



New South Wales

Motor Accidents and Workers Compensation Legislation Amendment Act 2022 No 25

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New South Wales

Motor Accidents and Workers Compensation Legislation Amendment Act 2022 No 25

Act No 25, 2022

An Act to make miscellaneous amendments to certain motor accidents legislation and workers compensation legislation and to make consequential or related amendments to other legislation.
[Assented to 16 June 2022]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Motor Accidents and Workers Compensation Legislation Amendment Act 2022*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 2.1[1] commences on a day to be appointed by proclamation.

Schedule 1 Amendments concerning motor accidents legislation

1.1 Limitation Act 1969 No 31

Section 50A Application of Division—kinds of causes of action

Insert “or the *Motor Accident Injuries Act 2017*” after “*Motor Accidents Compensation Act 1999*” in section 50A(3).

1.2 Motor Accident Injuries Act 2017 No 10

[1] Section 1.4 Definitions

Insert in alphabetical order in section 1.4(1)—

hire vehicle has the same meaning as in the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

passenger service has the same meaning as in the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

provider of a passenger service or booking service has the same meaning as in the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

taxi has the same meaning as in the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

[2] Section 2.26

Omit the section. Insert instead—

2.26 Special provisions relating to taxis and hire vehicles and other vehicles

- (1) The Motor Accident Guidelines relating to the determination of insurance premiums for third-party policies may provide for the payment of premiums of third-party policies.
- (2) Without limiting subsection (1), the guidelines may—
 - (a) provide for part of the premium to be paid before the issue of a third-party policy and the remainder of the premium to be paid during the period for which the policy is issued, and
 - (b) provide for refunds by licensed insurers of part of the premium paid for a third-party policy for taxis or hire vehicles during or after the period for which the policy is issued, and
 - (c) impose requirements on providers of passenger services or booking services relating to taxis, hire vehicles or other classes of vehicles, or on other persons conducting a business relating to the vehicles or on licensed insurers, concerning the following—
 - (i) terms for the payment of premiums, including reporting requirements and timeframes,
 - (ii) invoicing arrangements for the payment of premiums,
 - (iii) arrangements concerning the payment of GST for premiums.
- (3) A determination under subsection (1)—
 - (a) may be made in relation to taxis or hire vehicles or in relation to other classes of vehicles, and
 - (b) for guidelines for the purposes of subsection (2)(a) and (b)—

- (i) may provide for the basis on which the remainder of the premium is to be paid, or a part of the premium refunded, including by reference to the safe driving of vehicles, number of trips undertaken by the vehicles, distance travelled by the vehicles, other activity in which the vehicles are engaged or other factors, and
 - (ii) may authorise the remainder of the premium to be paid on behalf of the persons to whom the third-party policies are issued, including by the providers of passenger services or booking services relating to taxis or hire vehicles, or by other persons conducting a business relating to the vehicles.
- (4) Section 2.8 (Cancellation of third-party policies) extends to the cancellation of a third-party policy if a payment required to be made during the period for which the policy is issued has not been duly paid.
- (5) The Authority may, by written notice served on a person conducting a business relating to vehicles, including the provider of a passenger service or a booking service, require the person to do 1 or more of the following—
 - (a) provide to the Authority, within the time and in the way specified in the notice, information the Authority reasonably requires for the purpose of determining the guidelines for insurance premiums for third-party policies for taxis, hire vehicles or other classes of vehicles,
 - (b) provide to the Authority or a licensed insurer, within the time and in the way specified in the notice, information the Authority or licensed insurer reasonably requires to determine premiums for third-party policies for taxis, hire vehicles or other classes of vehicles,
 - (c) pay, within the time and in the way specified in the notice, premiums for third-party policies for taxis, hire vehicles or other classes of vehicles.
- (6) A person to whom a notice is given under this section must not—
 - (a) fail to comply with the notice, or
 - (b) provide information to the Authority or an insurer the person knows is false or misleading in a material particular.Maximum penalty—
 - (a) for a failure to comply with a requirement under subsection (5)(a)—100 penalty units, or
 - (b) for other contraventions—500 penalty units.
- (7) In this section—

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

[3] Section 2.38 Establishment of Nominal Defendant's Fund

Omit “into the Fund out of” from section 2.38(3)(c). Insert instead “out of the Fund into”.

[4] Section 3.2 Statutory benefits payable by relevant insurer

Omit section 3.2(4). Insert instead—

- (4) The insurer of the at-fault motor vehicle is the insurer who provides motor accident insurance cover for—
 - (a) the motor vehicle the use or operation of which caused the death or injury for which the statutory benefits are payable, or

- (b) if more than 1 motor vehicle caused the death or injury—the motor vehicle the use or operation of which contributed most to causing the death or injury for which the statutory benefits are payable.

[5] Section 3.2(6)–(8)

Omit section 3.2(6) and (7). Insert instead—

- (6) If the insurer of the at-fault motor vehicle is not a licensed insurer (a *non-licensed insurer*), statutory benefits payable under this Part are payable by the Nominal Defendant on behalf of the non-licensed insurer, unless the Authority gives written approval for the non-licensed insurer to enter into arrangements with a licensed insurer for the licensed insurer to pay the statutory benefits payable as a result of the motor accident.
- (7) However, if the insurance policy of the non-licensed insurer of the at-fault motor vehicle does not insure against a liability to pay statutory benefits under this Part—
 - (a) the Nominal Defendant is the relevant insurer, subject to subsection (3), for the purposes of the payment of the benefits, and
 - (b) the non-licensed insurer must give the Nominal Defendant the information it has in relation to an application made to it for the payment of benefits concerning the accident.
- (8) The Nominal Defendant or other insurer who pays statutory benefits under this Part is entitled to recover the amount of statutory benefits properly paid from the relevant insurer liable to make those payments, along with the costs associated with handling the statutory benefits claim.

[6] Sections 3.6(2) and (3), 3.7(2) and (3) and 3.8(2) and (3)

Insert “or post-accident earnings, whichever is the greater,” after “(if any)” wherever occurring.

[7] Section 3.7 Weekly payments during second entitlement period (weeks 14–78 after motor accident)

Omit “loss of earning capacity” wherever occurring in section 3.7(2).

Insert instead “loss of earnings”.

[8] Section 3.15 Requirements for evidence as to fitness for work

Omit “given by the injured person” wherever occurring in section 3.15(3)(a) and (a1).

Insert instead “provided by the injured person”.

[9] Section 3.15(3A)

Insert after section 3.15(3)—

- (3A) To avoid doubt, certificates referred to in subsection (3)(a) and (a1) constitute medical certificates as to an injured person’s fitness for work for the purposes of this Act.

[10] Section 3.15(5)

Insert “by the injured person to the insurer” after “provided”.

[11] Section 3.15(6)–(8)

Omit section 3.15(6). Insert instead—

- (6) An insurer is not required to make weekly payments of statutory benefits to which a person is entitled to under this Division until the person has complied with subsection (1).
- (7) If a person fails to comply with a requirement under this section within 7 days, or another period prescribed by the regulations, after the requirement is communicated to the person by the insurer, the insurer may, subject to the Motor Accident Guidelines, suspend payment of weekly payments of statutory benefits to the person under this Division for the period the failure to comply continues.
- (8) The person forfeits the person's entitlement to weekly payments of statutory benefits during the period of a suspension.

[12] Section 3.20 Refund of weekly payments paid after return to employment

Omit "section 3.19 (Notice required before discontinuing or reducing weekly payments)" from section 3.20(4).

Insert instead "section 3.18 (Claimant to notify change of circumstances)".

[13] Section 3.21 Weekly statutory benefits to persons residing outside Australia

Omit "earnings in respect of which statutory benefits are payable" and "earnings in respect of which the weekly payment is payable" from section 3.21(1) and (2)(b), respectively.

Insert instead "earning capacity".

[14] Section 3.21(2)

Insert ", or at shorter intervals agreed by the insurer and injured person," after "quarterly basis".

[15] Section 3.21(2)(a)

Insert "or insurer" before "has determined".

[16] Section 3.21(2)(a)

Omit "earnings". Insert instead "earning capacity".

[17] Section 3.30 Payment of hospital, ambulance, medical and other expenses not covered by bulk billing arrangement

Omit "at the maximum rate so fixed" from section 3.30(2)(b).

Insert instead "at a rate no greater than the maximum rate so fixed".

[18] Section 3.36 No statutory benefits for at-fault driver or owner if vehicle uninsured

Insert "in circumstances where the vehicle was required to be insured under this Act" after "third-party policy" in section 3.36(3)(a).

[19] Sections 5.2(1), 5.5 and 5.6

Omit "or statutory benefits" wherever occurring.

[20] Section 5.3 Presumption that motor accident is no-fault

Omit section 5.3(2).

[21] Section 5.6, heading

Omit "or statutory benefits".

[22] Section 5.6(2)

Insert at the end of section 5.6—

- (2) To avoid doubt, this section is intended to operate when a person is deemed to be the person at fault for causing a death or injury occasioned by a motor accident even though the accident itself is a no-fault motor accident.

Note— The definition of *no-fault motor accident* in section 5.1 is focused on the fault for causing a motor accident rather than the fault for causing death or injury occasioned by the accident.

[23] Section 5.8 Other entitlements not affected

Omit “or statutory benefits”.

[24] Section 6.15 How notice of claims given

Omit section 6.15(1)–(3). Insert instead—

- (1) A notice of a claim under this Division is to be given in the form approved by the Authority.
- (2) The approved form may, without limitation, provide for the giving of notices of claims by a computer system, whether or not operated by insurers, that makes the notices available to the insurers or other persons to whom the notices are required to be given.
- (3) The approved form may require the claimant to do 1 or more of the following—
 - (a) provide a certificate of a treating medical practitioner relating to the claim,
 - (b) authorise the insurer to obtain information and documents relevant to the claim from persons specified in the authorisation,
 - (c) authorise the insurer to provide information and documents so obtained by the insurer to persons specified in the authorisation.

[25] Section 7.13A

Insert after section 7.13—

7.13A Merit reviewer may assess costs

- (1) A merit reviewer may include in the certificate as to the determination of a merit review an assessment of the claimant’s costs in the matter, including costs for legal services and fees for medico-legal services.
- (2) The costs specified in the assessment are payable by the insurer.
- (3) In making an assessment under this section, a merit reviewer must—
 - (a) give effect to the requirements of the regulations under Part 8 (Costs and fees) as to costs that may be included in an assessment or fixing maximum fees and costs, and
 - (b) have regard to the principles and matters referred to in the *Legal Profession Uniform Law (NSW)*, section 200.
- (4) A claimant or an insurer, or an Australian legal practitioner acting for a claimant or an insurer in relation to the relevant claim, has the same right of appeal against an assessment made under this section as the claimant, insurer or legal practitioner would have under the *Legal Profession Uniform Law Application Act 2014*, section 89 if the assessment were a decision of a costs assessor under that Act, Part 7 in relation to a bill of costs.

[26] Section 11.11 Regulation of advertising and other marketing of services

Omit “whether” from section 11.11(1)(b). Insert instead “including”

[27] Schedule 1 Definitions relating to earnings for purposes of weekly payments of statutory benefits under Division 3.3

Omit clause 4(2)(b). Insert instead—

- (b) if subclause (3) applies—the weekly average of the gross earnings the earner received as an earner, or could reasonably have been expected to receive, during the 12 months after the change of circumstance referred to in the subclause occurred,

[28] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on enactment of Motor Accidents and Workers Compensation Legislation Amendment Act 2022

Application of amendments

- (1) Except as provided by subclauses (2)–(4) or the regulations, an amendment made to relevant legislation by the amending Act extends to—
 - (a) a motor accident occurring before the commencement of the amendment, but not before 1 December 2017, and
 - (b) a claim for statutory benefits or damages made before the commencement of the amendment, but not before 1 December 2017, and
 - (c) proceedings pending before a merit reviewer, a medical assessor, a claims assessor or a court immediately before the commencement of the amendment.
- (2) An amendment made to relevant legislation by the amending Act does not apply to statutory benefits or damages paid or payable for a period before the commencement of the amendment.
- (3) Section 9.7A of this Act, as inserted by the amending Act, extends to an insurer’s licence under this Act as in force immediately before the section commences.
- (4) The amendment made to section 10.12 of this Act applies to applications made under the *State Insurance and Care Governance Act 2015*, section 26F after the commencement of the amendment.
- (5) In this clause—

amending Act means the *Motor Accidents and Workers Compensation Legislation Amendment Act 2022*.

relevant legislation means each of the following—

 - (a) this Act and the regulations under this Act,
 - (b) the *Motor Accidents Compensation Act 1999* and the regulations under that Act.

1.3 Motor Accident Injuries Regulation 2017

Clause 22 Fixing of maximum costs recoverable by legal practitioners (sections 8.3 and 8.10)

Insert “recoverable by Australian legal practitioners and claimants” after “maximum costs” in clause 22(1).

1.4 Motor Accidents Compensation Act 1999 No 41

[1] Section 40 Establishment of Nominal Defendant’s Fund

Omit “into the Fund out of” from section 40(3)(a1). Insert instead “out of the Fund into”.

[2] Section 121 Regulation of advertising and other marketing of services

Omit “whether” from section 121(1)(b). Insert instead “including”.

[3] Section 146 Indexation of amounts relating to award of damages

Omit “Minister” from section 146(1). Insert instead “Authority”.

Schedule 2 Amendments concerning workers compensation legislation

2.1 Workers Compensation Act 1987 No 70

[1] Section 25 Death of worker leaving dependants

Insert after section 25(1)—

- (1A) If the lump sum death benefit is paid to the NSW Trustee for the benefit of a dependant in accordance with section 85 after the commencement of this subsection, the employer must, subject to the regulations, pay as additional compensation fees of a kind prescribed by the regulations concerning investing or otherwise managing the sum for the dependant's benefit.

[2] Section 53

Omit the section. Insert instead—

53 Weekly payments—residence outside the Commonwealth

- (1) A worker receiving, or entitled to receive, a weekly payment of compensation who ceases to reside in Australia continues to be entitled to receive the weekly payment if the Commission or insurer has determined the worker's incapacity for work resulting from the injury is likely to be of a permanent nature.
- (2) The weekly payment of compensation is payable—
- (a) at the employer's usual times of payment of wages to the worker, or
- (b) at other intervals as are agreed between the employer and the worker or between the insurer and the worker.
- (3) The worker's entitlement to the weekly payments continues so long as the worker establishes, in the way and at the intervals as may be required by the Workers Compensation Guidelines, the worker's identity and the continuance of the incapacity for which the weekly payment is payable.

[3] Schedule 6 Savings, transitional and other provisions

Insert after Part 19M, clause 2(2)—

- (3) To avoid doubt, the provisions of the 1998 Act, Schedule 5, clause 5A continue to apply in relation to a retired or former President to whom they applied despite the repeal of the clause by the *Personal Injury Commission Act 2020*.
- (4) In this clause—
President means a President of the former Workers Compensation Commission.

[4] Schedule 6

Insert before Part 20, with appropriate Part numbering—

Part Provisions consequent on enactment of Motor Accidents and Workers Compensation Legislation Amendment Act 2022

1 Definitions

In this Part—

amending Act means the *Motor Accidents and Workers Compensation Legislation Amendment Act 2022*.

substitution day, in relation to section 53, means the day on which the section is substituted by the amending Act.

2 Application of amendments

Section 53 of this Act, as substituted by the amending Act, extends on and from the substitution day to a worker who ceased to be a resident of Australia before the substitution day if the worker had an entitlement to weekly payments under section 53 as in force immediately before the substitution day.

2.2 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83

[1] Section 10 Compensation payable for injury or death

Omit section 10(a). Insert instead—

- (a) where death results from the injury—the compensation payments prescribed by the Principal Act, sections 25(1)(a) and (b) and (1A), 26 and 28,

[2] Sections 10(d) and 26(d)

Omit “the Table to” wherever occurring.

[3] Sections 14A and 14B

Insert after section 14—

14A Returning to work with new employer

- (1) This section applies to a fire fighter who—
 - (a) as a result of an injury received by the fire fighter, is not able to return to work with the fire fighter’s pre-injury employer, and
 - (b) accepts an offer of employment with a new employer.
- (2) Compensation is payable, subject to and in accordance with the regulations, to a fire fighter to whom this section applies for the cost of work assistance provided to assist the fire fighter to return to work with a new employer.
- (3) The maximum amount of compensation payable under this section for the injury concerned is \$1,000.
- (4) Without limiting subsection (2), the regulations may make provision for or concerning the following—
 - (a) limiting the classes of work assistance for which compensation is payable under this section,
 - (b) otherwise limiting the circumstances in which compensation is payable for the cost of work assistance under this section.

(5) In this section—

group means a group constituted under the Principal Act, Part 7, Division 2B, but does not include a member of the group in relation to whom a determination under the Principal Act, section 175E is in force.

new employer, in relation to a fire fighter, means an employer other than—

- (a) the pre-injury employer of the fire fighter, or
- (b) an employer who is a member of the same group as the pre-injury employer of the fire fighter.

pre-injury employer, in relation to a fire fighter, means the employer of the fire fighter immediately before the fire fighter suffered the injury.

work assistance means the provision of education or training, transport, child care, clothing, equipment or other similar service or assistance.

14B Compensation for education and training assistance

(1) This section applies to a fire fighter if—

- (a) the injury received by the fire fighter has resulted in a degree of permanent impairment assessed for the purposes of the Principal Act, Part 3, Division 4 to be more than 20%, and
- (b) a weekly payment of compensation has been paid or is payable to the fire fighter under this Part for the injury for an aggregate period of more than 78 weeks.

(2) Compensation is payable, subject to and in accordance with the regulations, to a fire fighter to whom this section applies for the cost of education or training provided to assist the fire fighter to return to work.

(3) The maximum amount of compensation payable under this section for the injury concerned is \$8,000.

(4) Without limiting subsection (2), the regulations may make provision for or concerning the following—

- (a) limiting the classes of education or training for which compensation is payable under this section,
- (b) otherwise limiting the circumstances for which compensation is payable under this section.

[4] Section 15 Making of claims

Insert after section 15(2)—

(3) This section is subject to Part 3A.

[5] Sections 16(3) and 30(3)

Omit the subsections.

[6] Section 26 Compensation payable for injury or death

Omit section 26(a). Insert instead—

- (a) where death results from the injury—the compensation payments prescribed by the Principal Act, sections 25(1)(a) and (b) and (1A), 26 and 28,

[7] Sections 28C and 28D

Insert after section 28B—

28C Returning to work with new employer

- (1) This section applies to an emergency service worker or a rescue association worker who—
 - (a) as a result of an injury received by the worker, is not able to return to work with the worker's pre-injury employer, and
 - (b) accepts an offer of employment with a new employer.
- (2) Compensation is payable, subject to and in accordance with the regulations, to an emergency service worker or a rescue association worker to whom this section applies for the cost of work assistance provided to assist the worker to return to work with a new employer.
- (3) The maximum amount of compensation payable under this section for the injury concerned is \$1,000.
- (4) Without limiting subsection (2), the regulations may make provision for or concerning the following—
 - (a) limiting the classes of work assistance for which compensation is payable under this section,
 - (b) otherwise limiting the circumstances in which compensation is payable for the cost of work assistance under this section.

- (5) In this section—

group means a group constituted under the Principal Act, Part 7, Division 2B, but does not include a member of the group in relation to whom a determination under the Principal Act, section 175E is in force.

new employer, in relation to an emergency service worker or a rescue association worker, means an employer other than—

- (a) the pre-injury employer of the worker, or
- (b) an employer who is a member of the same group as the pre-injury employer of the worker.

pre-injury employer, in relation to an emergency service worker or a rescue association worker, means the employer of the worker immediately before the worker suffered the injury.

work assistance means the provision of education or training, transport, child care, clothing, equipment or other similar service or assistance.

28D Compensation for education and training assistance

- (1) This section applies to an emergency service worker or a rescue association worker if—
 - (a) the injury received by the worker has resulted in a degree of permanent impairment assessed for the purposes of the Principal Act, Part 3, Division 4 to be more than 20%, and
 - (b) a weekly payment of compensation has been paid or is payable to the worker under this Part for the injury for an aggregate period of more than 78 weeks.
- (2) Compensation is payable, subject to and in accordance with the regulations, to an emergency service worker or a rescue association worker to whom this section applies for the cost of education or training provided to assist the worker to return to work.
- (3) The maximum amount of compensation payable under this section for the injury concerned is \$8,000.

- (4) Without limiting subsection (2), the regulations may make provision for or concerning the following—
- (a) limiting the classes of education or training for which compensation is payable under this section,
 - (b) otherwise limiting the circumstances for which compensation is payable under this section.

[8] Section 29 Making of claims

Insert after section 29(2)—

- (3) This section is subject to Part 3A.

[9] Part 3A

Insert after Part 3—

Part 3A Provisional payment of certain claims

31A Definitions

In this Part—

eligible volunteer means each of the following—

- (a) a fire fighter within the meaning of Part 2,
- (b) an emergency service worker within the meaning of Part 3,
- (c) a rescue association worker within the meaning of Part 3.

relevant injury, in relation to an eligible volunteer, means—

- (a) for a fire fighter within the meaning of Part 2—an injury to which Part 2 applies under section 7, or
- (b) for an emergency service worker or a rescue association worker within the meaning of Part 3—an injury to which Part 3 applies under section 24.

31B Claims for weekly payments of compensation

- (1) The Self Insurance Corporation may make provisional weekly payments of compensation to a person who has made a claim for weekly payments of compensation (the *substantive claim*) if satisfied it is likely—
 - (a) the person is an eligible volunteer, and
 - (b) the person has received a relevant injury.
- (2) The payment of provisional weekly payments of compensation under this section is on the basis of the provisional acceptance of liability by the Self Insurance Corporation for a period of up to 12 weeks determined by the Corporation having regard to the nature of the injury and the period of incapacity.
- (3) The acceptance of liability on a provisional basis does not constitute an admission of liability by the Self Insurance Corporation under this Act or independently of this Act.
- (4) The Self Insurance Corporation is to cease to make provisional weekly payments of compensation when it determines the substantive claim.

31C Claims for medical expenses compensation

- (1) The Self Insurance Corporation may pay provisional medical expenses compensation to a person who has made a claim for medical expenses compensation (the *substantive claim*) if satisfied it is likely—
 - (a) the person is an eligible volunteer, and
 - (b) the person has received a relevant injury.
- (2) The payment of provisional medical expenses compensation under this section is on the basis of the provisional acceptance of liability by the Self Insurance Corporation for an amount of \$10,000 or another amount prescribed by the regulations.
- (3) The acceptance of liability on a provisional basis does not constitute an admission of liability by the Self Insurance Corporation under this Act or independently of this Act.
- (4) The Self Insurance Corporation is to cease to pay provisional medical expenses compensation when it determines the substantive claim.

[10] Section 32 Application of Principal Act and 1998 Act

Omit “(except sections 26–28)” from section 32(1)(b).

[11] Section 34 Regulations

Insert after section 34(2)—

- (3) The regulations may apply, adopt or incorporate a publication, whether with or without modifications, as in force at a particular time or as in force from time to time.

[12] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

**Part Motor Accidents and Workers Compensation
Legislation Amendment Act 2022**

Definition

In this Part—

amending Act means the *Motor Accidents and Workers Compensation Legislation Amendment Act 2022*.

Application of amendments

- (1) Sections 10(a) and 26(a), as substituted by the amending Act, extend to a death occurring on or after 1 October 2019 as a result of an injury received on or after that day.
- (2) Sections 14A and 14B, as inserted by the amending Act, extend to a fire fighter for an injury received on or after the day those sections commence.
- (3) Sections 28C and 28D, as inserted by the amending Act, extend to an emergency service worker or a rescue association worker for an injury received on or after the day those sections commence.
- (4) Part 3A, along with sections 15(3) and 29(3), extend to an eligible volunteer within the meaning of Part 3A for an injury received on or after the day Part 3A commences.

Schedule 3 Amendments concerning service providers

3.1 Civil and Administrative Tribunal Act 2013 No 2

Schedule 5 Occupational Division

Insert in appropriate order in clause 4(2)—

State Insurance and Care Governance Act 2015

Workplace Injury Management and Workers Compensation Act 1998

3.2 Motor Accident Injuries Act 2017 No 10

[1] Section 9.7A

Insert after section 9.7—

9.7A Condition of licence not to engage excluded service providers

(1) It is a condition of an insurer's licence under this Act that the insurer will not do the following to the extent it would be inconsistent with an exclusion direction—

- (a) engage the excluded service provider to provide an excluded service,
- (b) approve the provision of an excluded service by an excluded service provider,
- (c) pay the excluded service provider for the provision of an excluded service.

(2) In this section—

excluded service, in relation to an excluded service provider, means a service for which the provider has been given an exclusion direction.

excluded service provider means the person, organisation or body given an exclusion direction.

exclusion direction means a direction in force under the *State Insurance and Care Governance Act 2015*, section 26D directing a relevant service provider under that Act, Part 3, Division 3 not to provide a service.

[2] Section 10.12 Motor Accidents Operational Fund (the SIRA Fund)

Insert after section 10.12(3)(h)—

- (h1) fees the Authority is required to pay to the Civil and Administrative Tribunal for applications made under the *State Insurance and Care Governance Act 2015*, section 26F in connection with the provision of relevant services for the purposes of this Act,

3.3 State Insurance and Care Governance Act 2015 No 19

[1] Part 3, Division 3

Insert after Division 2—

Division 3 Functions concerning certain service providers

26A Definitions

In this Division—

data means facts, statistics, instructions, concepts or other information in a form capable of being communicated, analysed or processed, whether by an individual or by a computer or other automated means.

relevant service means a service prescribed by the regulations provided in connection with a claim under the workers compensation and motor accidents legislation.

relevant service provider means a person, organisation or body providing a relevant service, but does not include a person, organisation or body, or class of persons or bodies, prescribed by the regulations.

26B Relationship of Division with other law

- (1) The provisions of this Division apply despite anything to the contrary in another Act or law.
- (2) Without limiting subsection (1), a relevant service provider is authorised and required to comply with a direction given under this Division despite anything to the contrary in the other Act or law.

26C Direction to provide data to SIRA

- (1) SIRA may give a written direction to a relevant service provider requiring the provider to provide SIRA with specified data within a specified period concerning relevant services the provider provides.
- (2) A relevant service provider must comply with a direction given to the provider under this section.
Maximum penalty—
 - (a) for a corporation—500 penalty units, or
 - (b) for another person—100 penalty units.
- (3) This section applies in relation to data that is personal information or health information about an individual despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

26D Directions concerning relevant services by relevant service providers

- (1) SIRA may give 1 or more of the following written directions to a relevant service provider—
 - (a) a direction requiring the provider to take specified action, or provide specified information, concerning specified relevant services,
 - (b) a direction requiring the provider to provide specified relevant services for the purposes of the workers compensation and motor accidents legislation in a specified way,
 - (c) a direction requiring the provider not to provide specified relevant services for the purposes of the workers compensation and motor accidents legislation,
 - (d) a direction requiring the provider not to provide any relevant services for the purposes of the workers compensation and motor accidents legislation.
- (2) Without limiting subsection (1), a direction under this section may extend to all of the workers compensation and motor accidents legislation or be limited to specified Acts or instruments, or specified provisions of Acts or instruments, forming part of the legislation.

- (3) A relevant service provider must comply with a direction given to the provider under this section.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
(b) for another person—100 penalty units.

- (4) The regulations may make provision for or concerning the following—

- (a) the giving and form of directions under this section,
(b) the circumstances in which directions may be given under this section,
(c) the periods during which directions under this section have effect, including providing for directions of indefinite duration,
(d) standard provisions for directions under this section, including enabling standard provisions to be incorporated in directions by reference rather than set out in the directions,
(e) the revocation and variation of directions given under this section,
(f) appeal or review procedures for directions given under subsection (1)(a) or (b).

Note— Section 26F allows a relevant service provider to apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a direction under subsection (1)(c) or (d).

26E Guidelines for provision of relevant services by relevant service providers

- (1) SIRA may issue guidelines concerning the provision of relevant services by relevant service providers.
- (2) Without limiting subsection (1)—
- (a) the guidelines may extend to all of the workers compensation and motor accidents legislation or be limited to specified Acts or instruments, or specified provisions of Acts or instruments, forming part of the legislation, and
- (b) the provisions of the *Interpretation Act 1987*, section 42(2) apply to the guidelines in the same way as they apply to statutory rules.
- (3) SIRA may, wholly or partly, amend, revoke or replace the guidelines.
- (4) The guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (5) Unless the guidelines provide otherwise, the guidelines prevail to the extent of an inconsistency between them and guidelines made under the workers compensation and motor accidents legislation.

26F Review of directions by NCAT

A relevant service provider given a direction under section 26D(1)(c) or (d) may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the direction.

26G Register of directed service providers

- (1) SIRA may keep a register of relevant service providers given directions under section 26D.
- (2) The regulations may make provision for or concerning the following—
- (a) the form of the register,

- (b) information to be recorded on the register,
 - (c) the updating or removal of information on the register,
 - (d) the provision of access to, or the publication of information contained on, the register.
- (3) SIRA, or a person acting under the direction of SIRA, does not incur liability for anything done, or omitted to be done, in good faith in connection with keeping the register or publishing information contained on the register.
- (4) Without limiting subsection (3), a person does not incur liability for publishing in good faith—
- (a) information contained on the register, or
 - (b) a fair report or summary of information contained on the register.
- (5) In this section—
liability includes liability for defamation.

[2] Sections 29A and 29B

Insert after section 29—

29A Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

29B Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note— The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This section does not limit the operation of other provisions of, or made under, this Act or another Act relating to proceedings that may be taken for offences.
- (6) In this section—
authorised officer means a person, or a person belonging to a class of persons, prescribed by the regulations to be an authorised officer.

[3] Section 30 Regulations

Insert at the end of the section—

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

3.4 Workers Compensation Act 1987 No 70

Section 182A

Insert after section 182—

182A Condition of licence not to engage excluded service providers

- (1) It is a condition of a licence granted under this Division that the licensed insurer will not do the following to the extent it would be inconsistent with an exclusion direction—
 - (a) engage the excluded service provider to provide an excluded service,
 - (b) approve the provision of an excluded service by an excluded service provider,
 - (c) pay the excluded service provider for the provision of an excluded service.

- (2) Despite section 154B(1), the Nominal Insurer must comply with the requirements of the condition mentioned in subsection (1).

- (3) In this section—

excluded service, in relation to an excluded service provider, means a service for which the provider has been given an exclusion direction.

excluded service provider means the person, organisation or body given an exclusion direction.

exclusion direction means a direction in force under the *State Insurance and Care Governance Act 2015*, section 26D directing a relevant service provider under that Act, Part 3, Division 3 not to provide a service.

3.5 Workplace Injury Management and Workers Compensation Act 1998 No 86

Section 35 Payments into and from Fund

Insert after section 35(2)(f)—

- (f1) fees the Authority is required to pay to the Civil and Administrative Tribunal for applications made under the *State Insurance and Care Governance Act 2015*, section 26F in connection with the provision of relevant services for the purposes of this Act,

Schedule 4 Amendments concerning establishment of Personal Injury Commission

4.1 Civil Liability Act 2002 No 22

Section 26D Assessment of permanent impairment

Omit “an approved medical specialist” wherever occurring in section 26D(3) and (4).

Insert instead “a medical assessor”.

4.2 Personal Injury Commission Act 2020 No 18

[1] Schedule 2 Provisions relating to members of Commission

Omit “clause 6” from clause 14(3). Insert instead “clauses 6 and 14A”.

[2] Schedule 2, clause 14A

Insert after clause 14—

14A Appointment of holder of judicial office as President

- (1) This clause applies to a retired or deceased President who, while holding the office, was a Judge of a court of record other than the Supreme Court.
- (2) The *Judges’ Pensions Act 1953* applies to the retired or deceased President as if the judicial office held by the person while President was equivalent to the office of Judge of the Supreme Court.
- (3) In the application of the *Judges’ Pensions Act 1953* to the retired or deceased President—
 - (a) service by the person as President is taken to be service as a Judge of the Supreme Court, and
 - (b) references to a Judge or judicial office include references to the person in the person’s capacity as President and the office of President, and
 - (c) references in the Act to notional judicial salary are, in relation to the person while President, references to the salary payable to a Supreme Court Judge.
- (4) This clause—
 - (a) extends to a Judge of a court of record appointed as President who died or retired from the office of President before the commencement of this clause, and
 - (b) is taken to have had effect on and from the establishment day.

4.3 Sporting Injuries Insurance Act 1978 No 141

Section 6 Appointment of referees and medical panels

Omit “An approved medical specialist” and “an approved medical specialist” from section 6(1).

Insert instead “A medical assessor” and “a medical assessor”, respectively.

[Second reading speech made in—
Legislative Assembly on 9 June 2021
Legislative Council on 19 May 2022]