

A group of business professionals in an office setting, smiling and reviewing documents. The image is partially obscured by a white diagonal shape on the left side.

# New Conciliation & Arbitration Services Information session

November 2011





## Introduction

Michelle Reynolds

Chief Executive Officer, WorkCover WA

# Our vision

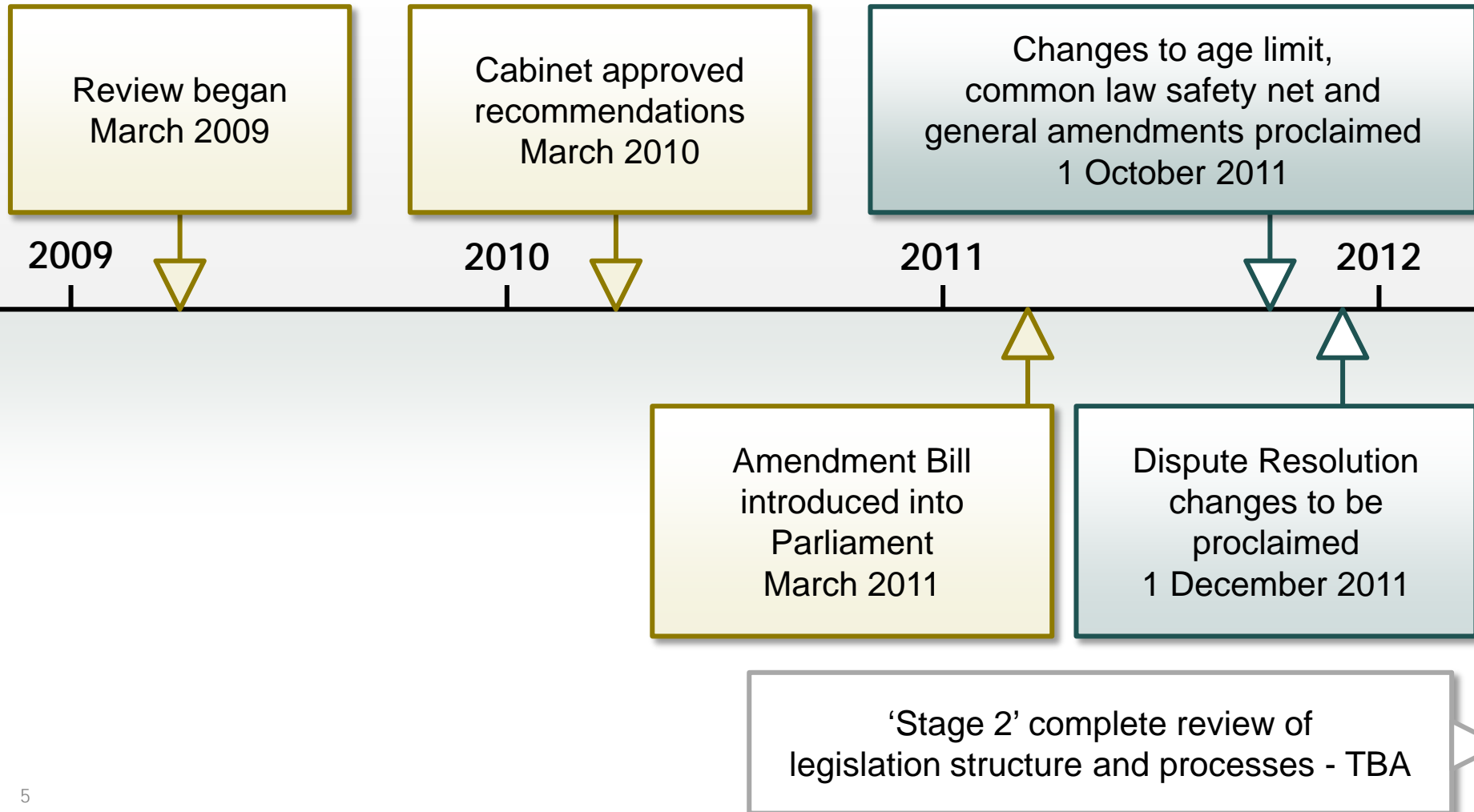
A workers' compensation system valued by all.



# Session outline

- 9.30am Introduction
- 9.40am New Conciliation Service
- 10:00am New Arbitration Service
- 10.30am Morning Tea*
- 10:50am Transition plan - operations
- 11.10am Legislative Reform
- 11.30am Questions & Answers
- 12.15pm Close*

# Legislative review



# New Dispute Resolution Model – Conciliation & Arbitration

## Why change the model?

Wide consultation indicated the need for:

- overall timeliness, fairness, cost-effectiveness
- earlier conciliation
- less complicated application process
- separate conciliation and arbitration functions
- more consistency, less complexity
- more outcome focus, less process driven

# New Dispute Resolution Model – Conciliation & Arbitration

Matter arises

Informal negotiation  
between parties

Informal negotiation fails

**Conciliation Service**  
(8 weeks from application to outcome)

**Arbitration Service**

## The new model

- More accessible and quicker means to resolve disputes
- Outcome driven, service oriented
- Time constrained
- Clear separation of Conciliation Service and Arbitration Service
- Early, easy access and compulsory Conciliation
- Retention of formality in Arbitration
- Clear Rules that govern both Services
- Access to representation and costs



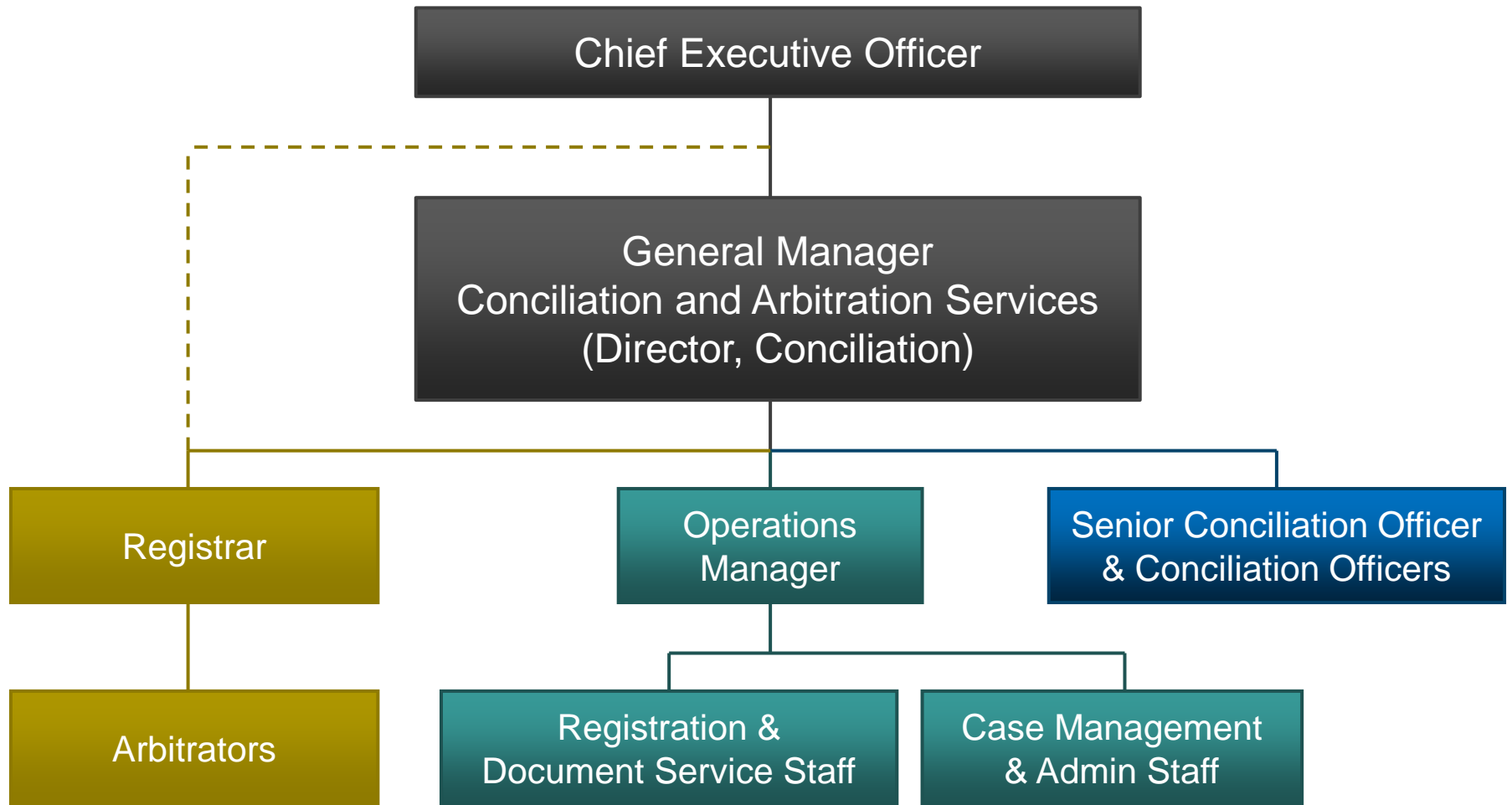
## New Conciliation Service

Wendy Attenborough

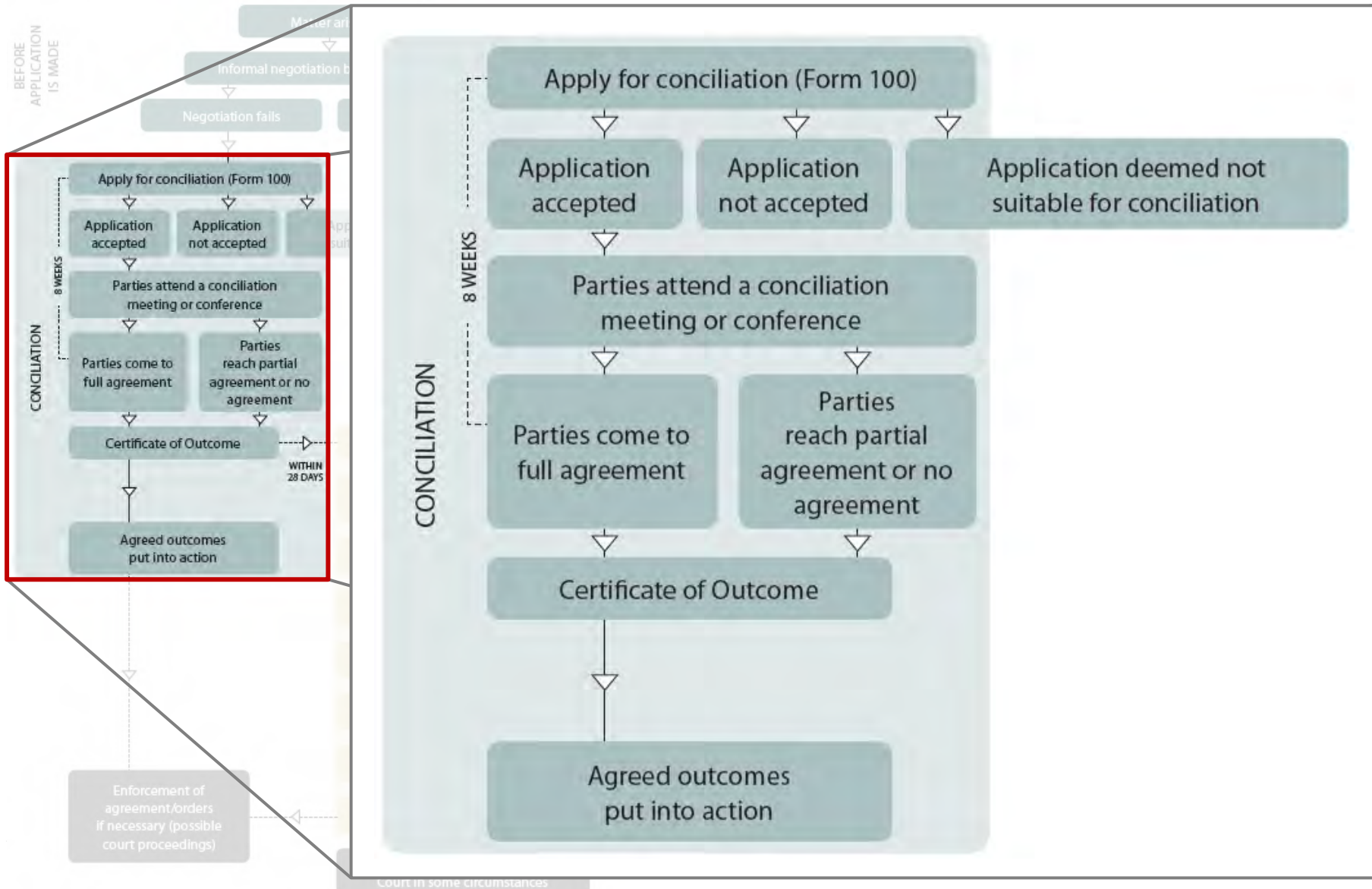
A/General Manager Conciliation and Arbitration Services

A/Director, Conciliation

# Conciliation and Arbitration Services Structure



# Conciliation Service



# Role & Powers of the Director, Conciliation

- Administration and management of the Conciliation Service
- Allocates work to conciliation officers
- Has all functions of a conciliation officer
- Provides advice to the Minister on the Conciliation Rules
- Statutory functions in relation to elections and agreements
- Is not subject to the direction of the WorkCover WA CEO as to any decisions or discretions regarding specific disputes

# A Conciliation officer:

- Guides parties in the resolution of disputes, by agreement
- May require parties to a dispute to:
  - attend a one-on-one meeting with the conciliation officer
  - attend a conciliation conference with other parties to the dispute present
  - answer questions or produce documents for the conciliation officer
- Can make payment directions akin to Part XII (12 week duration)
- Is not subject to the direction of the WorkCover WA CEO or the Director as to any decisions or discretions regarding specific disputes

# Conciliation Process

## 1. Application

2. What an applicant may lodge

3. Rejection

4. Not suitable for conciliation

5. Service

6. Time limits

7. Conciliation

8. Powers

9. Certificate of Outcome

10. Costs

- Removal of front loading
- Lodge an application in person, by post, by fax or online

# Conciliation Process

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- All that an applicant *needs* is the form
- Must satisfy the Director that reasonable attempts have been made to resolve the dispute by negotiation:
  - Applicant can write this on the form
  - Applicant should attach supporting documents where these are available (eg. letter between worker and insurer, records of phone conversations etc)
- Any other document relevant to the dispute
- No rules around what respondent may/may not file, though conciliation officer will likely request documents to inform the process

# Conciliation Process

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- Grounds for rejection are:
  - Reasonable attempts to resolve the dispute have not been made
  - 56 days have not elapsed since prior conciliation on same issue
  - Application is not properly completed or properly lodged
- The Director must otherwise accept the application, though the application may be deemed not suitable for conciliation

# Conciliation Process

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- The Director may deem a dispute not suitable for conciliation if the issues are unlikely to be resolved by conciliation
- The Director will issue a certificate identifying the issues, and provide it to the parties
- A party to the dispute may then make an application to the Arbitration Service, using the certificate.

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- Conciliation Service has responsibility for giving a copy of documents to each party
  - Important that the applicant provides correct contact details for parties
- Except for notice of representation or cessation to act – it remains the responsibility of the representative to notify the Conciliation Service and the other party within 3 days
- Note: Does not apply to the Arbitration Service

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- 56 days from acceptance of application to completion
- A conciliator may request the Director grant up to an additional 56 days
- Referral to medical panel “stops the clock”

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- Emphasis on timeframes
- Conciliation as a *service*
- Conferences will normally occur within 21 days from acceptance of an application
- Our DCMS will tell us when you're busy
- 6 conciliation rooms, 3 conciliations/day
- 2-hour meetings, tight schedule, very busy

# Conciliation Process

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- Conciliation officer may require parties to provide documents to assist in the resolution of the dispute
- Conciliation officer may make payment directions:
  - payment, suspension or reduction of wages payments for up to 12 weeks
  - for the payment of statutory allowances of up to 5% of Prescribed Amount.
- Failure to comply with payment direction – section 182ZL
  - Application to Director for an order
    - 14 days after payment due

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- At the end of conciliation, a Certificate of Outcome is issued by conciliation officer
- The Certificate outlines:
  - the matters in dispute at the outset of the process
  - those matters that were resolved and the basis on which they were resolved
  - those matters remaining in dispute
  - details of any payment directions issued.
- Certificate is *essential* to make an application to the Arbitration Service

# Conciliation Process

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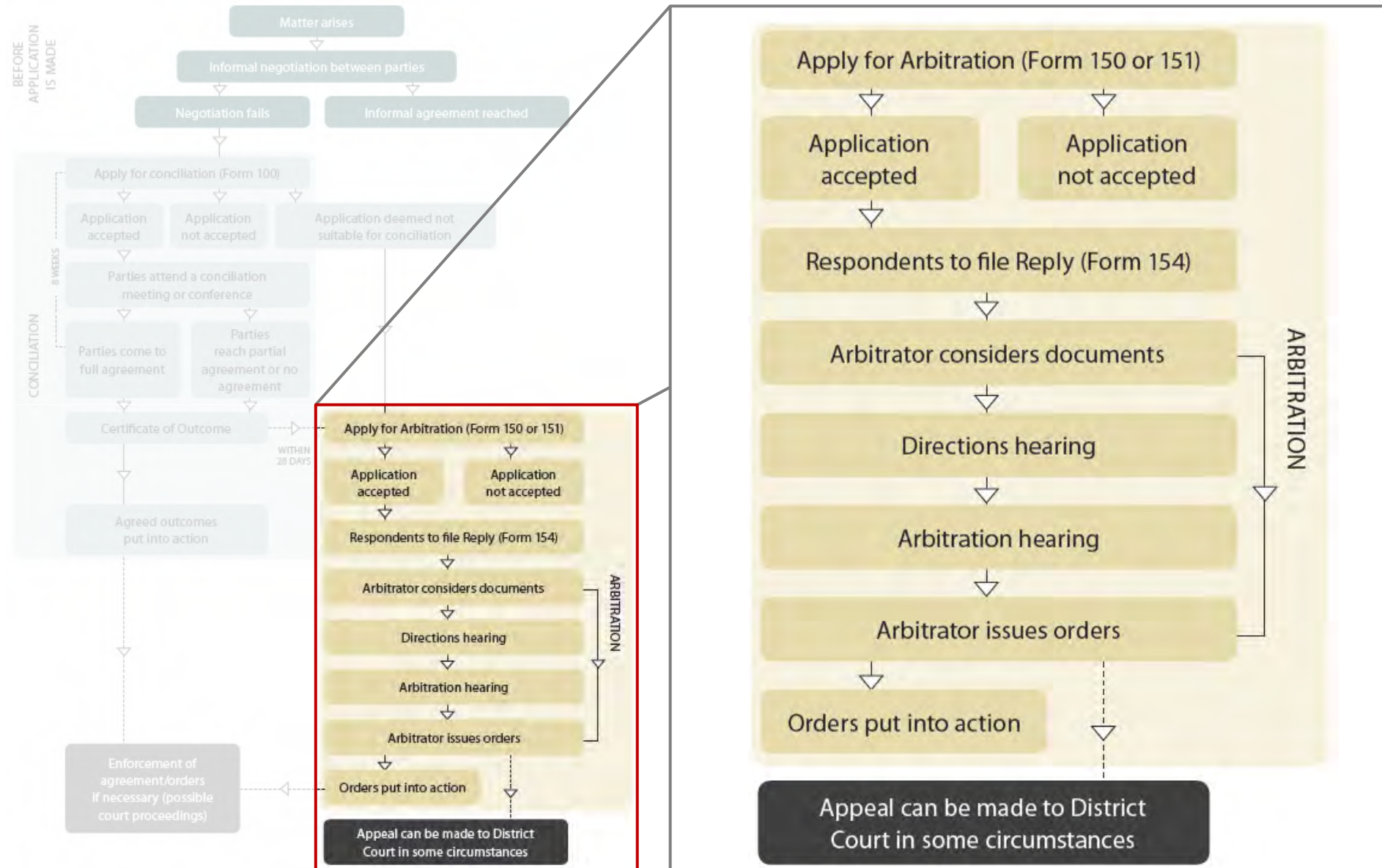
- Can apply for a conciliator to make a determination of costs
- Can only occur if dispute is resolved or has otherwise ended
- Cost order may be reviewed by the Director



## New Arbitration Process

Shane Melville  
A/Registrar

# Arbitration Service



# Role & Powers of the Registrar, Arbitration

- The WorkCover WA CEO is to designate the Registrar
- The Registrar must be a legal practitioner
- Is not subject to the direction of the WorkCover WA CEO as to any decisions or discretions regarding specific disputes
- Administration and management of the Arbitration Service
- Allocates work to Arbitrators
- Has all functions of an Arbitrator
- Provides advice as to content of Arbitration Rules

# An Arbitrator:

- Must be a legal practitioner
- Is not subject to the direction of the WorkCover WA CEO or the Registrar as to any decisions or discretions regarding specific disputes
- Makes determinations (orders) based on evidence and law
- Is not to attempt to resolve any matter in dispute by conciliation
- May confirm, vary or revoke a payment direction made by a conciliation officer
- Makes final and binding decisions upon parties
- Subject to appeal to the District Court in certain circumstances, or subject to review if there is new evidence

# Significant Arbitration Rules

1. Overview

2. Application

3. Rejection

4. Reply, Response & Service

5. Interlocutory Application

6. Directions Hearing

7. Arbitration Hearing

8. Miscellaneous

- Majority of the Arbitration rules reflect the DRD rules

# Significant Arbitration Rules

1. Overview

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4. Reply, Response & Service

5. Interlocutory Application

6. Directions Hearing

7. Arbitration Hearing

8. Miscellaneous

- Application for Arbitration is to be lodged within 28 days after a certificate is issued by the Conciliation Service
  - A party may apply to the Registrar to extend the time frame. Registrar may extend if satisfied that extenuating circumstances exist and it is proper to do so
- Lodge an application in person, by post, by fax

# Significant Arbitration Rules

1. Overview

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4. Reply, Response & Service

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- Registrar may reject application if
  - not properly lodged or properly completed
  - not accompanied by materials required by the Rules or an order
  - does not comply with the Rules or an order
  - no Certificate of Outcome from the Conciliation Service provided

# Significant Arbitration Rules

1. Overview

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## Reply

- Reply is to be filed within 14 days after being served with the application

## Response

- Response process has been removed

## Service

- Unlike in the Conciliation Service, service will remain the responsibility of the parties and little has changed from the current DRD Rules

# Significant Arbitration Rules

1. Overview

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5. Interlocutory Application

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8. Miscellaneous

- The definition of interlocutory application in the DRD rules contains 12 subsections. The Arbitration Rules introduce a simplified definition:
  - “Interlocutory application means any application or request for an order, except an order that finally determines a dispute between parties.”

# Significant Arbitration Rules

1. Overview

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- Before the hearing of a proceeding for determination of a dispute, the Registrar may convene a directions hearing to be conducted by an arbitrator to:
  - clearly define the issues to be determined;
  - make appropriate directions for the speedy and fair conduct of the proceeding;
  - list the dispute for hearing;
  - ensure effective case management of the dispute.

# Significant Arbitration Rules

1. Overview

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- In appropriate circumstances the applications may be arbitrated on the papers
- Otherwise a more formal hearing will take place involving;
  - a) the formal taking of evidence
  - b) cross examination
  - c) tendering of documents.
- Arbitrator is bound by the common law rules of natural justice to the extent the Act does not preclude them
- Decision given orally then and there, or reserved and likely to be in writing

# Significant Arbitration Rules

1. Overview

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8. Miscellaneous

- CEO may approve forms for the Arbitration Service
  - Amending and updating forms will be quicker and more flexible
- The effect of the current DRD Rule 91 has been retained relating to the limitation on medical reports that may be lodged



## Transition Plan

Shane Melville  
A/Registrar

# The Current Position

- Practice Direction 1 of 2011
- Part XII matters
  - Will continue to be determined by the DRD Arbitrators
  - Outstanding Part XII applications as of 1 December 2011 will be dealt with by the Arbitration Service Arbitrators

# The Current Position

- Part XI applications
  - **Arbitrations** - Subject to the overriding discretion of the DRD Arbitrators, no applications will be arbitrated in November 2011
  - **Conciliations**
    - New Applications (ie. those that have not yet had any form of conciliation) will be conciliated up to 17 November 2011, subject to the availability of DRD Arbitrators
    - Existing applications (ie. those that have had some form of conciliation but in respect of which conciliation is not complete) will be conciliated up to 24 November 2011, subject to the availability of DRD Arbitrators
  - **Interlocutory Applications** will continue to be dealt with by the DRD up to 30 November 2011
- Existing applications are being earmarked for streaming to either the Arbitration Service or the Conciliation Service

# The New System - Conciliation

- Those applications earmarked for the Conciliation Service are being provisionally listed for Conciliation in December 2011
- Matters will ordinarily be listed with priority to those matters awaiting a date the longest
- If there is a matter that justifies listing sooner than would ordinarily be the case an application should be made for an expedited hearing
- From 1 December 2011 the Registrar will review those files and if of the view that conciliation has not been completed will formalise that position

# The New System - Conciliation

- If on review of the application the Registrar is of the view that conciliation has in fact been completed no certification will issue and the application will be directed to the Arbitration Service, with the hearing provisionally listed in the Conciliation Service being vacated
- In the latter case the parties will be advised
- If the parties are not advised to the contrary, they are expected to attend the conciliation hearing fully prepared to discuss the manner by which the dispute might be resolved

# The New System - Arbitration

- A number of those applications earmarked for the Arbitration Service are being provisionally listed for arbitration in December 2011
- Matters will ordinarily be listed with priority to those matters awaiting a date the longest
- If there is a matter that justifies listing sooner than would ordinarily be the case an application should be made for an expedited hearing

# The New System - Arbitration

- If the parties are not advised to the contrary, they are expected to attend the arbitration hearing fully prepared to arbitrate
- Applications streamed to the Arbitration Service that are not given hearing dates in December 2011 will likely be listed for a directions hearing, the first of which will take place on 12 December 2011



## Legislative reform

Chris White

General Manager, Legislation & Scheme Information

# Removal of age-based limits

- Injured workers' aged 65 or more can access weekly income payments on same terms as all other injured workers
- Injured workers' aged 65 or more with noise-induced hearing loss are now entitled compensation
- Does not operate retrospectively
- Social and economic benefits for aging workers and workplaces

# Common law safety net

- Wider protection for injured workers where employer is uninsured
- Pre 1 Oct - Safety net only covered statutory entitlements
- Post 1 Oct - Extended coverage to include common law damages
- Funding may be satisfied by WorkCover WA General Account
- Insurance for common law liabilities is mandatory



# Other amendments

- Time to lodge a claim with insurer is extended - \$1000 penalty
- New penalty for failure to make weekly payments
- Clarification of the effective date of redemptions
- Removal of the time limit to issue writ after common law election (Limitations Act applies)
- Ability to define “remuneration” in regulations
- Removal of exclusion of family member from definition of worker
- Inclusion of “diffuse pleural fibrosis” as asbestos related disease
- Changes to clause 11 – calculation of weekly payments have not been proclaimed

# Legislation next steps

- WorkCover WA has an on-going legislative review program
- Implementation of all the recommendations of the 2009 review is not complete
- Long term objective to improve the structure and accessibility of the statute

## Panel Session



Michelle  
Reynolds



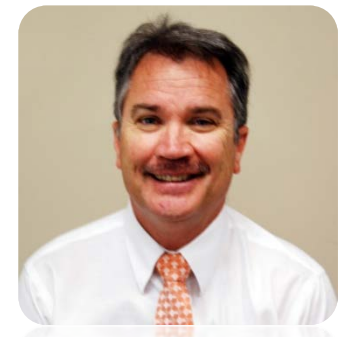
Wendy  
Attenborough



Shane  
Melville



Chris  
White



Harley  
White

# Finally...

- Further information:
  - Information pack
  - Advisory Services 1300 794 744
  - [www.workcover.wa.gov.au](http://www.workcover.wa.gov.au)
  - Email [corporatecommunications@workcover.wa.gov.au](mailto:corporatecommunications@workcover.wa.gov.au)



**Thank you!**