



New South Wales

Personal Injury Commission Regulation 2020

under the

Personal Injury Commission Act 2020

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Personal Injury Commission Act 2020*.

VICTOR DOMINELLO, MP
Minister for Customer Service

Explanatory note

The object of this Regulation is to provide for the following—

- (a) the procedure and criteria for the appointment of medical assessors, merit reviewers and mediators,
- (b) modifications to the fees and costs applicable under the *Motor Accident Injuries Act 2017* and *Motor Accidents Compensation Act 1999*, and the regulations made under those Acts, to proceedings for the determination of applications concerning certain compensation claims made to the District Court,
- (c) extending the definition of **relevant Commission officer** to include a member of staff of the Personal Injury Commission of New South Wales who exercises certain functions of the Commission at the direction of the President of the Commission,
- (d) savings and transitional provisions, including in relation to certain existing and pending proceedings and the review of those proceedings.

This Regulation is made under the *Personal Injury Commission Act 2020*, including sections 5(1) (paragraph (e) of the definition of **relevant Commission officer**), 28(1)(e), 29, 33(1), 39(1) and 65 (the general regulation-making power) and Schedule 1, clause 1.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Personal Injury Commission Regulation 2020*.

2 Commencement

This Regulation commences on the establishment day and is required to be published on the NSW legislation website.

3 Definition

In this Regulation—

the Act means the *Personal Injury Commission Act 2020*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

Part 2 Medical assessors, merit reviewers and mediators

4 Definition

In this Part—

decision-maker has the same meaning as in Division 4.1 of the Act.

5 Appointment of decision-makers and mediators

- (1) For the purposes of sections 33(1) and 39(1) of the Act, the President may, by written instrument given to a person, appoint the person as a decision-maker or mediator.
- (2) The instrument of appointment must include the following information—
 - (a) the term for which the person has been appointed,
 - (b) the type of appointment, including whether the person is appointed on a full-time basis or some other basis,
 - (c) for the appointment of a person as a medical assessor, whether the person is appointed for the purposes of—
 - (i) the *Workplace Injury Management and Workers Compensation Act 1998*, or
 - (ii) the *Motor Accident Injuries Act 2017*, or
 - (iii) the *Motor Accidents Compensation Act 1999*, or
 - (iv) any combination of the Acts referred to in subparagraphs (i)–(iii),
 - (d) for the appointment of a person as a medical assessor, whether the person is appointed as a senior medical assessor,
 - (e) the restrictions of the appointment, if any.
- (3) A decision-maker holds office for the period specified by the President in the instrument of appointment of the decision-maker, unless sooner removed from office.

Note— Section 39(4) of the Act provides for the period in which a mediator may hold office.

6 Criteria for appointment of medical assessors

For the purposes of section 65(2)(a) of the Act, a person is eligible for appointment as a medical assessor if the person is—

- (a) a registered health practitioner or a medical practitioner within the meaning of the *Health Practitioner Regulation National Law (NSW)*, but only if the practitioner does not have a condition imposed against the practitioner's registration as a result of disciplinary proceedings under that Law, and
- (b) a member of an Australian or Australasian medical college, faculty or other Australian or Australasian health profession body, and
- (c) in the opinion of the President, suitably qualified and has the necessary skills and expertise to exercise the functions of a medical assessor in relation to the Act or the enabling legislation.

7 Criteria for appointment of mediators

For the purposes of sections 65(2)(a) of the Act, a person is eligible for appointment as a mediator if, in addition to the requirements referred to in section 39(2)(a) of the Act, the person is an accredited mediator under the National Mediator Accreditation System.

Note— Section 39 of the Act sets out other requirements for the appointment of persons as mediators, including the circumstances in which a person is qualified to be appointed as a mediator.

Part 3 Federal proceedings

Division 1 Preliminary

8 Interpretation

- (1) Words and expressions used in this Part have the same meaning as in Division 3.2 of the Act.
- (2) To avoid doubt, this Part does not limit the application of the enabling legislation to substituted proceedings unless otherwise modified by this Part.

Division 2 Modifications in connection with substituted proceedings

9 Application of Division

For the purposes of sections 28(1)(e) and 29 of the Act, this Division sets out the fees and costs payable and other modifications in connection with substituted proceedings.

Note— The enabling legislation, including regulations made under the enabling legislation, further provides for fees and costs in connection with substituted proceedings.

10 Modification of certain pre-conditions before commencement of proceedings

Section 108 of the *Motor Accidents Compensation Act 1999* and section 6.31 of the *Motor Accident Injuries Act 2017* do not apply to compensation matter applications or substituted proceedings.

11 Costs payable in relation to claims for statutory benefits

- (1) Part 8 of the *Motor Accident Injuries Act 2017*, including regulations made under that Part, applies to substituted proceedings involving a claim for statutory benefits to which the *Motor Accident Injuries Act 2017* applies, except as otherwise modified by this clause.

Note— Part 8 of the *Motor Accident Injuries Act 2017*, among other things, provides that an insurer is not entitled to recover from a claimant for statutory benefits any costs of the insurer in relation to the claim.

- (2) The maximum costs set out in Schedule 1 of the *Motor Accident Injuries Regulation 2017* do not apply in relation to substituted proceedings to which this clause applies.
- (3) Despite section 8.3(4) of the *Motor Accident Injuries Act 2017*, an Australian legal practitioner is entitled to be paid or recover legal costs for legal services provided to a claimant in connection with claim for statutory benefits only if—
 - (a) the costs are payable on a party and party basis, and
 - (b) the District Court orders payment of the costs.

12 Costs payable in relation to motor accidents claims for damages

- (1) Part 8 of the *Motor Accident Injuries Act 2017*, including regulations made under that Part, applies to substituted proceedings involving a claim for damages to which the *Motor Accident Injuries Act 2017* applies, except as otherwise modified by this clause.
- (2) The maximum costs set out in Schedule 1 of the *Motor Accident Injuries Regulation 2017* do not apply in relation to substituted proceedings to which this clause applies.

13 Costs payable in relation to claims for other motor accidents claims for damages

- (1) Chapter 6 of the *Motor Accidents Compensation Act 1999*, including regulations made under that Chapter, applies to substituted proceedings involving a claim for damages to which that Act applies, except as otherwise modified by this clause.
- (2) The maximum costs set out in Schedule 1 of the *Motor Accidents Compensation Regulation 2020* do not apply in relation to substituted proceedings to which this clause applies.

Part 4 Miscellaneous

14 Definition of “relevant Commission officer”

For the purposes of paragraph (e) of the definition of *relevant Commission officer* in section 5(1) of the Act, a member of staff of the Commission who, at the direction of the President, exercises a function of the Commission under Schedule 3, clause 9 of the Act is prescribed.

15 Repeal of Schedule

Schedule 1 to this Regulation is repealed on the day after the establishment day.

Schedule 1 Amendment of Personal Injury Commission Act 2020 No 18

[1] Schedule 1 Savings, transitional and other provisions

Insert after Part 2, Division 4—

Division 4A Completion of existing proceedings

Subdivision 1 Introduction

14A Interpretation

(1) In this Division—

commence, in relation to proceedings, includes lodge or file an application or a document seeking the exercise of a function.

decision includes a purported decision or a refusal or failure to make a decision.

new decision-maker, in relation to proceedings or an unexercised right, means the person, court or other body given the function, on and from the establishment day, of dealing with the proceedings or the exercise of the right instead of the original decision-maker because of amendments made to the motor accidents legislation or workers compensation legislation.

Example— Schedule 6 makes amendments to confer or impose functions of the WCC under the workers compensation legislation on the Commission.

original decision-maker, in relation to proceedings or an unexercised right, means the person, court or other body having the function of dealing with the proceedings or the exercise of the right immediately before the establishment day.

part heard proceedings means pending proceedings that had begun to be heard or considered, but were not determined, before the establishment day.

pending proceedings means proceedings that—

- (a) were commenced before the establishment day, and
- (b) had not been finally determined before that day.

Note— See subclause (2) for the meaning of finally determined proceedings.

pre-establishment proceedings means—

- (a) proceedings that, before the establishment day, were required or permitted under the motor accidents legislation to be dealt with by—
 - (i) the DRS, MAS or CARS, or
 - (ii) the proper officer of the Authority designated under the *Motor Accident Injuries Act 2017* or the *Motor Accidents Compensation Act 1999*, or
 - (iii) a Principal Claims Assessor appointed under the *Motor Accident Injuries Act 2017* or the *Motor Accidents Compensation Act 1999*, or both, or
 - (iv) a claims assessor appointed under the *Motor Accident Injuries Act 2017* or the *Motor Accidents Compensation Act 1999*, or both, or
 - (v) a merit reviewer appointed under the *Motor Accident Injuries Act 2017*, or

- (vi) a medical assessor appointed under the *Motor Accident Injuries Act 2017* or the *Motor Accidents Compensation Act 1999*, or both, or
- (vii) a review panel for a medical assessment constituted under the *Motor Accident Injuries Act 2017* or the *Motor Accidents Compensation Act 1999*, or
- (viii) a review panel for a merit review constituted under the *Motor Accident Injuries Act 2017*, or
- (ix) a panel constituted to determine a dispute under Part 3, Division 2 of the *Motor Accidents (Lifetime Care and Support) Act 2006*, or
- (b) proceedings that, before the establishment day, were required or permitted under the workers compensation legislation to be dealt with by—
 - (i) the WCC or a member of the WCC, or
 - (ii) the Registrar of the WCC or a delegate of the Registrar, or
 - (iii) an approved medical specialist appointed under Chapter 7, Part 7 of the *Workplace Injury Management and Workers Compensation Act 1998*, including a senior approved medical specialist, or
 - (iv) an Appeal Panel for a medical assessment constituted under *Workplace Injury Management and Workers Compensation Act 1998*, or
 - (v) a mediator appointed under section 318F of the *Workplace Injury Management and Workers Compensation Act 1998*.

pre-establishment referral proceedings means pre-establishment proceedings to determine whether a matter should be referred to another decision-maker to determine.

proceedings includes an application for, or an appeal against, the exercise of a function.

unexercised right means a right, including a right exercisable only with leave or other permission, that—

- (a) was available to be exercised immediately before the establishment day, and
- (b) had not yet been exercised before that day.

unheard proceedings means pending proceedings that had not been heard or considered before the establishment day.

- (2) For the purposes of this Division, proceedings are not finally determined if—
 - (a) any period for bringing an appeal as of right in respect of the proceedings has not expired, ignoring any period that may be available by way of extension of time to appeal, or
 - (b) any appeal in respect of the proceedings is pending, whether or not it is an appeal brought as of right.

Subdivision 2 Pending proceedings

14B Pending non-court pre-establishment proceedings

- (1) This clause applies in relation to pre-establishment proceedings if they are pending proceedings before an original decision-maker other than a court.

- (2) Unheard proceedings are taken on and from the establishment day—
 - (a) to have been commenced for determination by the new decision-maker, and
 - (b) may be determined by the new decision-maker instead of the original decision-maker.
- (3) For part heard proceedings, the person or persons who started hearing or considering the proceedings—
 - (a) is or are to continue, on and from the establishment day, to hear or consider the proceedings, and to determine the proceedings, in the capacity of the new decision-maker, and
 - (b) is or are taken for the purposes of completing the proceedings to have been duly appointed as the new decision-maker, or as a member of the Commission if it is the new decision-maker, even if they have not been appointed by or under another provision of this Act, and
 - (c) may have regard to any record of the proceedings before the original decision-maker, including a record of any evidence taken in the proceedings before the original decision-maker.
- (4) The following provisions apply to the completion of proceedings under this clause—
 - (a) the person or persons completing the proceedings has and may exercise all the functions that the original decision-maker had immediately before the establishment day,
 - (b) for pre-establishment referral proceedings—
 - (i) the person or persons completing the referral proceedings may refer the matter for determination by the new decision-maker for the referred matter instead of the original decision-maker for the referred matter, and
 - (ii) the new decision-maker to which the matter is referred has and may exercise all the functions that the original decision-maker for the referred matter had to determine the matter immediately before the establishment day,
 - (c) the provisions of any Act, statutory rule or other law that would have applied to or in respect of the determination of the proceedings had this Act not been enacted continue to apply,
 - (d) despite paragraph (c), Division 3.2 of this Act applies to the proceedings, including section 30, but only if—
 - (i) the proceedings concern a compensation claim within the meaning of Division 3.2, and
 - (ii) a person with standing to whom section 26(1) applies makes an application to the District Court in accordance with that section.
- (5) To avoid doubt, if the District Court remits a matter to which subclause (4)(d) applies to the new decision-maker under section 26, the modifications made by this clause to proceedings, other than subclause (4)(d), continue to apply to the determination of the proceedings.

14C Pending court proceedings

- (1) This clause applies in relation to pending proceedings before a court—
 - (a) on an appeal against, or for the judicial or other review of, a decision of an original decision-maker in pre-establishment proceedings, or

- (b) on a claim for work injury damages, or
 - (c) on a claim for damages in respect of a motor accident to which the motor accidents legislation applies.
- (2) The court may, on and from the establishment day, continue to deal with the proceedings until they are completed.
- (3) The following provisions apply to the completion of proceedings under this clause—
- (a) the court continues to have and may exercise all the functions that the court had in relation to the proceedings immediately before the establishment day,
 - (b) the provisions of any Act, statutory rule or other law that would have applied to or in respect of the proceedings had this Act not been enacted continue to apply.
- (4) Without limiting subclause (3), if the original powers of the court included the power to remit the proceedings to be heard and decided again by the original decision-maker, the court may, in determining the proceedings—
- (a) remit the proceedings instead to the new decision-maker, and
 - (b) make any other orders it considers appropriate to facilitate the remitting of the proceedings to the new decision-maker.
- (5) If the court remits the proceedings to the new decision-maker under subclause (4)—
- (a) the provisions of any Act, statutory rule or other law that would have applied to or in respect of the determination of the proceedings had this Act not been enacted continue to apply, and
 - (b) despite paragraph (a), Division 3.2 of this Act applies to the proceedings, including section 30, but only if—
 - (i) the proceedings concern a compensation claim within the meaning of Division 3.2, and
 - (ii) a person with standing to whom section 26(1) applies makes an application to the District Court in accordance with that section.
- (6) To avoid doubt, if the District Court remits a matter to which subclause (5)(b) applies to the new decision-maker under section 26, the modifications made by subclause (5)(a) continue to apply in relation to the determination of the proceedings.

Subdivision 3 Unexercised rights concerning proceedings

14D Unexercised rights to commence non-court proceedings

- (1) This clause applies in relation to an unexercised right to commence pre-establishment proceedings before an original decision-maker other than a court.
- (2) A person who has the unexercised right to commence proceedings may commence the proceedings with the new decision-maker for the exercise of the same functions that could have been exercised by the original decision-maker to which the right relates.
- (3) The following provisions apply to the commencement of proceedings under this clause—

- (a) the new decision-maker has and may exercise all the functions that the original decision-maker would have had in relation to the proceedings if they had been commenced before the establishment day, including any functions relating to the granting of leave or other permission to commence proceedings,
- (b) the provisions of any Act, statutory rule or other law, including provisions concerning the time within which to commence the proceedings, that would have applied to or in respect of the determination of the proceedings had this Act not been enacted continue to apply,
- (c) despite paragraph (b), Division 3.2 of this Act applies to the proceedings, including section 30, but only if—
 - (i) the proceedings concern a compensation claim within the meaning of Division 3.2, and
 - (ii) a person with standing to whom section 26(1) applies makes an application to the District Court in accordance with that section.
- (4) To avoid doubt, if the District Court remits a matter to which subclause (3)(c) applies to the new decision-maker under section 26, the modifications made by this clause to proceedings, other than subclause (3)(c), continue to apply in relation to the determination of the proceedings.

14E Unexercised rights to commence court proceedings

- (1) This clause applies in relation to an unexercised right to commence proceedings before a court—
 - (a) as an appeal against, or for the judicial or other review of, a decision of an original decision-maker in pre-establishment proceedings, or
 - (b) on a claim for work injury damages, or
 - (c) on a claim for damages in respect of a motor accident to which the motor accidents legislation applies.
- (2) A person who has the existing unexercised right to commence proceedings may commence the proceedings to which that right relates in—
 - (a) for an appeal—the court to which the appeal could have been made immediately before the establishment day, or
 - (b) for an application for judicial or other review—the court to which the application for the review could have been made immediately before the establishment day, or
 - (c) for a claim for damages—a court in which proceedings for the claim could have been commenced immediately before the establishment day.
- (3) The following provisions apply to the commencement of proceedings under this clause—
 - (a) the court has and may exercise all the functions that the court would have had in relation to the proceedings if they had been commenced before the establishment day, including any functions relating to the granting of leave or other permission to commence proceedings,
 - (b) the provisions of any Act, statutory rule or other law, including provisions concerning the time within which to commence the proceedings, that would have applied to or in respect of the determination of the appeal, application or claim had this Act not been enacted continue to apply.

- (4) Without limiting subclause (3), if the original powers of a court would have included the power to remit the proceedings to be heard and decided again by the original decision-maker, the court may in determining proceedings under this clause—
 - (a) remit the proceedings instead to the new decision-maker, and
 - (b) make any other orders it considers appropriate to facilitate the remitting of the proceedings to the new decision-maker.

Subdivision 4 Review of completed pre-establishment proceedings

14F New law to apply to certain matters

- (1) This clause applies to the following proceedings (*completed pre-establishment proceedings*)—
 - (a) pending proceedings completed under Subdivision 2,
 - (b) proceedings commenced and completed under Subdivision 3.
- (2) The new review provisions, if any, apply in relation to a decision of a new decision-maker in completed pre-establishment proceedings instead of the old legislation.
- (3) The *new review provisions* are the provisions of the new legislation applicable to appeals against or reviews of decisions of new decision-makers that correspond, or substantially correspond, to provisions of the old legislation for decisions of the same kind.
- (4) Without limiting subclause (2)—
 - (a) section 7.24 of the *Motor Accident Injuries Act 2017*, as in force on or after the establishment day, extends to a medical assessment completed before the establishment day or under Subdivision 2 or 3, and
 - (b) section 62 of the *Motor Accidents Compensation Act 1999*, as in force on or after the establishment day, extends to a medical assessment completed before the establishment day or under Subdivision 2 or 3.
- (5) In this clause—

new legislation means this Act and statutory rules under this Act, the motor accidents legislation and the workers compensation legislation, as in force on or after the establishment day.

old legislation means the motor accidents legislation and workers compensation legislation, as in force immediately before the establishment day.

Subdivision 5 Allocation of transitional proceedings and enforcement of existing orders

14G Allocation of transitional pre-establishment proceedings to Commission Divisions

- (1) This clause applies to proceedings (*transitional pre-establishment proceedings*) that are—
 - (a) permitted or required to be determined by the Commission under this Division instead of another person or body, or
 - (b) remitted by a court under this Division to the Commission or a member of the Commission for reconsideration or redetermination.

- (2) The function of determining transitional pre-establishment proceedings is allocated to—
 - (a) if the Commission or a member of the Commission is determining the proceedings instead of the WCC or a member of the WCC—the Workers Compensation Division, or
 - (b) if the Commission or member of the Commission is determining the proceedings instead of a claims assessor under the motor accidents legislation—the Motor Accidents Division.
- (3) If the Commission is to determine transitional pre-establishment proceedings that are not pending proceedings, the President is, where practicable, to constitute the Commission in a manner that is consistent with the constitution requirements that would have been applicable for the kind of proceedings before the establishment day.

Note— For constitution requirements in relation to part heard transitional proceedings, see Subdivision 2.

14H Continuation of existing orders

- (1) An existing order of an original decision-maker made or issued under the motor accidents legislation or workers compensation legislation is taken, on and from the establishment day, to be an order made by the new decision-maker under the corresponding provision, if any, of this Act or the legislation as amended by this Act.
- (2) This clause is subject to the other provisions of this Schedule.
- (3) In this clause—

corresponding provision means a provision corresponding, or substantially corresponding, to the provision of the motor accidents legislation or workers compensation legislation under which the existing order was originally made.

existing order of an original decision-maker is an order made or issued by the decision-maker before the establishment day, and includes an order that would have come into effect on or after the establishment day.

order includes a determination, certificate or assessment.

Division 4B Pending matters before WIRO

14I Pending matters may be completed by Independent Review Officer

- (1) This clause applies in relation to the following if made or begun under Chapter 2, Part 3 of the *Workplace Injury Management and Workers Compensation Act 1998*, but not finalised or resolved, before the establishment day (a **pending WIRO matter**)—
 - (a) an application for legal funding made to the WIRO,
 - (b) a complaint about an insurer made to the WIRO,
 - (c) an inquiry by the WIRO.
- (2) A pending WIRO matter may be completed, on and from the establishment day, by the Independent Review Officer instead of the WIRO.
- (3) The provisions of Schedule 5, along with the provisions of regulations or guidelines made under or for the purposes of Schedule 5, apply instead of the old WIRO provisions in relation to the completion of a pending WIRO matter under this clause in the same way as they apply to a matter of the same kind commenced or initiated on or after the establishment day.

- (4) In this clause—

old WIRO provisions means the provisions of Chapter 2, Part 3 of the *Workplace Injury Management and Workers Compensation Act 1998*, along with the provisions of regulations or guidelines made under or for the purposes of the Part, as in force immediately before the establishment day.

WIRO means the Workers Compensation Independent Review Officer under the *Workplace Injury Management and Workers Compensation Act 1998*.

[2] Schedule 1, clause 17

Insert after clause 16—

17 General savings

- (1) This clause applies to a matter (an **existing matter**)—
- (a) that was done, initiated or commenced under the relevant legislation in relation to an abolished decision-maker before the establishment day, and
 - (b) still had effect, or was not completed, immediately before the establishment day.
- (2) If an existing matter could have been done, initiated or commenced under this Act or the relevant legislation as amended by this Act had this Act or the amendments to the legislation been in force at the time it was done, initiated or commenced, then—
- (a) the thing done continues to have effect, or
 - (b) the thing initiated or commenced may be completed as if it had been initiated or commenced under this Act or the legislation as amended by this Act.
- (3) This clause is subject to any express provision of this Act on the matter.
- (4) This clause does not limit the application of section 30 of the *Interpretation Act 1987*.
- (5) In this clause—
- abolished decision-maker** means an office or body abolished by this Part with decision-making functions under the relevant legislation.
- relevant legislation** means the motor accidents legislation or workers compensation legislation.