

PERSONAL INJURY COMMISSION BILL 2020

Schedule of the amendments referred to in the Legislative Council's message of 4 August 2020.

No. 1 **GRNS No. 1 [c2020-095F]**

Page 2, clause 2. Insert after line 7—

(1A) Schedule 4A commences on the establishment day.

No. 2 **GRNS No. 2 [c2020-095F as amended]**

Page 3, clause 5(1). Insert after line 17—

Independent Review Officer means the Independent Review Officer appointed under Schedule 4A.

No. 3 **GOVT No. 1 [c2020-107]**

Page 5, clause 6(3)(a), line 11. Omit "1 December 2020". Insert instead "1 March 2021".

No. 4 **GOVT No. 2 [c2020-107]**

Page 5, clause 6(4), line 15. Omit "1 December 2020". Insert instead "1 March 2021".

No. 5 **GOVT No. 3 [c2020-107]**

Page 5, clause 6(5), line 19. Omit "1 December 2020". Insert instead "1 March 2021".

No. 6 **GRNS No. 3 [c2020-095F]**

Page 5, clause 7(2). Insert after line 29—

(b1) appointment as the Independent Review Officer,

No. 7 **GRNS No. 4 [c2020-095F]**

Page 5, clause 7. Insert after line 32—

(2A) To avoid doubt, the provisions of clauses 2–4 of Schedule 4A apply in relation to the appointment of the Independent Review Officer before the establishment day even though those provisions have not commenced.

No. 8 **OPP No. 5 [c2020-100E]**

Page 6, clause 10(2), line 39. Omit all words on that line. Insert instead—

(b) is an Australian lawyer of 7 years' standing and has, in the opinion of the Minister, special knowledge, skill or expertise in relation to any class of matter in respect of which the Commission has jurisdiction.

No. 9 **OPP No. 6 [c2020-100E]**

Page 7, clause 10(3), lines 2 and 3. Omit all words on those lines. Insert instead—

(b) has, in the opinion of the Minister, special knowledge, skill or expertise in relation to any class of matter in respect of which the Commission has jurisdiction.

No. 10 OPP No. 7 [c2020-100E]

Page 7, clause 10(4), lines 8 and 9. Omit all words on those lines. Insert instead—

- (b) has, in the opinion of the Minister, special knowledge, skill or expertise in relation to any class of matter in respect of which the Commission has jurisdiction.

No. 11 OPP No. 8 [c2020-100E]

Page 8, clause 15(3), lines 22–24. Omit all words on those lines. Insert instead—

- (3) Subject to this Act (including subsections (1) and (2))—
 - (a) a member is assigned to the Commission Division specified in the member's instrument of appointment, and
 - (b) the Minister may vary the assignment of the member at any time by one or more subsequent instruments, and
 - (c) a member (other than the President) may be assigned to one or more Commission Divisions at a time.

No. 12 OPP No. 1 [c2020-099C]

Page 10, clause 19(3)(c), line 16. Omit "2 persons". Insert instead "1 person".

No. 13 OPP No. 1 [c2020-097B as amended]

Page 10, clause 19(3). Insert after line 16—

- (c1) 1 person nominated for the time being by Unions NSW,
- (c2) 1 person jointly nominated for the time being by the following—
 - (i) the Ai Group,
 - (ii) the Australian Federation of Employers and Industries,
 - (iii) the NSW Business Chamber,

No. 14 OPP No. 1 [c2020-098C]

Page 10, clause 19(3)(d) and (e), lines 17–20. Omit all words on those lines. Insert instead—

- (d) 2 barristers nominated for the time being by the Council of the New South Wales Bar Association who, in the opinion of the Council, have special knowledge, skill or expertise in relation to any class of workers compensation claims or motor accidents claims,
- (e) 2 solicitors nominated for the time being by the Council of the Law Society of New South Wales who, in the opinion of the Council, have special knowledge, skill or expertise in relation to any class of workers compensation claims or motor accidents claims,

No. 15 CDP No. 2 [c2020-103A as amended]

Page 10, clause 19(3). Insert after line 20—

- (e1) 1 person jointly nominated by the Presidents for the time being of the following—
 - (i) the Royal Australasian College of Physicians,
 - (ii) the Royal Australasian College of Surgeons,

(iii) the Royal Australian and New Zealand College of Psychiatrists,

No. 16 **OPP No. 2 [c2020-099C]**

Page 10, clause 19(3)(f), lines 21 and 22. Omit all words on those lines.

No. 17 **OPP No. 11 [c2020-100E]**

Page 10, clause 19. Insert after line 45—

(7A) Despite subsections (6) and (7), a Commission rule cannot take effect unless the President consents to the rule being made either by—

- (a) voting for it at the meeting at which it is proposed to be made, or
- (b) giving written consent for its making before or after the meeting.

No. 18 **OPP No. 2 [c2020-098C]**

Page 11, clause 19. Insert after line 3—

(9) In this section—

motor accidents claims means claims for statutory benefits or damages to which the motor accidents legislation applies.

workers compensation claims means claims for compensation or damages to which the workers compensation legislation applies.

No. 19 **OPP No. 12 [c2020-100E]**

Page 11, clause 20(2), lines 18–41. Omit all words on those lines. Insert instead—

- (2) Without limiting subsection (1), the Commission rules may make provision for or with respect to any of the following matters—
 - (a) the way for referring claims or disputes for assessment or determination or for making appeals,
 - (b) the amendment of filed or lodged documents,
 - (c) non-compliance with provisions concerning practice and procedure (including the effect of irregularities on proceedings),
 - (d) the making of assessments and determinations,
 - (e) the way for specifying an amount of damages, statutory benefits or compensation,
 - (f) the parties to proceedings (including the joinder, misjoinder and non-joinder of parties and rights of intervention of third parties such as the Authority in proceedings),
 - (g) the splitting and consolidation of proceedings in the Commission,
 - (h) the documentation to accompany a reference of a claim or dispute for assessment or determination or an appeal,
 - (i) the way for presenting documents and information by parties, including time limits for the presentation of the documents and information,
 - (j) the provision of documents and information by a party to a matter to any other party to the matter,
 - (k) the way for notifying the parties to proceedings of decisions of, or other action taken by, the Commission in the proceedings,

- (l) the form, use and effect of the seal of the Commission,
- (m) the specification of exceptions, limitations or other restrictions in relation to a provision of this Act or enabling legislation that is expressed to be subject to the Commission rules.

No. 20 OPP No. 14 [c2020-100E]

Page 18, clause 33. Insert after line 14—

- (2A) A person is qualified to be appointed as a merit reviewer only if, in the opinion of the appointor, the person has special knowledge, skill or expertise in respect of the motor accidents legislation or administrative decision-making.
- (2B) A merit reviewer is assigned to the Motor Accidents Division.

No. 21 OPP No. 19 [c2020-100E]

Page 19, clause 39. Insert after line 31—

- (1A) A person is qualified to be appointed as a mediator only if, in the opinion of the appointor, the person has—
 - (a) special knowledge, skill or expertise in respect of the enabling legislation concerned, and
 - (b) mediation qualifications of a kind prescribed by the regulations.

No. 22 OPP No. 24 [c2020-100E]

Page 22, clause 48(3), lines 29–32. Omit all words on those lines. Insert instead—

- (3) In proceedings in respect of a claim within the meaning of the *Workplace Injury Management and Workers Compensation Act 1998*, the Commission must refuse to permit an insurer to be represented by an Australian legal practitioner if the claimant is not represented by an Australian legal practitioner unless leave is granted by the Commission under subsection (3A).
- (3A) The Commission may, on the application of an insurer, grant leave for an insurer to be represented by an Australian legal practitioner only if satisfied that—
 - (a) the representation would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter, or
 - (b) it would be unfair not to allow the insurer to be represented because the insurer is unable to represent the insurer effectively, or
 - (c) it would be unfair not to allow the insurer to be represented, taking into account fairness between the insurer and other parties in the proceedings.
- (3B) The Commission may at any time revoke leave it has granted under subsection (3A).

No. 23 OPP No. 25 [c2020-100E]

Page 30, clause 66. Insert after line 14—

- (3) The review is to be tabled in Parliament and for that purpose the Minister is to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the review.
- (4) The review is to include the following information—
 - (a) the number and type of proceedings instituted in each Commission Division during the year,
 - (b) the sources of those proceedings,
 - (c) the number and type of proceedings that were made during the year but not dealt with,
 - (d) the extent to which the operations of the Commission are funded by each operational fund,
 - (e) any other information that the President considers appropriate to be included or the Minister directs to be included.
- (5) In this section—

operational fund means each of the following—

 - (a) the Motor Accidents Operational Fund (the SIRA Fund) under the *Motor Accident Injuries Act 2017*,
 - (b) the Motor Accidents Operational Fund under the *Motor Accidents Compensation Act 1999*,
 - (c) the Workers Compensation Operational Fund under the *Workplace Injury Management and Workers Compensation Act 1998*.

No. 24 **OPP No. 26 [c2020-100E]**

Page 30, clause 68, lines 18–25. Omit all words on those lines. Insert instead—

68 Review of Act

- (1) The Minister is to undertake 2 reviews of this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The reviews are to be undertaken as soon as possible after the period of 2 years, and then 7 years, from the date of assent to this Act.
- (3) A report on the outcome of each review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years or 7 years (as the case requires).

No. 25 **GRNS No. 5 [c2020-095F]**

Page 32, Schedule 1, clause 2(1). Insert after line 10—

current WIRO means any person who, immediately before the establishment day, was the Workers Compensation Independent Review Officer under the *Workplace Injury Management and Workers Compensation Act 1998*.

No. 26 **GRNS No. 6 [c2020-095F]**

Page 32, Schedule 1, clause 4(1). Insert after line 37—

- (e1) Workers Compensation Independent Review Officer under the *Workplace Injury Management and Workers Compensation Act 1998*,

No. 27 GRNS No. 7 [c2020-095F]

Page 35, Schedule 1, line 1. Insert “**WIRO,**” after “**concerning**”.

No. 28 GRNS No. 8 [c2020-095F]

Page 35, Schedule 1. Insert after line 2—

7A Transfer of current WIRO

The current WIRO is taken, on and from the establishment day, to have been appointed as the Independent Review Officer under this Act.

No. 29 GRNS No. 9 [c2020-095F]

Page 35, Schedule 1. Insert after line 26—

11A Effect of Division in relation to transfer of Independent Review Officer

- (1) A person who is appointed as the Independent Review Officer by operation of this Division is taken to hold office as the Independent Review Officer for the balance of the term to which the person was appointed to the abolished office.
- (2) A person appointed as the Independent Review Officer by operation of this clause is taken to have been appointed on a basis other than full-time if the person's abolished office was not held on a full-time basis.
- (3) The Governor may issue an appropriate instrument of appointment to a person appointed as the Independent Review Officer by operation of this Division.
- (4) A person's appointment as the Independent Review Officer is effective whether or not an instrument of appointment is issued under subclause (3).
- (5) This Division does not—
 - (a) apply to a person who is appointed under this Act as the Independent Review Officer before the establishment day, or
 - (b) prevent a person who becomes the Independent Review Officer by operation of this Division from—
 - (i) being appointed, with the consent of the person, to a different or additional office or position in the Commission under this Act, or
 - (ii) vacating office or the position, subject to subclauses (1) and (2), in accordance with the provisions of this Act.
- (6) In this clause—

abolished office, in relation to a person appointed as the Independent Review Officer by operation of this Division, means the office held by the person immediately before the establishment day.

No. 30 GRNS No. 10 [c2020-095F]

Page 35, Schedule 1, clause 12, line 27. Insert “**of medical assessors, merit reviewers and mediators**” after “**transfers**”.

No. 31 GRNS No. 11 [c2020-095F as amended]

Page 46. Insert after line 15—

Schedule 4A Independent Review Officer

Part 1 Introduction

1 Definitions

In this Schedule—

claimant means a person who makes or is entitled to make—

- (a) a claim within the meaning of the *Workplace Injury Management and Workers Compensation Act 1998*, or
- (b) a claim within the meaning of the *Motor Accident Injuries Act 2017*, or
- (c) a claim within the meaning of the *Motor Accidents Compensation Act 1999*.

employer has the same meaning as in the *Workplace Injury Management and Workers Compensation Act 1998*.

ILARS means the Independent Legal Assistance and Review Service established by Part 5 of this Schedule.

ILARS guidelines—see clause 10.

insurer means a licensed insurer under any of the enabling legislation.

Nominal Defendant means the Nominal Defendant within the meaning of the *Motor Accident Injuries Act 2017* or *Motor Accidents Compensation Act 1999*.

Nominal Insurer means the Nominal Insurer within the meaning of the *Workers Compensation Act 1987*.

Part 2 Administrative arrangements

2 Appointment of Independent Review Officer

- (1) The Governor may appoint an Independent Review Officer.
- (2) The Independent Review Officer holds office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for reappointment.
- (3) The office of Independent Review Officer is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Governor.
- (4) The Independent Review Officer is entitled to be paid—
 - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine.
- (5) The office of Independent Review Officer is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to that office.

3 Vacancy in office of Independent Review Officer

- (1) The office of Independent Review Officer becomes vacant if the holder—
 - (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) resigns the office by instrument in writing addressed to the Governor, or
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (e) becomes a mentally incapacitated person, or

- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (g) is removed from office under this clause.
- (2) The Governor may remove the Independent Review Officer from office—
 - (a) for misbehaviour, or
 - (b) for incapacity, or
 - (c) if the Independent Review Officer is absent from duty for a period in excess of his or her leave entitlement as approved by the Governor unless the absence is caused by illness or other unavoidable cause.
 - (3) The Independent Review Officer cannot be removed from office under Part 6 of the *Government Sector Employment Act 2013*.
 - (4) If the office of Independent Review Officer becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

4 Appointment of acting Independent Review Officer

- (1) The Minister may, from time to time, appoint a person to act in the office of the Independent Review Officer during—
 - (a) the illness or absence of the Independent Review Officer, or
 - (b) a vacancy in the office of the Independent Review Officer.
- (2) The person, while so acting, has all the functions of the Independent Review Officer and is taken to be the Independent Review Officer.
- (3) The Minister may, at any time, remove a person from office as acting Independent Review Officer.
- (4) An acting Independent Review Officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

5 Staff

- (1) Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Independent Review Officer to exercise the Officer's functions.

Note. Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Independent Review Officer makes use of) may be referred to as officers or employees, or members of staff, of that Officer. Section 47A of the *Constitution Act 1902* precludes that Officer from employing staff.

- (2) The persons so employed are to be employed in a separate Public Service agency and may (together with the persons referred to in subclause (3)) be referred to as members of staff of the Independent Review Officer.
- (3) The Independent Review Officer may also—
 - (a) arrange for the use of the services of any staff or facilities of a Public Service agency or a local or public authority, or
 - (b) engage persons as consultants to the Independent Review Officer or to perform services for the Officer.

Part 3 Functions

6 Functions of Independent Review Officer

The Independent Review Officer has the following functions—

- (a) to deal with complaints made to the Independent Review Officer under this Schedule,
- (b) to inquire into and report to the Minister on any matters arising in connection with the operation of this Act or the enabling legislation as the Independent Review Officer considers appropriate or as may be referred to the Independent Review Officer for inquiry and report by the Minister,
- (c) to encourage the establishment by insurers and employers of complaint resolution processes for complaints arising under the enabling legislation,
- (d) to manage and administer ILARS (including by issuing ILARS guidelines),
- (e) any other functions as may be conferred on the Independent Review Officer by or under this Act or any other Act (including the enabling legislation).

7 Requirement to provide information

- (1) The Independent Review Officer may require an insurer to provide specified information that the Independent Review Officer reasonably requires for the purposes of the exercise of any function of the Independent Review Officer.
- (2) It is a condition of an insurer's licence that the insurer comply with a request for the provision of information under this clause.
- (3) The Independent Review Officer can decline to deal with a complaint if the claimant who makes the complaint fails to comply with a request to provide information to the Independent Review Officer.
- (4) The Authority, the Nominal Insurer and the Nominal Defendant must provide the Independent Review Officer with such information as the Independent Review Officer reasonably requires and requests for the purposes of the exercise of any function of the Independent Review Officer.
- (5) The Independent Review Officer must provide the Authority with such information as the Authority reasonably requires and requests for the purposes of the exercise of any function of the Authority.

Part 4 Complaints

8 Complaints about insurers

- (1) A claimant may complain to the Independent Review Officer about any act or omission (including any decision or failure to decide) of an insurer that affects the entitlements, rights or obligations of the claimant under the enabling legislation.
- (2) The Independent Review Officer deals with a complaint by investigating the complaint and reporting to the claimant and the insurer on the findings of the investigation, including the reasons for those findings.
- (3) The Independent Review Officer's findings can include non-binding recommendations for specified action to be taken by the insurer or the claimant.
- (4) The Independent Review Officer is to deal with a complaint within a period of 30 days after the complaint is made unless the Independent Review Officer

notifies the claimant and the insurer within that period that a specified longer period will be required to deal with the complaint.

- (5) The Independent Review Officer may decline to deal with a complaint on the basis that it is frivolous or vexatious or should not be dealt with for such other reason as the Independent Review Officer considers relevant.
- (6) The regulations may make provision for or with respect to requiring the Independent Review Officer to notify the Authority of specified kinds of contraventions of this Act or the enabling legislation of which the Officer becomes aware.
- (7) Without limiting subsection (6), the regulations may—
 - (a) provide for the way in which notification is to be given, and
 - (b) provide for when the notification is to be given, and
 - (c) provide for the information required to be notified, and
 - (d) provide for any further requirements relating to the notification (for example, a requirement to provide further information or answer questions).

Part 5 Independent Legal Assistance and Review Service

9 Independent Legal Assistance and Review Service

- (1) There is to be an Independent Legal Assistance and Review Service managed and administered by the Independent Review Officer.
- (2) The purpose of ILARS is to provide funding for legal and associated costs for workers under the Workers Compensation Acts seeking advice regarding decisions of insurers for those Acts and to provide assistance in finding solutions for disputes between workers and insurers.

10 Guidelines concerning ILARS

- (1) The Independent Review Officer may issue guidelines (*ILARS guidelines*) for or with respect to the following—
 - (a) the approval of lawyers to be granted funding under ILARS (including qualifications and experience for approval),
 - (b) the allocation and amount of funding for legal and associated costs under ILARS.
- (2) The Independent Review Officer may (wholly or partly) amend, revoke or replace ILARS guidelines.
- (3) ILARS 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.

11 Publication and Parliamentary scrutiny of ILARS guidelines

- (1) ILARS guidelines are to be published on the NSW legislation website and take effect on the day of that publication or, if a later day is specified in the guidelines for that purpose, on the day so specified.

- (2) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to ILARS guidelines in the same way as those sections apply to statutory rules.

12 Review of ILARS by supervisory committee of Legislative Council

- (1) The committee of the Legislative Council designated for the purposes of section 27 of the *State Insurance and Care Governance Act 2015* is to enquire into and report on the whether ILARS should be extended to claimants for statutory benefits under the *Motor Accident Injuries Act 2017*.

Note. Section 27 of the *State Insurance and Care Governance Act 2015* provides for the Legislative Council to designate a committee of the Council to supervise the operation of the insurance and compensation schemes established under the workers compensation and motor accidents legislation. The Standing Committee on Law and Justice was the designated committee at the time of the enactment of this Act.

- (2) The enquiry and report are to be undertaken by the designated committee as part of its next review of the operation of the *Motor Accident Injuries Act 2017* following the commencement of this Schedule.

Part 6 General

13 Annual report

- (1) As soon as practicable after 30 June (but before 31 December) in each year, the Independent Review Officer is to prepare and forward to the Minister a report on his or her activities for the 12 months ending on 30 June in that year.
- (2) The report is to be tabled in Parliament and for that purpose the Minister is to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) The Minister is to give the Authority and insurers an opportunity to comment on the report before it is tabled in Parliament and may include with the report when it is tabled a statement as to the comments of the Authority and insurers.
- (4) The report is to include the following information—
 - (a) the number and type of complaints made and dealt with under this Schedule during the year,
 - (b) the sources of those complaints,
 - (c) the number and type of complaints that were made during the year but not dealt with,
 - (d) the operation of ILARS,
 - (e) any other information as the Independent Review Officer considers appropriate to be included or as the Minister directs to be included.
- (5) Matters included in a report must not identify individual claimants.

14 Delegation of functions

The Independent Review Officer may delegate the exercise of any function of the Independent Review Officer (other than this power of delegation) to—

- (a) any member of staff of the Independent Review Officer, or

- (b) any person, or any class of persons, authorised for the purposes of this clause by the regulations.

No. 32 GRNS No. 12 [c2020-095F as amended]

Page 47, Schedule 5. Insert before line 31—

5.4A Government Sector Employment Act 2013 No 40

Schedule 1 Public Service agencies

Insert in alphabetical order in Part 3—

Office of the

Independent Review Officer

*Independent Review Officer

No. 33 GRNS No. 13 [c2020-095F]

Page 56, Schedule 5.5[90]. Insert after line 34—

- (b1) the remuneration of the Independent Review Officer (within the meaning of the *Personal Injury Commission Act 2020*) and staff of the Independent Review Officer and costs incurred in connection with the exercise of the functions of the Independent Review Officer arising under this Act,

No. 34 GRNS No. 14 [c2020-095F]

Page 62, Schedule 5.6[67]. Insert after line 28—

[67A] Section 212(3)(c3)

Insert after section 212(3)(c2)—

- (c3) the remuneration of the Independent Review Officer (within the meaning of the *Personal Injury Commission Act 2020*) and staff of the Independent Review Officer and costs incurred in connection with the exercise of the functions of the Independent Review Officer arising under this Act,

No. 35 GRNS No. 15 [c2020-095F as amended]

Page 64, Schedule 5.10. Insert after line 35—

[3A] Section 4(1), definition of “Independent Review Officer”

Omit the definition. Insert instead—

Independent Review Officer means the Independent Review Officer appointed under Schedule 4A to the *Personal Injury Commission Act 2020*.

No. 36 GRNS No. 16 [c2020-095F]

Page 65, Schedule 5.10. Insert after line 20—

[8A] Chapter 2, Part 3 Workers Compensation Independent Review Officer

Omit the Part.

No. 37 GRNS No. 17 [c2020-095F]

Page 65, Schedule 5.10[9], line 22. Omit all words on that line. Insert instead—

Insert “arising under the Workers Compensation Acts” after “functions of the Independent Review Officer” in section 35(2)(c).

[9A] Section 35(2)(e1)

Omit the paragraph. Insert instead—