

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Workers Compensation Amendment Bill 2010

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# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Workers Compensation Amendment Bill 2010

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### A Bill for

An Act to amend the *Workers Compensation Act 1951*, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Workers Compensation Amendment Act 2010*.

### 2 Commencement

This Act commences on the 7th day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

### 3 Legislation amended

This Act amends the *Workers Compensation Act 1951* and the *Workers Compensation Regulation 2002*.

## Part 2 Workers Compensation Act 1951

### 4 Meaning of injury Section 4

*substitute*

(1) In this Act:

***injury*** means a physical or psychological injury (including stress) and includes aggravation, acceleration or recurrence of a pre-existing injury.

(2) In this section:

***psychological injury (including stress)***, for a worker, does not include a psychological injury (including stress) that is completely or mostly caused by the reasonable action, or proposed action, by or on behalf of an employer in relation to any of the following:

- (a) the transfer, demotion or promotion of the worker;
- (b) the performance appraisal or counselling of the worker;

- 
- (c) the discipline, retrenchment or dismissal of the worker;
  - (d) the provision of an employment benefit to the worker;
  - (e) the training of the worker;
  - (f) the counselling of the worker;
  - (g) the investigation of the worker.

**5 General entitlement to compensation for personal injury  
Section 31, new note**

*insert after section 31 (4)*

*Note* For the exclusion of compensation for an injury that arises from reasonable management action—see the definitions of *injury* and *psychological injury (including stress)* under s 4.

**6 Part 4.4**

*substitute*

**Part 4.4 Compensation for permanent  
impairment**

**Division 4.4.1 Whole person permanent impairment**

**48 Definitions—pt 4.4**

In this part:

*approved impairment guide* means a medical guideline for assessing the extent of permanent impairment to a person, approved by the Minister under the *Workers Compensation Regulation 2002*, section 5 (1) (b).

*approved medical assessor* means a person appointed under section 65.

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***insurer***, in relation to an injured worker, means—

- (a) if the worker’s employer had a compulsory insurance policy with an approved insurer when the compensable injury happened—the approved insurer; or
- (b) if the worker’s employer was a self-insurer when the compensable injury happened—the worker’s employer; or
- (c) in any other case—the DI fund.

***maximum medical improvement***, in relation to a compensable injury, means the stage at which medical evidence shows that the injury is stable and is unlikely to change significantly in the 12 months after the day the medical evidence is provided.

***PI assessment panel*** means the panel established under section 64.

***primary psychological injury*** means a psychological injury that—

- (a) results directly from an incident in the course of the worker’s employment; or
- (b) arises from the nature of the worker’s employment.

***secondary psychological injury*** means a psychological injury that is not a primary psychological injury.

- (a) ***whole person impairment*** is the degree of permanent impairment to a person that—
  - (a) results from a compensable injury; and
  - (b) is determined in accordance with the approved impairment guide; and
  - (c) is expressed as a whole number percentage.

## **49 Employer liability for permanent impairment**

- (1) A worker’s employer is liable to pay compensation for permanent impairment under this section if—
  - (a) the worker has a compensable injury that has reached maximum medical improvement; and

- 
- (b) the worker's compensable injury results in permanent impairment; and
  - (c) the degree of permanent impairment of the worker's compensable injury is—
    - (i) for hearing loss—a loss of 6% or more of the worker's hearing; or
    - (ii) for a primary psychological injury—whole person impairment of 20% or more; or
    - (iii) for any other impairment—whole person impairment of 1% or more.
- (2) The amount of compensation payable under this section is determined by the insurer in accordance with section 59 (Amount of compensation payable).

**50      Claiming compensation for permanent impairment—  
worker claim**

- (1) An injured worker may claim compensation for permanent impairment under this part by giving notice of the claim to the insurer.
- (2) A notice of claim under this section must be—
  - (a) in writing; and
  - (b) in the prescribed form; and
  - (c) accompanied by medical evidence showing that maximum medical improvement of the compensable injury has been reached.

*Note*      If a form is approved under s 222 for this provision, the form must be used.
- (3) A regulation may prescribe the kind of medical evidence required for subsection (2) (c).

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(4) An insurer who receives a notice of claim under this section must, within 7 days after the claim is received, give the PI assessment panel manager—

- (a) a copy of the notice; and
- (b) the prescribed details of the claim.

*Note* If a form is approved under s 222 for this provision, the form must be used.

## **51 Assessment of permanent impairment—insurer notice**

(1) This section applies if—

- (a) a worker has a compensable injury; and
- (b) an insurer against whom the worker could make a claim for compensation under section 50 (a *liable insurer*) reasonably believes that the worker's compensable injury has reached maximum medical improvement; and
- (c) the worker has not made a claim for compensation for permanent impairment under section 50.

(2) A liable insurer may start the process of assessing whole person impairment of the worker by giving notice to the worker that—

- (a) the insurer reasonably believes that the worker's compensable injury has reached maximum medical improvement; and
- (b) the insurer is referring the worker's case to the PI assessment panel manager to start the assessment of whole person impairment.

(3) A notice under subsection (2) must be—

- (a) in writing; and
- (b) in the prescribed form.

*Note* If a form is approved under s 222 for this provision, the form must be used.

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(4) An insurer who gives notice under subsection (2) must, within 7 days after giving notice to the worker, give the PI assessment panel manager—

- (a) a copy of the notice given to the worker; and
- (b) the prescribed details of the case.

*Note* If a form is approved under s 222 for this provision, the form must be used.

## **52 Arrangements for medical assessment**

(1) If the PI assessment panel manager receives notice under section 50 (Claiming compensation for permanent impairment—worker claim) or section 51, the manager must—

- (a) assign the case to an approved medical assessor within 3 working days after receiving the notice; or
- (b) refuse to assign the case to an approved medical assessor if any of the following apply:
  - (i) the notice does not provide sufficient information to allow the assessment to be made;
  - (ii) the notice does not provide the prescribed details;
  - (iii) the notice is not in the prescribed form.

(2) If the PI assessment panel manager refuses to assign a case under subsection (1) the manager must give the worker written notice of the refusal and the reasons for the refusal.

(3) For each case assigned under subsection (1), the PI assessment panel manager must—

- (a) arrange for—
  - (i) the worker to be interviewed or examined by an approved medical assessor to assess whole person impairment; and

- 
- (ii) the interview or examination to happen within 60 days after the case is assigned, unless the approved medical assessor is not available; and
  - (b) give the insurer written notice of the appointment; and
  - (c) give the worker—
    - (i) written notice of the appointment; and
    - (ii) information in the prescribed form about the worker's rights and obligations in relation to the claim.

*Note* If a form is approved under s 222 for this provision, the form must be used.

- (4) The insurer must, within 5 days after receiving the notice mentioned in section (3) (b), give the approved medical assessor—
  - (a) a letter of instruction in the prescribed form; and
  - (b) any relevant medical evidence about the worker held by the insurer; and
  - (c) any other information about the worker prescribed by regulation.

*Note* If a form is approved under s 222 for this provision, the form must be used.

- (5) The insurer must give the worker a copy of the letter of instruction at least 7 days before the date of the appointment.

## **53 Information for workers**

- (1) This section applies to an insurer if the insurer—
  - (a) receives a notice of claim under section 50 (Claiming compensation for permanent impairment—worker claim); or
  - (b) gives a notice under section 51 (Assessment of permanent impairment—insurer notice).
- (2) Within 10 days after the day the insurer receives or gives the notice, the insurer must give the worker written advice—

- 
- (a) about the grounds on which compensation is payable under part 4.4; and
  - (b) that an assessment of whole person impairment is required under section 54; and
  - (c) that the assessment of whole person impairment must be conducted by an approved medical assessor who is appointed to the PI assessment panel and selected by the PI assessment panel manager; and
  - (d) that if the worker fails to attend, fails to make a reasonable effort to participate in or obstructs the assessment of whole person impairment, weekly compensation payments may be withheld from the worker under section 113 (Compliance by workers); and
  - (e) that following the assessment of whole person impairment, the insurer will calculate the amount of compensation payable to the worker under section 59 (Amount of compensation payable).

*Note* If a form is approved under s 222 for this provision, the form must be used.

## **54 Assessment of whole person impairment**

- (1) An approved medical assessor must conduct an assessment of whole person impairment in accordance with this section.
- (2) In assessing the degree of whole person impairment the approved medical assessor must—
  - (a) use the approved impairment guide correctly; and
  - (b) disregard any impairment resulting from a secondary psychological injury; and
  - (c) if section 57 (Reduction for pre-existing condition) applies—make the reduction required by section 57.
- (3) However, the approved medical assessor may refuse to assess the degree of whole person impairment of the worker if—

- 
- (a) the assessor is not satisfied that the condition of the compensable injury has reached maximum medical improvement; or
  - (b) the assessor is not satisfied that the impairment is a permanent impairment.
- (4) If an approved medical assessor refuses to assess the degree of whole person impairment under subsection (3) the assessor must give written notice of the refusal and the reasons for the refusal to—
- (a) the worker; and
  - (b) the insurer.
- (5) If an approved medical assessor agrees to assess the degree of whole person impairment, the assessor must conduct an interview with, or examination of, the worker within 60 days (the *assessment period*) after the day the case was assigned to the assessor.
- (6) If the approved medical assessor (the *initial assessor*) is satisfied that the nature of the injury means that an additional assessment by another medical assessor is necessary—
- (a) the initial assessor must advise the PI assessment panel manager of the need for further interview with, or examination of, the worker by another approved medical assessor; and
  - (b) the PI assessment panel manager must arrange the additional assessment within the assessment period.
- (7) The PI assessment panel manager may arrange as many additional assessments as the manager considers necessary for the proper assessment of the worker's whole person impairment.
- (8) Within 20 working days after the day of the interview or examination mentioned in subsection (5), the initial assessor must—
- (a) review the totality of the medical evidence available to the assessor (including any additional assessment under subsection (6)); and

- 
- (b) review the relevant provisions of the approved impairment guidelines; and
  - (c) prepare a written initial assessment report (an *assessment report*) of the worker's whole person impairment (if any) including:
    - (i) the findings of the assessment; and
    - (ii) the details of the matters referred for assessment; and
    - (iii) the approved medical specialist's assessment of the referred matters; and
    - (iv) the reasons for the approved medical specialist's assessment; and
    - (v) the facts on which that assessment is based.
  - (d) provide a copy of the assessment report to the PI assessment panel manager.
- (9) An assessment report prepared by a person—
- (a) is a valid assessment for this part only if the person was an approved medical assessor at the time the person issued the report; and
  - (b) continues to be valid after the person ceases to be an approved medical assessor.

## **55 Peer review of assessment**

- (1) Within 5 working days after receiving an assessment report under section 54, the PI assessment panel manager must assign the assessment report to a peer review assessor.
- (2) A peer review assessor must examine the assessment report to check if the following requirements have been satisfactorily met in the assessment of a worker's whole person impairment made in the report:
  - (a) the approved impairment guide was used;

- 
- (b) the correct provisions of the approved impairment guide were applied;
  - (c) the mathematical calculations in the assessment are correct;
  - (d) the assessment is factually and medically accurate;
  - (e) the report covers any other relevant issues for a proper assessment.
- (3) If the peer review assessor is satisfied that the assessment report meets the requirements mentioned in subsection (2), the peer review assessor must—
- (a) complete a certificate of compliance for the assessment; and
  - (b) give copies of the certificate to—
    - (i) the PI assessment panel manager; and
    - (ii) the initial assessor.
- (4) If the peer review assessor is not satisfied that the assessment report satisfactorily meets the requirements mentioned in subsection (2) the peer review assessor must—
- (a) tell the initial assessor about the deficiencies in the assessment report; and
  - (b) ask the initial assessor to provide an amended report within 5 working days of being told about the deficiencies; and
  - (c) conduct peer review of any amended report under this section.

(5) In this section:

*peer review assessor* means an approved medical assessor required to examine an assessment of a worker's whole person impairment, other than the initial assessor.

## **56 Declaration of whole person impairment assessment**

- (1) This section applies if—

- 
- (a) an assessment report has been given a certificate of compliance under section 55 (3); and
  - (b) the initial assessor has received the certificate.
- (2) The initial assessor must give a written declaration of the assessment (a ***declared assessment***) to—
- (a) the worker to whom the assessment applies; and
  - (b) the worker’s insurer.
- (3) A declared assessment must—
- (a) be given within 2 working days after the day the certificate of compliance is received by the initial assessor; and
  - (b) include any particulars prescribed by regulation.

**57            Reduction for pre-existing condition**

- (1) This section applies if a worker claiming compensation for a compensable injury under this part has a pre-existing condition.
- (2) In assessing the degree of the worker’s whole person impairment under section 54 the approved medical assessor must—
  - (a) if there is available medical evidence about the degree of whole person impairment contributed by the pre-existing condition (the ***contributing amount***)—reduce the whole person impairment assessment by the contributing amount; or
  - (b) if there is no available medical evidence about the contributing amount—reduce the whole person impairment assessment by 10%.

**Example —par (b)**

As a result of a motor cycle accident in her youth Isobel had several vertebrae in her back fused. Many years later Isobel has a compensable injury at work. Isobel is assessed by an approved medical assessor as having 30% permanent impairment. There is no available medical evidence about the extent to which the fused vertebrae contribute to the permanent impairment. The approved medical assessor must reduce the assessment by 3% (10% of 30%). Compensation would then be calculated on the basis of 27% whole person impairment.

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*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) In this section:

*available medical evidence* means medical evidence accepted by an approved medical assessor for an assessment of whole person impairment conducted under this part.

*pre-existing condition* means a previous injury, pre-existing abnormality or condition that contributes to the worker's impairment.

## **58 Status of whole person impairment assessment**

- (1) Except as provided in this section, a declared assessment is final and conclusive of the degree of whole person impairment experienced by a worker as a result of a compensable injury.
- (2) A person whose interests are affected by a declared assessment may apply to the court to have the assessment declared void if there is evidence of a denial of procedural fairness in relation to the assessment.
- (3) If the court is satisfied that the denial of procedural fairness has caused substantial injustice to a person whose interests are affected the court must—
  - (a) declare the assessment void; and
  - (b) remit the matter to the PI assessment panel manager for a further assessment.
- (4) If a matter is remitted under subsection (3) the PI assessment panel manager must arrange for a further assessment to be conducted under section 54 by an approved medical assessor who was not involved in making the void assessment.
- (5) A worker who receives a declared assessment under section 56 may apply to the PI assessment panel manager for a further assessment on the grounds that—

- 
- (a) the worker's impairment has deteriorated since the last assessment and the deterioration could establish a material increase in the worker's whole person impairment; or
  - (b) there is additional information about the impairment that—
    - (i) was not available at the time of the last assessment; and
    - (ii) could establish a material increase in the worker's whole person impairment.
- (6) If an application is received under subsection (5) the PI assessment panel manager must arrange for a further assessment to be made under section 54 if the manager is satisfied that—
- (a) the impairment has deteriorated since the last assessment and the deterioration could establish a material increase in the worker's whole person impairment; or
  - (b) there is additional information about the impairment that—
    - (i) was not available at the time of the last assessment; and
    - (ii) could establish a material increase in the worker's whole person impairment.
- (7) In this section:

*court* means the Magistrates Court.

*material increase*, in relation to a worker's whole person impairment, means an increase in the impairment by more than 10% of the last assessment of the impairment.

## **59 Amount of compensation payable**

- (1) The amount of compensation payable by an employer liable to pay compensation under this part is as follows:
  - (a) if the worker's WPI percentage is 75 or more—the maximum amount;
  - (b) if the worker's WPI percentage is less than 75—

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the maximum amount × WPI percentage

- (2) Within 10 working days after the day an insurer for a liable employer receives notice of an assessment of whole person impairment under section 54, the insurer must—
  - (a) work out the amount of compensation in accordance with this part; and
  - (b) give written notice to the worker of—
    - (i) the amount of compensation; and
    - (ii) how the compensation is worked out.
- (3) In this section:

*maximum amount* means \$220 000.

*WPI percentage* means the degree of whole person impairment, expressed as a whole number percentage, assessed under section 54.

## **60 Costs of assessment**

- (1) The insurer is liable to pay costs in relation to determining an injured worker's entitlement to compensation for permanent impairment under this part including—
  - (a) costs in relation to assessing whole person impairment under section 54 (Assessment of whole person impairment); and
  - (b) costs in relation to any further assessment required under section 58 (Status of whole person impairment assessment).
- (2) A regulation may provide for the payment of costs in relation to this part.
- (3) In this section:

*costs* means the following:

  - (a) the remuneration of approved medical assessors;

- 
- (b) the reasonable and necessary costs and expenses incurred by an injured person, or the injured person's carer, to attend the assessment;
  - (c) any other costs prescribed by regulation.

**61 No compensation for less than 6% hearing loss**

- (1) A worker is not entitled to compensation under section 49 (Employer liability for permanent impairment) for a loss of hearing because of boilermakers deafness (the *hearing loss*) if the worker's total hearing loss is less than 6%.
- (2) However, the worker is entitled to compensation for the hearing loss if the total hearing loss because of boilermakers deafness is 6% or more.

**Example**

Assume all hearing losses mentioned in this example are because of boilermakers deafness.

A worker suffers a hearing loss of 3% (the first hearing loss that the worker has suffered). No compensation is payable under section 49 for the loss because it is less than 6%, although notice of injury may be given or a claim may be made for the hearing loss.

The worker suffers a further hearing loss of 6%, bringing the total loss to 9%. The total loss has now passed the 6% threshold and compensation is payable for the full 9%. Compensation for the initial 3% hearing loss will be payable by the earlier employer if the worker made a claim or gave notice of injury for the initial hearing loss.

The worker suffers a further hearing loss of 6%. The worker is entitled in the usual way to compensation for the 6% further loss because the 6% threshold has already been passed (the total loss is now 15%).

*Note 1* Pt 5.3 (Obligations on injury) and ch 6 (Claims) apply to a hearing loss even if it is not immediately compensable because of this section.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) In working out the percentage hearing loss because of boilermakers deafness, the loss of hearing is to be worked out as a proportionate loss of hearing of both ears, even if the loss is in 1 ear only, in

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accordance with the method for attributing hearing loss prescribed by regulation.

- (4) A legal service provider or agent who acts for a worker on a claim for compensation for loss of hearing because of boilermakers deafness—
  - (a) is not entitled to recover legal costs from the worker or the employer in relation to the claim if no compensation is payable on the claim because the worker's total hearing loss is less than 6%; and
  - (b) is not entitled to recover legal costs from the worker or the employer in relation to the claim if compensation subsequently becomes payable as a result of further hearing loss.

- (5) In this section:

*total hearing loss* means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

## **62 Presumption to be drawn from refusal to submit to hearing examination**

- (1) This section applies to a worker with a claim for which no compensation is payable because of section 61.
- (2) If the worker does not participate in an assessment of permanent impairment under section 54 (Assessment of whole person permanent impairment) the worker is taken, in the absence of evidence to the contrary, not to have hearing loss because of boilermakers deafness.

## **63 Employer's responsibility to pay for hearing loss tests**

- (1) If an employer would, apart from section 61 (No compensation for less than 6% hearing loss), be liable to pay compensation under section 49 (Employer liability for permanent impairment) for a worker's hearing loss, the employer is liable under this chapter to pay the cost of only the following hearing tests for the loss:

- 
- (a) a test carried out at least 3 years after any previous test that the employer has paid for;
  - (b) a test that finds that the worker has suffered a total hearing loss because of boilermakers deafness of 6% or more;
  - (c) a test carried out after the worker has left the worker's employment with the employer if the hearing loss is attributable to the employment;
  - (d) a test carried out by a doctor, or audiologist, using an audiogram to work out the level of hearing loss.
- (2) The cost of a hearing test for the worker is the cost of obtaining a medical certificate, and any examination required for the certificate, about the extent of the worker's hearing loss.
  - (3) This section does not require payment by an employer for the cost of obtaining a hearing test that the employer would not otherwise be liable to pay for under this chapter.
  - (4) In this section:

*total hearing loss* means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

#### **Division 4.4.2          Permanent impairment assessment panel**

##### **64          Permanent impairment assessment panel—establishment**

The Permanent Impairment Assessment Panel (*PI assessment panel*) is established.

##### **65          PI assessment panel—functions**

The PI assessment panel has the following functions:

- (a) the functions given to the PI assessment panel under this Act;
- (b) the functions prescribed by regulation;

- 
- (c) the functions given to the PI assessment panel under the *Road Transport (Third-Party Insurance) Act 2008*;
  - (d) the functions given to the PI assessment panel under any other territory law.

**66 PI assessment panel—membership**

The PI assessment panel consists of—

- (a) members appointed by the chief executive as approved medical assessors for this Act; and
- (b) the PI assessment panel manager.

**67 Appointment of approved medical assessors**

- (1) The chief executive may appoint a suitably qualified person as an approved medical assessor for this Act.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

- (2) An appointment must not be for longer than 3 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (3) A regulation may provide for—

- (a) the eligibility requirements for appointment as an approved medical assessor; and
- (b) the terms, not provided by this Act, of the appointment.

- (4) The chief executive must end the appointment of a person as an approved medical assessor if—

- (a) the person ceases to be a suitably qualified person; or

---

(b) a circumstance provided for by regulation applies to the person.

(5) An irregularity or defect in the appointment of an approved medical assessor does not affect the validity of anything done or not done in the performance of the assessor's functions under this Act.

(6) In this section:

*suitably qualified person* means a person who meets the eligibility requirements in a regulation made under subsection (3) (b).

## **68 Protection of approved medical assessor from liability**

(1) An approved medical assessor is not civilly liable for anything done or omitted to be done honestly and without recklessness—

(a) in the exercise of a function under this Act; or

(b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

(2) Any civil liability that would, apart from this section, attach to the approved medical assessor attaches instead to the Territory.

(3) An approved medical assessor is not compellable in a proceeding to give evidence or produce documents in relation to any matter in which the assessor was involved in the exercise of a function under this Act.

## **68A PI assessment panel manager**

(1) The chief executive may appoint a public servant as the PI assessment panel manager for this Act.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

(2) A regulation may provide for the terms of the appointment.

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**68B PI assessment panel manager—functions**

- (1) The PI assessment panel manager manages the PI assessment panel.
- (2) The PI assessment panel manager also exercises any other function given to the manager under this Act or prescribed by regulation.

**68C PI assessment panel staff**

The staff of the PI assessment panel must be employed under the *Public Sector Management Act 1994*.

**7 Employer liability for medical treatment etc  
Section 70 (1) (a)**

*omit*

reasonably received

*substitute*

reasonably required or reasonably received

**8 New section 70 (1A)**

- (1A) For subsection (1) medical treatment is *reasonably required* if a health professional registered under the *Health Professions Act 2004* signs a certificate stating that the treatment is required.

**9 Death benefits  
Section 77 (2) (a)**

*omit*

\$150 000

*substitute*

\$450 000

**10 Section 77 (2) (c) and (6)**

*omit*

\$4 000

---

*substitute*

\$9 000

**11 Section 79 and 80**

*substitute*

**79 Registration of agreements for compensation**

- (1) A party to an agreement may apply to the Magistrates Court for registration of the agreement if—
  - (a) a worker agrees to receive an amount of compensation for a statutory benefit under this Act; and
  - (b) the compensation is not compensation payable under part 4.4 (Compensation for permanent impairment).
- (2) The Magistrates Court may refuse to register the agreement if the court is satisfied that—
  - (a) the agreement is inaccurate; or
  - (b) that the agreed amount of compensation is manifestly inadequate.
- (3) The Magistrates Court must refuse to register the agreement if satisfied that—
  - (a) a party has not complied with the requirements of chapter 11 (Dispute resolution); or
  - (b) the agreement mentioned was obtained by fraud or undue influence.
- (4) An agreement may deal with the payment of legal costs if the agreement complies with this Act in relation to legal costs.

**80 Additional compensation on registration of agreements**

- (1) This section applies if the Magistrates Court is considering an application for registration of an agreement under section 79.

- 
- (2) The Magistrates Court may award additional compensation if satisfied that the agreed amount of compensation is manifestly inadequate.

**12 Compliance by workers  
Section 113 (1)**

*insert*

- (g) fails to attend an appointment with a medical assessor for the assessment of whole person impairment under part 4.4; or
- (h) fails to make a reasonable effort to participate in an assessment of whole person impairment under part 4.4; or
- (i) obstructs an assessment of whole person impairment under part 4.4.

**13 Time for making claim under pt 4.4  
Section 121**

*omit*

**14 How worker may commute rights  
Section 137 (2) (b)**

*omit*

**15 New section 147C**

*insert*

**147C Compulsory insurance policy—not affected by errors**

- (1) The validity of a compulsory insurance policy underwritten by an approved insurer is not affected by—
- (a) an error by the insurer; or
- (b) payment of an incorrect premium for the policy.
- (2) An approved insurer who has been paid an incorrect premium may recover any outstanding amount as a debt owing to the insurer.

---

*Note* An amount owing under a law to a person may be recovered as a debt owing to the person in a court of competent jurisdiction (see Legislation Act, s 177).

**16** **Definitions—ch 9**  
**Section 180**

*insert*

*loss of earnings* means loss of future earnings or the deprivation or impairment of future earning capacity.

**17** **New sections 180A, 180B and 180C**

*insert*

**180A** **Meaning of *damages claim***

For this Act:

*damages claim*—

- (a) means a claim for damages in relation to a work-related injury to a worker caused, or claimed to have been caused, by—
  - (i) the negligence or other tort of the worker’s employer or a person for whose acts the employer is vicariously liable;  
or
  - (ii) a breach of contract by the employer; and
- (b) includes a claim for damages in relation to an injury cause or claimed to have been caused, by negligence or another tort even if the damages are claimed in an action for breach of contract or other action.

**180B** **Meaning of *work-related injury***

For this Act:

*work-related injury*—

- 
- (a) means an injury to a worker for which compensation is payable (whether or not it has been paid) under this Act or the workers compensation law of a Territory or State; and
  - (b) includes an injury to a worker for which compensation under this Act or a workers compensation law of a Territory or State—
    - (i) would have been payable apart from a provision of the law that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker stated in the provision; or
    - (ii) would have been payable if a claim for the compensation had been properly made, and (if applicable) an election to claim compensation (instead of damages) had been properly made.

**180C Impairment threshold for damages claim**

A worker must not start a damages claim unless the worker's degree of whole person impairment has been assessed as—

- (a) for a physical injury—15% or more; or
- (b) for a psychological injury (including stress)—20% or more.

*Note* For how the degree of whole person permanent impairment of an injured worker is assessed, see s 54.

**18 Definitions—pt 9.2**  
**Section 182A (1), definition of *damages claim***

*omit*

**19 Section 182A (2) and (3)**

*omit*

**20 New section 184A**

*insert*

---

**184A Damages for future economic loss—discount rates**

- (1) This section applies if, in a proceeding for a damages claim, an award of damages to a worker includes a lump sum for future economic loss for—
  - (a) loss of earnings; or
  - (b) loss of expectation of financial support; or
  - (c) the value of future services of a domestic nature or services relating to nursing and attendance; or
  - (d) a liability to incur expenditure in the future.
- (2) The present value of the future economic loss is worked out by discounting the future economic loss in accordance with—
  - (a) a discount rate of the percentage prescribed by regulation; or
  - (b) if no percentage is prescribed—a discount rate of 5%.

**184B Damages for future economic loss—worker’s prospects and adjustments**

- (1) In a proceeding for a damages claim, the court may award damages for future economic loss for loss of earnings only if satisfied that the assumptions about future earning capacity or other events on which the damages are to be based reflect the worker’s most likely future circumstances were it not for the injury.
- (2) If the court decides the amount of damages for future economic loss for loss of earnings, the court must adjust the damages that would be payable if the assumptions were correct by the possibility, calculated as a percentage, of the events occurring were it not for the injury.
- (3) If the court awards damages for future economic loss for loss of earnings, the court must state—
  - (a) the assumptions and evidence on which the damages are based; and
  - (b) the percentage by which the court has adjusted the damages.

---

**21**      **New section 194**

*insert*

**194**      **Use of protected information**

- (1) This section applies to a person if—
  - (a) the person is exercising, or purporting to exercise, any function under this Act; and
  - (b) the person obtains protected information about another person.
- (2) A person to whom this section applies commits an offence if the person—
  - (a) makes a record of the protected information; or
  - (b) directly or indirectly divulges the protected information to a person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the record is made, or the protected information is divulged—
  - (a) under this or another territory law; or
  - (b) in relation to the exercise of a function of the person to whom this section applies under this or another territory law; or
  - (c) to a relevant authority, by the person to whom this section applies, if the person reasonably believes that recording or divulging the information is in the interests of work safety; or
  - (d) to a person administering or enforcing a corresponding law; or
  - (e) to a law enforcement authority; or
  - (f) to a court.
- (4) Subsection (2) does not prevent a person from making a record of, or divulging protected information about another person with the other person's consent.

---

(5) In this section:

***corresponding law*** means—

- (a) a law of a State corresponding, or substantially corresponding, to this Act; or
- (b) a law of the Commonwealth or a State that is declared by regulation to be a corresponding law.

*Note* ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

***court*** includes any tribunal or other entity having power to require the production of documents or the answering of questions.

***protected information*** means—

- (a) information relating to the personal affairs of a person; or
- (b) information the disclosure of which would, or could reasonably be expected to—
  - (i) disclose a trade secret; or
  - (ii) adversely affect a person in relation to the lawful business affairs of that person.

***relevant authority*** means a government agency administering a law of the Territory, the Commonwealth, or a State.

---

**22 Chapter 11**

*substitute*

## **Chapter 11 Dispute resolution**

### **Part 11.1 Preliminary**

#### **195 Object—ch 11**

The object of this chapter is to establish a system—

- 
- (a) to facilitate the just and prompt resolution of claims for compensation under this Act, and damages claims; and
  - (b) to encourage parties to claims to avoid delay, unnecessary expense and technicality in resolving claims.

**196 Definitions—ch 11**

In this chapter:

*compulsory settlement conference* means a conference under section 196C.

*court*, in relation to a proceeding, means the court in which the proceeding was commenced.

## **Part 11.2 Compulsory settlement conference**

**196A Definition—pt 11.2**

In this part:

*conciliator* means a person appointed in accordance with a regulation made under section 196H.

**196B Application—pt 11.2**

- (1) This part—
  - (a) applies to the following kinds of proceeding:
    - (i) a claim for compensation under this Act;
    - (ii) a damages claim; and
  - (b) does not apply to a proceeding that is a prosecution for an offence against this Act.
- (2) A provision of this part prevails to the extent of any inconsistency with a provision of the *Legal Profession Act 2006*.

---

**196C Compulsory settlement conference**

- (1) The parties to a proceeding must hold a compulsory settlement conference, in accordance with this part, with the object of settling any issue of liability and the amount of compensation or damages payable that is relevant to the proceeding.
- (2) However, if the court considers it appropriate to do so, the court may make—
  - (a) an order dispensing with the requirement to hold the compulsory settlement conference in the proceeding; or
  - (b) an order excusing a party to the proceeding from attending the compulsory settlement conference; or
  - (c) any other order the court considers appropriate in relation to the compulsory settlement conference.
- (3) Before making an order under subsection (2), the court must take into account the following:
  - (a) the extent to which the parties to the proceeding have complied with their obligations under the Act in relation to the proceeding;
  - (b) whether information required for the compulsory settlement conference has been made available to the parties;
  - (c) the likelihood that the parties might settle the claim at the conference;
  - (d) any other matter prescribed by regulation.

**196D Court must not hear proceeding unless conference held or dispensed with**

- (1) A court must not begin hearing a proceeding unless—
  - (a) the parties to the proceeding have participated in a compulsory settlement conference and are unable to settle the proceeding; or

---

(b) the court has made an order under section 196C (2) dispensing with the requirement to hold a compulsory settlement conference.

(2) In this section:

*hearing a proceeding*, does not include determining a preliminary application in the proceeding.

### **196E Arrangements for compulsory settlement conference**

(1) If the parties to a proceeding are required to hold a compulsory settlement conference, the parties must—

- (a) agree on a date for the conference that is within 3 months after the day the proceeding commenced; and
- (b) notify the court of the agreed date; and
- (c) agree on whether a conciliator is, or is not, required to preside over the conference; and
- (d) if the parties agree on the need for a conciliator—choose a conciliator.

(2) If a date agreed for a compulsory settlement conference becomes unsuitable for a party, the parties must—

- (a) agree on a new date that is—
  - (i) within 3 months after the day the proceeding commenced; or
  - (ii) if it is not practicable to hold a conference within the 3 month period—as soon as practicable after the end of that period; and
- (b) notify the court of—
  - (i) the new date of the conference; and
  - (ii) the reasons for the change of date.

- 
- (3) If the parties cannot reach agreement on a matter required to be agreed under subsection (1) or (2), the parties must apply to the court to decide the matter.
  - (4) A party attending a compulsory conference must actively take part in a genuine attempt to settle the claim.
  - (5) Each party must be represented at a compulsory conference, by attending the conference in person, or by attendance a person who is able to settle the claim on their behalf.
  - (6) A regulation may provide requirements for a compulsory settlement conference, including—
    - (a) procedures that must be followed by the parties or a conciliator required to attend the conference; and
    - (b) procedures for joining third parties to the conference; and
    - (c) limiting the use of admissions made, or information disclosed at, the conference; and
    - (d) payment of reasonable costs and disbursements associated with the conference.

**196F Information required for compulsory settlement conference**

- (1) A party to a compulsory settlement conference must give to each other party and the conciliator (if any) the following information, in writing, at least 7 days before the day on which the conference begins:
  - (a) details of the key issues in the proceeding, and the party's position on the issues;
  - (b) the facts that the party proposes to rely on, or adduce in evidence, at a hearing of the proceeding;
  - (c) a statement verifying that all information possessed by the party, or the party's lawyer, and that is to be relied on in the proceeding has been disclosed, and copies of the information given to the other parties;

- 
- (d) if the party has legal representation—
- (i) details of the party’s legal representation; and
  - (ii) a certificate of readiness signed by the party’s lawyer; and
  - (iii) a statement that the party’s lawyer has given the party a financial statement under section 196G.
- (2) The court may, on application by a party in the absence of the other party, excuse the party from complying with subsection (1) in relation to particular information if the court is satisfied that—
- (a) giving the information would alert a person who is reasonably suspected of fraud to the suspicion; or
  - (b) there is some other good reason why the material should not be given.

(3) In this section:

***certificate of readiness*** means a certificate stating that—

- (a) the party is ready to attend a compulsory settlement conference; and
- (b) the party possesses all relevant investigative material required for the conference including witness statements from each person (other than expert witnesses); and
- (c) the party has obtained medical or other expert reports from each person the party proposes to rely on as an expert witness at the conference; and
- (d) the party has complied with its obligations to give all other parties to the proceeding the relevant claim information.

***relevant claim information*** for a claim for compensation under the Act or a damages claim by a worker in relation to a work-related injury—

- (a) means written documents with information about the following:

- 
- (i) the nature of the injury, and any related impairment;
  - (ii) all medical treatment and rehabilitation services that the worker has sought or obtained in relation to the injury;
  - (iii) all medical treatment and rehabilitation services that the worker intends to seek in relation to the injury;
  - (iv) the worker's medical history to the extent that it is relevant to the claim;
  - (v) any other claim for personal injury made by the worker;
  - (vi) the worker's claim for past and future economic loss in relation to the injury or impairment; and
- (b) means any other information that a party intends to rely on in relation to the claim; and
- (c) includes reports or other documents about the following:
- (i) the circumstances giving rise to the injury, and any related impairment;
  - (ii) the worker's medical condition and prospects for rehabilitation;
  - (iii) the worker's cognitive, functional and vocational capacity; and
- (d) a statement indicating whether the party has received a financial statement under section 196G.

**196G Requirement to give financial statement**

- (1) A lawyer who represents a party in a proceeding must give the party a financial statement at least 7 days before the day on which the compulsory settlement conference begins.
- (2) In this section:  
*financial statement* means a statement containing—

- 
- (a) details of the legal costs (clearly identifying legal fees and disbursements) payable by the party to the party's lawyer up to the completion of the conference; and
  - (b) an estimate of the party's likely legal costs (clearly identifying legal fees and disbursements) if the claim is settled and does not proceed to a hearing; and
  - (c) an estimate of the party's likely legal costs (clearly identifying legal fees and disbursements) if the claim proceeds to hearing and is decided by the court.

**196H Appointment and function of conciliators**

A regulation may provide for

- (a) the appointment of conciliators for this part; and
- (b) the functions of conciliators.

## **Part 11.3 Mandatory final offers**

**196I Definition—pt 11.3**

In this part:

*insurer*, in relation to an injured worker, means—

- (a) if the worker's employer had a compulsory insurance policy with an approved insurer when the compensable injury happened—the approved insurer; or
- (b) if the worker's employer was a self-insurer when the compensable injury happened—the worker's employer; or
- (c) in any other case—the DI fund.

**196J Application—pt 11.3**

- (1) This part applies to a proceeding for a damages claim.
- (2) A provision of this part prevails to the extent of any inconsistency with a provision of the *Legal Profession Act 2006*.

---

**196K Mandatory final offers**

- (1) This section applies if—
  - (a) a compulsory settlement conference for a proceeding, has been dispensed with under section 196E (Compulsory settlement conference may be dispensed with etc); or
  - (b) the proceeding is not settled at a compulsory settlement conference.
- (2) The worker and the insurer in the proceeding must make a written final offer to each other (a *mandatory final offer*) to settle the proceeding.
- (3) However, if an insurer does not admit liability in the proceeding, the insurer must give the worker written notice stating that liability is disputed (a *mandatory final notice*).
- (4) If the insurer gives the worker a mandatory final notice the insurer is taken to have given the worker a mandatory final offer of \$0.
- (5) A mandatory final offer must set out how much of the total amount of the offer is for non-economic loss.

*Note 1* If a form is approved under s 222 for a mandatory final offer or a mandatory final notice, the form must be used.

**196L Mandatory final offers may be dispensed with**

The court may, on application by a party to the proceeding, dispense with the obligation of the parties to make mandatory final offers if the court considers it appropriate to do so.

**196M Time for exchanging mandatory final offers**

- (1) If the court has not made an order under section 196L, mandatory final offers in the proceeding must be exchanged—
  - (a) if the compulsory settlement conference has been dispensed with under section 196E—not later than 14 days after the day the conference was dispensed with; or

- 
- (b) if the proceeding is not settled at the compulsory settlement conference—at the end of the conference.
  - (2) A mandatory final offer remains open for 14 working days after the day it is made.

**196N Information required with mandatory final offer**

- (1) This section applies if a worker or insurer makes a mandatory final offer under section 196K.
- (2) The worker must give the insurer an estimate of the likely total legal costs to the worker of bringing the damages claim if a court were to hear the proceeding and order the following amounts of compensation or damages to the worker:
  - (a) an amount that is equal to or more than the amount of the worker's mandatory final offer;
  - (b) an amount that is less than the worker's mandatory final offer but equal to or more than the insurer's mandatory final offer; and
  - (c) an amount that is equal to or less than the insurer's mandatory final offer.
- (3) The insurer must give the worker an estimate of the likely total legal costs to the insurer of responding to the worker's claim if a court were to hear the proceeding and order an amount of compensation or damages to the worker in each of the following possible outcomes:
  - (a) an amount that is less than the insurer's mandatory final offer but equal to or more than the worker's mandatory final offer; and
  - (b) an amount that is equal to or less than the worker's mandatory final offer.

---

**196O Working out legal costs for mandatory final offers**

A mandatory final offer must not include an amount for legal costs associated with—

- (a) a claim for compensation under this Act; or
- (b) a damages claim by the worker in relation to a work-related injury.

**196P Court hearing not to begin if mandatory final offer open**

- (1) A court must not begin hearing a proceeding if a mandatory final offer for the claim remains open.

*Note* A mandatory final offer remains open for 14 days (see s 196M).

- (2) If a court begins hearing a proceeding the worker must, at the beginning of the hearing, file in the court a sealed envelope containing a copy of the worker's mandatory final offer.
- (3) The insurer must, before or at the time of filing a defence, file in the court a sealed envelope containing a copy of the insurer's mandatory final offer.
- (4) The court must not read the mandatory final offers until the court has delivered judgment in the proceeding.
- (5) However, the court must have regard to the mandatory final offers when it makes a decision about costs in the proceeding.

## **Part 11.4 Arbitration**

**196Q Arbitration of matters arising**

All matters and questions (other than prosecutions for offences) arising under this Act must be settled by arbitration in accordance with the regulations if—

- (a) no other provision is made in this Act for the resolution of the matters or questions; and

- 
- (b) there is no agreement between the parties about the matters or questions.

## **Chapter 11A      Legal costs etc**

### **197A      Application—ch 11A**

- (1) This chapter applies to legal costs in relation to a claim for compensation under the Act, or a damages claim.
- (2) This chapter prevails to the extent of any inconsistency with the *Legal Profession Act 2006* and any other territory law.

### **197B      Minister may determine maximum amount for legal costs**

- (1) The Minister may determine the maximum amount payable for legal costs.
- (2) A determination under this section is a notifiable instrument.  
*Note*      A notifiable instrument must be notified under the Legislation Act.
- (3) The Minister may determine the maximum amount of legal costs—
  - (a) by reference to the procedure for determining legal costs under the *Legal Profession Act 2006*, the *Court Procedure Rules 2006* or another territory law; or
  - (b) by stating the maximum amount for a particular legal service; or
  - (c) in any other way.
- (4) The Minister may consult with anyone else before making a determination under this section.

### **197C      Legal costs not to exceed maximum amount**

A legal service provider is not entitled to be paid or recover an amount for legal costs in relation to a claim that is more than the maximum amount determined by the Minister under section 197B.

---

**197D Legal costs awarded by court—claim for compensation**

- (1) This section applies if a court makes an order in a proceeding in relation to a claim for compensation.
- (2) The court must not order a party to pay legal costs in the proceeding that are more than the maximum amount determined by the Minister under section 197B unless the court is satisfied there are exceptional circumstances to justify a greater amount.

**197E Legal costs awarded by court—damages claim**

- (1) This section applies if a court makes an order in a proceeding in relation to a damages claim.
- (2) The court must make the following orders in relation to legal costs in the proceeding:
  - (a) if the worker in the proceeding receives a judgment that is the same as, or more than, the worker's mandatory final offer—the insurer pay the workers legal costs on a party and party basis up to the day the offer was made, and on an indemnity basis after that day;
  - (b) if the worker in the proceeding receives a judgment that is less than the worker's mandatory final offer, but more than the insurer's mandatory final offer—the insurer pay the worker's legal costs on a party and party basis;
  - (c) if the worker in the proceeding receives a judgment that is less than the insurer's mandatory final offer—
    - (i) the insurer pay the worker's legal costs on a party and party basis only up to and including the day the offer was made; and
    - (ii) if the court is satisfied the worker's decision to proceed to a hearing of the claim was manifestly unreasonable—the worker pay the insurer's legal costs on a party and party basis from the day the offer was made.

- 
- (3) However, the court must not order a party to pay legal costs in the proceeding that are more than the maximum amount determined by the Minister under section 197B unless the court is satisfied there are exceptional circumstances to justify a greater amount.

**197F Legal costs unreasonably incurred**

- (1) This section applies if a court makes an order in a proceeding in relation to a claim for compensation or a damages claim.
- (2) The court must not order a party to pay the legal costs of another party if satisfied the costs are unreasonably incurred.
- (3) Legal costs are unreasonably incurred by a party if the costs are incurred because—
- (a) the party unreasonably failed to comply with a written request for information from another party (the *requesting party*) that would have enabled the requesting party to properly consider the claim to make an offer of settlement; or
  - (b) the party—
    - (i) unreasonably failed to participate in a compulsory settlement conference; and
    - (ii) the failure to participate substantially contributed to unnecessary litigation; or
  - (c) the party made an application in the proceeding that was frivolous or vexatious.
- (4) The party's legal service provider is not entitled to be paid or recover legal costs that are unreasonably incurred by the party unless the court is satisfied the provider—
- (a) made all reasonable efforts not to incur the costs; or
  - (b) should not otherwise be held responsible for the costs.

**23 New section 200B**

*insert*

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**200B**      **Limitation on advertising certain legal services**

(1) A legal service provider must not advertise legal services in relation to a claim unless the advertising complies with a regulation made for this section.

(3) In this section:

*claim* means—

(a) a claim for compensation under this Act; or

(b) a damages claim in relation to a work-related injury.

1      **Given the sensitivity of this subject matter we think it is more appropriate to have the authorising provision set out in a dedicated section.**

**24**      **Section 210 (1)**

*substitute*

**210**      **Apportionment of costs of administration of Workers Compensation Act etc**

(1) Liability for the costs of administration of this Act, the *Work Safety Act 2008* or a law prescribed by regulation, for a financial year may be apportioned by the Minister among the entities that were approved insurers or self-insurers during the year.

**25**      **Section 210 (2)**

*omit*

this Act

*substitute*

this Act, the *Work Safety Act 2008* or a law prescribed by regulation,

**26**      **Section 211 (1)**

*substitute*

---

**211**      **Amounts for administration of Workers Compensation Act etc**

- (1) The costs of administration of this Act, the *Work Safety Act 2008* or a law prescribed by regulation, may be paid out of amounts received by the Territory under section 210 and any other amounts received by the Territory under this Act.

**27**      **Regulation-making power  
Section 223 (f) (ii)**

*omit*

**28**      **Regulation-making power  
New section 223 (2) (m)**

*insert*

- (m) the management and administration of the permanent impairment assessment process.

**29**      **Schedule 1**

*omit*

**30**      **Chapter 20**

*insert*

**Chapter 20**      **Transitional—Workers  
Compensation Amendment Bill  
2010**

**400**      **Definitions—ch 20**

In this chapter:

*old Act* means the *Workers Compensation Act 1951* as in force immediately before the commencement day.

---

*claim* means—

- (a) a claim for compensation under this Act; or
- (b) a damages claim in relation to a work-related injury;

*commencement day* means the day the *Workers Compensation Amendment Bill 2010* commences.

**401 Transitional—claims for compensation and damages for work-related injury**

- (1) This section applies to a claim in relation to an injury suffered before the commencement day (an *old claim*).
- (2) The old Act applies to an old claim.

**402 Transitional effect—Legislation Act, s 88**

This chapter is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**403 Expiry**

This chapter expires 3 years after the commencement day:

**31 Ending of members appointment  
Schedule 3, section 3.6 (c)**

*substitute*

- (c) if the member becomes bankrupt or personally insolvent; or

*Note* **Bankrupt or personally insolvent**—see the Legislation Act, dictionary, pt 1.

**32 Dictionary, note 2**

*insert*

- bankrupt or personally insolvent

**33 Dictionary, new definitions**

*insert*

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*approved impairment guide*, for part 4.4 (Compensation for permanent impairment)—see section 48.

*approved medical assessor*, for part 4.4 (Compensation for permanent impairment)—see section 48.

*Australian legal practitioner*—see *Legal Profession Act 2006*, section 8.

*assessment report* means a report about whole person impairment made under section 54.

*damages claim*—see section 180A.

*declared assessment* means a declaration of whole person impairment made under section 56.

**34 Dictionary, definition of *deductible proportion***

*omit*

**35 Dictionary, new definition of *impairment***

*insert*

*impairment*, for part 4.4 (Compensation for permanent impairment)—see section 48.

**36 Dictionary, definition of *initial loss***

*omit*

**37 Dictionary, definition of *insurer***

*substitute*

*insurer*—

- (a) for part 4.4 (Compensation for permanent impairment)—see section 48; and
- (b) for chapter 5 (Injury management process)—
  - (i) see section 86A; and

- 
- (ii) if there is more than 1 employer of a worker—see section 87; and
  - (c) for part 6.2 (Time for accepting or rejecting claims)—see section 127 (1); and
  - (d) for part 11.3 (Dispute resolution)—see section 196.

### **38 Dictionary, new definitions**

*insert*

*law firm*—see *Legal Profession Act 2006*, dictionary.

*law practice*—see *Legal Profession Act 2006*, dictionary.

*legal costs*, in relation to a matter, means the costs of providing legal services, including disbursements, in the matter.

*legal service provider* means an Australian legal practitioner, a law firm or a law practice.

*legal services* means work done, or business transacted, in the ordinary course of legal practice.

### **39 Dictionary, definition of *loss***

*omit*

### **40 Dictionary, definition of *lump sum claim***

*omit*

part 4.4 (Compensation for permanent injuries)

*substitute*

part 4.4 (Compensation for permanent impairment)

### **41 Dictionary, new definition of *maximum amount***

*insert*

*maximum amount*, for part 4.4 (Compensation for permanent impairment)—see section 59.

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**42 Dictionary, definition of *maximum loss amount***

*omit*

**43 Dictionary, new definitions**

*insert*

*maximum medical improvement*, for part 4.4 (Compensation for permanent impairment)—see section 48.

*permanent impairment*, for part 4.4 (Compensation for permanent impairment)—see section 48.

*PI assessment panel*, for part 4.4 (Compensation for permanent impairment)—see section 48.

*psychological injury* includes a psychiatric injury.

**44 Dictionary, definition of *single loss amount***

*omit*

**45 Dictionary, new definitions**

*insert*

*whole person impairment*, for part 4.4 (Compensation for permanent impairment)—see section 48.

*WPI percentage*, for part 4.4 (Compensation for permanent impairment)—see section 59.

*work-related injury*—see section 180B.

**Part 3 Workers Compensation Regulation 2002**

**46 Approval of medical guidelines  
Section 5 (1) (b) and note**

*substitute*

- 
- (b) how to assess the extent of whole person impairment for the Act, part 4.4 (Compensation for permanent impairment).

*Note* Power given under a regulation to make a statutory instrument (including medical guideline) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

**47 New Part 2A**

*before part 3 insert*

**Part 2A Permanent impairment**

**8B Information to be given by insurer—Act, s 52 (4) (c)**

The following information is prescribed:

- (a) radiological investigations and associated reports;
- (b) treating practitioner reports;
- (c) medical certificates;
- (d) specialist reports;
- (e) surgical reports;
- (f) clinical records;
- (g) any other medical evidence.

**8C Eligibility requirement for appointment as approved medical assessor—Act s 67 (3) (a)**

A person is eligible for appointment as an approved medical assessor if the person is authorised to apply medical guidelines to assess whole person permanent impairment in a relevant jurisdiction.

**48 Medical referee to review medical evidence etc  
Section 14 (1)**

*omit*

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a conciliation or

**49 Medical referee's report  
Section 15 (1)**

*omit*

a conciliation or

**50 Part 6**

*substitute*

**Part 6 Dispute resolution**

**Division 6.1 Appointment and functions of  
conciliators**

**36 Appointment of conciliators—Act, s 196H (a)**

- (1) The Minister may appoint a person as a conciliator for the Act, part 11.
- (2) However, the Minister must not appoint a person under subsection (1) unless the Minister is satisfied that the person has the experience or expertise to qualify the person to exercise the functions of a conciliator.
- (3) In deciding whether a person has the experience or expertise to qualify as a conciliator, the Minister may consult with anyone else before making a decision under this section.

**37 Functions of conciliator—Act, s 196H (b)**

- (1) A conciliator has the following functions:
  - (a) helping injured workers and their employers to reach agreement about matters that arise in—
    - (i) a claim for compensation under the Act; or
    - (ii) a damages claim;

- 
- (b) presiding over compulsory settlement conferences;
  - (c) encouraging injured workers and their employers to reach agreements that allow injury management to continue;
  - (d) setting a time and place for a compulsory settlement conference; and
  - (e) telling each party, in writing, about the time and place for the compulsory settlement conference; and

*Note* For how documents may be served, see the Legislation Act, pt 19.5.

- (f) deciding that a matter in issue in a worker's claim for compensation under the Act, or a damages claim, is not suitable for resolution by compulsory settlement conference; and
- (g) if agreement is reached on a matter in issue between the parties to the conference—recording the agreement in writing.

*Note* Some agreements may be registered in the Magistrates Court—see the Act, sec 179.

## **Division 6.2                      Compulsory settlement conference**

### **38                      Request for medical referee report—Act, s 196F (6)**

- (1) With the agreement of the parties to the compulsory settlement conference, the conciliator may ask a medical referee to prepare a report to help the parties to reach agreement.

*Note* Section 14 (Medical referee to review medical evidence etc) sets out what a medical referee must do for a conciliation and s 15 (Medical referee's report) states what a medical referee's report for a conciliation must contain.

- (2) The medical referee must give a copy of the report to the conciliator.
- (3) The conciliator must give a copy of the report to each party.

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**39 Use of conference information—Act, s 196F (6) (c)**

The information or material relied on, or anything said or done during, a compulsory settlement conference, must not be admitted in evidence at an arbitration.

**40 Costs of compulsory settlement conference—Act, s 196F (6) (d)**

- (1) The insurer must meet all reasonable costs and disbursements of, and incidental to, the compulsory settlement conference.
- (2) If a party, other than the insurer, is represented at a compulsory settlement conference by a representative (including a lawyer), the conciliator may allow the representative to claim from the insurer reasonable costs and disbursements of, and incidental to, the conference.

**41 Offence—fail to provide information—Act, s 223 ()**

- (1) A party to a compulsory settlement conference commits an offence if—
  - (a) the party is required to provide information, to another person, under the Act, section 196F (1); and
  - (b) the party is not excused under the Act, under section 196F (2) from complying with the requirement; and
  - (c) the party does not provide the information within the time required under the Act, section 196F (1).

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

**51 When may application for arbitration be filed  
Section 48 (a) (ii) and (iii)**

*omit*

conciliation

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*substitute*

compulsory settlement conference

**52 Section 57, heading**

*substitute*

**57 Costs—arbitration**

**53 Dictionary, new definition of *relevant jurisdiction***

*insert*

*relevant jurisdiction* means the workers' compensation jurisdiction in New South Wales or South Australia.

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## **Endnotes**

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2010.

**2 Notification**

Notified under the Legislation Act on 2010.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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