner, the sum of \$20,
- or such higher amounts as are respectively prescribed.

Exceptions to cessation of weekly payments by reason of age **Schedule 5**

- (2) Schedule 1 shall be read and construed subject to this Schedule.

[Clause 1 amended by No. 28 of 2003 s. 216(1).]

1A. Successive lung diseases to be regarded as one

If a worker, at the same time or successively, suffers more than one of the ~~disabilities-injuries~~ of pneumoconiosis, mesothelioma, or lung cancer, they are to be regarded for the purposes of this Schedule as the same ~~disability injury~~, being the ~~disability injury~~ for which the worker has claimed compensation under this Act, or as a progression of that ~~disability injury~~.

[Clause 1A amended by the Workers' Compensation Reform Bill 2004 cl. 147 and 148(1).]

2. Incapacity for work resulting from disabilities other than pneumoconiosis, mesothelioma and lung cancer

Where the worker shows to the satisfaction of the employer or, in the case of dispute, ~~a dispute resolution body~~ an arbitrator that, if incapacity resulting from the ~~disability injury~~ had not occurred, he would have continued to be a worker after attaining the age of 65, he shall be entitled to the supplementary amount as a weekly payment during any period of total incapacity resulting from the ~~disability injury~~ in the time he would have been a worker, but in any case —

- (a) not beyond the time when he attains the age of 70 years; and
- (b) subject to Schedule 1 clause 7(3).

[Clause 2 amended by the Workers' Compensation Reform Bill 2004 cl. 147 and 149.]

3. Incapacity for work resulting from ~~disabilities-injuries~~ of pneumoconiosis, mesothelioma and lung cancer — weekly payments

- (1) This clause shall be read and construed subject to the qualifications on entitlement in sections 33 and 34 and subject to sections 46 and 47.
- (2) In this clause “**weekly payments**” means weekly payments of compensation calculated and varied in accordance with Schedule 1.
- (2a) Subclauses (3) to (7) apply only to the ~~disabilities-injuries~~ of pneumoconiosis and mesothelioma.

Schedule 5 Exceptions to cessation of weekly payments by reason of age

- (3) Subject to the provisions of this Schedule and to Schedule 1 clause 7(3), where a worker aged 65 or more on the proclaimed date had suffered one of those ~~disabilities-injuries~~ before that date and, immediately before then, he was entitled to weekly payments of compensation for any incapacity resulting from that ~~disability-injury~~ under the repealed Act, in respect of any incapacity resulting from that ~~disability-injury~~ on or after the proclaimed date he is entitled to receive weekly payments.
- (4) Subject to the provisions of this Schedule and Schedule 1 clause 7(3), where a worker who attains or has attained the age of 65 after the proclaimed date has or had suffered one of those ~~disabilities-injuries~~ before attaining that age and, immediately before attaining that age, he was entitled to weekly payments for any incapacity resulting from that ~~disability-injury~~, in respect of any incapacity resulting from that ~~disability-injury~~ on or after the day he attains or attained that age he is entitled to receive weekly payments.
- (5) Subject to the provisions of this Schedule, where a worker attains or has attained the age of 65 after the proclaimed date and one of those ~~disabilities-injuries~~ of the worker occurs or has occurred on or after his attaining that age, in respect of any incapacity arising from that ~~disability-injury~~ he is entitled to receive weekly payments.
- (6) Subject to the provisions of this Schedule, where a worker was aged 65 or more on the proclaimed date and one of those ~~disabilities-injuries~~ of the worker occurs on or after the day on which the *Workers' Compensation and Assistance Amendment Act 1984*¹ comes into operation, in respect of any incapacity arising from that ~~disability-injury~~ he is entitled to receive weekly payments.
- (7) Subject to the provisions of this Schedule, where a worker aged 65 or more on the proclaimed date suffers from one of those ~~disabilities-injuries~~ and the ~~disability-injury~~ occurred on or after the proclaimed date but before the coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*¹, in respect of any incapacity resulting from that ~~disability-injury~~ he is entitled to receive —
- (a) a lump sum payment equivalent to the value of weekly payments he would have received prior to the coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*¹ if he had been entitled to receive such

Exceptions to cessation of weekly payments by reason of age Schedule 5

- weekly payments from the time the ~~disability-injury~~ occurred but so that such lump sum payment shall not exceed the aggregate of 52 such weekly payments; and
- (b) weekly payments, if and to the extent that the total sum of weekly payments received, together with the lump sum payment received pursuant to paragraph (a), does not exceed the aggregate of 52 such weekly payments.
- (8) Subject to the provisions of this Schedule and Schedule 1 clause 7(3) —
- (a) where a worker aged 65 or more on the relevant day had suffered the ~~disability-injury~~ of lung cancer before that day and, immediately before then, he was entitled to weekly payments of compensation for any incapacity resulting from that ~~disability-injury~~, in respect of any incapacity resulting from that ~~disability-injury~~ on or after the relevant day he is entitled to receive weekly payments;
- (b) where a worker who attains or has attained the age of 65 after the relevant day has or had suffered the ~~disability-injury~~ of lung cancer before attaining that age and, immediately before attaining that age, he was entitled to weekly payments for any incapacity resulting from that ~~disability-injury~~, in respect of any incapacity resulting from that ~~disability-injury~~ on or after the day he attains or attained that age he is entitled to receive weekly payments;
- (c) where a worker who attains or has attained the age of 65 after the relevant day suffers or has suffered the ~~disability-injury~~ of lung cancer on or after attaining that age, in respect of any incapacity arising from that ~~disability-injury~~ he is entitled to receive weekly payments;
- (d) where a worker who was aged 65 or more on the relevant day suffers the ~~disability-injury~~ of lung cancer on or after the relevant day, in respect of any incapacity arising from that ~~disability-injury~~ he is entitled to receive weekly payments; and
- (e) where a worker would be entitled to receive weekly payments under paragraph (a), (b), (c) or (d) if the references in those

Schedule 5 Exceptions to cessation of weekly payments by reason of age

paragraphs to “relevant day” were references to 28 June 1985, he is entitled to receive —

- (i) a lump sum payment equivalent to the value of the weekly payments he would have received up until the “relevant day” but so that such lump sum payment shall not exceed the aggregate of 52 such weekly payments; and
- (ii) weekly payments, if and to the extent that the total sum of weekly payments received, together with the lump sum payment received pursuant to subparagraph (i), does not exceed the aggregate of 52 such weekly payments,

and for the purposes of this subclause, “**the relevant day**” means the day of the commencement of section 49 of the *Workers' Compensation and Assistance Amendment Act 1990*¹.

[Clause 3 amended by the Workers' Compensation Reform Bill 2004 cl. 147 and 148(1).]

4. Election to take redemption amount as lump sum or supplementary amount weekly

A worker entitled to receive weekly payments of compensation under clause 3 may elect during his lifetime and while he is so entitled and —

- (a) where he receives payments under clause 3(3), within 3 months of the coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*¹;
- (b) where he receives payments under clause 3(4), within the period ending on the date that is —
 - (i) 3 months after the coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*¹; or
 - (ii) one year after he becomes or became entitled to receive payments,whichever date is the later;
- (c) where he receives payments under clause 3(5) —
 - (i) if, at the coming into operation of the *Workers' Compensation and Assistance Amendment Act 1984*¹,

Exceptions to cessation of weekly payments by reason of age **Schedule 5**

he has received such payments for a period of not less than one year, within 3 months of the coming into operation of that Act; or

- (ii) in any other case, within the period of one year from the time when he became or becomes entitled to receive weekly payments;
- (d) where he receives weekly payments under clause 3(6) or clause 3(8)(a), (b), (c) or (d), within the period of one year from the time when he becomes entitled to receive those payments; or
- (e) where he receives —
 - (i) only a lump sum payment under clause 3(7) or 3(8)(e), at the time of receiving that lump sum payment; or
 - (ii) a lump sum payment and weekly payments under clause 3(7) or 3(8)(e), before receiving the aggregate of 52 weekly payments,

to receive the redemption amount as a lump sum or to receive the supplementary amount weekly during his lifetime from the date he so elects and the employer shall be liable to pay compensation accordingly and not in accordance with clause 3.

5. Requirements for election under clause 4

- (1) A worker elects for the purposes of clause 4 if, and only if —
 - (a) the worker signs a prescribed form of election containing prescribed particulars in respect of the relevant ~~disability~~ injury; and
 - (b) that form is filed with the ~~Directorate~~ Director, and a copy of it is served on the employer, by or on behalf of the worker.
- (2) A form of election shall not be binding upon a worker unless the Director is satisfied that it contains a statement in clear terms of the effect the election will have on the worker's, and the worker's dependants', future entitlement to compensation under this Act.

Schedule 5 Exceptions to cessation of weekly payments by reason of age

- (3) Where the Director is not satisfied in accordance with subclause (2), he shall within 7 days notify the employer and the worker accordingly.

[Clause 5 amended by the Workers' Compensation Reform Bill 2004 cl. 143(1) and 147.]

6. Effect of receiving the redemption amount as a lump sum

From the date a worker receives the redemption amount as a lump sum —

- (a) section 67 does not apply;
 - (b) for the ~~disability-injury~~ from which the incapacity resulted —
 - (i) the worker is not entitled to further compensation; and
 - (ii) clauses 9, 10, 17, 18, 18A and 19 of Schedule 1 cease to apply to the worker;
- and
- (c) clauses 1, 2, 3, 4, 5 and 17(2) of Schedule 1 shall not apply in respect of the worker's death.

[Clause 6 amended by the Workers' Compensation Reform Bill 2004 cl. 143(2) and 147.]

7. Effect of receiving supplementary amount

From the date a worker commences to receive a supplementary amount weekly —

- (a) section 67 does not apply;
- (b) if his death results from the ~~disability-injury~~ and a dependent spouse or dependent de facto partner, survives him —
 - (i) the employer is liable to pay into the custody of ~~the Commission~~ WorkCover WA for the benefit of the spouse or de facto partner, as a lump sum the aggregate of the supplementary amount for a worker with a dependent spouse or dependent de facto partner at the rate applicable at the date of death for a period of 3 years, and after the amount is so paid there shall be liberty to apply to ~~the Commission~~ WorkCover WA by or on behalf of the dependent

Exceptions to cessation of weekly payments by reason of age Schedule 5

spouse or dependent de facto partner in respect of the manner in which that amount or any part of it is applied and that dependant is entitled to receive that lump sum;

- (ii) if application is made to ~~the Commission~~ WorkCover WA under subparagraph (i) by or on behalf of more than one such dependant, the lump sum referred to in that subparagraph is to be apportioned between the dependants according to the respective financial losses of support suffered by them, which apportionment is to be determined by ~~a dispute resolution body~~ an arbitrator, and those dependants are entitled to receive that lump sum as so apportioned; and
- (iii) the dependent spouse or dependent de facto partner is also entitled to receive, and the employer is liable to pay weekly, from the date of the worker's death and during the lifetime of the dependent spouse or dependent de facto partner, the supplementary amount at the rate for a worker without a dependent spouse or dependent de facto partner, and where there is more than one such dependant, the amount is to be apportioned between them according to the respective financial losses of support suffered by them, which apportionment is to be determined by ~~a dispute resolution body~~ an arbitrator;

and

- (c) clauses 1, 2, 3, 4, 5 and 17(2) of Schedule 1 do not apply in respect of the worker's death.

[Clause 7 amended by No. 28 of 2003 s. 216(2); the Workers' Compensation Reform Bill 2004 cl. 147, 149 and 150.]

8. Payment of supplementary amount

- (1) An employer is not liable to pay compensation in accordance with clause 3 to a worker who does not make an election within the time specified in clause 4 but is liable to pay that worker the supplementary

Schedule 5 Exceptions to cessation of weekly payments by reason of age

amount weekly during his lifetime from the last day on which the worker was entitled to make an election.

- (2) A worker who —
- (a) receives a lump sum payment under clause 3(7)(a) or 3(8)(e)(i);
 - (b) is not entitled to receive weekly payments under clause 3(7)(b) or 3(8)(e)(ii); and
 - (c) does not elect to take the redemption amount as a lump sum at the time of receiving the payment referred to in paragraph (a),

is entitled to receive a further lump sum payment equivalent to the value of the supplementary amounts weekly he would have been entitled to receive during the period commencing one year after his ~~disability-injury~~ occurred and ending on the day on which he is entitled to make an election under clause 4(e)(i) and thereafter he is entitled to receive the supplementary amount weekly during his lifetime.

[Clause 8 amended by the Workers' Compensation Reform Bill 2004 cl. 147.]

9. Death of a worker prior to commencement of section 49 of Workers' Compensation and Assistance Amendment Act 1990

- (1) Where a worker who died prior to the commencement of section 49 of the *Workers' Compensation and Assistance Amendment Act 1990*¹ would otherwise have been entitled to compensation or other benefits, or both, under clause 3(8)(e), 4(e) or 8(2) in respect of incapacity resulting from the ~~disability-injury~~ of lung cancer is survived by a dependent spouse, that spouse is entitled to receive any compensation or other benefits, and the employer is liable to pay the compensation or to pay for the provision of the other benefits, that the worker would have received or been entitled to receive up until the time of his death.

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- (2) The payment of a supplementary amount weekly to a dependent spouse instead of to a worker under subclause (1) does not act to stop clause 7(b) applying to that dependent spouse.

[Clause 9 amended by the Workers' Compensation Reform Bill 2004 cl. 147.]

[Schedule 5 amended by No. 104 of 1984 s. 8; No. 96 of 1990 s. 49; No. 48 of 1993 s. 28; No. 34 of 1999 s. 55; No. 28 of 2003 s. 216; the Workers' Compensation Reform Bill 2004 cl. 143, 147, 149 and 150.]

[Schedule 6 repealed by No. 48 of 1993 s. 28.]

Schedule 7 Noise induced hearing loss

Schedule 7 — Noise induced hearing loss

[Section 24A]

1. Definitions

In this Schedule —

“audiometric test” means an audiometric test carried out in accordance with clause 4(1);

“prescribed workplace” means a workplace prescribed under clause 10;

“proclaimed date” means the date on which the *Workers' Compensation and Assistance Amendment Act 1988*¹ comes into operation.

2. Audiometric tests

- (1) A worker employed in a prescribed work place shall undergo an initial audiometric test as soon as practicable but no later than —
 - (a) where the worker is employed in a prescribed workplace at the proclaimed date, 12 months after that date; or
 - (b) if the worker was not employed in a prescribed workplace at the proclaimed date, 12 months after the worker commences employment in a prescribed workplace.
- (2) A worker employed in a prescribed workplace, or who has retired from work in a prescribed workplace within the last 3 months, who has not undergone an audiometric test for 12 months and who wishes to do so may request the employer, or in the case of a retired worker the worker's last employer, in writing to arrange for such a test and the employer shall, as soon as practicable, but not later than one month after the day that the request was received, arrange for the test to be held at the earliest date practicable.
- (3) A worker who has retired from work and is subsequently employed in a prescribed workplace shall undergo an audiometric test within 3 months of commencing that employment.
- (4) Any worker may undergo an audiometric test at any other time not referred to in this clause but clause 3 does not apply to that test.

3. Employer to arrange and pay for audiometric test

- (1) The employer of a worker who is required, or who makes a request, to undergo an audiometric test under clause 2 shall —
 - (a) arrange for the test;
 - (b) bear the cost of the test and all reasonable fares and expenses incurred by the worker in travelling to undergo the test and in returning, including the reasonable cost of meals and lodgings; and
 - (c) give written notice to the worker in the prescribed form of the time and place of the test, where relevant, the requirement to undergo the test and any other particulars prescribed regarding the test.
- (2) An employer who contravenes subclause (1) commits an offence.

4. Carrying out of audiometric tests

- (1) An audiometric test shall be carried out in the prescribed manner by a person meeting the prescribed requirements and approved by the ~~Executive Director~~ chief executive officer.
- (2) A person who carries out an audiometric test shall ensure that the results of the test prepared, or summarized, as prescribed are delivered to ~~the Commission~~ WorkCover WA and to the worker tested within one month after the day of the test.
- (3) Subject to subclause (2), a person who carries out an audiometric test shall ensure that the results of the test, and any information derived from those results, are not communicated to any person other than at the written request of the worker tested or to —
 - (a) ~~the Executive Director~~ chief executive officer; or
 - (b) any other person prescribed in circumstances, if any, prescribed.
- (4) A person who contravenes subclause (2) or (3) commits an offence.

[Clause 4 amended by the Workers' Compensation Reform Bill 2004 cl. 150 and 152.]

Schedule 7 Noise induced hearing loss

5. Communication and storage of audiometric test results

- (1) ~~The Commission~~ WorkCover WA shall communicate the results of an audiometric test delivered to it under clause 4(2) —
- (a) to the worker tested and, if the test results indicate that the worker may be entitled to compensation for noise induced hearing loss under section 24A or 31E, to the worker's employer; and
 - (b) ~~to the Directorate or a compensation magistrate's court~~ an arbitrator, where required to do so under section 73(6).
- (1a) ~~The Commission~~ WorkCover WA may communicate the results mentioned in subclause (1) or information from those results, to any other person if, and only if, the identity of the worker or employer to whom the results or information relates, is not revealed to that person.
- (2) ~~The Commission~~ WorkCover WA shall store the results of audiometric tests delivered to it under clause 4(2) for the period prescribed and, subject to subclause (1), shall ensure that those results, and any information derived from them, remain confidential.
- (3) Subject to subclause (2), ~~the Commission~~ WorkCover WA may store the results of audiometric tests delivered to it under clause 4(2) in any form that enables the results stored, or information from those results, to be read, whether with the use of a device or otherwise.

[Clause 5 amended by the Workers' Compensation Reform Bill 2004 cl. 144(1) and 150.]

~~6. Reference to medical assessment panel~~

- ~~(1) Any question that arises under section 24A or this Schedule regarding audiometric testing or hearing loss, including whether or to what extent hearing loss is noise induced hearing loss, may be referred by the Director to a medical assessment panel if —~~
- ~~(a) a person performing a function under Part IIIA so requests;~~
 - ~~(b) the worker claiming compensation or that worker's employer so requests in the manner prescribed and on payment of the prescribed fee.~~

Noise induced hearing loss Schedule 7

- ~~(2) Where a question has been referred to a medical panel under subclause (1) —~~
- ~~(a) the Director shall make such arrangements as are necessary to enable any medical practitioner who has examined or treated the worker, on the worker's own behalf or on behalf of the employer, and who makes a request to do so, to attend before the medical assessment panel and make oral submissions, and the medical practitioner shall be paid from moneys standing to the credit of the General Fund such witness fees as he or she would have been entitled to receive if he or she had attended to give evidence in a hearing before a compensation magistrate's court under Part IIIA; and~~
- ~~(b) if the worker, on being required to do so, refuses without reasonable excuse, proof of which is on the worker, to submit to an examination by that panel, or obstructs the examination, then that worker's right to compensation for noise induced hearing loss under section 24A is suspended until the examination takes place.~~

6. Reference to medical assessment panel

If permitted by section 145A to do so, an arbitrator may refer a question that arises under section 24A or 31E regarding audiometric testing or hearing loss, including whether or to what extent hearing loss is noise induced hearing loss, for determination by a medical assessment panel.

[Clause 6 inserted by the Workers' Compensation Reform Bill 2004 cl. 144(2).]

7. Re-test of person's hearing

- (1) Where an audiometric test has been carried out on a worker and the worker or the employer, within 3 months after the day on which the results of the audiometric test are communicated to him or her, gives notice in the prescribed form to ~~the Commission~~ WorkCover WA to the effect that the test results are disputed ~~the Commission~~ WorkCover WA shall arrange for a re-test of the worker to be carried out in the prescribed manner.

Schedule 7 Noise induced hearing loss

- (2) If a worker refuses without reasonable excuse, proof of which is on the worker, to submit to a re-test under subclause (1) or obstructs that re-test, then that worker's right to compensation for noise induced hearing loss under section 24A or 31E is suspended until the re-test takes place.
- (3) The costs of a re-test under this clause and all reasonable fares and expenses incurred by the worker in travelling to undergo the test and in returning, including the reasonable cost of meals and lodgings shall be paid from moneys standing to the credit of the General Fund.

[Clause 7 amended by the Workers' Compensation Reform Bill 2004 cl. 144(3) and 150.]

8. Determination of hearing loss

- (1) The results of an audiometric test carried out on a worker and stored in any form by ~~the Commission~~ WorkCover WA under clause 5 are prima facie evidence of the level of hearing of the person at the date of the test.
- (2) Where a comparison of the results of 2 audiometric tests stored by ~~the Commission~~ WorkCover WA under clause 5 shows that a loss or diminution of the hearing of a worker has occurred, those results shall be prima facie evidence of the measure of loss or diminution of hearing of that worker between the dates of the tests.
- (3) Where an audiometric test shows that a loss or diminution of hearing has been incurred by a worker but the worker has not undergone an earlier audiometric test then whether, and to what extent, that loss or diminution of hearing is compensable noise induced hearing loss may, in default of agreement between the worker and employer, be referred ~~to the Director for conciliation under Part IIIA~~ dealt with as a dispute under Part XI.
- (4) If a worker —
 - (a) undergoes an audiometric test within 3 months of the worker's employment being terminated, or in the case of a worker who has retired, the worker makes a request under clause 2(2) within 3 months of retirement, then the results of that test shall be taken into account in assessing hearing loss for the purposes of section 24A or 31E as if the person had

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undergone the test before the termination of that employment, or on retirement; or

- (b) undergoes an audiometric test within 3 months before commencing employment then the results of that test shall be taken into account in assessing hearing loss for the purposes of section 24A or 31E as if the worker had undergone the test at the commencement of that employment.

[Clause 8 amended by the Workers' Compensation Reform Bill 2004 cl. 144(4), (5) and 150.]

9. Audiometric test not conclusive proof that hearing loss is noise induced

The fact that the worker was under a duty or chose to undergo an audiometric test or other hearing test, shall not be conclusive proof that any loss or diminution of the worker's hearing is due to the nature of the employment in which the worker was employed.

10. Prescribed workplaces

Workplaces shall be prescribed for the purposes of this Schedule.

[Schedule 7 inserted by No. 36 of 1988 s. 12; amended by No. 48 of 1993 s. 28 and 43; No. 49 of 1996 s. 64; No. 34 of 1999 s. 56(1) and (3); the Workers' Compensation Reform Bill 2004 cl. 144, 150 and 152.]

Schedule 8 Terms and conditions of service of Commissioner

**Schedule 8 — Terms and conditions of service
of Commissioner**

*[Heading inserted by the Workers' Compensation Reform
Bill 2004 cl. 145.]*

[s. 282]

1. Tenure of Commissioner's office

- (1) The term for which a person is appointed as the Commissioner is to be fixed in the instrument of appointment and is to be not longer than 5 years.
- (2) The Commissioner's eligibility for reappointment or the term for which the Commissioner may be reappointed is not affected by an earlier appointment.

*[Clause 1 inserted by the Workers' Compensation Reform Bill 2004
cl. 145.]*

2. Vacating office prematurely

- (1) The Commissioner may resign from office by giving the Governor a signed letter of resignation.
- (2) A resignation is not effective until the Governor has accepted it.
- (3) If a resignation is accepted it takes effect when it is accepted or at any later date stated in the letter.
- (4) A person who has resigned from office as the Commissioner is not precluded from again being appointed to the office.
- (5) A person who holds office as the Commissioner does so during good behaviour but the Governor may, on the address of both Houses of Parliament, terminate the person's term of office.
- (6) If a person who holds office as the Commissioner becomes ineligible, because of section 281(2), to hold the office, the person's term of office terminates.

*[Clause 2 inserted by the Workers' Compensation Reform Bill 2004
cl. 145.]*

3. Commissioner's status as District Court Judge

- (1) The appointment of a person as the Commissioner does not affect the person's tenure of office as, or status as, a Judge of the District Court nor the payment of the person's salary or allowances as a Judge nor any other rights or privileges of the person as a Judge.
- (2) A person's service in the office of Commissioner is to be taken for all purposes to be service in the person's office of Judge of the District Court.
- (3) Nothing in this Act prevents a person who holds office as Commissioner from doing anything in the person's capacity as a Judge of the District Court.
- (4) A person's resignation from office as Commissioner or the termination of a person's term of office as Commissioner does not affect the person's office as a Judge of the District Court.

[Clause 3 inserted by the Workers' Compensation Reform Bill 2004 cl. 145.]

4. Completion of matters

- (1) A former Commissioner may, despite the expiration of the Commissioner's term of appointment, complete or otherwise continue to deal with any matters relating to proceedings before the Commissioner that have been heard or partly heard by the Commissioner before the expiration of that term.
- (2) While completing or otherwise dealing with matters under subclause (1), a former Commissioner is taken to have all the powers and immunities as the Commissioner that the former Commissioner had immediately before the expiration of that person's term as the Commissioner.

[Clause 4 inserted by the Workers' Compensation Reform Bill 2004 cl. 145.]

[Schedule 8 inserted by the Workers' Compensation Reform Bill 2004 cl. 145.]

Notes

- ¹ This is a compilation of the *Workers' Compensation and Rehabilitation Act 1981* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

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

Short title	Number and year	Assent	Commencement
<i>Workers' Compensation and Assistance Amendment Act 1986</i> ²⁵	33 of 1986	1 Aug 1986	1 Aug 1986 (see s. 2)
<i>State Government Insurance Commission Act 1986</i> s. 46(2)	51 of 1986	5 Aug 1986	1 Jan 1987 (see s. 2 and <i>Gazette</i> 19 Dec 1986 p. 4859)
<i>Workers' Compensation and Assistance Amendment Act (No. 2) 1986</i>	85 of 1986	5 Dec 1986	s. 7 and 11: 22 May 1987 (see s. 2(2) and <i>Gazette</i> 22 May 1987 p. 2167); balance: 5 Dec 1986
<i>Acts Amendment (Workers' Compensation and Assistance) Act 1986</i> Pt. III	86 of 1986	5 Dec 1986	2 Jan 1987
Reprint of the Workers' Compensation and Assistance Act 1981 as at 6 Feb 1987 (includes amendments listed above except those in the <i>Workers' Compensation and Assistance Amendment Act (No. 2) 1986</i> s. 7 and 11)			
<i>Workers' Compensation and Assistance Amendment Act 1987</i> ²⁶	21 of 1987	25 Jun 1987	23 Jul 1987
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987</i> Pt. VII	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and <i>Gazette</i> 12 Feb 1988 p. 397)
<i>Workers' Compensation and Assistance Amendment Act 1988</i>	36 of 1988	24 Nov 1988	1 Mar 1991 (see s. 2 and <i>Gazette</i> 1 Mar 1991 p. 967)
<i>Workers' Compensation and Assistance Amendment Act 1990</i> ²⁷	96 of 1990	22 Dec 1990	8 Mar 1991 (see s. 2 and <i>Gazette</i> 8 Mar 1991 p. 1030)
Reprint of the Workers' Compensation and Rehabilitation Act 1981 as at 9 Oct 1991 (includes amendments listed above) (errata in <i>Gazette</i> 1 May 1992 p. 1866)			
<i>Acts Amendment (Parliamentary, Electorate and Gubernatorial Staff) Act 1992</i> Pt. 6	40 of 1992	2 Oct 1992	3 Nov 1992 (see s. 2 and <i>Gazette</i> 3 Nov 1992 p. 5389)

Short title	Number and year	Assent	Commencement
<i>Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1992</i>	72 of 1992	15 Dec 1992	s. 6-8: 5 Feb 1993 (see s. 2 and <i>Gazette</i> 5 Feb 1993 p. 975); balance: 24 Dec 1992 (see s. 2 and <i>Gazette</i> 24 Dec 1992 p. 6277)
<i>Employers' Indemnity Supplementation Fund Amendment Act 1993 s. 14</i>	1 of 1993	19 Jul 1993	19 Jul 1993 (see s. 2)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 August 1993	Deemed operative 1 Jul 1993 (see s. 2(1))
<i>Mines Regulation Amendment Act 1993 s. 13</i>	30 of 1993	16 Dec 1993	24 Dec 1993 (see s. 2 and <i>Gazette</i> 24 Dec 1993 p. 6796)
<i>Workers' Compensation and Rehabilitation Amendment Act 1993</i> ²⁸	48 of 1993	20 Dec 1993	Pt. 1-3: 20 Dec 1993 (see s. 2(1)); s. 21, 23, 25, 28(1) (only so far as it gives effect to Sch. 1 cl. 13, 14, 27(a)(i), (b)(i) and (c) and 31) of Pt. 4, and Pt. 5 (other than s. 36-38, 41 and 43): 24 Dec 1993 (see s. 2(2) and <i>Gazette</i> 24 Dec 1993 p. 6795); balance: 1 Mar 1994 (see s. 2(2) and <i>Gazette</i> 24 Dec 1993 p. 6795)
Reprint of the Workers' Compensation and Rehabilitation Act 1981 as at 14 Mar 1994 (includes amendments listed above)			
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Mines Safety and Inspection Act 1994 s. 109</i>	62 of 1994	7 Nov 1994	9 Dec 1995 (see s. 2 and <i>Gazette</i> 8 Dec 1995 p. 5935)
<i>Hospitals Amendment Act 1994 s. 18</i>	103 of 1994	11 Jan 1995	3 Feb 1995 (see s. 2 and <i>Gazette</i> 3 Feb 1995 p. 333)
<i>Occupational Safety and Health Legislation Amendment Act 1995 s. 48</i>	30 of 1995	11 Sep 1995	1 Oct 1995 (see s. 2 and <i>Gazette</i> 15 Sep 1995 p. 4301)

Short title	Number and year	Assent	Commencement
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 84</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Reprint of the Workers' Compensation and Rehabilitation Act 1981 as at 29 Jan 1999 (includes amendments listed above)			
<i>Workers' Compensation and Rehabilitation Amendment Act (No. 2) 1999</i> ²⁹	33 of 1999	5 Oct 1999	5 Oct 1999 (see s. 2)
<i>Workers' Compensation and Rehabilitation Amendment Act 1999</i> ³⁰	34 of 1999 (as amended by No. 37 of 1999 s. 3)	5 Oct 1999	s. 5, 14, 15, 32, 48(a)(iv), 53(a), 53(c) and 53(d)(ii): 5 Oct 1999 (see s. 2(1)); balance: 15 Oct 1999 (see s. 2(2) and <i>Gazette</i> 15 Oct 1999 p. 4889)
<i>Workers' Compensation and Rehabilitation Amendment Act 2000</i>	44 of 2000	17 Nov 2000	s. 1, 2 and 4(2)(b): 17 Nov 2000 (see s. 2(2)); balance: 5 Oct 1999 (see s. 2(1))
<i>Corporations (Consequential Amendments) Act 2001 Pt. 57</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
Reprint of the Workers' Compensation and Rehabilitation Act 1981 as at 14 Sep 2001 (includes amendments listed above)			
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 63</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Racing and Gambling Legislation Amendment and Repeal Act 2003 Pt. 15</i> ³²	35 of 2003	26 Jun 2003	1 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Jul 2003 p. 3259)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 72, 96, 97</i> ³³	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments)</i> Act 2003 s. 134	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<u><i>Workers' Compensation Reform Bill 2004</i></u> ^{34, 35}	<u>Current Bill</u>		

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

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (ICWA)</i> Act 1996 Sch. 1 it. 16 ³¹	45 of 1996	25 Oct 1996	To be proclaimed (see s. 2)
<i>State Superannuation (Transitional and Consequential Provisions)</i> Act 2000 s. 74 ²⁰	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

- ² ~~The Workers' Compensation and Rehabilitation Commission was abolished under the *Public Sector Management Act 1994* s. 35(1)(c) with effect on and from 1 July 2001. See *Gazette* 11 September 2001 p. 5000. Footnote no longer applicable.~~

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

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

- ⁵ See *Industrial Relations Act 1988* of the Commonwealth.

- ⁶ Repealed by the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984* s. 83(c).

- ⁷ This tribunal no longer exists. Now see the Coal Industry Tribunal of Western Australia constituted under the *Coal Industry Tribunal of Western Australia Act 1992* s. 4.
- ⁸ Repealed by the *Mining Act 1978* s. 3(1)(a).
- ⁹ The name of the State Government Insurance Commission was changed to the Insurance Commission of Western Australia by the *Acts Amendment (ICWA) Act 1996* s. 8.
- ¹⁰ Under the *Acts Amendment (ICWA) Act 1996* s. 31(2)(h), which had not come into operation on the date as at which this compilation was prepared, a reference to the State Government Insurance Corporation in a written law will be required, unless because of the context it would be inappropriate so to do, to be construed, or have effect, as if it had been amended to be a reference to the Insurance Commission of Western Australia.
- ¹¹ The *Workers' Compensation Act Amendment Act (No. 2) 1977* s. 3 became operative on 28 November 1977.
- ¹² The effect of this section was removed by the *Western Australian Marine Act 1982* s. 135, subject to the savings provisions in section 135(4) of that Act.
- ¹³ Under the *Acts Amendment (Public Service) Act 1987* s. 31(1)(f) a reference in a written law to "Permanent Head" is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the chief executive officer of the department. This reference was amended under the *Reprints Act 1984* s. 7(5)(a).
- ¹⁴ ~~Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management. Footnote no longer applicable.~~
- ¹⁵ ~~Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Commissioner is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management. Footnote no longer applicable.~~
- ¹⁶ Formerly referred to the *Workers' Compensation Supplementation Fund Act 1980* the short title of which was changed to the *Employers' Indemnity Supplementation Fund Act 1980* by the *Workers' Compensation Supplementation Fund Amendment Act 1982* s. 3. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).
- ¹⁷ The Standards Association of Australia has changed its corporate status and its name. It is now Standards Australia International Limited (ACN 087 326 690). It also trades as Standards Australia.

¹⁸ Now see the *Interpretation Act 1984*.

¹⁹ Repealed by the *State Superannuation Act 2000*.

²⁰ On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 74 had not come into operation. It reads:

“

74. Workers' Compensation and Rehabilitation Act 1981 amended

Section 201(2) of the *Workers' Compensation and Rehabilitation Act 1981* is amended by deleting “or the *Superannuation and Family Benefits Act 1938*”.

”.

²¹ Now known as the *Workers' Compensation and Rehabilitation Act 1981*; short title changed by the *Workers' Compensation and Assistance Amendment Act 1990* s. 4.

²² The *Workers' Compensation and Assistance Amendment Act 1984* s. 9 and 10 read as follows —

“

9. Transitional

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

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

10. Validation and ratification

- (1) In this section “**the amended Schedule**” means Schedule 5 to the principal Act as amended by section 8 of this Act.
- (2) Where moneys have been paid by The State Government Insurance Office established under the *State Government Insurance Office Act 1938* to a person on behalf of an employer before the coming into operation of this Act and such payment would have been authorized if clause 3(7) and clause 4 or 8 of the amended Schedule had been in operation at the time the payment was made —
 - (a) where the payment is expressed to be equivalent to weekly payments of compensation that payment shall be, and shall be deemed always to have been, as valid as if clause 3(7) of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met;
 - (b) where the payment is expressed to be equivalent to weekly payments of compensation and a redemption amount as a lump sum, that payment shall be, and shall be deemed always to have been as valid as it would have been if clause 3(7) and clause 4 of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met; or
 - (c) where the payment is expressed to be equivalent to weekly payments of compensation and weekly supplementary amounts, that payment shall be, and shall be deemed always to have been as valid as it would have been if clause 3(7) and clause 4 or 8, whichever is appropriate, of the amended Schedule had been in operation at the time the payment was made and all the requirements of the principal Act as amended by this Act as to such payments had been met.
- (3) Notwithstanding sections 77 and 181 of the principal Act, any deed of release signed by a person in respect of a payment referred to in subsection (2) is declared to be legal and binding upon that person and may be filed with the Workers' Compensation Board.
- (4) A form of election signed by a person in relation to a payment referred to in subsection (2)(b) or (2)(c) may be filed with the Workers' Compensation Board and is deemed to be, and to always have been, as valid and as effective as it would have been if it had

been signed, filed and served in accordance with the provisions of the principal Act as amended by this Act.

- (5) Where there is under the amended Schedule —
- (a) liability to pay compensation or to pay for the provision of benefits or both; and
 - (b) entitlement to receive compensation or other benefits, or both,
- to and by a person who has received a payment referred to in subsection (2) for or in relation to a disability, in determining that liability and the extent of it and that entitlement and the extent of it, moneys already paid as a payment referred to in subsection (2) shall be taken into account and be deemed to be moneys paid under the amended Schedule.
- (6) Clause 6 or 7, whichever is appropriate, of the amended Schedule applies to a person who has received a payment referred to in subsection (2)(b) or (2)(c).

”.

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

“

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

”.

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

“

16. Transitional — sections 24, 28, 29 and 30 of principal Act

Sections 24, 28, 29 and 30 of the principal Act, as amended by sections 9, 13, 14 and 15 respectively of this Act, apply to and in respect of any election of a worker made in accordance with section 24 of the principal Act on or after the day on which this section comes into operation and to and in respect of the compensation payable pursuant to that election; but an election made under section 24 of the principal Act before that day, and the compensation payable pursuant to that election,

shall not be affected by the amendments effected by sections 9, 13, 14 and 15 of this Act.

”.

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

“

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

”.

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

“

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

”.

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

“

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

”.

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

“

- (2) Notwithstanding any provision of the principal Act and in particular section 117 of the principal Act, where any decision, ruling, order, award, judgment, settlement or agreement was given or made by, or registered with the Board before the coming into operation of this section, on the basis that compensation payable for an injury under item 29 of the table set out in Schedule 2 to the principal Act was in accordance with the amount indicated in column 2 of that table in respect of that injury at the date of the accident whereby that injury was caused to the worker, that decision, ruling, order, award, judgment, settlement or agreement shall not be rescinded, altered or amended, and the worker shall not be entitled to any further payment under the provisions of that table in respect of that injury, by reason that it was given, made or registered on that basis.

”.

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

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

“

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

”.

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

“

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

”.

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

“

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

”.

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

“

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

”.

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

“

50. Transitional

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

”.

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

“

51. Transitional and Schedule 5

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

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

”

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

“

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

”

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

“

Division 2 — Further transitional provisions

5. Definitions

(1) In this Division —

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

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

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

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

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

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

“significant damages” means damages of which —

- (a) the amount attributable to non-pecuniary loss; or
- (b) the amount attributable to future pecuniary loss, is equal to or more than \$25 000.

(2) Unless the contrary intention appears, expressions in this Division that are used in the principal Act have the same respective meanings in this Division as they have in the principal Act.

6. Registration of certain causes of action

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

[Section 6 amended by No. 34 of 1999 s. 59.]

7. Appeals for registration

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

8. Certificate of registration

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

9. Negotiations with employer or insurer

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

- (ii) decline to pay on the grounds that the damages are not significant damages;
 - or
 - (b) notify the affected person in writing that the employer's liability is not accepted.
 - (3) Nothing in a notice under subsection (2) is admissible in court proceedings for the award of damages in respect of the disability.
 - (4) Without limiting the other matters that may be taken into account by a court but subject to section 12(3) and (4), in making an order as to costs the court shall have regard to whether or not a person has acted within the time specified in this section.
- 10. Improved statutory benefits available if liability accepted**
- (1) An affected person who is notified under section 9 that liability is accepted may, whether or not damages are considered to be significant, discontinue proceedings, if any, in respect of the cause and opt for the improved statutory benefits.
 - (2) An offer made under section 9(2)(a)(i) to an affected person lapses if the person opts for the improved statutory benefits.
- 11. Consequences of filing certificate in court proceedings**
- (1) If an affected person —
 - (a) has commenced court proceedings in respect of a registered cause (whether the cause was registered before or after the proceedings were commenced); and
 - (b) has, within 90 days after the day on which the certificate was given, filed the certificate of registration in the proceedings and given a copy of the certificate to each other party to the proceedings,the relevant employer or insurer may within 60 days after the day on which the certificate is filed, apply to a District Court Judge for a declaration as to the preliminary questions or either of those questions that is in dispute.
 - (2) If, in the circumstances mentioned in subsection (1)(a) and (b), the relevant employer or insurer does not apply under subsection (1) to a District Court Judge within the time provided by that subsection, the affected person may —
 - (a) discontinue the proceedings and opt for the improved statutory benefits; or
 - (b) continue the proceedings and enjoy the exemption given by section 13(1).

- (3) If, on an application under subsection (1), the District Court Judge declares that a court would not be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause, this Division has no further application in relation to that cause.
- (4) If, on an application under subsection (1), the District Court Judge declares that —
 - (a) a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause; and
 - (b) the damages that a court would be likely to award but for section 93D of the principal Act would not be significant damages,this Division has no further application in relation to that cause unless the affected person discontinues the proceedings and opts for the improved statutory benefits.
- (5) If, on an application under subsection (1), the District Court Judge declares that —
 - (a) a court would be likely to find the relevant employer or insurer to be liable for damages in an action founded on the cause; and
 - (b) the damages that a court would be likely to award but for section 93D of the principal Act would be significant damages,the affected person may —
 - (c) discontinue the proceedings and opt for the improved statutory benefits; or
 - (d) continue the proceedings and enjoy the exemption given by section 13(1).

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

12. Offer to settle

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

- (b) the day on which the declaration under section 11(5) was made,

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

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

13. Exemption from effect of section 93D

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

14. Consequences of opting for improved statutory benefits

- (1) An affected person opting for the improved statutory benefits is to do so by notice in writing given to the relevant employer or insurer and, if court proceedings have been commenced, a copy of the notice is to be filed in the proceedings.
- (2) If under this Division an affected person opts for the improved statutory benefits, the benefits available to the person under the principal Act are the improved statutory benefits but otherwise this Division has no further application in relation to that cause.

- (3) Subsection (2) applies whether or not the full extent of the benefits to which a person would be entitled under the principal Act but for this section had already been received when the person opts for the improved statutory benefits.

15. Time limits for bringing proceedings

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

16. Fund to bear cost of declarations

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

17. Leave not required if certificate filed

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

”.

The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 18(3) reads as follows:

“

- (3) The increase in the prescribed amount effected by subsection (1) has effect on and from 1 July 1993.

”.

The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 19(2) reads as follows:

“

- (2) The amendments made by subsection (1) have effect on and from 1 July 1993.

”.

The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 20(2) reads as follows:

“

- (2) The amendments made by subsection (1) have effect on and from 1 July 1993.

”.

The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 27 reads as follows:

“

27. Transitional provision as to proceedings

- (1) On the commencement of section 24, all proceedings pending before the Board are to be transferred to the Director and dealt with as if they had been referred for conciliation.
- (2) In this section —
- “**Board**” has the meaning given to that expression by the principal Act as in force immediately before the commencement of section 24;
- “**Director**” has the meaning given to that expression by the principal Act as amended by section 21.

”.

The *Workers' Compensation and Rehabilitation Amendment Act 1993* s. 28(2) reads as follows:

“

- (2) Regulations may be made amending the principal Act (including any provision amended by Schedule 1) to deal with any matter of a transitional nature that arises from the amendments made by this Part or to deal with any matter that is consequential on or incidental to those amendments.

”.

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

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

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

“

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

”.

³⁰ The *Workers' Compensation and Rehabilitation Amendment Act 1999* s. 32(6), (7), (8), (20) and (21) (as amended by No. 37 of 1999 s. 3) read as follows:

“

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

(e) would not be more than 3 months after the assent day,
the termination day is to be regarded as being the day that is
3 months after the assent day.

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

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

”.

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

“

- (2) A person who —
- (a) before the commencement of section 35, was authorized
by the Commission under the former section 103 as an
inspector; or
 - (b) before the commencement of section 44, was authorized
by the Minister under the former section 172,
- is to be regarded as having been authorized by the Commission as
an inspector under section 175A(1) of the principal Act and as
having taken the oath required by section 175A(2).
- (3) If —
- (a) a requirement made under the former section 103 by a
person referred to in subsection (2)(a); or

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

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

- (4) In subsections (2) and (3) —

“former section” means a section of the principal Act as in force before its repeal by this Act.

”.

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

“

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

”.

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

“

Schedule 1 — Consequential amendments to other Acts

16. *Workers' Compensation and Rehabilitation Act 1981*

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

“

“Insurance Commission of Western Australia”

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

”.

- (b) Delete the definitions of "State Government Insurance Commission" and "State Government Insurance Corporation".
- Section 95(1) Delete "State Government Insurance
(c)(iii) and (iv) Commission or the State Government Insurance Corporation", substitute "Insurance Commission of Western Australia" in each case.
- Section 95(3) Delete "State Government Insurance
(d) Commission", substitute "Insurance Commission of Western Australia".
- Section 147(2) Delete "State Government Insurance
(b) Commission", substitute "Insurance Commission of Western Australia".
- Section 147(2) Delete "State Government Insurance
(d)(iii) Commission or the State Government Insurance Corporation", substitute "Insurance Commission of Western Australia".
- Section 154(6), Delete "State Government Insurance
(7) and (9) Commission", wherever it occurs, substitute "Insurance Commission of Western Australia" in each case.
- Section 154(8) Delete "State Government Insurance
Commission's", substitute "Insurance Commission of Western Australia's".
- Section 162(1) Delete "State Government Insurance
Commission", substitute "Insurance Commission of Western Australia".
- Section 163 Delete "State Government Insurance
Commission", substitute "Insurance Commission of Western Australia".

”.

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

“

19. Power to amend regulations

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

”

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

“

97. References to Crown Solicitor

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

”

³⁴ The *Workers' Compensation Reform Bill 2004* cl. 114(3) reads as follows:

“

—

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

”

—

³⁵ The *Workers' Compensation Reform Bill 2004* Pt. 4 reads as follows:

“
—

Part 4 — Transitional provisions

Division 1 — General

176. Interpretation

In this Division unless the contrary intention appears —

“**principal Act**” means the *Workers' Compensation and Rehabilitation Act 1981* as in force immediately before the coming into operation of the provision in which the term is used;

“**amended Act**” means the *Workers' Compensation and Injury Management Act 1981* as in force immediately after the coming into operation of the provision in which the term is used.

177. Application of *Interpretation Act 1984*

The provisions of this Part do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by this Act.

178. Transitional regulations

(1) If this Act does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of the amendments effected by this Act, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed for providing for the matter or issue.

(2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision —

(a) of this Act; or

(b) of the *Interpretation Act 1984* as it applies to the amendments made by this Act,

the Governor may by regulations —

(c) modify that provision to remove that anomaly; and

(d) make such provision as is necessary or expedient to carry out the intention of that provision.

(3) If regulations made under subsection (1) or (2) provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the

Gazette but not earlier than the commencement day, the regulations have effect according to their terms.

- (4) If regulations contain a provision referred to in subsection (3), the provision does not operate so as —
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

179. Power to amend subsidiary regulations

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

Division 2 — Transitional provisions relating to statutory entitlements

180. Section 217 of the Workers' Compensation and Injury Management Act 1981

- (1) Despite the enactment of section 217 of the amended Act, if, before the day on which section 130 of this Act comes into operation the total weekly payments by way of compensation payable under Schedule 1 clause 7 of the principal Act for that disability have reached the prescribed amount within the meaning of that Act, the total liability of the employer of a worker under section 217 of the amended Act in respect of that disability or incapacity is not to exceed the lesser of the amounts set out in section 84E(3)(a) and (b) of the principal Act as in force immediately before the coming into operation of section 130 of this Act.
- (2) If, after the coming into operation of section 130 of this Act, a claim for damages in respect of an incapacity that has been settled by agreement independently of the principal Act is disapproved

under section 92 of the amended Act, section 217 of the amended Act applies in respect of the total liability of the employer of the worker.

181. Transitional provisions — amendments to Schedule 1

- (1) Where the death of a worker occurred before the coming into operation of section 141(1) of this Act, Schedule 1 clause 1 of the principal Act as in force immediately before the coming into operation of section 141(1) of this Act applies in relation to the compensation entitlements of the worker as if section 141(1) of this Act had not been enacted.
- (2) Amount Aa as determined under Schedule 1 clause 11 of the amended Act as amended by subsections (9) and (12) of section 141 of this Act applies in relation to all weekly payments payable on or after the coming into operation of those subsections, but no weekly payments payable before those subsections come into operation are affected by the amendments effected by those subsections.
- (3) Schedule 1 clause 11(3) of the amended Act as amended by section 141(10) of this Act does not apply in relation to weekly earnings of a worker who, before the coming into operation of section 141(10) of this Act, has received 4 weekly payments of compensation, and Schedule 1 clause 11(3) of the principal Act applies in respect of those weekly earnings as if the amendment had not been enacted.
- (4) Schedule 1 clause 11(4) of the amended Act as amended by section 141(11) of this Act does not apply in relation to weekly earnings of a worker who, before the coming into operation of section 141(11) of this Act, has received 4 weekly payments of compensation, and Schedule 1 clause 11(4) of the principal Act applies in respect of those weekly earnings as if the amendment had not been enacted.
- (5) Schedule 1 clause 18A of the amended Act as amended by section 141 of this Act does not apply to compensation payable to a worker if, before the coming into operation of section 141(16) of this Act —
 - (a) an election by the worker under section 93E(3)(b) of the principal Act in respect of the disability has been registered;
 - (b) an order for redemption of the liability for incapacity has been made under section 67(4) of the principal Act or

any order for settlement or redemption of the liability has been made under Part IIIA of that Act;

(c) an agreement in respect of the whole of the liability for incapacity or as to the amount of compensation payable for the incapacity has been registered under Part III Division 7 of the principal Act; or

(d) the worker's claim for damages in respect of the injury or incapacity has been settled by agreement independently of the principal Act.

(6) Subsection (5)(d) does not apply if, after the coming into operation of section 141(16) of this Act, the settlement is disapproved under section 92 of the amended Act.

Division 3 — Transitional provisions relating to dispute resolution

182. Interpretation

(1) In this Division —

“commencement day” means the day on which section 130 of this Act comes into operation;

“Director Dispute Resolution” has the meaning given to “Director” in the amended Act;

“Director of Conciliation and Review” has the meaning given to “Director” in the principal Act;

“pending proceeding” means —

(a) any matter the conciliation, review or other determination of which has been sought but not commenced before a dispute resolution body; or

(b) any matter that has been partly or fully heard or otherwise dealt with before, but not determined by, a dispute resolution body.

(2) The following expressions have the same meaning in this Division as they had in the principal Act before it was amended by this Act —

(a) “compensation magistrate’s court”;

(b) “conciliation officer”;

(c) “dispute resolution body”;

(d) “review officer”.

(3) Unless the contrary intention appears, words and expressions used in this Part have the same meaning as they have in the amended Act.

183. Conciliation and review

- (1) A pending proceeding referred for conciliation under Part IIIA Division 2 of the principal Act, referred for review under Part IIIA Division 3 of that Act or otherwise referred to a conciliation officer or a review officer for determination under that Act or the subject of an application to a conciliation officer or a review officer under that Act —

 - (a) is, on and from the commencement day, taken to be a proceeding pending before an arbitrator; and
 - (b) is to be heard and determined by an arbitrator as if the referral or application were an application made under the amended Act.
- (2) A dispute resolution authority to whom a pending proceeding is transferred under this section may —

 - (a) receive in evidence any transcript of evidence in a proceeding before a dispute resolution body relating to that matter; and
 - (b) adopt, as the dispute resolution authority thinks fit, any finding or decision of a dispute resolution body relating to that matter.
- (3) The Director Dispute Resolution may give directions for the purpose of dealing with issues arising when the amended Act confers on a dispute resolution authority jurisdiction to deal with a matter that, before that jurisdiction was conferred, was dealt with by a dispute resolution body.
- (4) Directions given under subsection (3) may modify the provisions of the amended Act, or the rules or regulations made under that Act, to such extent as is necessary or expedient to apply any of the general principles described in this section in a proceeding of a particular kind and to ensure a smooth transfer of proceedings from dispute resolution bodies to dispute resolution authorities.
- (5) On and from the commencement day, anything ordered, decided, or otherwise done by a conciliation officer or review officer in respect of a matter under the amended Act before the commencement day becomes of the same effect as if, and enforceable as if, it were ordered, decided or done by an arbitrator under the provisions of the amended Act authorising an arbitrator to order, decide, or do corresponding things after the commencement day.

184. Compensation magistrate's court

- (1) A matter referred to a compensation magistrate's court under section 84ZM of the principal Act, but which the court has not commenced to hear before the commencement day, is to be transferred to the Commissioner and is to be dealt with by the Commissioner as if it had been referred under section 246(1) of that Act as amended by this Act.
 - (2) On and from the commencement day —
 - (a) any pending proceeding before a compensation magistrate's court; and
 - (b) any matter that has been determined by a review officer and —
 - (i) would have been appealable to a compensation magistrate's court had the law in force immediately before the commencement day continued to apply; or
 - (ii) was the subject of an appeal to a compensation magistrate's court that was not determined before the commencement day.
- is to continue to be dealt with and determined as if the law in force immediately before the commencement day had continued in force.
- (3) The principal Act as in force before the commencement day continues to apply to the extent that is necessary to enable a compensation magistrate's court to continue to deal with and determine a matter under this section and to enable appeals to be dealt with and implemented.
- (4) Anything ordered, decided or otherwise done by a compensation magistrate's court under this section or before the commencement day is to be given effect and enforced, and is subject to appeal and may be dealt with on appeal, as if the principal Act as in force before the commencement day continued to apply.

185. Existing summonses and warrants

- (1) If immediately before the commencement day a summons or other process issued by a review officer under Part IIIA of the principal Act is in force, then on the commencement day the summons, warrant or other process is to be taken to be a summons or other process issued under Part XI of the amended Act.
- (2) If immediately before the commencement day a summons issued by a review officer under Part IIIA of the principal Act is in force

and requires the person to attend before, or to produce documents to, a review officer, then on the commencement day the summons is to be taken to require the person to attend before, or produce the documents to, an arbitrator at the place specified in the summons.

186. Director of Conciliation and Review

(1) In this section —

“former function” means a function of the Director Dispute Resolution that is substantially similar to a function that before the commencement day was performed by the Director of Conciliation and Review.

(2) On the commencement day —

(a) any matter involved in the performance of a former function is to be transferred to the Director Dispute Resolution;

(b) any application, referral or other thing made, or otherwise directed or given to the Director of Conciliation and Review to do with the performance of the former function becomes of the same effect as if it had been referred or given to the Director Dispute Resolution to be dealt with under the amended Act; and

(c) anything decided, or otherwise done by the Director of Conciliation and Review in the performance of a former function becomes of the same effect as if, and enforceable as if, it were decided, or done by the Director Dispute Resolution under the provisions authorising the Director Dispute Resolution to decide, or do corresponding things after the commencement day.

(3) For the purposes of subsection (1), section 183(2), (3) and (4) apply as if a reference in that section to a dispute resolution body includes a reference to the Director of Conciliation and Review and a reference in that section to a pending proceeding includes a reference to a matter referred to in subsection (1).

187. Records

(1) All records of a dispute resolution body relating to a matter that is transferred to a dispute resolution authority under section 183 of this Act, and all records of the Director of Conciliation and Review, are to be given to the Director Dispute Resolution.

- (2) A compensation magistrate's court is to cause the Director Dispute Resolution to be given —
 - (a) a record of anything referred to in section 184 that the compensation magistrate's court orders, decides, or otherwise does; and
 - (b) all records relating to a matter that is transferred, or that the compensation magistrate's court finishes dealing with, under section 184.

188. Deemed eligibility for approval as Director or arbitrator

- (1) The person who, immediately before the coming into operation of section 130 of the *Workers' Compensation Reform Act 2004*, was the Director of Conciliation and Review is taken to be eligible for approval under section 288(3) of the amended Act as the Director Dispute Resolution.
- (2) An officer of WorkCover WA who, immediately before the coming into operation of section 130 of the *Workers' Compensation Reform Act 2004*, was a review officer is taken to be eligible for approval under section 286(3) of the amended Act as an arbitrator.
- (3) Subsection (2) does not apply to a person seconded to, or acting in, the office of a review officer immediately before the coming into operation of section 130 of the *Workers' Compensation Reform Act 2004*.

Division 4 — Transitional provisions relating to Part VIII amendments

189. Transitional provisions for Part VIII amendments

- (1) When the Part VIII amendments come into operation (the "**commencement time**"), any effect that anything done before the commencement time by the former Committee would have had if those amendments had not been made continues as if the corresponding thing had been done by WorkCover WA.
- (2) In subsection (1) —
 - "**WorkCover WA**" has the meaning given to that term by the *Workers' Compensation and Injury Management Act 1981*;
 - "**corresponding thing**" means anything done by WorkCover WA after the commencement of the Part VIII amendments that would have substantially the same effect after the commencement as what was done by the former Committee would have had if the Part VIII amendments had not been made;

“former Committee” means the Premium Rates Committee under the *Workers' Compensation and Rehabilitation Act 1981* as in force before the commencement of the Part VIII amendments;

“Part VIII amendments” means the amendments that sections 104 to 117 and 150 to 153 make to Part VIII of the *Workers' Compensation and Rehabilitation Act 1981*.

”
—