

Workers' Compensation and Injury Management Amendment Bill 2011

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Western Australia

LEGISLATIVE ASSEMBLY

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

A Bill for

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

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

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

2. Commencement

This Act comes into operation as follows —

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

3. Act amended

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

Part 2 — Amendments about dispute resolution

Division 1 — Main amendments

4. Section 177 replaced

Delete section 177 and insert:

177. Object of this Part

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

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

3 Delete the heading to Part XI Division 3 and insert:
4

5 **Division 3 — Conciliation**

6 **Subdivision 1 — Workers' Compensation Conciliation**
7 **Service**
8

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

11 Delete section 181 and insert:
12

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

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

25 **182A. Director**

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

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

18 **182B. Conciliation officers**

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

1 **182C. Provisions about designations**

2 (1) In this section —

3 *designation* means a designation under
4 section 182A(1) or 182B(1).

5 (2) A designation is to be in writing and the *Interpretation*
6 *Act 1984* section 52 applies to it in the same way as
7 that section applies to an appointment.

8 (3) The designation of a person ceases to have effect if the
9 person ceases to be an officer of WorkCover WA.

10 **182D. Delegation by Director**

11 (1) The Director may delegate a power or duty given to the
12 Director under this Act to an officer of
13 WorkCover WA or a person engaged under
14 section 182B(2).

15 (2) The Director is to make the delegation in writing
16 signed by the Director.

17 (3) A person to whom a power or duty is delegated under
18 this section cannot delegate that power or duty.

19 (4) A person exercising or performing a power or duty that
20 has been delegated to the person under this section is
21 taken to do so in accordance with the terms of the
22 delegation unless the contrary is shown.

23 (5) Nothing in this section limits the ability of the Director
24 to perform a function through an officer or agent.

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

26 **182E. Application for conciliation**

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

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

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

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

14 **182F. Acceptance of application**

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

28 **182G. Director to allocate dispute**

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

1 (2) The Director may reallocate the dispute to another
2 conciliation officer at any time.

3 (3) The conciliation officer to whom the dispute is
4 allocated for the time being is referred to in this
5 Division as the *conciliation officer*.

6 **182H. Director may certify that dispute is not suitable for**
7 **conciliation**

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

11 **182I. Conciliation process**

12 (1) The conciliation officer is to make all reasonable
13 efforts to bring the parties to the dispute to an
14 agreement acceptable to all of them.

15 (2) The conciliation officer is to act —
16 (a) fairly, economically, informally and quickly;
17 and
18 (b) according to the substantial merits of the case
19 without regard to technicalities and legal forms.

20 **182J. Powers**

21 The conciliation officer may —

- 22 (a) require a party to the dispute to attend at a
23 meeting with the conciliation officer;
24 (b) require a party to the dispute to attend at a
25 conciliation conference at which the
26 conciliation officer and any other party to the
27 dispute is present;
28 (c) require a party to the dispute, or the
29 representative of a party, to answer questions
30 put by the conciliation officer;

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

6 **182K. Payment directions**

- 7 (1) This section applies in relation to the employer and
8 worker who are parties to the dispute.
- 9 (2) The conciliation officer may direct that weekly
10 payments of compensation be made by the employer to
11 the worker if the conciliation officer considers that it
12 would be reasonable to expect that the resolution or
13 determination of the dispute under this Part would
14 result in weekly payments of compensation becoming
15 payable.
- 16 (3) The conciliation officer is not to direct that weekly
17 payments of compensation be made —
18 (a) for a period that exceeds 12 weeks; or
19 (b) if 2 or more directions are given: for periods the
20 aggregate of which exceeds 12 weeks.
- 21 (4) The conciliation officer may direct that a payment be
22 made by the employer in respect of a compensation
23 entitlement under clause 17 or 19 (*statutory expenses*)
24 if the conciliation officer considers that it would be
25 reasonable to expect that the resolution or
26 determination of the dispute under this Part would
27 result in statutory expenses becoming payable.
- 28 (5) The conciliation officer is not to direct payment in
29 respect of statutory expenses —
30 (a) of an amount that exceeds 5% of the prescribed
31 amount; or

- 1 (b) if 2 or more directions are given: of amounts
2 the aggregate of which exceeds 5% of the
3 prescribed amount.
- 4 (6) A payment made by a party in accordance with a
5 direction under subsection (2) or (4) —
6 (a) is not an admission of liability by the party; and
7 (b) does not prevent a question of liability from
8 being heard and determined on an application
9 under section 58 or otherwise under this Act as
10 if the payment had not been made.
- 11 (7) The conciliation officer, or another conciliation officer,
12 may, by further direction, vary, suspend or revoke a
13 direction previously given under subsection (2) or (4)
14 or this subsection.
- 15 (8) When a direction under subsection (2) or (4) is revoked
16 the obligation to pay compensation under the direction
17 ceases.
- 18 (9) The revocation of a direction given under
19 subsection (2) or (4) does not affect the requirement to
20 pay the compensation before the revocation.
- 21 **182L. Interim suspension or reduction directions**
- 22 (1) This section applies in relation to the employer and
23 worker who are parties to the dispute in a case where
24 weekly payments are being made otherwise than by
25 direction under section 182K.
- 26 (2) The conciliation officer may direct that weekly
27 payments of compensation are to be suspended or
28 reduced if the conciliation officer considers that it
29 would be reasonable to expect that the resolution or
30 determination of the dispute under this Part would
31 result in the payments being suspended or reduced.

- 1 (3) The conciliation officer is not to direct the suspension
2 or reduction of weekly payments —
3 (a) for a period that exceeds 12 weeks; or
4 (b) if 2 or more directions are given: for periods the
5 aggregate of which exceeds 12 weeks.
- 6 (4) The conciliation officer, or another conciliation officer,
7 may, by further direction, amend, suspend or revoke a
8 direction previously given under subsection (2) or this
9 subsection.
- 10 (5) When a direction suspending weekly payments is
11 revoked —
12 (a) the obligation to make weekly payments
13 recommences from the date on which the
14 suspension is revoked; and
15 (b) the worker is to be paid the weekly payments
16 that were not paid during the period of
17 suspension unless the conciliation officer
18 directs otherwise.
- 19 (6) When a direction reducing weekly payments is
20 revoked —
21 (a) the obligation to make weekly payments as if
22 the direction had not been made recommences
23 from the date on which the direction is revoked;
24 and
25 (b) the worker is to be paid any amount of weekly
26 payments to which the worker would have been
27 entitled if the direction had not been made
28 unless the conciliation officer directs otherwise.

29 **182M. Provisions about directions**

- 30 (1) In this section —
31 *direction* means a direction under section 182K(2), (4)
32 or (6) or 182L(2) or (4).

1 (2) The conciliation officer is not required to give reasons
2 in writing for a direction.

3 (3) A direction can be given subject to conditions.

4 (4) A decision of the conciliation officer to give, or not to
5 give, a direction is not a determination of liability.

6 (5) The conciliation rules may regulate the giving of
7 directions.

8 **182N. Finalising orders**

9 (1) The conciliation officer may, with the consent of the
10 parties to the dispute, issue an order of the kind that an
11 arbitrator could issue setting out matters that have been
12 agreed to during conciliation.

13 (2) An order is not to be made under this section unless —

14 (a) the parties have lodged with the Conciliation
15 Service a memorandum of consent that sets out
16 the terms of the order consented to by the
17 parties; and

18 (b) the conciliation officer is satisfied that —

19 (i) the parties have given their consent by
20 free exercise of their will and without
21 being induced by fraud or
22 misrepresentation; and

23 (ii) the parties understand the effect of
24 giving their consent; and

25 (iii) the terms of the order consented to by
26 the parties are terms that can be given
27 effect to under this Act.

1 **182O. Conclusion of conciliation and certificate of**
2 **outcome**

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

25 **Subdivision 3 — Practice and procedure**

26 **182P. Obtaining information**

27 The conciliation officer is not bound by the rules of

28 evidence and may use any means the conciliation

29 officer thinks fit in order to be informed about any

30 matter.

1 **182Q. Scope of conciliation**

2 (1) The matters that may be discussed and agreed on at
3 conciliation or the subject of a direction under
4 section 182K or 182L are not necessarily limited by the
5 extent of the dispute as detailed in the application for
6 conciliation.

7 (2) However subsection (1) does not prevent the
8 conciliation officer from determining that a matter is
9 beyond the scope of the application for conciliation and
10 should be the subject of another application for
11 conciliation.

12 **182R. Conciliation officer may provide information to**
13 **another party or a medical practitioner**

14 (1) In this section —
15 *information* includes a document or other material.

16 (2) When information is provided to the conciliation
17 officer by a party to the dispute or another person
18 (whether or not pursuant to a requirement by the
19 conciliation officer), the conciliation officer may
20 provide the information to —

- 21 (a) any other party to the dispute; or
22 (b) any other party's legal representative or
23 registered agent; or
24 (c) a medical practitioner (including a medical
25 assessment panel).

26 (3) The conciliation officer may, when providing
27 information to another person, prohibit or restrict the
28 disclosure of the information to another person.

1 **182S. Representation**

- 2 (1) At any meeting with the conciliation officer or
3 conciliation conference, a party to the dispute may
4 appear in person or may be represented by —
- 5 (a) a legal practitioner; or
6 (b) a registered agent; or
7 (c) if the party is a body corporate, a director,
8 secretary, or other officer of the body
9 corporate; or
10 (d) if the party is a public sector body as defined in
11 the *Public Sector Management Act 1994*
12 section 3(1), a public sector employee
13 authorised by the party to represent the party.
- 14 (2) The conciliation officer may refuse to permit an
15 employer or an insurer to be represented by a legal
16 practitioner or registered agent if a party who is a
17 worker is not represented by a legal practitioner or
18 registered agent.
- 19 (3) A prohibited person cannot represent a party.
- 20 (4) In subsection (3) —
21 ***prohibited person*** has the meaning given in the *Legal*
22 *Profession Act 2008* section 18(1) except that it does
23 not include a person whose name has been removed
24 from an Australian roll (as defined in section 3 of that
25 Act) at the person's own request.
- 26 (5) The conciliation officer may refuse to permit a party to
27 be represented by an agent if of the opinion that the
28 agent does not have sufficient authority to make
29 binding decisions on behalf of the party.
- 30 (6) The regulations or the conciliation rules may prevent
31 specified persons, or persons of a specified class, from
32 representing a party.

1 **182T. Litigation guardian**

2 (1) The conciliation rules may provide that, if a child is a
3 party to a dispute, the conciliation officer may appoint
4 a litigation guardian to act on the child's behalf.

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

12 **182U. Interpreters and assistants**

13 (1) Unless the conciliation officer directs otherwise, a
14 party to the dispute or the party's representative may be
15 assisted in the course of a meeting or conciliation
16 conference by an interpreter or another person
17 necessary or desirable to make the meeting or
18 conciliation conference intelligible to that party and to
19 enable the party to communicate adequately.

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

26 **182V. Alternative means of participation in conciliation**

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

1 (2) If the conciliation officer thinks it appropriate, the
2 conciliation officer may conduct all or part of a
3 meeting or conciliation conference entirely on the basis
4 of documents without the parties or their
5 representatives attending or participating in a meeting
6 or conciliation conference.

7 (3) The conciliation officer may take into account a written
8 submission prepared by a legal practitioner or
9 registered agent acting for a party to a dispute and
10 submitted by or on behalf of the party, whether or not
11 the party is represented by a legal practitioner or
12 registered agent at a meeting or conciliation
13 conference.

14 **182W. Conciliation to be in private**

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

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

21 **182X. Attendance at meetings and conferences**

22 (1) Notice of the time and place at which a party to the
23 dispute is required to attend a meeting with the
24 conciliation officer is to be given to the party in
25 accordance with the conciliation rules.

26 (2) Notice of the time and place for a conciliation
27 conference is to be given in accordance with the
28 conciliation rules —

- 29 (a) to each party to the dispute; and
30 (b) if the conciliation officer considers that it is
31 appropriate in the circumstances for another

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

3 (3) If a person, including a party, to whom notice has been
4 given in accordance with the conciliation rules fails to
5 attend a conciliation conference, the conciliation
6 conference may be held in the absence of that person.

7 (4) The failure of a party to attend before the conciliation
8 officer when required to do so does not prevent a
9 direction that affects the party from being given under
10 section 182K or 182L.

11 **182Y. Privilege against self incrimination**

12 (1) A person is not excused from complying with a
13 requirement under this Division to answer a question or
14 produce a document on the ground that the answer or
15 the production of the document might incriminate the
16 person or render the person liable to a penalty.

17 (2) However neither —

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

20 (b) the fact that a document produced by the person
21 to comply with the requirement was produced,

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

26 **182ZA. Legal professional privilege in relation to medical**
27 **reports**

28 (1) A legal practitioner is not excused from complying
29 with a requirement under this Division to answer a
30 question in relation to a medical report or produce a
31 medical report on the ground that the answer to the

1 question would disclose, or the report contains, a
2 privileged communication made by or to the legal
3 practitioner in his or her capacity as a legal
4 practitioner.

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

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

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

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

18 **182ZB. Other claims of privilege**

19 (1) Unless it would be contrary to section 182Y or 182ZA,
20 a person is excused from answering a question or
21 producing a document under this Division if the person
22 could not be compelled to answer the question or
23 produce the document in proceedings in the Supreme
24 Court.

25 (2) The conciliation officer may require a person to
26 produce a document to the conciliation officer for the
27 purpose of determining whether or not it is a document
28 that the conciliation officer has power to require the
29 person to produce.

30 **182ZC. Dealing with documents produced**

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

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

4 **182ZD. Referral of medical dispute for assessment**

- 5 (1) If permitted by section 145A to do so, the conciliation
6 officer may refer a question as to —
7 (a) the nature or extent of an injury; or
8 (b) whether an injury is permanent or temporary; or
9 (c) a worker's capacity for work,
10 for determination by a medical assessment panel.
- 11 (2) Without limiting subsection (1), it applies to —
12 (a) questions as to the permanent or other loss of
13 the efficient use of any part or faculty of the
14 body for the purposes of Part III Division 2, or
15 to the degree of that loss; and
16 (b) questions as to the degree of disability assessed
17 in accordance with section 93D(2); and
18 (c) questions for the purposes of section 31F as to
19 whether a worker has contracted AIDS.
- 20 (3) Subsection (1) does not apply to questions as to —
21 (a) the permanent or other impairment of the
22 efficient use of any part or faculty of the body
23 for the purposes of Part III Division 2A, or to
24 the degree of that impairment; or
25 (b) the degree of permanent whole of person
26 impairment for the purposes of Part IV
27 Division 2 Subdivision 3; or
28 (c) the degree of whole of person impairment for
29 the purposes of Part IXA; or
30 (d) the degree of permanent whole of person
31 impairment for the purposes of clause 18A.

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

182ZE. Terms used

In this Subdivision —

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

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

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

182ZF. When decision or conciliation agreement has effect

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

182ZG. Correcting mistakes

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

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

182ZH. Enforcement of decisions and conciliation agreements

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

182ZI. Conciliation decisions not reviewable

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

182ZJ. Provisions about revoked directions

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

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

5 **182ZK. Recovery of payments**

6 If an arbitrator determines under Division 4 that a
7 person was not liable to pay compensation by way of
8 the weekly payments or statutory expenses that have
9 been paid in accordance with a direction of the
10 conciliation officer under section 182K(2) or (4), the
11 following provisions apply —

- 12 (a) the worker or other person who received that
13 compensation is not required to refund the
14 compensation unless the arbitrator otherwise
15 orders under paragraph (b);
- 16 (b) if the arbitrator is satisfied that the claim for
17 compensation was wholly or partly fraudulent
18 or made without proper justification, the
19 arbitrator may order the worker or other person
20 concerned to refund the whole or a specified
21 part of the compensation;
- 22 (c) the arbitrator may (instead of making an order
23 for a refund) order any other person whom the
24 arbitrator determines was liable for the whole
25 or any part of the compensation to reimburse
26 the person who paid the compensation;
- 27 (d) the compensation is to be excluded from any
28 determinations of the claims experience of the
29 employer for the purposes of calculating the
30 premium payable by the employer for a policy
31 of insurance.

1 **182ZL. Director may order payment by insurer**

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

12 **Subdivision 5 — Miscellaneous**

13 **182ZM. Evidence not admissible in proceedings**

- 14 (1) In this section —
15 *subsequent proceeding* means a proceeding before an
16 arbitrator or an action brought by the worker for
17 damages independently of this Act.
18 (2) Evidence of a statement made to the conciliation
19 officer or in a conciliation conference is not admissible
20 in a subsequent proceeding unless the person who
21 made the statement agrees to the evidence being
22 admitted.
23 (3) The conciliation officer is not to be called as a witness
24 in a subsequent proceeding.

25 **182ZN. Payment of compensation**

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

Division 4 — Arbitration

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

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

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

182ZP. Registrar

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

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

11 **182ZQ. Arbitrators**

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

27 **182ZR. Provisions about designations**

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

1 (2) A designation is to be in writing and the *Interpretation*
2 *Act 1984* section 52 applies to it in the same way as
3 that section applies to an appointment.

4 (3) The designation of a person ceases to have effect if the
5 person ceases to be an officer of WorkCover WA.

6 **182ZS. Delegation by Registrar**

7 (1) The Registrar may delegate a power or duty given to
8 the Registrar under this Act to an officer of
9 WorkCover WA or a person engaged under
10 section 182ZQ(2).

11 (2) The Registrar is to make the delegation in writing
12 signed by the Registrar.

13 (3) A person to whom a power or duty is delegated under
14 this section cannot delegate that power or duty.

15 (4) A person exercising or performing a power or duty that
16 has been delegated to the person under this section is
17 taken to do so in accordance with the terms of the
18 delegation unless the contrary is shown.

19 (5) Nothing in this section limits the ability of the
20 Registrar to perform a function through an officer or
21 agent.

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

23 **182ZT. Application for arbitration**

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

1 **182ZU. Acceptance of application**

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

15 **182ZV. Registrar to allocate dispute**

- 16 (1) When an application for arbitration is accepted the
17 Registrar is to allocate the dispute to which the
18 application relates to an arbitrator for determination.
19 (2) The Registrar may reallocate a dispute to another
20 arbitrator at any time.
21

22 **7. Section 185 replaced**

23 Delete section 185 and insert:
24

25 **185. Arbitration process**

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

- 1 (2) The arbitrator is not to attempt to resolve any matter in
2 dispute by conciliation.
- 3 (3) Subsection (2) applies even if there was no conciliation
4 of any matter in dispute because the Director issued a
5 certificate under section 182H.
6

7 **8. Section 189 amended**

- 8 (1) In section 189 delete “The” and insert:
9

10 (1) The
11

- 12 (2) At the end of section 189 insert:
13

14 (2) However subsection (1) does not prevent the arbitrator
15 from determining that a matter is beyond the scope of
16 the application for conciliation that preceded the
17 application for arbitration and should be the subject of
18 another application for conciliation.
19

20 **9. Section 204A inserted**

21 After section 203 insert:
22

23 **204A. Evidence of communication between worker and**
24 **WorkCover WA employee**

25 Evidence of any communication between —

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

29 is not admissible in a proceeding before an arbitrator
30 unless, during the course of the proceeding, the worker
31 consents to the evidence being so admitted.
32

1 **10. Section 211 amended**

2 Delete section 211(2) and insert:

3

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

6

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

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

9

10 **217A. Arbitrator may review decision**

- 11 (1) In this section —

12 *new information* means information relevant to a
13 decision that, although available to a party at the time
14 the decision was made, was not available to the
15 arbitrator and, in the opinion of the arbitrator, justifies
16 reconsideration of the matter.

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

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

21 (b) make any further decision,

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

24 **217B. Arbitration decisions not reviewable**

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

- 1 (2) A decision of an arbitrator or anything done under this
2 Act in the process of coming to a decision of an
3 arbitrator is not amenable to judicial review.
4

5 **12. Part XII deleted**

6 Delete Part XII.

7 **13. Part XIII heading amended**

8 In the heading to Part XIII delete “**Questions of law and**
9 **appeals**” and insert:
10

11 **Appeals to District Court**
12

13 **14. Sections 245 and 246 deleted**

14 Delete sections 245 and 246.

15 **15. Section 247 amended**

- 16 (1) Delete section 247(1) and insert:
17

- 18 (1) If written reasons for an arbitrator’s decision under
19 Part XI in respect of a dispute are given to a party to
20 the dispute (whether as required by section 213(3) or
21 otherwise), the party may, with the leave of the District
22 Court, appeal to the District Court against the decision.
23

- 24 (2) In section 247(2):

- 25 (a) delete “Commissioner” (first occurrence) and insert:
26

27 District Court
28

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

2

3 District Court,

4

5 (3) Delete section 247(3).

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

8

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

12

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

14

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

18

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

21

22 District Court except with the leave of the District Court.

23

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

26

27 District Court

28

29 **16. Sections 248 and 249 deleted**

30 Delete sections 248 and 249.

1 **17. Section 250 amended**

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

3

4 District Court

5

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

7

8 District Court,

9

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

11

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

14

15 **18. Sections 251 to 253 deleted**

16 Delete sections 251 to 253.

17 **19. Section 254 replaced**

18 Delete section 254 and insert:

19

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

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

26 (a) the appeal must relate to a question of law; and

27 (b) leave to appeal must be obtained from the
28 Court of Appeal.

29

1 **20. Section 267 replaced**

2 Delete section 267 and insert:

3

4 **267. Appeal costs**

5 (1) The District Court is not to make an order for costs
6 against a worker on the ground that an appeal under
7 Part XIII was successful.

8 (2) If the appellant in an appeal under Part XIII is a worker
9 and is unsuccessful on the appeal, the District Court is
10 not to make an order for the payment of the appellant's
11 costs on the appeal by any other party to the appeal.

12

13 **21. Part XVII deleted**

14 Delete Part XVII.

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

16 After section 292 insert:

17

18 **293A. Conciliation rules**

19 (1) The Minister may make rules (the *conciliation rules*)
20 prescribing all matters that are required or permitted by
21 this Act to be prescribed by conciliation rules, or are
22 necessary or convenient to be prescribed by
23 conciliation rules for giving effect to the purposes of
24 this Act.

25 (2) Without limiting subsection (1), conciliation rules may
26 make provision for or with respect to —

- 27 (a) the organisation and management of the
28 business of the Conciliation Service; and
29 (b) records of the Conciliation Service; and

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

8 **293B. Arbitration rules**

- 9 (1) The Minister may make rules (the *arbitration rules*)
10 prescribing all matters that are required or permitted by
11 this Act to be prescribed by arbitration rules, or are
12 necessary or convenient to be prescribed by arbitration
13 rules for giving effect to the purposes of this Act.
14 (2) Without limiting subsection (1), arbitration rules may
15 make provision for or with respect to —
16 (a) the organisation and management of the
17 business of the Arbitration Service; and
18 (b) records of the Arbitration Service; and
19 (c) the practice and procedure governing the
20 jurisdiction, functions and proceedings of
21 arbitrators; and
22 (d) assessment of, and orders as to, costs as defined
23 in section 261; and
24 (e) limiting the number of medical reports in
25 connection with a claim or any aspect of a
26 claim and, in particular, limiting the number of
27 medical reports that may be admitted in
28 evidence in a proceeding before an arbitrator;
29 and
30 (f) limiting the number of expert witnesses that
31 may be called by any party in a proceeding
32 before an arbitrator and otherwise restricting
33 the calling of expert witnesses by a party; and

- 1 (g) the practice and procedure governing medical
2 assessment panels, approved medical specialist
3 panels and specialised retraining assessment
4 panels.
5

6 **23. Section 293 amended**

- 7 (1) Delete section 293(1) and (2) and insert:
8

- 9 (1) In this section —
10 *rule* means a conciliation rule or an arbitration rule
11 and *rules* has a corresponding meaning.
12

- 13 (2) In section 293(3) delete “DRD Rule” and insert:
14

15 rule
16

- 17 (3) In section 293(4) delete “DRD”.

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

19 **General provisions about rules**

20 **24. Section 294 replaced**

21 Delete section 294 and insert:
22

23 **294. Practice notes**

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

- 1 (3) A conciliation practice note is not a conciliation rule
2 and does not form part of the conciliation rules.
- 3 (4) The Registrar may issue arbitration practice notes
4 about the practice and procedure of arbitrators.
- 5 (5) The Registrar is to give the Minister a copy of each
6 arbitration practice note the Registrar issues as soon as
7 practicable after issuing it.
- 8 (6) An arbitration practice note is not an arbitration rule
9 and does not form part of the arbitration rules.
10

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

12 **25. Section 5 amended**

- 13 (1) In section 5(1) delete the definitions of:
14 *arbitrator*
15 *Commissioner*
16 *Director*
17 *dispute resolution authority*
18 *DRD*
19 *DRD Rules*
20 *officer of the DRD*
- 21 (2) In section 5(1) insert in alphabetical order:
22
- 23 *application for conciliation* means an application
24 under section 182E;
25 *arbitration rules* means the rules made under
26 section 293B;
27 *Arbitration Service* means the Workers' Compensation
28 Arbitration Service established under section 182ZO;

- 1 **arbitrator** means an officer of WorkCover WA
2 designated or engaged under section 182ZQ as an
3 arbitrator;
4 **conciliation officer** means a person designated or
5 engaged under section 182B as a conciliation officer;
6 **conciliation rules** means the rules made under
7 section 293A;
8 **Conciliation Service** means the Workers'
9 Compensation Conciliation Service established under
10 section 181;
11 **Director** means the officer of WorkCover WA
12 designated under section 182A as the Director,
13 Conciliation;
14 **dispute resolution authority** means the Director, the
15 Registrar, a conciliation officer or an arbitrator;
16 **party** to a dispute means the worker, the employer or
17 the insurer of the employer;
18 **Registrar** means the officer of WorkCover WA
19 designated under section 182ZP as the Registrar,
20 Arbitration;
21

22 **26. Section 67 amended**

23 In section 67(1)(a):

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

26
27 an order is made under Part XI
28

1 **27. Section 76 amended**

2 In section 76(6):

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

4

5 Registrar who shall allocate it to an arbitrator to

6

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

8

9 arbitrator thinks

10

11 **28. Section 91 amended**

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

13

14 conciliation rules and the arbitration rules,

15

16 **29. Section 93D amended**

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

18 **30. Section 106 amended**

19 (1) In section 106(3):

20 (a) after paragraph (b) insert:

21

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

25

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

28

29 WorkCover WA for carrying out its

30

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

2

3 (4) The amount of the costs and expenses referred to in
4 subsection (3)(c) is to be —

5 (a) determined in the manner approved by the
6 Treasurer after consultation with the chief
7 executive officer of WorkCover WA and the
8 chief executive officer of the department
9 principally assisting the Minister in the
10 administration of the *District Court of Western*
11 *Australia Act 1969*; and

12 (b) credited to the Consolidated Account.
13

14 **31. Section 144 inserted**

15 At the beginning of Part VII Division 1 insert:
16

17 **144. Term used: relevant authority**

18 In this Division —

19 ***relevant authority*** means —

20 (a) in relation to conciliation: the Director; or

21 (b) in relation to arbitration: the Registrar.
22

23 **32. Section 145A amended**

24 (1) In section 145A(1) delete “210” and insert:
25

26 182ZD or 210, Schedule 1 clause 18A(2ab) or
27 Schedule 7 clause 6
28

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

2

3 182ZD or

4

5 **33. Section 145B amended**

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

7

8 chief executive officer

9

10 **34. Section 145C amended**

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

12

13 relevant authority

14

15 **35. Section 145D amended**

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

18

19 the relevant authority

20

21 **36. Section 145E amended**

22 (1) In section 145E(3):

23 (a) delete “Director,” and insert:

24

25 relevant authority,

26

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1 (b) delete “Director within” and insert:

2

3 relevant authority within

4

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

7

8 relevant authority

9

10 **37. Section 145F amended**

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

13

14 relevant authority

15

16 **38. Section 146F amended**

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

18

19 chief executive officer

20

21 **39. Section 146M amended**

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

24

25 the Registrar

26

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

28

29 The Registrar

30

1 **40. Section 146S amended**

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

4
5 chief executive officer
6

7 **41. Section 176 amended**

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

9
10 Part.
11

12 **42. Section 180 amended**

13 In section 180(4):

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

15
16 conciliation rules or arbitration rules and
17

18 (b) delete “DRD Rules.” and insert:

19
20 relevant rules.
21

22 **43. Section 182 amended**

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

24
25 for arbitration is accepted
26

1 **44. Section 183 amended**

2 Delete section 183(1) and insert:

3

4 (1) If an application for arbitration is accepted a party to
5 the dispute must comply with the provisions of the
6 arbitration rules as to —

7 (a) the documents, material and information that
8 the party must provide to other parties and the
9 Registrar; and

10 (b) the time or times at which, and manner in
11 which, the documents, material and information
12 must be provided.

13

14 **45. Section 184 deleted**

15 Delete section 184.

16 **46. Sections 186 and 187 deleted**

17 Delete sections 186 and 187.

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

20 Delete the heading to Part XI Division 4 and insert:

21

22 **Subdivision 3 — Practice and procedure**

23

24 **48. Section 193 amended**

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

27

28 the Registrar or an arbitrator

29

1 **49. Section 194 amended**

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

3

4 Division),

5

6 **50. Section 195 amended**

7 Delete section 195(3) and insert:

8

9 (3) A prohibited person cannot represent a party.

10 (4A) In subsection (3) —

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

16

17 **51. Section 196 replaced**

18 Delete section 196 and insert:

19

20 **196. Litigation guardian**

21 (1) The arbitration rules may provide that, if a child is a
22 party or potential party to a proceeding or proposed
23 proceeding, an arbitrator may appoint a litigation
24 guardian to act on the child’s behalf.

25 (2) The arbitration rules may provide that, if a party to a
26 dispute is under a legal disability (otherwise than
27 because of being a child), an arbitrator may adjourn or
28 defer the proceeding or proposed proceeding until a
29 litigation guardian is appointed to act on the party’s

1 behalf, whether under the *Guardianship and*
2 *Administration Act 1990* or otherwise.
3

4 **52. Section 198 amended**

5 (1) Delete section 198(1).

6 (2) In section 198(2) and (3) delete “conference or”.

7 (3) In section 198(4):

8 (a) after “practitioner” (each occurrence) insert:

9

10 or registered agent

11

12 (b) delete “conference or”.

13 (4) In section 198(6) delete “a conference or”.

14 **53. Section 199 amended**

15 (1) In section 199 delete “and conferences”.

16 (2) In section 199(a) delete “or conference”.

17 **54. Section 204 amended**

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

19

20 Division

21

22 **55. Section 205 amended**

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

24

25 Division

26

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

3 Delete the heading to Part XI Division 5 and insert:
4

5 **Subdivision 4 — Decisions**
6

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

8 Delete the heading to Part XI Division 5 Subdivision 1.

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

10 Delete the heading to Part XI Division 5 Subdivision 2.

11 **59. Section 218 amended**

12 In section 218(1) and (4) delete “Part” and insert:
13

14 Division
15

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

17 Delete the heading to Part XI Division 5 Subdivision 3.

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

20 Delete the heading to Part XI Division 6 and insert:
21

22 **Subdivision 5 — Miscellaneous**
23

1 **62. Section 255 amended**

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

3

4 (2A) Without limiting the application of subsection (1) it
5 extends to a decision of a conciliation officer to —

- 6 (a) make a requirement under section 182J; or
7 (b) give a direction under section 182K or 182L; or
8 (c) issue an order under section 182N.

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

- 10 (a) the person is excused by section 182ZB or 206
11 from complying with the decision; or
12 (b) the person has a reasonable excuse (other than
13 an excuse mentioned in section 182Y(1),
14 182ZA, 204(1) or 205) for failing to comply
15 with the decision.
16

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

18

19 or Registrar
20

21 **63. Section 256 replaced**

22 Delete section 256 and insert:

23

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

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

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

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

3 Penalty: a fine of \$2 000.
4

5 **64. Section 257 amended**

6 In section 257:

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

8
9 the Registrar or an arbitrator
10

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

13
14 the Registrar or an arbitrator
15

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

18
19 the Registrar or an arbitrator
20

21 **65. Section 259 amended**

- 22 (1) At the beginning of section 259 insert:
23

- 24 (1) In this section —

25 *hearing* includes —

- 26 (a) a meeting with a conciliation officer; and

- 27 (b) a conciliation conference.
28

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

2

3 (2) A person

4

5 **66. Section 260 deleted**

6 Delete section 260.

7 **67. Section 268 amended**

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

10

11 a conciliation officer or an arbitrator.

12

13 **68. Section 292 amended**

14 In section 292(1)(b):

15 (a) delete “DRD” and insert:

16

17 Conciliation Service and the Arbitration Service

18

19 (b) delete “DRD;” and insert:

20

21 Conciliation Service and the Arbitration Service;

22

23 **69. Section 299 amended**

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

26

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

28

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

3

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

5

6 **70. Section 304 amended**

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

8

9 (d) a person engaged under section 182B(2) as a
10 conciliation officer or under section 182ZQ(2)
11 as an arbitrator; and
12

13 **71. Section 305 amended**

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

15

16 (a) a conciliation officer when performing the
17 functions of a conciliation officer;
18

19 **72. Section 325 inserted**

20 At the end of Part XX insert:

21

22 **325. Transitional provisions**

23 (1) Schedule 8 sets out transitional provisions in relation to
24 amendments to this Act.

25 (2) Schedule 8 does not affect the operation of the
26 *Interpretation Act 1984* Part V.

27 (3) If Schedule 8 does not provide sufficiently for a matter
28 or issue of a transitional nature that arises as a result of
29 amendments to this Act, the Governor may make

- 1 regulations prescribing all matters that are required,
2 necessary or convenient to be prescribed for providing
3 for the matter or issue.
- 4 (4) If in the opinion of the Minister an anomaly arises in
5 the carrying out of any provision —
6 (a) of Schedule 8; or
7 (b) of the *Interpretation Act 1984* as it applies to
8 the amendments made to this Act,
9 the Governor may by regulation —
10 (c) modify that provision to remove that anomaly;
11 and
12 (d) make such provision as is necessary or
13 expedient to carry out the intention of that
14 provision.
- 15 (5) If regulations made under subsection (3) or (4) provide
16 that a state of affairs specified or described in the
17 regulations is to be taken to have existed, or not to have
18 existed, on and from a day that is earlier than the day
19 on which the regulations are published in the *Gazette*
20 but not earlier than the commencement day, the
21 regulations have effect according to their terms.
- 22 (6) If regulations contain a provision referred to in
23 subsection (5), the provision does not operate so as —
24 (a) to affect, in a manner prejudicial to any person
25 (other than the State or an authority of the
26 State), the rights of that person existing before
27 the day of publication of those regulations; or
28 (b) to impose liabilities on any person (other than
29 the State or an authority of the State) in respect
30 of anything done or omitted to be done before
31 the day of publication of those regulations.
32

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- 1 *DRD* has the meaning given in section 5(1) of the former
2 provisions;
- 3 *DRD Rules* has the meaning given in section 5(1) of the
4 former provisions;
- 5 *former provisions* means this Act as enacted before the
6 commencement day;
- 7 *pending arbitration proceeding* means a dispute —
- 8 (a) in respect of which an application has been made
9 under section 181 of the former provisions; and
- 10 (b) which has not been determined by an arbitrator
11 before the commencement day;
- 12 *pending Court of Appeal matter* means —
- 13 (a) a case stated to the Court of Appeal under
14 section 251 of the former provisions; or
- 15 (b) an appeal to the Court of Appeal under section 254
16 of the former provisions (including an application
17 under that section for leave to appeal),
- 18 which has not been determined by the Court of Appeal
19 before the commencement day;
- 20 *pending Part XII application* means an application under
21 Part XII of the former provisions which has not been
22 determined by an arbitrator before the commencement day;
- 23 *pending Part XIII matter* means —
- 24 (a) a reference of a question of law to the
25 Commissioner under section 246 of the former
26 provisions; or
- 27 (b) an appeal to the Commissioner under section 247 of
28 the former provisions (including an application
29 under that section for leave to appeal),
- 30 which has not been determined by the Commissioner before
31 the commencement day.
- 32 **2. Pending arbitration proceedings**
- 33 (1) Subject to subclause (2), a pending arbitration proceeding is
34 to be dealt with and determined under Part XI Division 4 of
35 the amended provisions.

1 (2) If the Registrar certifies in writing that a pending arbitration
2 proceeding in relation to a dispute has not been the subject
3 of conciliation under section 185 of the former provisions
4 before the commencement day, the dispute is taken to be the
5 subject of an application for conciliation under the amended
6 provisions.

7 (3) The Director may give directions for the purpose of dealing
8 with issues arising in relation to a pending arbitration
9 proceeding to which subclause (2) applies.

10 (4) Directions given under subclause (3) may modify the
11 amended provisions, or the conciliation rules or the
12 regulations, to such extent as is necessary or expedient to
13 enable the dispute to be resolved by conciliation under
14 Part XI Division 3 of the amended provisions.

15 **3. Pending Part XII applications**

16 (1) A pending Part XII application is to continue to be dealt
17 with and determined by an arbitrator as if the amending Act
18 had not been enacted.

19 (2) Without limiting subclause (1), Part XII of the former
20 provisions and the DRD Rules continue to have effect in
21 relation to pending Part XII applications despite sections 12
22 and 77 of the amending Act.

23 **4. Records**

24 (1) In this clause —

25 **DRD records** means records of the DRD relating to pending
26 arbitration proceedings and pending Part XII applications.

27 (2) The Director and the Registrar may make such arrangements
28 for the disposition of DRD records between the Conciliation
29 Service and the Arbitration Service as are necessary to
30 facilitate the operation of clauses 2 and 3.

- 1 **5. Pending Part XIII matters**
- 2 (1) A pending Part XIII matter is to continue to be dealt with
- 3 and determined by the Commissioner as if the amending Act
- 4 had not been enacted.
- 5 (2) Without limiting subclause (1), sections 245 to 253 of the
- 6 former provisions and the DRD Rules continue to have
- 7 effect in relation to pending Part XIII matters despite
- 8 sections 13 to 18 and 77 of the amending Act.
- 9 **6. Pending Court of Appeal matters**
- 10 (1) A pending Court of Appeal matter is to continue to be dealt
- 11 with and determined by the Court of Appeal as if the
- 12 amending Act had not been enacted.
- 13 (2) Without limiting subclause (1), section 254(3) to (6) of the
- 14 former provisions continue to have effect in relation to
- 15 pending Court of Appeal matters despite section 19 of the
- 16 amending Act.
- 17 **7. Further Court of Appeal matters**
- 18 (1) Despite section 19 of the amending Act, section 254 of the
- 19 former provisions —
- 20 (a) continues to apply to a decision made by the
- 21 Commissioner under Part XIII of the former
- 22 provisions before the commencement day as if the
- 23 amending Act had not been enacted; and
- 24 (b) applies to a decision made by the Commissioner
- 25 after the commencement day in a pending Part XIII
- 26 matter dealt with under clause 5.
- 27 (2) The following matters may be dealt with and determined by
- 28 the Court of Appeal as if the amending Act had not been
- 29 enacted —
- 30 (a) a case stated to the Court of Appeal under
- 31 section 251 of the former provisions in relation to a
- 32 question of law arising in a pending Part XIII matter
- 33 that is being dealt with under clause 5;

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

8. Continuation of Commissioner's appointment

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

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

75. Various references to “Director” amended

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

Registrar

Table

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

76. Various references to “DRD Rules” amended

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

arbitration rules

Table

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

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

77. DRD Rules repealed

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

Part 3 — Other amendments

Division 1 — Amendments

78. Long title amended

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

to provide for the resolution of disputes,

79. Section 3 amended

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

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

1 **80. Section 5 amended**

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

4
5 (d) an award, order, agreement or other
6 instrument —

7 (i) of a class prescribed by the regulations;
8 and

9 (ii) under a law of the State or the
10 Commonwealth prescribed by the
11 regulations,
12

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

16
17 pneumoconiosis, mesothelioma, lung cancer or
18 pleural plaques (diffuse pleural fibrosis),
19

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

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

25
26 1892;
27

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

31
32 injury;
33

1 **81. Section 10A amended**

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

3

4 and to the extent that

5

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

7

8 Act other than section 174(1AA) —

9

10 **82. Section 24A amended**

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

12 (a) delete “where the worker has reached the age of
13 65 years or on the worker’s retirement from work before
14 that age,”;

15 (b) delete “hearing.” and insert:

16

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

20

21 (2) In section 24A(3)(a) delete “work before attaining the age of
22 65 years;” and insert:

23

24 work; and

25

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

27

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

1 *Management Amendment Act 2011* section 82 comes
2 into operation.
3

4 **83. Section 31E amended**

5 (1) In section 31E(3)(b)(ii) —

6 (a) delete “where the worker has reached the age of
7 65 years or on the worker’s retirement from work before
8 that age,”;

9 (b) delete “hearing.” and insert:

10
11 hearing and at the time of the
12 subsequent election the worker is retired
13 from work.
14

15 (2) In section 31E(4)(a) delete “work before attaining the age of
16 65 years; and” and insert:

17
18 work; and
19

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

21
22 years if the hearing loss occurred before the day on
23 which the *Workers' Compensation and Injury*
24 *Management Amendment Act 2011* section 83 comes
25 into operation.
26

27 **84. Section 32 amended**

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

29
30 lung cancer, or pleural plaques (diffuse pleural fibrosis),
31

1 **85. Section 33 amended**

2 In section 33:

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

4

5 lung cancer; or

6

7 (b) after paragraph (c) insert:

8

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

11

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

13

14 lung cancer or pleural plaques (diffuse pleural fibrosis),

15

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

17 **Pneumoconiosis, mesothelioma, lung cancer or pleural plaques**

18 **86. Section 38 amended**

19 In section 38(1):

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

22

23 mesothelioma, lung cancer or pleural plaques
24 (diffuse pleural fibrosis)?

25

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

27

28 cancer; or

29

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

2

3 (iv) pleural plaques (diffuse pleural
4 fibrosis),

5

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

7

8 or

9

10 **87. Section 41 amended**

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

12

13 lung cancer or pleural plaques (diffuse pleural fibrosis),

14

15 **88. Section 56 amended**

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

17

18 (1) Subject to subsection (2) and

19

20 (2) At the end of section 56 insert:

21

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

29

1 **89. Section 57 amended**

2 In section 57 delete “18A(1c).” and insert:

3

4 18A(1CA) and (1C).

5

6 **90. Section 57A amended**

7 (1) In section 57A(1):

8 (a) in paragraph (a) delete “has been” and insert:

9

10 is

11

12 (b) after paragraph (a) insert:

13

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

17

18 (c) in paragraph (b) delete “has served” and insert:

19

20 serves

21

22 (d) in paragraph (b)(ii) delete “been served,” and insert:

23

24 been served.

25

26 (e) delete “and the employer is indemnified by a policy of
27 insurance against his liability to pay the compensation
28 claimed.”

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

2

3 (2A) In the circumstances mentioned in subsection (1),
4 before the expiration of 5 full working days the
5 employer must claim under and in accordance with his
6 or her policy of insurance in respect of liability to pay
7 the compensation claimed.

8 Penalty: a fine of \$1 000.

9

10 (3) In section 57A(2):

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

12

13 5 full working days

14

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

16

17 5 working days

18

19 (4) In section 57A(7):

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

21

22 not later than 14 days

23

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

25

26 insurer; or

27

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

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

4
5 subsection,

6
7 (5) After section 57A(7) insert:

8
9 (8A) An employer who fails to make a weekly payment by
10 the due date under subsection (7) commits an offence.
11 Penalty for each weekly payment not made when due:
12 a fine of \$2 000.

13
14 **91. Section 57B amended**

15 After section 57B(7) insert:

16
17 (8) An employer who fails to make a weekly payment by
18 the due date under subsection (2), (4) or (7) commits an
19 offence.
20 Penalty for each weekly payment not made when due:
21 a fine of \$2 000.

22
23 **92. Section 58 amended**

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

25
26 19 days
27

1 **93. Section 67 amended**

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

3

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

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

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

14 the worker is not entitled to further weekly payments of
15 compensation for incapacity, and clauses 9, 10, 17, 18,
16 18A and 19 cease to apply to the worker.

17

18 (2) After section 67(6) insert:

19

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

26 Penalty: a fine of \$2 000.

27

28 **94. Section 71 amended**

29 (1) In section 71:

30 (a) delete “Where” and insert:

31

32 (1) Where

33

- 1 (b) delete “and to make” and insert:
2
3 and, subject to subsection (3), to make
4
- 5 (2) At the end of section 71 insert:
6
- 7 (2) Without limiting the orders that may be made under
8 subsection (1), the arbitrator may, instead of making an
9 order for a refund, order any person who the arbitrator
10 determines was liable for the whole or any part of the
11 compensation or expenses to reimburse the person who
12 paid the compensation or expenses.
- 13 (3) If the payment of compensation or expenses was in
14 accordance with an order of an arbitrator, the arbitrator
15 hearing and determining an application under
16 subsection (1) may make an order for a refund only if
17 satisfied that the claim for the payment was fraudulent
18 or made without proper justification.
- 19 (4) If —
20 (a) the arbitrator makes or, apart from
21 subsection (3), would have made an order for a
22 refund of an amount of compensation or
23 expenses; or
24 (b) makes an order under subsection (2) in relation
25 to such an amount,
- 26 the amount is to be excluded from any determinations
27 of the claims experience of the employer for the
28 purposes of calculating the premium payable by the
29 employer for a policy of insurance.
30

1 **95. Section 83 amended**

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

5
6 prescribed Commonwealth award or agreement,
7

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

9
10 (2A) In subsection (1) —

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

- 14 (a) of a class prescribed by the regulations; and
15 (b) under a law of the Commonwealth prescribed
16 by the regulations.
17

18 **96. Section 93K amended**

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

- 20
21 (c) court proceedings seeking the damages are
22 commenced after the Director gives the worker
23 written notice that the Director has registered
24 the election; and
25

26 **97. Section 100 replaced**

27 Delete section 100 and insert:

28
29 **100. Functions of WorkCover WA**

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

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

- 3 (a) to monitor compliance with the workers'
4 compensation scheme by employers, insurers
5 and others participating in or affected by the
6 workers' compensation scheme; and
- 7 (b) to control and administer the General Account
8 and the Trust Account; and
- 9 (c) to promote and co-ordinate the management
10 and treatment of accidents, injuries, losses of
11 functions and diseases in respect of which
12 compensation may be payable under this Act;
13 and
- 14 (d) to fix insurance premium rates and perform the
15 related functions conferred upon it by Part VIII;
16 and
- 17 (e) to resolve or assist in resolving disputes under
18 this Act through conciliation and arbitration;
19 and
- 20 (f) to obtain from insurers, self insurers and others
21 who participate in or provide services in
22 connection with the workers' compensation
23 scheme data enabling WorkCover WA to
24 compile and record such statistics, records and
25 reports as it considers necessary or desirable for
26 the operation of the workers' compensation
27 scheme and administration of this Act; and
- 28 (g) to review the sufficiency of the data provided to
29 WorkCover WA by insurers, self insurers and
30 others who participate in or provide services in
31 connection with the workers' compensation
32 scheme, and whether or not criteria developed
33 by WorkCover WA or prescribed by the
34 regulations for assessing the performance of
35 those persons are being met; and

- 1 (h) to promote awareness of and disseminate
2 information about the workers' compensation
3 scheme; and
- 4 (i) to undertake research to advance or support the
5 purposes of the Act or the performance of the
6 other functions of WorkCover WA; and
- 7 (j) to promote the prevention of accidents, injuries,
8 losses of functions, and diseases of a kind in
9 respect of which compensation may be payable
10 under this Act; and
- 11 (k) to advise the Minister on —
- 12 (i) matters to do with insurance that is
13 required by this Act; and
- 14 (ii) WorkCover WA's functions under this
15 Act; and
- 16 (iii) the policy to be followed in the State
17 with regard to workers' compensation;
18 and
- 19 (iv) any other matter referred by the
20 Minister to WorkCover WA for its
21 advice.
22

23 **98. Section 101 amended**

24 After section 101(c) insert:

- 25
- 26 (caa) to effect contracts of insurance providing
27 indemnity against liability to make payments
28 out of moneys standing to the credit of the
29 General Account; and
30

1 **99. Section 106 amended**

2 (1) In section 106(2):

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

4

5 1980; and

6

7 (b) after paragraph (d) insert:

8

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

11

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

13

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

16

17 **100. Section 146H amended**

18 Delete section 146H(4).

19 **101. Section 151 amended**

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

22

23 pneumoconiosis, mesothelioma, lung
24 cancer and pleural plaques (diffuse
25 pleural fibrosis)

26

1 **102. Section 155E inserted**

2 After section 155D insert:

3

4 **155E. Notice of requirements of sections 155C and 155D**

5 If WorkCover WA is of the opinion that a worker's
6 injury should be reviewed to determine whether a
7 return to work program should be established for the
8 worker, WorkCover WA may —

- 9 (a) notify the worker, the worker's employer and
10 the employer's insurer of that opinion; and
11 (b) inform those persons of the requirements of
12 sections 155C and 155D and their obligations
13 under those provisions.
14

15 **103. Section 157A deleted**

16 Delete section 157A.

17 **104. Section 159 inserted**

18 At the beginning of Part X Division 1 insert:

19

20 **159. Terms used**

21 In this Part —

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

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

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

- 1 **remuneration** means —
- 2 (a) unless regulations provide that it is not to be
- 3 treated as remuneration for the purposes of this
- 4 definition, any amount of any of the
- 5 following —
- 6 (i) wages;
- 7 (ii) salaries;
- 8 (iii) sums paid to workers under an
- 9 agreement to perform —
- 10 (I) a specified quantity of work for
- 11 a specified sum; or
- 12 (II) work on piece rates; or
- 13 (III) work on a bonus or commission
- 14 system for payment by results;
- 15 and
- 16 (b) any other amount which regulations provide is
- 17 to be treated as remuneration for the purposes
- 18 of this definition, not being —
- 19 (i) an amount paid by way of compensation
- 20 under this Act; or
- 21 (ii) an amount paid by way of damages in
- 22 respect of a compensable injury.
- 23

24 **105. Section 160 amended**

- 25 (1) Delete section 160(1) and (2) and insert:
- 26

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

- 1 increase in amount occurring during currency
2 of the policy; and
- 3 (b) the full amount of the employer's liability to
4 pay damages to any worker employed by the
5 employer in respect of a compensable injury for
6 which the employer is liable.
- 7 (2) An employer obliged by this section to effect or renew
8 a policy of insurance shall, on applying to an approved
9 insurance office, for that purpose, furnish to that office
10 an estimate, made to the best of that employer's
11 knowledge, information and belief, of the aggregate
12 amount of remuneration to be paid or payable over the
13 period for which the policy is to be effected or
14 renewed, and shall forthwith after the termination of
15 that period —
- 16 (a) furnish a statement of the aggregate amount of
17 remuneration paid or payable in fact; and
- 18 (b) include in that statement every sum paid during
19 that period to an employee in respect of
20 overtime worked by the employee.
21
- 22 (2) In section 160(2b)(a) delete "the wages, salary and other
23 remuneration paid" and insert:
24
- 25 remuneration paid or payable
26
- 27 (3) In section 160(3) delete "pay compensation under this Act to all
28 workers employed by him." and insert:
29
- 30 pay to all workers employed by the employer —
31 (a) compensation under this Act; and

1 (b) damages in respect of compensable injuries for
2 which the employer is liable.
3

4 (4) In section 160(4):

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

6

7 Act or damages in respect of compensable
8 injuries for which the employer is liable; and
9

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

12

13 such compensation or such damages
14

15 **106. Section 161A amended**

16 In section 161A after “Act” insert:

17

18 or damages in respect of compensable injuries for
19 which the employer is liable
20

21 **107. Section 164 amended**

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

23

24 Act for, or to pay damages in respect of,
25

26 **108. Section 165 amended**

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

28

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

1 damages in respect of compensable injuries for
2 which the employer is liable, since the last
3 review.
4

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

6
7 compensation or damages in respect of
8 compensable injuries for which the employer is
9 liable; or
10

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

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

13
14 for which insurance would, but for the
15 exemption, be required by this Act,
16

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

18
19 for which insurance would, but for the
20 exemption, be required by this Act.
21

22 **109. Section 168 amended**

23 In section 168(b):

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

25
26 (iii) there are no outstanding or potential
27 claims for compensation or actions for
28 damages in respect of an injury for
29 which the employer is or may be liable;
30 or
31

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

3
4 or potential claims or actions,
5

6 **110. Section 171 amended**

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

9
10 required by this Act with the insurance office
11 concerned; and
12

13 **111. Section 172 amended**

14 In section 172:

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

18 **112. Section 173 amended**

19 In section 173(1):

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

21
22 under this Act
23

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

25
26 liability
27

- 1 (c) in paragraph (a) delete “insurer; and” and insert:
2
3 insurer that the employer otherwise would have
4 had under the contract; and
5
6 (d) in paragraph (b) delete “the liability,” and insert:
7
8 that liability that the employer otherwise would
9 have had to that worker and in respect of that
10 liability.
11
12 (e) delete “that the employer otherwise would have had
13 under the contract.”
14

15 **113. Section 174 amended**

- 16 (1) After section 174(1) insert:
17
18 (1AA) Where —
19 (a) on or after the day on which the *Workers’*
20 *Compensation and Injury Management*
21 *Amendment Act 2011* section 113 comes into
22 operation, an action for damages is brought by
23 a worker against the worker’s employer in
24 respect of a compensable injury; and
25 (b) before that day no claim for compensation
26 under this Act has been made in respect of the
27 same injury; and
28 (c) the action —
29 (i) proceeds to judgment, including the
30 acceptance of an offer to consent to
31 judgment, against the employer and
32 damages are awarded to the worker
33 against the employer; or

- 1 (ii) is settled by an agreement of the kind
2 described in section 92(f) made between
3 the worker and WorkCover WA, in the
4 exercise of its powers under
5 section 174AB(1), under which
6 damages are to be paid to the worker;
7 and
8 (d) the employer is not insured under this Act
9 against the employer's liability to pay damages
10 to the worker or the case is one to which
11 section 173(2) applies or the employer's insurer
12 declines to indemnify the employer against the
13 worker's claim for damages; and
14 (e) the employer does not pay the damages
15 awarded or agreed within 60 days after the date
16 payment is due under the judgment or
17 agreement,
18 subject to section 174AAA, WorkCover WA is to pay
19 to the worker from moneys standing to the credit of the
20 General Account the amount required to satisfy the
21 judgment or agreement and any order against the
22 employer for costs in respect of the action.
23
24 (2) In section 174(1a) delete "under this Act in relation to the
25 payment of that award." and insert:
26
27 in relation to the payment of that amount.
28
29 (3) In section 174(3) after "satisfy an award" insert:
30
31 of compensation in accordance with this Act
32

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

2

3 or damages

4

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

6

7 or (1AA)

8

9 (6) In section 174(9):

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

11 (b) after “to a worker,” insert:

12

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

15

16 **114. Section 174AAA inserted**

17 After section 174 insert:

18

19 **174AAA. Setting aside judgments and agreements**

20 (1) If —

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

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

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

- 1 (2) The Supreme Court may set aside the judgment or
2 agreement if satisfied that there are reasonable grounds
3 for believing that the employer has not taken all
4 reasonable steps to protect the employer's own
5 interests.
- 6 (3) If the Supreme Court sets the judgment or agreement
7 aside the costs of the respondent in relation to the
8 application are to be paid from the General Account
9 unless the Supreme Court orders otherwise.
- 10 (4) The Supreme Court may make an order about costs
11 under subsection (3) only if satisfied that it is
12 appropriate to make the order because of the special
13 circumstances surrounding the giving of the judgment
14 or the making of the agreement.
- 15 (5) If a judgment or agreement is set aside under this
16 section —
- 17 (a) the judgment or agreement is taken never to
18 have had effect for the purpose of any
19 proceeding in any court; and
- 20 (b) evidence of a statement or communication, or a
21 part of a statement or communication, tending
22 to establish the existence of the agreement is
23 not admissible in any proceeding in a court,
24 unless the Supreme Court orders otherwise.
- 25 (6) The Supreme Court may make an order under
26 subsection (5)(b) only if satisfied that the admission of
27 the evidence is necessary to avoid injustice to a party to
28 the proceeding.
29

1 **115. Section 174AB amended**

2 (1) In section 174AB(1):

3 (a) delete “is uninsured and is not defending a claim
4 brought by a worker, WorkCover WA has all of the
5 rights of the employer under this Act” and insert:

6

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

13

14 (b) after paragraph (a) insert:

15

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

18

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

20

21 claim or compromise of the action; and

22

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

24

25 claim or action; and

26

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

1 **116. Section 174AC replaced**

2 Delete section 174AC and insert:

3

4 **174AC. WorkCover WA's rights of indemnity and**
5 **subrogation**

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

- 10 (a) any right of the employer to indemnity from an
11 insurer in respect of that payment; and
- 12 (b) any right of the employer and any insurer of the
13 employer to recover any amount from any other
14 person in respect of that payment (had the
15 payment been made by the employer or
16 insurer), whether the right arises by way of
17 liability for contribution, apportionment of
18 liability or otherwise.

19 **174AD. Employer's duty to assist WorkCover WA**

20 (1) Where under section 174AB or 174AC WorkCover
21 WA has or is subrogated to any right of an employer,
22 WorkCover WA may by notice in writing require the
23 employer to —

- 24 (a) give WorkCover WA any information and
25 assistance which WorkCover WA considers
26 necessary or desirable in relation to the exercise
27 or proposed exercise of the right; and
- 28 (b) provide to WorkCover WA any documents in
29 the employer's possession or control which
30 WorkCover WA considers necessary or
31 desirable in relation to the exercise or
32 contemplated exercise of the right; and

1 (c) execute any documents or instruments which
2 may be necessary to enable WorkCover WA to
3 exercise the right, or to ratify or confirm any
4 exercise or purported exercise of the right by
5 WorkCover WA.

6 (2) An employer must comply with any requirement made
7 under subsection (1).

8 Penalty: a fine of \$5 000.
9

10 **117. Section 174A amended**

11 In section 174A(1):

12 (a) delete “claimed under this Act” and insert:
13

14 or damages in respect of a compensable injury for
15 which the employer is liable
16

17 (b) before “claimed,” insert:
18

19 or damages are
20

21 **118. Section 175 amended**

22 After section 175(7) insert:
23

24 (8) Nothing in this section makes either a principal or a
25 contractor liable to pay any damages which, but for this
26 section, the principal or contractor would not be liable
27 to pay.
28

1 **119. Section 175A amended**

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

3

4 The chief executive officer

5

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

8

9 chief executive officer

10

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

12

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

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

27

28 **120. Section 178 amended**

29 After section 178(1) insert:

30

31 (2A) For the purposes of showing that the employer has not
32 been prejudiced in defending the proceedings for

1 subsection (1)(d), the period from the occurrence of the
2 injury, or from the time of death, to the time the claim
3 is made is to be taken into account.
4

5 **121. Section 270A inserted**

6 After section 269 insert:
7

8 **270A. Remuneration**

9 (1) A member of the Costs Committee is entitled to be
10 paid such fees and allowances as may be determined by
11 the Minister on the recommendation of the Minister for
12 Public Sector Management.

13 (2) The fees and allowances mentioned in subsection (1)
14 are to be paid by WorkCover WA from moneys
15 standing to the credit of the General Account.
16

17 **122. Section 277 amended**

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

20
21 *Fair Work (Registered Organisations) Act 2009*
22 (Commonwealth) or under another law of the
23 Commonwealth prescribed by the regulations;
24

25 **123. Schedule 1 amended**

26 (1) In Schedule 1 clause 7(4) delete “18A(1c).” and insert:
27

28 18A(1CA) and (1C).
29

1 (2) In Schedule 1 clause 11(2) delete the definitions of:

2 *Amount A*

3 *Amount D*

4 (3) In Schedule 1 clause 11(3)(a):

5 (a) delete “Amount A” and insert:

6

7 Amount B

8

9 (b) delete “Amount D;” and insert:

10

11 Amount Aa;

12

13 (4) In Schedule 1 clause 11(3)(b):

14 (a) delete “Amount Aa,” and insert:

15

16 85% of Amount B,

17

18 (b) delete “Amount D.” and insert:

19

20 Amount Aa.

21

22 (5) Delete Schedule 1 clause 11(5) and insert:

23

24 (5) Subject to subclause (6), the references in the definition of
25 *Amount Aa* to allowances are references to allowances
26 averaged over the period of one year ending at the date of
27 incapacity.

28

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- 1 (6) In Schedule 1 clause 11(6) delete “13 weeks mentioned in
2 subclause (5),” and insert:
3
4 one year mentioned in subclause (5), or if for part of that
5 period the worker was not in the employment that the
6 worker is in on the date of incapacity,
7
- 8 (7) In Schedule 1 clause 11(7) delete “Amount D” and insert:
9
10 Amount Aa
11
- 12 (8) In Schedule 1 clause 16(2) delete “any percentage increase in
13 wages ordered in a National Wage Decision made under the
14 *Conciliation and Arbitration Act 1904* of the Commonwealth as a
15 result, *inter alia*, of consumer price index movements.” and insert:
16
17 any percentage increase in minimum wages resulting
18 from —
19 (a) a national minimum wage order made under the
20 *Fair Work Act 2009* (Commonwealth); or
21 (b) any other instrument determining or regulating
22 minimum wages prescribed by the regulations in
23 place of national minimum wage orders.
24
- 25 (9) Before Schedule 1 clause 18A(1) insert:
26
27 (1AA) In this clause —
28 ***reasonable expenses referred to in clause 17(1)*** includes
29 the vehicle running expenses, reasonable fares and expenses
30 and reasonable cost of meals and lodging referred to in
31 clause 19(1).
32

- 1 (10) In Schedule 1 clause 18A(1) delete “subclauses (1c)(a) and (2),”
2 and insert:
3
4 subclauses (1CA) and (2),
5
- 6 (11) In Schedule 1 clause 18A(1a) delete “subclauses (1c)(a) and (2),”
7 and insert:
8
9 subclauses (1CA) and (2),
10
- 11 (12) In Schedule 1 clause 18A(1b) delete “subclauses (1c)(b)” and
12 insert:
13
14 subclauses (1C)
15
- 16 (13) Delete Schedule 1 clause 18A(1c) and insert:
17
- 18 (1CA) In the exercise of a discretion under subclause (1) or (1a), an
19 arbitrator is not to allow an additional sum which exceeds,
20 or additional sums which in aggregate exceed —
21 (a) \$50 000; less
22 (b) any sum or sums in excess of the maximum amount
23 provided by clause 17(1) that the insurer or
24 employer has voluntarily paid in respect of
25 reasonable expenses referred to in that clause.
- 26 (1C) In the exercise of a discretion under subclause (1b), an
27 arbitrator is not to allow a further additional sum which
28 exceeds, or further additional sums which in aggregate
29 exceed —
30 (a) the prescribed amount; less
31 (b) any sum or sums in excess of the maximum amount
32 provided by clause 17(1) that the insurer or

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- 1 employer has voluntarily paid in respect of
2 reasonable expenses referred to in that clause.
3
- 4 (14) In Schedule 1 clause 18A(1d) delete “subclause (1c)(b) —” and
5 insert:
6
- 7 subclause (1C) —
8
- 9 (15) In Schedule 1 clause 18A(3)(a)(ii) delete “\$30 000;” and insert:
10
- 11 \$30 000, less any sum or sums in excess of
12 the maximum amount provided by
13 clause 17(1) that the insurer or employer
14 has voluntarily paid in respect of reasonable
15 expenses referred to in that clause;
16
- 17 (16) In Schedule 1 clause 18A(4)(b) delete “\$30 000.” and insert:
18
- 19 \$30 000, less any sum or sums in excess of the
20 maximum amount provided by clause 17(1) that the
21 insurer or employer has voluntarily paid in respect
22 of reasonable expenses referred to in that clause.
23
- 24 (17) Before Schedule 1 clause 18D(1) insert:
25
- 26 (1A) In this clause —
27 *reasonable expenses referred to in clause 17(1)* includes
28 the vehicle running expenses, reasonable fares and expenses
29 and reasonable cost of meals and lodging referred to in
30 clause 19(1).
31

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

3 (3A) In any case where a worker travels for the worker's degree
4 of impairment to be assessed by an approved medical
5 specialist or an approved medical specialist panel, the
6 employer is liable to pay the worker's vehicle running
7 expenses, reasonable fares and expenses and reasonable cost
8 of meals and lodging —

9 (a) as if subclause (1), with any necessary
10 modifications, applied to the travelling; and

11 (b) if the worker proves that the travelling was
12 necessary in the circumstances of the case.
13

14 **124. Schedule 3 amended**

15 In Schedule 3 after the item relating to Diseases caused by the
16 asphyxiants insert:
17

Pleural plaques (diffuse
pleural fibrosis)

Any process entailing
substantial exposure to
asbestos dust.

18

19 **Division 2 — Workers' Compensation and Injury Management**
20 **(Specified Industrial Diseases) Order 2008 revoked**

21 **125. Specified Industrial Diseases Order revoked**

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

=====