

2010

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**WORKERS COMPENSATION AMENDMENT BILL 2010
(EXPOSURE DRAFT)**

EXPLANATORY STATEMENT

**Presented by
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Workers Compensation Amendment Bill 2010

OUTLINE

The *Workers Compensation Act 1951* (the Act) establishes a statutory workers' compensation scheme for the Territory's private sector (the ACT Scheme), which obliges employers to compensate workers who suffer an injury that arises 'out of, or in the course of' their employment (a compensable injury).

Workers who suffer a compensable injury have access to a framework of statutory benefits which cover income support, the cost of medical and rehabilitative treatment and compensation for permanent injuries. In addition, an injured Territory worker may also pursue common law damages if the injury resulted from their employer's negligence.

Fundamentally, the ACT Scheme is an instrument of social welfare and industrial fairness – it ensures that injured workers receive necessary care, rehabilitation and where appropriate, compensation.

Objectives of the Bill

To operate effectively and meet its inherent return to work and rehabilitation objectives, the ACT Scheme must provide for reasonable balance. Reasonable balance in terms of the statutory benefits and protection provided to injured workers, affordability and accountability for employers and the level of regulation and scrutiny applied to service providers connected with the ACT Scheme.

The key purpose of the Bill is to address existing inefficiencies within the ACT Scheme and create robust, transparent and equitable frameworks around:

- the assessment and award of compensation for permanent impairment;
- resolution of claims for workers' compensation and related damages actions;
- transition of claims from the statutory to the common law environment;
- the cost of services provided by third parties connected to the Scheme; and
- advertising and marketing by legal service providers connected with the Scheme.

How will the objectives be achieved?

Statutory compensation for permanent injury – a model of whole person impairment (WPI)

Historically, the ACT Scheme provided for the payment of compensation in respect of specified permanent loss caused by a permanent injury. Specifically, where a worker suffered a loss prescribed in Schedule 1 to the Act as a result of a compensable injury, s/he was entitled to compensation under s 51 of the Act.

This framework did not allow for the payment of lump sum compensation for permanent loss arising from a psychological injury nor did it respond to other losses not specified in Schedule 1 – the categories of compensable loss were limited and closed.

In 2005 the ACT Government approved the use of specific guidelines for the assessment of a worker's entitlement to lump sum compensation – the *American Medical Association Guides to the Evaluation of Permanent Impairment* (4th and 5th Editions) and the NSW *WorkCover Guides for the Evaluation of Permanent Impairment* (1st Edition). Critically, these guidelines were based on the concept of permanent impairment (as opposed to loss) caused as a result of a compensable injury.

The approval of these guidelines signalled the Government's intention to move away from the concept of loss as a basis for compensation and endorse a model based on the concept of WPI.

The Bill introduces amendments to close the loop on the revised impairment model approved by the Government in 2005, through the removal of Schedule 1 to the Act and adoption of a robust framework for the compensation of permanent impairment arising as a result of a compensable injury.

Key features of the new framework are addressed below and include:

- creation of a Permanent Impairment Assessment Panel (the Panel), comprising medical specialists trained and approved in the use of the approved impairment guidelines;
- creation of a streamlined process to obtain a single, independent assessment of a worker's possible permanent impairment; and

- determination of compensation benefits within statutory timeframes and limits, based upon clear, independent medical evidence.

To this end, the Bill provides absolute clarity and certainty as to the tools to be used in determining the medical impairment suffered by a worker as a result of a compensable injury. It establishes a robust framework for the determination of an injured worker's statutory entitlement to lump sum compensation and allows for consistency in decision-making.

An enhanced framework for the resolution of disputes

The Act makes limited provision for the means and manner by which parties to a dispute must endeavour to achieve resolution without recourse to formal court procedures such as arbitration or litigation.

The Bill introduces a new framework for the use of alternative dispute resolution mechanisms as compulsory milestones on the pathway to formal litigation – it makes clear the obligation on parties to pursue these mechanisms in good faith and with a view to timely resolution where appropriate.

Significantly, the framework requires parties to:

- participate in a compulsory settlement conference within 3 months of having filed an application for arbitration or having commenced an action for damages; and
- exchange mandatory final offers of settlement in connection with common law claims, prior to proceeding to hearing.

Critically, the obligations only come into effect once proceedings before the relevant Court have been commenced.

Moving from the statutory to the common law environment

In most jurisdictions injured workers either have no entitlement to pursue common law damages (NT and SA) or they are required to satisfy minimum impairment thresholds before being able to commence action against their employer (VIC, TAS, NSW and WA).

Similarly, injured workers can face a cap on the type and/or quantum of damages payable in relation to a common law action (WA, NSW, VIC).

Under the current ACT Scheme an injured worker can pursue common law damages against a negligent third party irrespective of the severity of injury or its impact on life. Historically, access to common law damages played a key role in the context of an injured person's inability to access the necessary care, rehabilitation and compensation to injured workers.

The ACT Scheme is a return to work scheme that provides a rigorous framework of rehabilitation, care and compensation to assist injured workers to overcome the impact of an injury and make a full return to employment and life.

The amendments rebalance the ACT Scheme and introduce a threshold that injured workers will need to satisfy in order to pursue common law damages as follows:

- For claims related to physical injuries – 15% or more WPI;
- For claims related to psychological injuries – 20% or more WPI.

The threshold for claims related to physical injuries aligns with those imposed in respect of the NSW private sector workers' compensation scheme and those introduced by the *Road Transport (Third Party Insurance) Amendment Bill 2010*. Significantly, the threshold introduced by the Bill is lower than the 20% threshold that injured workers must satisfy in Tasmania and the 30% or narrative test in Victoria, in order to pursue damages against a third party.

The threshold for claims related to psychological injuries introduced by the Bill is consistent with that introduced by the *Road Transport (Third Party Insurance) Amendment Bill 2010*. In practice, this amendment allows substantial harmony across the two no-fault statutory schemes and provides for an equal level of access to damages for injured persons.

The imposition of a threshold will allow claims to be streamlined and effectively channelled across the statutory and common law environments based on the severity of the worker's injury. Having satisfied the relevant threshold the injured worker will be entitled to pursue unrestricted damages.

Those workers whose degree of WPI is less than the relevant threshold, will remain within the statutory framework and continue to receive the rehabilitation, return to work and benefit support which it facilitates.

Regulation of service providers – costs

The Act currently allows for the making of regulations with respect to the maximum fees that may be required in relation to third party service providers connected with the ACT Scheme (e.g. Lawyers, medical professionals, rehabilitation service providers etc).

The Bill proposes minor amendments to allow the Minister to determine (by notifiable instrument) the maximum expenses and fees that may be charged by or paid to legal service providers in connection with the Scheme.

The Bill clarifies that any costs so prescribed by the Minister cannot be circumvented through the use of a costs agreement or any other tool entered into between an individual and a service provider. Similarly, the amendments make clear that in making an order for costs, the relevant Court must abide by the limitations set down by the Government.

These amendments are intended to provide for the early resolution of issues and disputes by agreement, while creating disincentives for excessive servicing, unnecessary delay and needless litigation.

Regulation of service providers – advertising

In some jurisdictions the legislature has placed controls around the manner and content of advertising by legal service providers in connection with claims for personal injury or related common law damages.¹

Presently, the advertisement of legal service providers in connection with claims for personal injury or related common law damages is unregulated within the ACT Scheme.

In some cases, the nature, tenor and messaging conveyed in the advertising is being used to convey misleading messages about an injured worker's access to statutory benefits.

¹ See: Legal Profession Act 2007 (QLD), Legal Profession (Solicitors) Rules 2007 (QLD), Personal Injuries Proceedings Act 2002 (QLD), Legal Profession Act 2004 (NSW), Legal Profession Regulations 2005 (NSW), Legal Profession Act 2008 (WA), Civil Liability Act 2002 (WA), Legal Profession Act (NT) and Legal Profession Regulations (NT).

The Bill introduces amendments to prohibit the advertising of legal services in relation to a claim for compensation under the Act or a related damages claim unless the advertising complies with the relevant provisions of the Regulations.

Legal service providers will continue to be able to advertise their skill or experience within the personal injury environment and the availability of specialists to assist injured workers to understand their entitlements.

Workers Compensation Amendment Bill 2010

Detail

Clause 1 — Name of Act

This is a technical clause that names the Act. This Act is the *Workers Compensation Amendment Act 2010*.

Clause 2 — Commencement

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

Clause 3 — Legislation amended

This clause identifies the legislation to be amended, namely the *Workers Compensation Act 1951* and the *Workers Compensation Regulation 2002*.

Clause 4 — Meaning of injury

This amendment replaces the language of ‘mental injury’ with the term ‘psychological injury’ as is used for the purposes of Part 4.4 of the Act. Further the amendment clarifies that, for the purposes of the Act, a psychological injury does not include a psychological injury completely or mostly caused by reasonable action taken, or proposed to be taken, by or on behalf of, an employer in relation to counselling, training or investigation.

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

This amendment inserts a note that refers readers to the exclusions that s 4 of the Act makes in respect of psychological injuries arising from reasonable management action.

Clause 6 — Part 4.4 Compensation for permanent impairment

Part 4.4 of the Bill establishes the new framework to apply for the consideration, assessment and determination of a worker’s entitlement to compensation for permanent impairment arising from a compensable injury.

Section 49 - liability for permanent impairment

Section 49 sets out the conditions that must be satisfied in order for a worker to receive compensation for permanent impairment. Under s 49 an employer is only liable to pay compensation under Part 4.4, in relation to a physical injury other than hearing loss, if a worker of the employer:

- a) has suffered an injury for which liability under s 31 has been accepted (a compensable injury) and that injury has reached maximum medical improvement; **and**
- b) suffers a permanent impairment as a result of that compensable injury; **and**
- c) the degree of that permanent impairment, expressed as whole person impairment (WPI) in accordance with the relevant provisions of the approved impairment guidelines, is 1% or more.

Section 49 makes specific provision with respect to the minimum impairment that must result from compensable hearing loss or a compensable psychological injury in order for the worker to be entitled to compensation under Part 4.4:

- a) hearing loss - the worker must have suffered a hearing loss of 6% or more; and
- b) psychological injury – the injury must have resulted in a WPI of at least 20%.

The grounds established by s 49(1) operate cumulatively – ss (1)(a) must be satisfied before ss (1)(b) is considered and ss (1)(a) and (1)(b) must be met before ss 1(c) can be considered. A worker will not be entitled, or their employer liable, to compensation for permanent impairment unless **all** of the grounds set out in s 49 are satisfied.

Under s 5(1)(b) of the Workers Compensation Regulation 2002, the Minister has approved the *American Medical Association Guides to the Evaluation of Permanent Impairment* (5th Edition) and the NSW *WorkCover Guides for the Evaluation of Permanent Impairment* (3rd Edition) as the approved impairment guidelines for the purposes of Pt 4.4 of the Act.

Sections 50-51 - claiming compensation

There are two avenues by which a claim for compensation for permanent impairment can arise under Part 4.4.

Firstly, an injured worker has the power to make a claim for compensation for permanent impairment by giving written notice of the claim to their employer's insurer or their employer where it is self-insured (s 50). The claim must be accompanied by medical evidence confirming that the worker's compensable injury has reached maximum medical improvement as defined in s 48.

Within 7 days of receiving a notice of claim under s 50, the insurer/self-insurer must provide a copy of the worker's notice and any prescribed details of the claim to the PI Assessment Panel Manager as the first step in the assessment process.

Secondly, s 51 authorises an insurer/self-insurer against whom the worker could make a claim, to initiate the process of determining the worker's entitlement to compensation for permanent impairment. Specifically, the insurer/self-insurer is authorised to give the worker written notice that the:

- a) insurer/self-insurer reasonably believes that the worker's compensable injury has reached maximum medical improvement; and
- b) matter is being referred to the PI Assessment Panel Manager to enliven the process for assessing the worker's possible WPI.

Within 7 days of issuing a notice under ss 51(2), the insurer/self-insurer must provide a copy of the notice give to the worker and any prescribed details of the claim to the PI Assessment Panel Manager as the first step in the assessment process.

Sections 52-53 - arrangements for medical assessments and information for workers

Within 3 days after receiving a notice under ss 50 or 51, the PI Assessment Panel Manager must assign the case to an approved medical assessor or refuse to sign the case to an approved medical assessor if the notice:

- a) does not provide sufficient information to allow the assessment be made; or
- b) does not provide the prescribed details; or
- c) is not in the prescribed form.

Where a case is assigned to an approved assessor under ss 52(1), the PI Assessment Panel Manager is required to arrange for the worker to be interviewed or examined by an approved medical assessor for the purposes of assessing their WPI. That interview or examination must occur within 60 days after the case has been assigned, unless the approved assessor is not available.

The PI Assessment Panel Manager is also required to give the:

- a) insurer written notice of the appointment; and
- b) worker notice of the appointment and information in the prescribed form about their rights and obligations in relation to the claim.

Under ss 52(4) the insurer is obliged to provide the approved medical assessor appointed to the case a letter of instruction in the prescribed form, including any relevant medical evidence or other prescribed information, within 5 days after receiving notice of the appointment from the PI Assessment Panel Manager. This information must be provided to the worker at least 7 days before the date of the appointment.

In accordance with s 53, an insurer has 10 days from receiving a notice under s 50 or from issuing a notice under s 51, to provide the injured worker with written advice on the following:

- a) the grounds upon which compensation is payable under Pt 4.4 of the Act;
- b) an assessment of the degree of the WPI suffered by the worker, if any, is required under s 52 of the Act; and
- c) this assessment must be conducted by an approved medical assessor appointed to the PI Assessment Panel, as selected by the Panel Manager; and
- d) the worker is obliged to participate in the assessment process and may face cessation of their statutory benefits if they unreasonably obstruct or fail to participate in this process in accordance with s 113; and
- e) a decision in relation to their claim for compensation will be made by the insurer following the assessment of their impairment.

Sections 54-57 – assessment of whole person impairment

In assessing the degree of WPI suffered by an injured worker as a result of a compensable injury, an approved medical assessor is required to conduct the assessment in accordance with ss 54-57 and any procedures prescribed by regulation.

Collectively, these provisions set in place the following framework:

- an injured worker is examined or interviewed by an approved medical specialist with a view to determining the degree of their WPI, if any, under the approved guidelines;

- the approved assessor may refuse to assess the worker if satisfied that the compensable injury has not reached maximum medical improvement or if the claimed impairment is not permanent;
- within 20 days of interviewing the worker the assessor produces an assessment report setting out their findings and other prescribed matters;
- The assessment report is returned to the PI Assessment Panel Manager for the purposes of facilitating peer review by an independent assessor;
- The peer review assessor undertakes a compliance audit of the assessment report to ensure:
 - correct impairment guide was used;
 - correct provisions in the approved impairment guide were used;
 - mathematical calculations are correct;
 - assessment is factually and medically accurate; and
 - assessment addresses all of the relevant issues required for the assessment to be completed,
- The approved assessor issues a declaration of assessment (a declared assessment) to the worker and the insurer upon receiving a certificate of compliance from the peer review assessor.

Subsection 54(6) and (7) provide for the conduct of multiple assessments, co-ordinated by a lead assessor, in circumstances where the nature of the worker's injuries and claimed impairment required the involvement of discreet specialities. In these cases, a lead assessor is appointed and retains responsibility for preparing the assessment report and the declaration of assessment.

Section 57 recognises the impact of pre-existing injuries in assessing the degree of WPI suffered by an injured worker as a result of a compensable injury. The provision requires the approved medical assessor conducting the relevant assessment to deduct any contribution to the impairment under assessment that is made by the pre-existing injury. Where the extent of the contribution is not readily ascertainable, the medical assessor is required to deduct 10% of the declared assessment issued under s 56.

Sections 58 – Status of declared assessment

Section 58 makes clear that a declared assessment issued in accordance with s 56 is final and conclusive evidence of the degree of WPI suffered by the worker as a result of the compensable injury.

There are two qualifications to this provision. Firstly, ss 58(2) provides a mechanism for a person whose interests are affected by a declared assessment issued under s 56 to apply to the Magistrates Court to have the assessment declared void if there is evidence of the denial of procedural fairness in connection with the issue of the assessment. This ground would be relied upon where pertinent evidence was not available to the medical assessor, if the medical assessor failed to consider relevant and available evidence or if there was grounds for suggesting bias on the part of the assessor.

Subsection 58(3) allows the Magistrates Court to declare an assessment void and remit the matter to the PI Assessment Panel Manager for further assessment but only

where satisfied that the denial of procedural fairness has caused substantial injustice to a person affected by the assessment.

Secondly, a worker's claim may be referred to the PI Assessment Panel for a further assessment if the Manager is satisfied that:

- a) the impairment has deteriorated since the last assessment and the deterioration could have a material effect on the outcome of the previous assessment; or
- b) there is additional information about the impairment that could have a material effect on the outcome of the previous assessment.

A material effect means a deterioration of an impairment which increases the degree of WPI by more than 10% from the previous assessment.

Section 59 – Amount of compensation payable

This provision sets out the formula to be applied by an insurer in calculating the quantum of compensation payable to an injured worker in response to a WPI assessed and identified under Part 4.4. It also establishes that an insurer has 10 working days from receipt of a final assessment of WPI under s 54 to make a determination of the injured worker's entitlement, if any, to compensation under s 49.

Section 60 - Costs assessment

This section makes clear that costs in relation to determining an injured worker's entitlement to compensation for permanent impairment fall to the insurer or self-insurer liable for the compensable injury.

Sections 61-63 - Hearing loss

These provisions reflect the previous requirements for compensating hearing loss under the Act and re-iterate that compensation is not payable if the worker's total hearing loss is less than 6%.

Sections 64-68C – Permanent Impairment Assessment Panel

These sections create the Permanent Impairment Assessment Panel, which consists of:

- a) members appointed by the Chief Executive as approved medical assessors for the Act; and
- b) the PI Assessment Panel Manager.

Approved medical assessors may be appointed by the Chief Executive in accordance with the *Workers Compensation Regulation 2002* (the Regulation). The PI Assessment Panel Manager must be a public servant appointed under the Act by the Chief Executive and has responsibility for managing the Panel and any other function given to the Manager under the Act or prescribed in the Regulation.

Clause 7 — Employer liability for medical treatment etc. Section 70(1)(a)

Historically, an employer was liable to pay compensation for the cost of medical treatment reasonably received by a worker in relation to a compensable injury. This amendment clarifies that liability to pay compensation under ss 70(1)(a) arises where the employee has reasonably received medical treatment or where s/he is reasonably required to receive particular medical treatment.

In practice, the section will allow an injured worker to receive compensation in respect of medical treatment that they are reasonably required to receive in relation to a compensable injury without having to incur such costs and seek reimbursement at a later point in time.

Clause 8 —New section 70(1A)

In line with the amendments made to ss 70(1)(a), this provision provides a definition of ‘reasonably required’.

Clause 9 —Death benefits Section 77(2)(a)

This amendment increases the maximum lump sum death benefit available under the Act from \$150,000 to \$450,000. Dependents of a deceased worker continue to be eligible to receive weekly compensation and funeral benefits under ss 77(2)(b)-(c).

Clause 10 — Section 77(2)(c) and (6)

This amendment increases the maximum funeral expenses compensated under the Act from \$4,000 to \$9000.

Clause 11 — Section 79 and 80

Section 79 of the Act has been streamlined to operate as a mechanism for the registration with the Magistrates Court of agreements reached during compulsory settlement conferences.

The section no longer applies to agreements reached in relation to the payment of lump sum compensation under s 49 or in relation to the commutation of a right under s 137.

Clause 12 — Compliance by workers, s 113(1)

This provision amends s 113 (1) to incorporate the relevant provisions of the new framework around the determination of compensation for permanent impairment and the assessment of a worker’s WPI.

Clause 13 – Time for making claim under Pt 4.4, section 121

This provision omits s 121, allowing the process of claiming compensation for permanent impairment to be initiated at any time provided there is medical evidence demonstrating that the grounds in s 49 have been met.

Clause 14 – How worker may commute rights, s 137(2)(b)

This section has been omitted to reflect the new framework that applies to the determination of compensation under Part 4.4 of the Act.

Clause 15 – New section 147C

The section clarifies that the validity of a compulsory insurance policy underwritten by an approved insurer is not affected by an error on the part of the insurer or payment of the incorrect premium for the policy.

Existing provisions set out in s 147, 147A, 147B and 148 of the Act continue to apply to cases of under-declaration of wages (i.e. under insurance) and non-insurance.

Clause 16 — Definitions – Chapter 9, section 180

This provision creates a definition for ‘loss of earnings’ for the purposes of Chapter 9 of the Act, as referring to the loss of future earnings or the deprivation or impairment of future earning capacity.

Clause 13 — New section 180A, 180B and 180C

These provisions establish a framework around the transition of claims from the statutory to the common law environment. Under new s 180C an injured worker will only be eligible to commence an action for damages in connection with a work-related injury if:

- a) For a physical injury – the worker has a WPI of at least 15% assessed in accordance with ss 54-57 of the Act;
- b) For a psychological injury – the worker has a WPI of at least 20% assessed in accordance with ss 54-57 of the Act.

Where a worker does not meet the above thresholds, s/he will remain entitled to lump sum compensation under s 49 of the Act, in addition to any ongoing incapacity benefits or medical expenses.

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

This section is omitted as the meaning of ‘damages claim’ is now reflected in s 180A.

Clause 19 — Definitions –Section 182A(2) and (3)

These provisions are omitted.

Clause 20 — New section 184A

This section aligns with the provisions made by the *Road Transport (Third-party Insurance) Act 2008* with respect to the discount rate to be applied in determining the present value of future economic loss.

Clause 21 — New section 194

This amendment recognises the nature of protected information received by Government officials in the course of their official duties and establishes the parameters for permitted use of that material.

A person that is exercising or purporting to exercise a function under the Act who obtains protected information about another person will be guilty of an offence if s/he uses that information in a way that is not protected by the Act.

Clause 22 — Chapter 11

These provisions establish a robust framework for the resolution of disputes concerning workers’ compensation under the Act and associated common law action prior to arbitration or litigation. Critically, the Chapter establishes compulsory steps in the resolution path that parties to a proceeding in relation to a claim for compensation under the Act or an associated common law action will be required to complete before they are able to proceed to a full hearing of the dispute by the Magistrates or Supreme Courts.

The purpose of the provisions is to set up a system that facilitates just and prompt resolution of claims under the Act and associated common law action, while encouraging parties to a dispute to avoid delay, unnecessary expense and technicality.

Revised Chapter 11 also makes provision with respect to legal costs in relation to a claim for compensation under the Act or a damages claim, providing the Minister with a mechanism for determining maximum legal costs payable in a matter.

Sections 196-196H – Compulsory settlement conferences

These sections introduce the requirement for parties to a proceeding in relation to a claim for compensation under the Act or an associated common law action to participate in a compulsory settlement conference before proceeding to arbitration or hearing before the relevant Court.

The obligation to participate in the settlement conference does not arise until proceedings before the relevant Court have been commenced. However, the conference must be undertaken within 3 months from the day the application for arbitration or the originating claim is filed in the relevant Court unless the Court orders or approves otherwise.

The parties are obliged to notify the Court of the agreed date for the settlement conference and are required to actively take part in the conference in a genuine attempt to settle the claim where possible.

The provisions allow for the settlement conference to happen between the parties directly, or with the assistance of a conciliator. A conciliator may be engaged to participate in the settlement conference by the consent of the parties or where ordered by the relevant Court.

Section 197A confers power on the Court in which proceedings are commenced to dispense with the requirement that the parties participate in a settlement conference where it considers appropriate to do so.

To ensure that parties are in a position to participate in the settlement conference in a meaningful way, ss 196F and 196G place disclosure obligations on both parties to the claim or dispute. Each legally represented party must also provide the other with a certificate of readiness, confirming **readiness for the settlement conference** (as opposed to their readiness for proceeding to hearing) including a financial statement addressing the likely legal costs the party will occur in proceeding with the claim.

A party who fails to comply with these disclosure obligations will have committed an offence, with a penalty of 10 penalty units.

Sections 196I-P - Mandatory Final Offers

These provisions introduce a further resolution mechanism that must be satisfied before the parties to a damages claim can participate in a final hearing by the relevant Court. Specifically, before proceeding to hearing the parties to the damages claim are required to exchange written final offers to settle the issues in dispute.

Offers must be made either at the end of the compulsory settlement conference where resolution is not achieved or not later than 14 days after the conference is dispensed with by the Court.

In exchanging the offers each party to the proceeding is required to provide the other with information regarding the total costs likely to be incurred by that party if a court were to proceed to determine the dispute and specific outcomes were achieved.

Section 196P makes clear that a proceeding cannot move forward to final determination by a Court unless written final offers have been exchanged and the time for acceptance has closed. The provision also requires parties who proceed to hearing to file with the Court, sealed copies of the written final offers exchanged which the Court may have regard to in making an order as to costs at conclusion of the substantive hearing.

Sections 197A-F – Legal costs

These provisions give effect to the framework to apply for the determination of maximum legal costs payable in relation to a claim for compensation under the Act or a damages claim.

Broadly, the provisions give power to the Minister to determine the maximum amount payable for legal costs by way of a determination issued under the Act. The Minister has the discretion to determine these costs by reference to the *Legal Profession Act 2006*, the *Court Procedure Rules 2006*, any other Territory law, by stating the maximum amount for a particular legal service or any other way.

Critically, s 197C provides that a legal service provider is not entitled to be paid or to recover an amount for legal costs in relation to a claim that is more than the maximum amount determined by the Minister under s 197B. Similar limitations are placed upon the orders that a Court may make as to costs in connection with a claim for compensation under the Act (see s 197D).

Section 197F introduces new provisions with respect to legal costs that are unreasonably incurred in relation to a claim for compensation under the Act or an associated damages claim. Under this provision the Court must not order a party to pay legal costs of another party if satisfied that the costs are unreasonably incurred.

Under s 197F(4) a 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 that the provider:

- Made all reasonable efforts not to incur the costs; or
- Should not otherwise be held responsible for the costs.

Clause 23 — New section 200B

This amendment introduces a mechanism for the regulation of advertising of legal services and legal service providers in connection with claims for compensation under the Act or associated damages action.

Clause 24 — Section 210(1)

This amendment allows for the costs of administering the Act, the *Work Safety Act 2008* or a law prescribed by regulation to be apportioned among the approved insurers and self-insurers by the Minister.

Clause 25 — Section 210(2)

This amendment reflects the changes made to ss 210(1).

Clause 26 — Section 211(1)

This amendment corresponds with the changes made to ss 210(1) to allow the costs of administration of the Act, the *Work Safety Act 2008* or any other prescribed law to be paid out of amounts received under ss 210(1).

Clause 27 — Regulation making power, section 223(f)(iii)

This section is omitted in light of the stand alone provisions made at Chapter 11A.

Clause 28 — Regulation making power, new section 223(2)(m)

This provision updates the regulation making powers established under s 223(2) of the Act to reflect adoption of the new permanent impairment framework under Part 4.4 of the Act.

Clause 29 — Schedule 1

This section omits Schedule 1, consistent with the adoption of the new WPI framework.

Clause 30 — Chapter 20

This section creates transitional arrangements for introduction of the above amendments. The provisions make clear that claims made in relation to an injury sustained before the commencement of this Bill, will continue to be dealt with under the previous legislative framework. For these purposes, ‘claims’ includes a claim for compensation under the Act or a damages claim in relation to a work-related injury.

Clause 31 — Ending of members appointment

This section updates Schedule 3 in connection with the ending of membership of the Default Insurance Fund Advisory Committee if a member becomes bankrupt or personally insolvent.

Clause 32 — Dictionary, note 2

This section reflects the change to Schedule 3 above.

Clause 33 — Dictionary, new definitions

This section is updated to reflect changes to Part 4.4 of the Act.

Clause 34 — Dictionary, definition of *deductible proportion*

This section is omitted.

Clause 35 — Dictionary, new definition of *impairment*

This section is amended consistent with the introduction of specific definitions in s 48.

Clause 36 — Dictionary, definition of *initial loss*

This section is omitted consistent with the introduction of specific definitions in s 48.

Clause 37 — Dictionary, definition of *insurer*

This section is updated consistent with the introduction of specific definitions in s 48, Chapter 5, Part 6.2 and Part 11.3.

Clause 38 — Dictionary, new definitions

This section inserts specific definitions for the terms: law firm, law practice, legal costs, legal service provider and legal services.

Clause 39 — Dictionary, definition of *loss*

This section is omitted.

Clause 40 — Dictionary, definition of *lump sum claim*

This section is updated consistent with the changes made to Part 4.4 of the Act.

Clause 41 — Dictionary, definition of *maximum amount*

This section is updated to reflect the amendments to s 48.

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

This section is omitted.

Clause 43 — Dictionary, new definitions

This section is updated to cross-reference the definitions set out in s 48 of the Act.

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

This section is omitted as a consequence of the removal of Schedule 1.

Clause 45 — Dictionary, new definitions

This section is updated to cross-reference the definitions set out in s 48, 59 and 180B of the Act.

Clause 46 — Approval of medical guidelines, section 5(1)(b) and note

This section is updated to reflect the change in name of part 4.4 of the Act.

Clause 47 — New Part 2A

Regulation 8B sets out that the prescribed information that an insurer, including a self insurer, is required to provide to an approved medical assessor in accordance with s 52(4)(c) of the Act.

Regulation 8C articulates the qualifications that an individual is required to have in order to be considered suitable for approval as a medical assessor for the purposes of the Permanent Impairment Assessment Panel.

Clause 48 — medical referee to review medical evidence etc

This amendment reflects the revised process that applies to the determination of permanent impairment.

Clause 49 — medical referee's report

This amendment reflects the revised process that applies to the determination of permanent impairment.

Clause 50 — Part 6, Dispute Resolution

These provisions provide regulatory support for the new Dispute Resolution framework enshrined in Chapter 11 of the Act.

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

This section is updated to reflect the introduction of the compulsory settlement conference.

Clause 52 — Section 57, heading

This amendment reflects the changes made to s 57.

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

This amendment provides the meaning of 'relevant jurisdiction' for the purposes of determining the suitability of approved medical assessors for appointment to the PI Assessment Panel.