

# Personal Injury Commission Act 2020 No 18

[2020-18]



New South Wales

## Status Information

### Currency of version

Historical version for 29 November 2021 to 15 June 2022 (accessed 4 December 2023 at 15:37)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**

[Statute Law \(Miscellaneous Provisions\) Bill 2021](#)

[Motor Accidents and Workers Compensation Legislation Amendment Bill 2021](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 29 November 2021

# Personal Injury Commission Act 2020 No 18



New South Wales

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# Personal Injury Commission Act 2020 No 18



New South Wales

An Act to establish the Personal Injury Commission and provide for its functions; and to make consequential amendments to other legislation.

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 5 commences on the establishment day.
- (3) Schedule 6 commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are as follows—

- (a) to establish an independent Personal Injury Commission of New South Wales to deal with certain matters under the workers compensation legislation and motor accidents legislation and provide a central registry for that purpose,
- (b) to ensure the Commission—
  - (i) is accessible, professional and responsive to the needs of all of its users, and
  - (ii) is open and transparent about its processes, and
  - (iii) encourages early dispute resolution,
- (c) to enable the Commission to resolve the real issues in proceedings justly, quickly, cost effectively and with as little formality as possible,
- (d) to ensure that the decisions of the Commission are timely, fair, consistent and of a high quality,

- (e) to promote public confidence in the decision-making of the Commission and in the conduct of its members,
- (f) to ensure that the Commission—
  - (i) publicises and disseminates information concerning its processes, and
  - (ii) establishes effective liaison and communication with interested parties concerning its processes and the role of the Commission,
- (g) to make appropriate use of the knowledge and experience of members and other decision-makers.

#### 4 Interpretation and application of Act by reference to objects

- (1) In the interpretation of a provision of this Act, the Commission rules or the regulations, a construction that would promote the objects of this Act or the provision is to be preferred to a construction that would not promote those objects.
- (2) In the exercise of a discretion conferred by a provision of this Act, the Commission rules or the regulations, the person exercising the discretion must do so in the way that would best promote the objects of this Act or the provision concerned.

#### 5 Definitions

- (1) In this Act—

**Authority** means the State Insurance Regulatory Authority constituted under the [State Insurance and Care Governance Act 2015](#).

**Commission** means the Personal Injury Commission of New South Wales established by this Act.

**Commission Division** means—

- (a) the Workers Compensation Division, or
- (b) the Motor Accidents Division.

**Commission rules**—see section 20.

**Deputy President** means a Deputy President of the Commission.

**Division Head** of a Commission Division means the member who is appointed by or under this Act as the Division Head of that Division.

**Division member**, in relation to a Commission Division, means a member who is assigned by or under this Act to that Division.

**Division Schedule** for a Commission Division—see section 13.

**enabling legislation** means—

- (a) the workers compensation legislation, and
- (b) the motor accidents legislation.

**establishment day**—see section 6.

**general member** means a general member of the Commission.

**Independent Review Officer** means the Independent Review Officer appointed under Schedule 5.

**judicial officer** has the same meaning as in the [Judicial Officers Act 1986](#).

**legislation** means an Act or statutory rule.

**mediator** means a mediator appointed by the President under this Act.

**medical assessor** means a medical assessor appointed by the President under this Act.

**member** means a member of the Commission.

**merit reviewer** means a merit reviewer appointed by the President under this Act.

**modification** includes variation, addition, exception, omission or substitution.

**Motor Accidents Division** means the Motor Accidents Division of the Commission.

**motor accidents legislation** means—

- (a) the [Motor Accidents Compensation Act 1999](#), and
- (b) the [Motor Accidents \(Lifetime Care and Support\) Act 2006](#), and
- (c) the [Motor Accident Injuries Act 2017](#), and
- (d) any other Act prescribed by the regulations, and
- (e) the instruments under each of those Acts.

**non-presidential member**—see section 8.

**President** means the President of the Commission.

**presidential member**—see section 8.

**principal member** means a principal member of the Commission.

**principal registrar** means the person employed in the Public Service as the principal



registrar of the Commission.

**procedural directions**—see section 21.

**Public Service employee** has the same meaning as in the [Government Sector Employment Act 2013](#).

**registrar** means the principal registrar or any other person employed in the Public Service as a registrar of the Commission.

**relevant Commission officer** means each of the following—

- (a) the principal registrar or any other registrar,
- (b) a medical assessor,
- (c) a merit reviewer,
- (d) a mediator,
- (e) any other kind of person prescribed by the regulations who exercises functions in connection with the Commission.

**Rule Committee** means the Rule Committee of the Commission.

**senior member** means a senior member of the Commission.

**work injury damages** has the same meaning as in Chapter 7 (New claims procedures) of the [Workplace Injury Management and Workers Compensation Act 1998](#).

**Workers Compensation Acts** has the same meaning as in the [Workplace Injury Management and Workers Compensation Act 1998](#).

**Workers Compensation Division** means the Workers Compensation Division of the Commission.

**workers compensation legislation** means—

- (a) workers compensation legislation within the meaning of the [Workplace Injury Management and Workers Compensation Act 1998](#), and
- (b) any other Act prescribed by the regulations (including instruments under the prescribed Act).

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) A reference in this Act (however expressed) to the exercise by the Commission of its

functions in relation to enabling legislation includes a reference both to its functions under the enabling legislation and its functions under this Act or any other legislation in relation to the enabling legislation.

- (3) Any provisions of this Act or enabling legislation that are expressed to be subject to the Commission rules have effect subject to any exceptions, limitations or other restrictions specified by the Commission rules.
- (4) Notes included in this Act do not form part of this Act.

## **Part 2 Establishment of Commission**

### **Division 2.1 Establishment**

#### **6 Establishment of Personal Injury Commission**

- (1) The Personal Injury Commission of New South Wales is established by this Act on the establishment day.

**Note—**

Part 3 provides for the functions and constitution of the Commission.

- (2) The Commission is to have a seal and the seal is to be judicially noticed.

**Note—**

Section 20 enables the Commission rules to make provision for or with respect to the form, use and effect of the seal of the Commission.

- (3) The **establishment day** is—

- (a) 1 March 2021, or

- (b) any later day fixed as the establishment day by a proclamation made under this section.

- (4) The Governor may, by proclamation published on the NSW legislation website, fix a day later than 1 March 2021 as the establishment day for the purposes of this section.
- (5) The Governor may, by further proclamation published on the NSW legislation website, revoke a previous proclamation fixing a day as the establishment day and fix a different day later than 1 March 2021 as the establishment day.
- (6) A proclamation under this section has effect only if published before the establishment day applying for the time being.

#### **7 Appointments and other matters to facilitate establishment of Commission**

- (1) A person may be appointed to any office or other position under this Act before the establishment day.

- (2) Without limiting subsection (1), the following appointments may be made before the establishment day—
  - (a) appointment as the President or as any other kind of member,
  - (b) appointment as a Division Head of a Commission Division that will be created on the establishment of the Commission,
  - (c) appointment as the Independent Review Officer,
  - (d) appointment as a member of the Rule Committee,
  - (e) appointment as a registrar (including as the principal registrar) or other member of staff of the Commission.
- (3) To avoid doubt, the provisions of clauses 2–4 of Schedule 5 apply in relation to the appointment of the Independent Review Officer before the establishment day even though those provisions have not commenced.
- (4) A member appointed before the establishment day may also be assigned by or under this Act to a Commission Division to be created on the establishment of the Commission.
- (5) Without limiting subsections (1) and (2), the Rule Committee may be constituted before the establishment day and may before that day—
  - (a) meet and transact business as if the Commission (and its Divisions) had been established, and
  - (b) without limiting paragraph (a), make Commission rules that will come into force on or after the establishment day.
- (6) Any appointment or assignment made before the establishment day has effect on and from the day specified in the instrument of appointment or assignment as the date of appointment or assignment as if the Commission (including its Divisions) had been established.
- (7) Despite Division 3 of Part 2 of Schedule 1, a person holding an office to which a provision of that Division applies who is appointed as a member of the Commission before the establishment day is not entitled to be paid remuneration as a member of the Commission while the person continues to receive remuneration for the office.

## **Division 2.2 Membership**

### **8 Membership of Commission**

- (1) The Commission is to consist of the following members—
  - (a) the President,

- (b) Deputy Presidents,
- (c) principal members,
- (d) senior members,
- (e) general members.

- (2) The President and the Deputy Presidents are referred to in this Act as **presidential members**.
- (3) The principal members, senior members and general members are referred to in this Act as **non-presidential members**.
- (4) Schedule 2 sets out additional provisions with respect to members (including their maximum terms of office).

## 9 Appointment of members

- (1) A person may be appointed as a member if the person is qualified to be appointed as a member of the kind concerned.

### Note—

Section 10 makes general provision with respect to qualifications for appointment.

- (2) A member is to be appointed by the Minister by written instrument.
- (3) The instrument of appointment of a member is to specify—
  - (a) whether the member has been appointed as the President or a Deputy President, principal member, senior member or general member, and
  - (b) the term for which the member has been appointed, and
  - (c) any entitlements of the member to annual and other leave, and
  - (d) whether the member is appointed on a full-time basis or on some other basis.

## 10 Qualifications of members

- (1) **President** A person is qualified to hold office as the President only if the person is a judge of a court of record.
- (2) **Deputy Presidents** A person is qualified to be appointed as a Deputy President only if the person—
  - (a) is or has been a judicial officer, or
  - (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.

- (3) **Principal members** A person is qualified to be appointed as a principal member if the person—
- (a) is an Australian lawyer of at least 7 years' standing, or
  - (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.
- (4) **Senior members or general members** A person is qualified to be appointed as a senior member or general member if the person—
- (a) is an Australian lawyer of at least 5 years' standing, or
  - (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.
- (5) **Appointment of Public Service employees** A Public Service employee who is otherwise qualified for appointment may be appointed as a general member (but not as any other kind of member).

## 11 Functions of members generally

- (1) A member has any functions conferred or imposed on the member by or under this Act or any other legislation.
- (2) Without limiting subsection (1), a member (other than the President or Division Head of a Commission Division) appointed before the establishment day has and may exercise any functions with respect to the establishment of the Commission as may be assigned to the member under section 16(2).
- (3) Each member must comply with any procedural directions given by the President and the Division Head of the Commission Division to which the member is assigned.

## Division 2.3 Commission Divisions

### 12 Divisions of Commission

- (1) On the establishment of the Commission, the Divisions of the Commission are to be—
  - (a) the Workers Compensation Division, and
  - (b) the Motor Accidents Division.
- (2) The functions of the Commission in relation to enabling legislation allocated to a Commission Division are to be exercised in that Division.

#### Note—

Section 5(2) provides that a reference in this Act (however expressed) to the exercise by the Commission of its functions in relation to enabling legislation includes a reference both to its functions under the enabling legislation and its functions under this Act or any other legislation in relation to the enabling legislation.

- (3) The functions of the Commission in relation to enabling legislation allocated to a Commission Division are the functions in relation to the legislation allocated to the Division by the Division Schedule for the Division.
- (4) A Commission Division is composed of the members assigned to it by or under this Act.

### **13 Division Schedule for Commission Division**

- (1) The ***Division Schedule*** for a Commission Division is—
  - (a) for the Workers Compensation Division—Schedule 3, or
  - (b) for the Motor Accidents Division—Schedule 4.
- (2) The provisions of a Division Schedule for the Commission prevail to the extent of any inconsistency between those provisions and any other provisions of this Act or the provisions of the regulations or the Commission rules.

### **14 Division Heads**

- (1) The President, or a Deputy President or principal member, may be appointed by the Minister as the Division Head of a Commission Division—
  - (a) in the instrument of appointment of the member, or
  - (b) by subsequent instrument.
- (2) A Division Head ceases to hold office as a Division Head if the person—
  - (a) is removed from office as a Division Head by the Minister, or
  - (b) resigns the office by written instrument addressed to the Minister, or
  - (c) ceases to hold office as a member.
- (3) However, a person does not cease to hold office as a member simply because the person has been removed, or has resigned, from office as a Division Head under subsection (2).
- (4) A Division Head has any functions conferred or imposed on the Division Head by or under this Act or any other legislation.

### **15 Assignment of members to Commission Divisions**

- (1) The President is assigned to each Commission Division.
- (2) A Division Head is assigned to the Commission Division in respect of which the person is appointed as the Division Head.
- (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.
- (4) An assignment of a member to a Commission Division is subject to any limitations specified in the member's instrument of appointment or assignment (including in respect of the kinds of matters that may be dealt with by the member).

## **Division 2.4 Functions of President and Division Heads**

### **16 Functions of President**

- (1) The functions of the President are—
- (a) to direct the business of the Commission (including determining the places and times for sittings of the Commission), and
  - (b) to facilitate the adoption of good administrative practices for the conduct of the business of the Commission, and
  - (c) to give directions about, and participate in the development of, the practice and procedure to be followed by the Commission, and
  - (d) to manage members in each of the Divisions of the Commission, and
  - (e) to appoint medical assessors, merit reviewers and mediators for the purposes of enabling legislation and exercise general direction and control over the exercise of their functions, and
  - (f) to advise the Minister about the appointment, reappointment and removal of members and assist in the process of recruitment at the direction of the Minister, and
  - (g) any other functions that are conferred or imposed on the President by or under this Act or any other legislation.
- (2) Without limiting subsection (1), the President has the following functions if appointed before the establishment day—
- (a) to assist in the development of the Commission rules for the Commission to use on its establishment,
  - (b) to assign functions to other members appointed before the establishment day (including any Division Head of a Commission Division) with respect to the

establishment of the Commission,

- (c) to assign functions to any registrar or other member of staff appointed before the establishment day,
- (d) any other functions as are necessary or convenient to facilitate the establishment of the Commission.

## **17 Functions of Division Heads**

- (1) The functions of a Division Head of a Commission Division are—
  - (a) to direct (subject to this Act, the regulations, the Commission rules and any direction of the President) the business of the Commission in that Division, and
  - (b) to exercise any other functions conferred or imposed on the Division Head by or under this Act or any other legislation.
- (2) Without limiting subsection (1), a Division Head of a Commission Division appointed before the establishment day has and may exercise any functions with respect to the establishment of the Commission as may be assigned to the Division Head under section 16(2).

## **Division 2.5 Delegations**

### **18 Delegations by the President and Division Heads**

- (1) The President may—
  - (a) delegate to a Division Head of a Commission Division or other member any of the functions of the President (other than this power of delegation), or
  - (b) delegate to a registrar or any other member of staff of the Commission any of the functions of the President (other than this power of delegation) specified by a Division Schedule for a Commission Division or prescribed by the Commission rules.

#### **Note—**

Section 49 of the [Interpretation Act 1987](#) contains general provisions relating to the delegation of functions.

- (2) Despite subsection (1), the President may delegate a function of the President under section 92 of the [Motor Accidents Compensation Act 1999](#) or section 7.34 of the [Motor Accident Injuries Act 2017](#) only to the Division Head of the Motor Accidents Division.
- (3) The Division Head of a Commission Division may—
  - (a) delegate to another Division member any of the functions of the Division Head (other than this power of delegation), or



(b) delegate to a registrar or any other member of staff of the Commission any of the functions of the Division Head (other than this power of delegation) specified by the Division Schedule for the Division or prescribed by the Commission rules.

(4) A delegate may subdelegate a function delegated to the delegate if—

(a) for a function of the President—the delegate is authorised in writing to do so by the President, or

(b) for a function of a Division Head of a Commission Division—the delegate is authorised in writing to do so by the Division Head.

## **Division 2.6 Commission rules and procedural directions**

### **19 Rule Committee of Commission**

(1) There is to be a Rule Committee of the Commission.

(2) The functions of the Rule Committee are—

(a) to make the Commission rules, and

(b) to ensure that the Commission rules it makes are as flexible and informal as possible.

(3) The Rule Committee is to be composed of the following—

(a) the President,

(b) each Division Head of a Commission Division,

(c) 1 person nominated for the time being by the Authority,

(d) 1 person nominated for the time being by Unions NSW,

(e) 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,

(f) 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,

(g) 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,

(h) 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.

(4) The President is to be the Chairperson of the Rule Committee.

(5) The President is to appoint one of the other members of the Rule Committee who is a member of the Commission as Deputy Chairperson of the Rule Committee.

(6) Unless the regulations provide otherwise, the Rule Committee is to regulate its own procedure.

(7) The following provisions apply in relation to meetings of the Rule Committee unless the regulations provide, or the Rule Committee decides, otherwise—

(a) the Chairperson of the Rule Committee or, in the absence of the Chairperson, the Deputy Chairperson of the Committee is to preside at a meeting of the Committee,

(b) in the absence from a meeting of the Rule Committee of both the Chairperson and Deputy Chairperson, another member of the Committee who is a Division Head of a Commission Division is to be chosen by the members present to preside at the meeting,

(c) the quorum for a meeting of the Rule Committee is a majority of the number of the members for the time being,

(d) any duly convened meeting of the Rule Committee at which a quorum is present is competent to transact any business of the Rule Committee and has and may exercise all the functions of the Rule Committee,

(e) a decision supported by a majority of the votes cast at a meeting of the Rule Committee at which a quorum is present is the decision of the Committee,

(f) the person presiding at a meeting of the Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(8) 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.

(9) The President is to call the first meeting of the Rule Committee in the manner the President thinks fit and (subject to any decision of the Committee) may call any other meetings of the Committee as the President thinks necessary.

(10) 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.

## 20 Commission rules

(1) The Rule Committee may make rules of the Commission (referred to in this Act as the **Commission rules**), not inconsistent with this Act or enabling legislation, for or with respect to the following—

- (a) the practice and procedure to be followed in proceedings before the Commission,
- (b) the practice and procedure to be followed in proceedings before medical assessors, merit reviewers or mediators,
- (c) any matter that is, by this Act or enabling legislation, required or permitted to be prescribed by the Commission rules.

### Note—

The Commission rules are rules of court within the meaning of section 21 of the [Interpretation Act 1987](#). Rules of court are statutory rules for the purposes of the [Interpretation Act 1987](#). As a result, they can be disallowed by either House of Parliament under Part 6 of that Act.

(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.
- (3) The Commission rules may authorise or require the use of an electronic case management system established under clause 2 of Schedule 1 to the *Electronic Transactions Act 2000* in relation to any proceedings in the Commission in respect of which the use of the system is authorised by an order in force under clause 3 of Schedule 1 to that Act.
- (4) Without limiting the generality of section 42 of the *Interpretation Act 1987*, the Commission rules may also prescribe different rules for—
- (a) each of the Divisions of the Commission, and
  - (b) different classes of matters.
- (5) This section does not limit the operation of section 78 (Rules of court) of the *Interpretation Act 1987*.

## 21 Procedural directions

- (1) The President may give directions (**procedural directions**) relating to the practice and procedures to be followed in proceedings before—
- (a) the Commission, or
  - (b) medical assessors or merit reviewers.
- (2) The procedural directions must be—
- (a) publicly available, and
  - (b) consistent with this Act and enabling legislation.

- (3) Without limiting subsection (2)(a), it is sufficient compliance with that paragraph if procedural directions are published on the website of the Commission.
- (4) Each of the following must comply with any applicable procedural directions—
  - (a) members,
  - (b) medical assessors,
  - (c) merit reviewers,
  - (d) the parties to proceedings and their representatives and agents.

## **Division 2.7 Registrars and other staff**

### **22 Appointment of registrars and other staff**

- (1) Persons (including the principal registrar and other registrars) may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Commission to exercise its functions.

**Note—**

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

- (2) This section does not affect the exercise of the functions under the [Government Sector Employment Act 2013](#) of the head of the Public Service agency in which those persons are employed.
- (3) The Authority or any other Department of the Government as the regulations may specify is to provide for the Commission—
  - (a) facilities (including registry facilities), and
  - (b) any additional staff that may be necessary.
- (4) Without limiting subsection (3), the President may enter into arrangements with any government agency or other body or person (whether in the public or private sector) for the provision of assistance to the Commission in connection with the exercise of its functions.

### **23 Functions of registrars**

- (1) A registrar has the functions conferred or imposed on the registrar by or under this Act or any other legislation.
- (2) The principal registrar has the following additional functions—
  - (a) to assist the President in managing the business and the affairs of the

Commission,

- (b) any administrative and other functions conferred or imposed on the principal registrar by or under this Act or any other legislation.
- (3) A registrar may exercise any functions of the principal registrar as may be directed by the President or principal registrar.
- (4) Without limiting subsections (1) and (3)—
  - (a) the President may, from time to time, designate a registrar to be a registrar for one or more Divisions of the Commission, and
  - (b) the designated registrar may (subject to any direction of the President or principal registrar) exercise the functions of the principal registrar in connection with proceedings and legislation allocated to the Division or Divisions concerned.
- (5) Anything done or omitted to be done by a registrar in exercising a function of the principal registrar has effect as if it had been done or omitted to be done by the principal registrar.
- (6) The Commission rules may make provision for or with respect to the functions of the principal registrar and other registrars, including authorising registrars to make specified kinds of decisions of the Commission on behalf of the Commission.
- (7) In addition, a registrar (including the principal registrar) appointed before the establishment day has and may exercise any functions with respect to the establishment of the Commission as may be assigned to the registrar under section 16(2).

## **Part 3 Functions and constitution of Commission**

### **Division 3.1 Functions**

#### **24 Functions of Commission generally**

The Commission has the jurisdiction and functions that may be conferred or imposed on it by or under this Act, enabling legislation or any other legislation.

### **Division 3.2 Determination of federal proceedings**

#### **25 Definitions**

In this Division—

***compensation claim*** means—

- (a) a claim for damages to which the [Motor Accidents Compensation Act 1999](#) applies, or

- (b) a claim for statutory benefits to which the *Motor Accident Injuries Act 2017* applies, or
- (c) a claim for damages to which the *Motor Accident Injuries Act 2017* applies, or
- (d) a claim for compensation or work injury damages to which the *Workplace Injury Management and Workers Compensation Act 1998* applies.

**compensation matter application**—see section 26.

**federal jurisdiction** means jurisdiction of a kind referred to in section 75 or 76 of the Commonwealth Constitution.

**relevant courts legislation** means—

- (a) the *District Court Act 1973* and the rules of court under that Act, and
- (b) the *Civil Procedure Act 2005* and the regulations and uniform rules under that Act in their application to the District Court.

**substituted proceedings**—see section 27.

**usual decision-maker**, in relation to determining a matter concerning a compensation claim, means the person or body (whether or not the President or Commission) on which the function is conferred or imposed by this Act or enabling legislation.

## 26 Applications involving federal jurisdiction may be made to District Court

- (1) A person with standing to apply to the President or the Commission for a matter concerning a compensation claim to be determined by the usual decision-maker (a **compensation matter application**) may, with the leave of the District Court, make the application to the Court instead of the President or Commission.
- (2) The regulations may make provision for or with respect to—
  - (a) who has standing to make an application for leave, and
  - (b) excluding or including applications as compensation matter applications.
- (3) The District Court may grant leave for a compensation matter application to be made to the Court only if it is satisfied that—
  - (a) an application was first made to the President or Commission, and
  - (b) the determination of the matter by the usual decision-maker would involve an exercise of federal jurisdiction, and
  - (c) the usual decision-maker would otherwise have had jurisdiction enabling the decision-maker to determine the application.
- (4) An application for leave must be—

- (a) filed with the District Court along with—
    - (i) an application that has been completed in the form and manner required under this Act or enabling legislation for the kind of compensation matter application concerned, and
    - (ii) if the parties to the compensation matter application have reached a settlement before leave is sought using a resolution process provided under this Act or enabling legislation—a copy of the terms of settlement, and
  - (b) accompanied by the applicable fee (if any) payable for the compensation matter application unless it has already been paid.
- (5) The District Court may—
- (a) remit a compensation matter application for determination by the usual decision-maker if the Court is satisfied that the usual decision-maker has jurisdiction to determine it, and
  - (b) do so instead of granting leave or after granting leave.
- (6) If the District Court remits a compensation matter application to be dealt with by the usual decision-maker, the Court may make such orders that it considers appropriate to facilitate the determination of the application by the decision-maker.
- (7) The usual decision-maker is to determine any compensation matter application that is remitted to the decision-maker in accordance with any orders made by the District Court.

## **27 Proceedings after leave granted**

- (1) If the District Court grants leave for a compensation matter application to be made to it instead of the President or Commission—
- (a) proceedings for the determination of the application (***substituted proceedings***) are taken to have been commenced in the Court on the day on which the application was first made, and
  - (b) the Court may make such orders (including in relation to the usual decision-maker) as it considers appropriate to facilitate its determination of the application.
- (2) Subsection (1) applies despite any limitation period under the [Limitation Act 1969](#) or any enabling legislation that applies to the application concerned provided it was first lodged for exercise by the usual decision-maker before the expiry of the period.
- (3) The District Court has, and may exercise, all of the jurisdiction and functions in relation to the substituted proceedings that the usual decision-maker would have had if they could exercise federal jurisdiction, including jurisdiction and functions conferred



or imposed by or under this Act, enabling legislation or any other legislation.

- (4) Without limiting subsection (3), the District Court may—
- (a) order that a medical assessment or merit review required by or under enabling legislation (or a review or appeal against the assessment or merit review) be carried out for the Court by a medical assessor, merit reviewer or panel specified by the Court, and
  - (b) make any other orders it thinks fit to facilitate the carrying out of the medical assessment, merit review or the review or appeal before the panel (including with respect to the issuing of certificates), and
  - (c) adopt (whether with or without variation), or refuse to adopt, the decision of the medical assessor, merit reviewer or panel as the Court sees fit.
- (5) A decision adopted by the Court (whether with or without variation) has effect as a decision of the Court in respect of the matter concerned.
- (6) This section has effect subject to the provisions specified by section 28.

## **28 Provisions relating to determining substituted proceedings**

- (1) The following provisions apply in relation to substituted proceedings—
- (a) the District Court is to be constituted as provided by its relevant courts legislation instead of as provided by this Act or enabling legislation,
  - (b) the legislation applicable to appeals against decisions of the District Court applies to decisions of the Court instead of appeal provisions specified by or under this Act, enabling legislation or any other legislation,
  - (c) the practice and procedure applicable in the District Court under its relevant courts legislation (and any laws applicable in relation to contempt of court) apply to the substituted proceedings instead of the practice and procedure specified by or under this Act, enabling legislation or any other legislation,
  - (d) the District Court may make orders giving effect to any settlement reached by the parties even if that settlement was reached before the substituted proceedings commenced,
  - (e) any other provisions (including by way of modifications to the provisions of this Act, enabling legislation or other legislation) as may be prescribed by the regulations in respect of the substituted proceedings of the kind concerned.
- (2) Without limiting subsection (1)(e), the provisions that may be prescribed by the regulations for the purposes of the paragraph include provisions for or with respect to the following—

- (a) the parties to substituted proceedings,
  - (b) fees and costs payable in respect of substituted proceedings,
  - (c) enabling a person or body to determine a matter for the District Court,
  - (d) the updating of references in provisions of this Act, enabling legislation or other legislation conferring or imposing functions exercisable in substituted proceedings by the District Court instead of some other person or body.
- (3) The Minister is not to recommend the making of a regulation for the purposes of subsection (1)(e) unless the Minister certifies that—
- (a) if the proposed provisions affect the exercise of jurisdiction or functions by the Commission—the President has agreed to the provisions, and
  - (b) if the proposed provisions affect the exercise of jurisdiction or functions by the District Court—the Chief Judge of the District Court has agreed to the provisions.

## **29 Commencement of court proceedings**

The regulations may make provision for or with respect to the modification of provisions of enabling legislation preventing the commencement of proceedings in a court for a compensation claim unless certain preconditions are met, if compliance with those preconditions may involve an exercise of federal jurisdiction or be the subject of substituted proceedings.

## **30 Relationship of Division to this Act and other laws**

- (1) The provisions of this Division (including of regulations made for the purposes of a provision of this Division) prevail to the extent of any inconsistency between those provisions and any other provisions of this Act, enabling legislation or other legislation.
- (2) To avoid doubt, subsection (1) applies despite anything in a Division Schedule for a Commission Division.

## **Division 3.3 Constitution**

### **31 Constitution of Commission**

- (1) The Commission is to be constituted by one or more Division members of the Commission Division to which the function of dealing with the proceedings is allocated.

#### **Note—**

A Division Schedule for a Commission Division may, in some cases, make special provision for the constitution of the Commission when exercising functions allocated to that Division (including the qualifications of members to sit in specified kinds of proceedings). It may also provide for certain Division functions to be exercised by a registrar.

- (2) The President may give directions as to the members who are to constitute the Commission for the purposes of any particular proceedings.

**Note—**

The President may delegate the function of constituting the Commission for particular proceedings to a Division Head of a Commission Division or another member. See section 18.

- (3) The President may give directions (whether for particular proceedings, classes of proceedings or generally) as to which member is to preside at proceedings in the Commission when the Commission is constituted by more than one member.
- (4) There may be more than one sitting of the Commission at the same time.
- (5) The President may direct that proceedings be conducted outside the State—
- (a) if requested by a party to the proceedings, or
  - (b) with the consent of the parties to the proceedings.
- (6) In deciding whether to make a direction under subsection (5), the President must consider the following—
- (a) the interests and wishes of the parties to the proceedings,
  - (b) the nature and complexity of the proceedings,
  - (c) if the arrangement is necessary for the timely and cost effective conduct of the proceedings,
  - (d) other matters the President considers relevant.

## **Part 4 Medical assessors, merit reviewers and mediators**

### **Division 4.1 Medical assessors and merit reviewers**

#### **32 Definition**

In this Division—

***decision-maker*** means a medical assessor or a merit reviewer.

#### **33 Appointment of medical assessors and merit reviewers**

- (1) The President may, in accordance with the regulations, appoint persons to be—
- (a) medical assessors for the purposes of the *Workplace Injury Management and Workers Compensation Act 1998*, or
  - (b) medical assessors for the purposes of the *Motor Accident Injuries Act 2017* or *Motor Accidents Compensation Act 1999* (or both), or

(c) merit reviewers for the purposes of the *Motor Accident Injuries Act 2017*.

- (2) Without limiting subsection (1), a member or a Public Service employee may be appointed as a decision-maker.
- (3) 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.
- (4) A merit reviewer is assigned to the Motor Accidents Division.
- (5) The terms of appointment of a decision-maker may restrict a decision-maker to disputes of a specified kind (including to disputes or assessments under specified legislation).
- (6) One or more medical assessors may be appointed as a senior medical assessor, either by the assessor's instrument of appointment or by a later instrument executed by the President.
- (7) The President is to ensure that, as far as reasonably practicable, there are medical assessors in the regional areas of the State.
- (8) The President may remove a decision-maker from office at any time.
- (9) A decision-maker who is not a member or Public Service employee is entitled to be paid the remuneration (including travelling and subsistence allowances) that the Minister may from time to time determine.
- (10) Nothing in this section prevents a person being appointed as a decision-maker of more than one class.

### **34 Functions of decision-makers**

A decision-maker has the functions that are conferred on the decision-maker by or under—

- (a) this Act, and
- (b) the legislation for which the decision-maker was appointed.

### **35 Lists of decision-makers**

- (1) The principal registrar may from time to time issue a list of persons who are appointed as decision-makers under this Division.
- (2) The list is evidence of the appointments concerned.

### **36 Control and direction of decision-makers**

- (1) Decision-makers are, in the exercise of their functions, subject to the general control

and direction of the President.

- (2) However, a decision-maker is not subject to control and direction by the Commission (or a member), the Authority or any Public Service employee with regard to any of the decisions of the decision-maker that affect the interests of the parties to the merit review or medical assessment concerned.
- (3) The Commission (or a member), the Authority or any Public Service employee may not overrule or interfere with any decision in respect of any assessment or review.
- (4) Subsection (3) does not prevent an appeal or review panel from determining an appeal or review for which provision is made under enabling legislation.
- (5) This section does not affect the exercise of the functions of the head of a Public Service agency under the *Government Sector Employment Act 2013* with respect to decision-makers who are members of staff of the agency.

### **37 Provision of training and information**

- (1) The Commission may make arrangements for the provision of training and information to medical assessors and merit reviewers to promote accurate and consistent decisions by medical assessors and merit reviewers.
- (2) In providing training for medical assessors, the Commission is to have regard to any relevant material prepared by the Authority.

### **38 Protection of decision-makers**

A decision-maker is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which the decision-maker was involved in the course of the exercise of functions as a decision-maker.

**Note—**

See also section 64 (Protection of representatives, witnesses and relevant Commission officers).

## **Division 4.2 Mediators**

### **39 Appointment of mediators**

- (1) The President may, in accordance with the regulations, appoint persons to be—
  - (a) mediators for the purposes of the *Workplace Injury Management and Workers Compensation Act 1998* to mediate on claims for work injury damages within the meaning of that Act as and when required to do so by the Division Head of the Workers Compensation Division, or
  - (b) mediators for any other purposes prescribed by the regulations.
- (2) 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.

(3) Mediators are, in the exercise of their functions, subject to the general control and direction of the President.

(4) Subject to this section, a mediator holds office for the period (not exceeding 5 years) specified in the instrument of appointment of the mediator, but is eligible for reappointment.

(5) A mediator is entitled to be paid the remuneration (including travelling and subsistence allowances) in respect of work done as a mediator as the Minister may from time to time determine in respect of the mediator.

(6) A mediator vacates office if the mediator—

(a) dies, or

(b) completes a term of office and is not reappointed, or

(c) 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

(d) becomes a mentally incapacitated person, or

(e) 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

(f) resigns the office by instrument in writing addressed to the President, or

(g) is removed from office by the President.

(7) The President may at any time remove a mediator from office.

(8) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a mediator.

#### **40 Protection of mediators**

A mediator is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which the mediator was involved in the course of the exercise of the mediator's functions as a mediator.

**Note—**

See also section 64 (Protection of representatives, witnesses and relevant Commission officers).

## **Part 5 Practice and procedure**

### **Division 5.1 Introduction**

#### **41 Application of Part**

- (1) Each of the provisions of this Part (including as applied by the Commission rules under subsection (2)) is subject to enabling legislation and the Commission rules.

**Note—**

The Division Schedule for a Commission Division may, in some cases, make special provision for the practice and procedure to be followed in connection with certain proceedings allocated to the Division for determination. The provisions of the Division Schedule prevail to the extent of any inconsistency with the provisions of this Part. See section 13(2).

Section 5(3) also provides that any provisions of this Act or enabling legislation that are expressed to be subject to the Commission rules have effect subject to any exceptions, limitations or other restrictions specified by the Commission rules.

Enabling legislation may also make provision for matters relating to practice and procedure in relation to functions conferred on the Commission, including (for example) specifying periods within which applications or appeals under that legislation are to be made.

- (2) The Commission rules may make provision for or with respect to applying provisions of this Part (whether with or without modification) to the following—
  - (a) proceedings before a merit reviewer or medical assessor under enabling legislation,
  - (b) proceedings before a panel under enabling legislation determining an appeal against, or a review of, a decision of a merit reviewer or medical assessor.

#### **42 Guiding principle to be applied to practice and procedure**

- (1) The **guiding principle** for this Act and the Commission rules, in their application to proceedings in the Commission, is to facilitate the just, quick and cost effective resolution of the real issues in the proceedings.
- (2) The Commission must seek to give effect to the guiding principle when it—
  - (a) exercises any power given to it by this Act or the Commission rules, or
  - (b) interprets any provision of this Act or the Commission rules.
- (3) Each of the following persons is under a duty to co-operate with the Commission to give effect to the guiding principle and, for that purpose, to participate in the processes of the Commission and to comply with directions and orders of the Commission—

(a) a party to proceedings in the Commission,

(b) an Australian legal practitioner or other person who is representing a party in proceedings in the Commission.

(4) In addition, the practice and procedure of the Commission should be implemented so as to facilitate the resolution of the issues between the parties in such a way that the cost to the parties and the Commission is proportionate to the importance and complexity of the subject-matter of the proceedings.

(5) However, nothing in this section requires or permits the Commission to exercise any functions that are conferred or imposed on it under enabling legislation in a manner that is inconsistent with the objects or principles for which that legislation provides in relation to the exercise of those functions.

### **43 Procedure before Commission generally**

(1) Proceedings in any matter before the Commission are to be conducted with as little formality and technicality as the proper consideration of the matter permits.

(2) The Commission is not bound by the rules of evidence but may inform itself on any matter in the manner the Commission thinks appropriate and as the proper consideration of the matter before the Commission permits.

(3) The Commission is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

## **Division 5.2 Commencement of proceedings**

### **44 What constitutes an application**

For the purposes of this Act, an **application** to the Commission includes a referral or other mechanism (however expressed) by means of which enabling legislation provides for a matter to be brought to the attention of the Commission for a decision.

### **45 Making of applications and appeals**

An application or appeal to the Commission is to be made in the time and manner prescribed by enabling legislation or the Commission rules.

### **46 Service of documents outside the State**

The Commission may require a document to be served outside the State.

## **Division 5.3 Participation in proceedings**

### **47 Intervention by Authority**

The Authority—



- (a) has a right to be heard in any proceedings before the Commission, and
- (b) may, for that purpose, be represented by an Australian legal practitioner or a member of staff of the Authority or by any other person, and
- (c) may apply for an order for which any party may apply in those proceedings.

#### **48 Representation before Commission**

- (1) A person who is a party to proceedings before the Commission is entitled to be represented by an Australian legal practitioner or by an agent.
- (2) The Commission may refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.
- (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 (4).
- (4) 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.
- (5) The Commission may at any time revoke leave it has granted under subsection (4).
- (6) A party to proceedings before the Commission is entitled to representation or assistance (for example, the assistance of an interpreter) as may be necessary to enable the party to communicate adequately at any conference or hearing.
- (7) The Commission must take into account any written submission prepared by an Australian legal practitioner acting for a party to proceedings and submitted by or on behalf of the party (whether or not the party is represented by an Australian legal practitioner at any conference or hearing in the proceedings).
- (8) In this section—

**agent**, in relation to proceedings allocated to the Workers Compensation Division, means—

- (a) an officer of an industrial organisation of employers or employees registered under the *Industrial Relations Act 1996*, or
- (b) an officer of an association of employers or employees registered under the *Fair Work Act 2009* of the Commonwealth, or
- (c) a person employed by a licensed insurer or former licensed insurer or by a self-insurer within the meaning of the *Workplace Injury Management and Workers Compensation Act 1998*, or
- (d) a person employed by a law practice within the meaning of the *Legal Profession Uniform Law (NSW)*.

#### **49 Power of Commission to require information**

- (1) The Commission may give a direction in writing to any person (whether or not a party to proceedings before the Commission) requiring the person—
  - (a) to produce, at a time and place specified in the direction, specified documents in the possession of the person, or
  - (b) to provide specified information within a time specified in the direction that the Commission considers relevant to the proceedings, or
  - (c) to give within a time specified in the direction any specified consent, authority or direction that the Commission considers necessary or desirable for the purpose of facilitating the provision by another person of documents or information pursuant to a direction under subsection (2).
- (2) The direction may require the documents to be produced or the information to be provided—
  - (a) to the Commission or to another party to proceedings before the Commission, in the case of a direction given to a party to the proceedings, or
  - (b) to the Commission in the case of a direction given to a person who is not a party to proceedings before the Commission.
- (3) A person must not, without reasonable excuse, fail to comply with a direction given to the person.

Maximum penalty—50 penalty units.

- (4) If a person does not, without reasonable excuse, produce a document or provide information in compliance with a direction given to the person under this section, the person cannot as a party to proceedings before the Commission or a court have the document or information admitted in the proceedings.
- (5) The Commission may exercise powers under this section at the request of a party to

proceedings before the Commission or of the Commission's own motion.

- (6) A Division Head of a Commission Division or the principal registrar has and may exercise any power of the Commission under this section.
- (7) The regulations or the Commission rules may make provision for or with respect to any of the following matters—
  - (a) exempting specified kinds of documents or information from the operation of this section,
  - (b) specifying cases and circumstances in which the Commission is required to exercise the Commission's powers under this section,
  - (c) specifying cases and circumstances in which the Commission is not to exercise the Commission's powers under this section.

#### **50 Power of Commission to provide documents and information to a party**

- (1) If documents or information relevant to proceedings before the Commission are produced or provided to the Commission by a party to the proceedings or another person (whether or not in compliance with a requirement under this Act), the Commission may produce or provide the documents or information to—
  - (a) any other party to the proceedings, or
  - (b) any Australian legal practitioner representing any party, or
  - (c) a medical practitioner (including a medical assessor).
- (2) The Commission may, when producing or providing information or documents to an Australian legal practitioner or medical practitioner, direct that the person must not cause or permit disclosure of the information, or the information in the documents, to another party.
- (3) An Australian legal practitioner or medical practitioner must not contravene the Commission's direction under this section.

Maximum penalty—50 penalty units.

- (4) The regulations or the Commission rules may make provision for or with respect to any of the following matters—
  - (a) exempting specified kinds of documents or information from the operation of this section,
  - (b) specifying cases and circumstances in which the Commission is required to exercise the Commission's powers under this section,

- (c) specifying cases and circumstances in which documents or information produced or provided to the Commission may not be produced or provided by the Commission to another party to the proceedings or to an Australian legal practitioner or medical practitioner.

### **51 Summons to appear at conference or hearing**

- (1) Subject to subsection (2), the Division Head of a Commission Division may issue a summons, in circumstances prescribed by the Commission rules, requiring the attendance of a person at any conference or hearing before the Commission in connection with proceedings before the Commission.
- (2) If the proceedings are allocated to the Motor Accidents Division, a summons may be issued only to a party to the proceedings.
- (3) A person must not, without reasonable excuse, fail to comply with a summons served on the person under this section.

Maximum penalty—50 penalty units.

- (4) In this section—

**conference** includes a conference at which the parties (or some of them) participate by telephone, closed-circuit television or other means.

## **Division 5.4 Conduct of proceedings**

### **52 Hearings and conferences**

- (1) Proceedings need not be conducted by formal hearing and may be conducted by way of a conference between the parties, including a conference at which the parties (or some of them) participate by telephone, closed-circuit television or other means.
- (2) Subject to any procedural directions, the Commission may hold a conference with all relevant parties in attendance and with relevant experts in attendance, or a separate conference in private with any of them.
- (3) If the Commission is satisfied that sufficient information has been supplied to it in connection with proceedings, the Commission may exercise functions under this Act and enabling legislation without holding any conference or formal hearing.
- (4) An assessment or determination is to be made by the Commission having regard to information that is conveniently available to the Commission, even if one or more of the parties to the assessment or determination proceedings do not co-operate or cease to co-operate.

### **53 Reconstitution of Commission during proceedings**

- (1) The President may replace the member, or one of the members, constituting the

Commission after the consideration of a matter by the Commission has commenced if, before the matter is determined, the member—

- (a) becomes unavailable for any reason, or
- (b) ceases to be a member, or
- (c) ceases to have a qualification required for participation in the proceedings.

(2) The President may not replace a member unless the President has first—

- (a) afforded the parties an opportunity to make submissions about the proposed replacement, and
- (b) taken their submissions into account.

(3) The Commission as reconstituted is to have regard to the evidence, submissions and decisions in relation to the matter that were given or made before the Commission was reconstituted.

#### **54 Dismissal of proceedings**

The Commission may at any stage dismiss proceedings before it—

- (a) if it is satisfied that the proceedings have been abandoned, or
- (b) if it is satisfied that the proceedings are frivolous or vexatious or otherwise misconceived or lacking in substance, or
- (c) for any other ground of dismissal specified in the Commission rules.

### **Division 5.5 Determination of issues and proceedings**

#### **55 Commission divided in opinion**

If the Commission is constituted by more than one member for the purposes of the determination of any proceedings and the members are divided in opinion, the opinion of the majority is taken to be the decision of the Commission.

#### **56 Effect of decisions of Commission**

- (1) Except as otherwise provided by this Act or enabling legislation, a decision of the Commission under the Workers Compensation Acts is final and binding on the parties and is not subject to appeal or review.
- (2) A decision of or proceeding before the Commission is not—
  - (a) to be vitiated because of any informality or want of form, or
  - (b) liable to be challenged, appealed against, reviewed, quashed or called into

question by any court.

- (3) To avoid doubt, this section does not limit any power of the Supreme Court to provide relief for jurisdictional error in proceedings for the judicial review of a decision of the Commission.

## **57 Reconsideration of decisions of Commission**

- (1) The Commission may reconsider any matter that has been dealt with by the Commission in the Workers Compensation Division and rescind, alter or amend any decision previously made or given by the Commission in that Division.
- (2) If after the making of a decision by the Commission (and without limiting subsection (1)), the President is satisfied that the decision contains an obvious error, the President may—
  - (a) alter the decision to correct the error, or
  - (b) direct a registrar to alter the decision to correct the error.
- (3) Without limiting subsection (2), if the decision is contained in a certificate, the President may—
  - (a) issue a replacement certificate with the error corrected, or
  - (b) direct a registrar to issue a replacement certificate with the error corrected.
- (4) If a decision is altered, the altered decision is taken to be the decision and notice of the alteration is to be given to the parties in the proceedings in the manner directed by the President.
- (5) If a replacement certificate is issued, the certificate prevails over any previous certificate.
- (6) Examples of obvious errors in a decision are where—
  - (a) there is an obvious clerical or typographical error in the text of the notice or statement, or
  - (b) there is an error arising from an accidental slip or omission, or
  - (c) there is a defect of form, or
  - (d) there is an inconsistency between the stated decision and the stated reasons.

## **58 Publication of decisions**

- (1) The Commission must cause details of the following to be published in accordance with the Commission rules—

- (a) decisions of the Commission,
  - (b) decisions of merit reviewers under Division 7.4 of the *Motor Accident Injuries Act 2017*,
  - (c) decisions of review panels for merit reviewers under Division 7.4 of the *Motor Accident Injuries Act 2017*,
  - (d) decisions of Appeal Panels for medical assessments under Part 7 of Chapter 7 of the *Workplace Injury Management and Workers Compensation Act 1998*,
  - (e) decisions of review panels for medical assessments under Part 3.4 of the *Motor Accidents Compensation Act 1999* or Division 7.5 of the *Motor Accident Injuries Act 2017*,
  - (f) any other decisions prescribed by the Commission rules.
- (2) The Commission may make a summary of the details of agreements registered under the former section 66A of the *Workers Compensation Act 1987* (before its substitution by the *Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act 2005*) available for public inspection by—
- (a) employers, insurers, workers and the Authority (and their legal representatives),  
and
  - (b) persons or classes of persons as may be prescribed by the regulations.

## **Part 6 Enforcement**

### **59 Recovery of amounts ordered to be paid**

- (1) For the purposes of the recovery of any amount ordered to be paid by the Commission (including costs, but not including a civil or other penalty), the amount is to be certified by the principal registrar.
- (2) A certificate given under this section must identify the person liable to pay the certified amount.
- (3) A certificate of the principal registrar under this section that is filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate, operates as such a judgment.

### **60 Proceedings for offences**

- (1) Proceedings for an offence under this Act may be dealt with summarily before the Local Court.
- (2) Proceedings for an offence under this Act may be commenced only by any of the following persons—

- (a) the Minister,
- (b) a person with the written consent of either the Minister or another person or body authorised by the Minister for that purpose.

## **Part 7 Miscellaneous**

### **61 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### **62 Authentication of documents**

- (1) Every document requiring authentication by the Commission is sufficiently authenticated without the seal of the Commission if it is—
  - (a) signed by any member or a registrar, or
  - (b) authenticated in a manner prescribed by the regulations.
- (2) Judicial notice is to be taken of the signature of the member concerned or a registrar when appearing on a document issued by the Commission.

### **63 Proof of certain matters not required**

In any legal proceedings, no proof is required (unless evidence to the contrary is given) of—

- (a) the constitution of the Commission, or
- (b) any decision of the Commission, or
- (c) the appointment or qualifications of, or the holding of office by, a member, registrar, mediator, medical assessor or merit reviewer.

**Note—**

See also section 52 (Proceedings of statutory bodies) of the [Interpretation Act 1987](#).

### **64 Protection of representatives, witnesses and relevant Commission officers**

- (1) An Australian legal practitioner, or any other person appearing before the Commission on behalf of a party in any proceedings, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (2) Subject to this Act, a person summoned to attend or appearing before the Commission as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.



- (3) Any thing done or omitted to be done by a relevant Commission officer in exercising the functions conferred or imposed on the relevant Commission officer by or under this or any other Act does not, if the thing was done or omitted to be done in good faith, subject the relevant Commission officer personally to any action, liability, claim or demand.

**Note—**

See also clause 4 of Schedule 2 with respect to the protections and immunities of members of the Commission when exercising their functions.

- (4) Any liability that would attach to a person were it not for the operation of subsection (3) attaches instead to the Crown.
- (5) In this section—

**barrister** has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

## 65 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following—
  - (a) qualifications or criteria for the appointment of mediators, medical assessors or merit reviewers,
  - (b) the procedure of the Rule Committee.

## 66 Annual reviews

- (1) As soon as practicable after 30 June (but on or before 31 December) of each year, the President must provide both the Minister and the Authority with a review (an **annual review**) of the operations of the Commission for the period ending on 30 June in that year.
- (2) The President is, within 90 days of providing an annual review to the Minister, to cause the review to be published on a website the President considers appropriate.
- (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*.

## **67 Repeal of Workers Compensation Commission Rules 2011**

The *Workers Compensation Commission Rules 2011* are repealed on the establishment day.

## **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).

## **Schedule 1 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent

on the enactment of this Act or any Act that amends this Act.

- (2) Any such provision has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (5) Without limiting subclause (1), provision may be made for or with respect to proceedings (whether or not made or commenced or initiated) or rights to bring proceedings, or the exercise of any functions, in connection with services, bodies or offices that are abolished or transferred by operation of Part 2 of this Schedule.
- (6) In this clause—

**proceedings** includes applications, requests, referrals, reviews and appeals (including those made to courts).

## **Part 2 Provisions consequent on enactment of this Act**

### **Division 1 Interpretation**

#### **2 Definitions**

- (1) In this Part—

**CARS** means the Motor Accidents Claims Assessment and Resolution Service of the Authority referred to in section 98 of the [Motor Accidents Compensation Act 1999](#) immediately before the establishment day.

**current approved medical specialist** means any person who, immediately before the establishment day, was an approved medical specialist appointed under Part 7 of Chapter 7 of the [Workplace Injury Management and Workers Compensation Act 1998](#) (including a senior approved medical specialist).

**current claims assessor** means any person (other than the current Principal Claims Assessor) who, immediately before the establishment day, was a claims assessor under the *Motor Accident Injuries Act 2017* or the *Motor Accidents Compensation Act 1999* (or both).

**current mediator** means any person who, immediately before the establishment day, was a mediator appointed under section 318F of the *Workplace Injury Management and Workers Compensation Act 1998*.

**current medical assessor** means any person who, immediately before the establishment day, was a medical assessor under the *Motor Accident Injuries Act 2017* or the *Motor Accidents Compensation Act 1999* (or both).

**current merit reviewer** means any person who, immediately before the establishment day, was a merit reviewer under the *Motor Accident Injuries Act 2017*.

**current Principal Claims Assessor** means any person who, immediately before the establishment day, was the Principal Claims Assessor under the *Motor Accident Injuries Act 2017* or the *Motor Accidents Compensation Act 1999* (or both).

**current WCC member** means a person who was a member of the WCC immediately before the establishment day.

**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*.

**DRS** means the Dispute Resolution Service of the Authority established under Division 7.2 of the *Motor Accident Injuries Act 2017* provided in respect of motor vehicle accidents occurring on or after 1 December 2017.

**MAS** means the Motor Accidents Medical Assessment Service of the Authority referred to in section 57A of the *Motor Accidents Compensation Act 1999* immediately before the establishment day.

**WCC** means the Workers Compensation Commission established by the *Workplace Injury Management and Workers Compensation Act 1998*.

- (2) If a provision of this Part provides for a matter or other thing to occur on a specified day, the matter or thing is taken to have occurred at the beginning of the specified day.

## **Division 2 Abolition of WCC, certain offices and dispute resolution**

## services provided by Authority

### 3 Abolition of WCC and various motor accident services

Each of the following is abolished on the establishment day—

- (a) the DRS,
- (b) the MAS,
- (c) the CARS,
- (d) the WCC.

### 4 Certain office holders cease to hold office on establishment day

(1) Any person who, immediately before the establishment day, held any of the following offices ceases to hold it on and from the establishment day—

- (a) President of the WCC,
- (b) Deputy President of the WCC,
- (c) Registrar of the WCC,
- (d) Senior Arbitrator of the WCC,
- (e) Arbitrator of the WCC,
- (f) Workers Compensation Independent Review Officer under the *Workplace Injury Management and Workers Compensation Act 1998*,
- (g) senior approved medical specialist under the *Workplace Injury Management and Workers Compensation Act 1998*,
- (h) approved medical specialist under the *Workplace Injury Management and Workers Compensation Act 1998*,
- (i) mediator under the *Workplace Injury Management and Workers Compensation Act 1998*.

(2) Any person who, immediately before the establishment day, held any of the following offices ceases to hold it on and from the establishment day—

- (a) Principal Claims Assessor under the *Motor Accident Injuries Act 2017* or the *Motor Accidents Compensation Act 1999* (or both),
- (b) claims assessor under the *Motor Accident Injuries Act 2017* or the *Motor Accidents Compensation Act 1999* (or both),
- (c) medical assessor under the *Motor Accident Injuries Act 2017* or the *Motor*

*Accidents Compensation Act 1999* (or both),

(d) merit reviewer under the *Motor Accident Injuries Act 2017*.

(3) If a person ceases to hold an office by operation of this clause, the person is—

(a) not entitled to any remuneration or compensation because of the loss of that office, and

(b) eligible (if otherwise qualified) to be appointed to hold an office in the Commission if Division 3 or Division 4 does not already operate to make the appointment.

**Note—**

Division 3 and Division 4 provide for certain persons who cease to hold office by operation of this clause to be transferred to the Commission.

(4) This clause has effect despite anything to the contrary in any other legislation concerning the circumstances or processes for the removal of (or the vacation of office by) holders of the offices referred to in subclause (1) or (2).

## **Division 3 Transfers concerning members of Commission**

### **5 WCC members to become members of Commission**

(1) **Transfer of WCC President** A current WCC member who is the President of the WCC is taken, on and from the establishment day, to have been appointed under this Act as the President of the Commission.

(2) **Transfer of WCC Deputy Presidents** A current WCC member who is a Deputy President of the WCC is taken, on and from the establishment day, to have been—

(a) appointed under this Act as a Deputy President of the Commission, and

(b) assigned under this Act to the Workers Compensation Division.

(3) **Transfer of WCC Registrar** A current WCC member who is the Registrar of the WCC is taken, on and from the establishment day, to have been—

(a) appointed under this Act as a principal member of the Commission, and

(b) appointed under this Act as the Division Head of the Workers Compensation Division.

(4) **Transfer of WCC Senior Arbitrators** A current WCC member who is a Senior Arbitrator of the WCC is taken, on and from the establishment day, to have been—

(a) appointed under this Act as a senior member of the Commission, and

(b) assigned under this Act to the Workers Compensation Division.

(5) **Transfer of other WCC Arbitrators** A current WCC member who is an Arbitrator (other

than a Senior Arbitrator) of the WCC is taken, on and from the establishment day, to have been—

- (a) appointed under this Act as a general member of the Commission, and
- (b) assigned under this Act to the Workers Compensation Division.

(6) Subclause (5) does not apply to an Arbitrator who is a Public Service employee immediately before the establishment day.

## **6 Certain motor accident claims assessors to become members of Commission**

(1) The current Principal Claims Assessor under the *Motor Accident Injuries Act 2017* is taken, on and from the establishment day, to have been—

- (a) appointed under this Act as a principal member of the Commission, and
- (b) appointed under this Act as the Division Head of the Motor Accidents Division.

(2) A current claims assessor is taken, on and from the establishment day, to have been—

- (a) appointed under this Act as a general member of the Commission, and
- (b) assigned under this Act to the Motor Accidents Division.

(3) Subclause (2) does not apply to a current claims assessor who is a Public Service employee immediately before the establishment day.

## **7 Effect of Division in relation to transfers**

(1) Despite clause 3 of Schedule 2, a person who is appointed as a member of the Commission by operation of this Division is taken to hold office as a member of the Commission for whichever of the following is the greater—

- (a) the period of 12 months commencing on the establishment day,
- (b) the balance of the term to which the person was appointed to the abolished office.

(2) A person appointed as a member of the Commission 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 Minister may issue an appropriate instrument of appointment to a person appointed as a member of the Commission by operation of this Division.

(4) A person's appointment as a member of the Commission 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 to be a member of the

Commission before the establishment day, or

- (b) prevent a person who becomes a member of the Commission or the holder of another position in the Commission 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 a member of the Commission by operation of this Division, means the office held by the person immediately before the establishment day.

## **Division 4 Transfers concerning WIRO, medical assessors, merit reviewers and mediators**

### **8 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.

### **9 Transfer of current approved medical specialists**

- (1) A current approved medical specialist is taken, on and from the establishment day, to have been appointed under this Act as a medical assessor for the purposes of the [Workplace Injury Management and Workers Compensation Act 1998](#).
- (2) Subclause (1) does not apply to a current approved medical specialist who is a Public Service employee immediately before the establishment day.

### **10 Transfer of current medical assessors**

- (1) A current medical assessor is taken, on and from the establishment day, to have been appointed as a medical assessor under this Act for the purposes of the Act under which they were originally appointed.
- (2) Subclause (1) does not apply to a current medical assessor who is a Public Service employee immediately before the establishment day.

### **11 Transfer of current merit reviewers**

- (1) A current merit reviewer is taken, on and from the establishment day, to have been appointed as a merit reviewer under this Act for the purposes of the [Motor Accident Injuries Act 2017](#).



- (2) Subclause (1) does not apply to a current merit reviewer who is a Public Service employee immediately before the establishment day.

## **12 Transfer of current mediators**

- (1) A current mediator is taken, on and from the establishment day, to have been appointed as a mediator under this Act for the purposes of the *Workplace Injury Management and Workers Compensation Act 1998*.
- (2) Subclause (1) does not apply to a current mediator who is a Public Service employee immediately before the establishment day.

## **13 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.

## **14 Effect of Division in relation to transfers of medical assessors, merit reviewers and**

## **mediators**

- (1) A person who is appointed as a medical assessor, merit reviewer or mediator by operation of this Division is taken to hold office as a medical assessor, merit reviewer or mediator for whichever of the following is the greater—
  - (a) the period of 12 months commencing on the establishment day,
  - (b) the balance of the term to which the person was appointed to the abolished office.
- (2) A person appointed as a medical assessor, merit reviewer or mediator 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 President may issue an appropriate instrument of appointment to a person appointed as a medical assessor, merit reviewer or mediator by operation of this Division.
- (4) A person's appointment as a medical assessor, merit reviewer or mediator is effective whether or not an instrument of appointment is issued under subclause (3).
- (5) This Division does not prevent a person who becomes a member of the Commission or the holder of another position in the Commission by operation of this Division from—
  - (a) being appointed, with the consent of the person, to a different or additional office or position in the Commission under this Act, or
  - (b) 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 a medical assessor, merit reviewer or mediator by operation of this Division, means the office held by the person immediately before the establishment day.

## **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*.

## Division 5 Miscellaneous

### 15 Interim directions concerning practice and procedure

- (1) Until Commission rules first come into force, the President may issue directions (**interim practice and procedure directions**) concerning any matter for or in respect of which the Commission rules may make provision.
- (2) An interim practice and procedure direction—
  - (a) must be published on the Commission's website, and
  - (b) takes effect on the day it is published or any later day specified in the direction, and
  - (c) ceases to have effect when the Commission rules first come into force, unless

sooner revoked, and

(d) may be amended, replaced or revoked by a further direction.

- (3) An interim practice and procedure direction is taken to be a Commission rule for the purposes of any provision of legislation that refers to a matter for which the Commission rules may or must make provision (however described).
- (4) Without limiting subclause (3), an interim practice and procedure direction operates as a Commission rule for the purposes of this Act.
- (5) However, subclause (3) does not apply in respect of the following provisions—
  - (a) sections 39–41 of the *Interpretation Act 1987*,
  - (b) any other provision of legislation prescribed by the regulations.
- (6) This clause does not limit the power of the President to issue procedural directions under section 21.

## 16 Making of first principal Regulation

Part 2 of the *Subordinate Legislation Act 1989* is taken to apply to the first regulation made under this Act that is a principal statutory rule (within the meaning of the *Subordinate Legislation Act 1989*) as if the Minister administering the *Subordinate Legislation Act 1989* had given a certificate under section 6(1)(b) of that Act with respect to the regulation.

## 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.

### **17A Independent Review Officer—remuneration**

The Independent Review Officer is, until the earlier of the following, entitled to the same remuneration the current WIRO was entitled to immediately before the establishment day—

- (a) the day on which a determination of the Independent Review Officer's remuneration comes into force under the *Statutory and Other Offices Remuneration Act 1975*,
- (b) 26 August 2022.

## **Schedule 2 Provisions relating to members of Commission**

section 8

### **1 Definition**

In this Schedule—

**judicial office** means the office of—

- (a) Magistrate, or
- (b) Judge of the District Court, or
- (c) Judge of the Land and Environment Court, or
- (d) Judge of the Supreme Court.

### **2 Application of Schedule to acting members**

- (1) Subject to this clause, all of the provisions of this Schedule apply to acting members.
- (2) In this clause—

**acting member** means a person appointed by or under this Act to act as a member.

### **3 Terms of appointment**

- (1) Subject to this Act, a member holds office for the period specified in the member's instrument of appointment.
- (2) The term of an appointment must not exceed—

- (a) for a presidential member—7 years, or
- (b) for a non-presidential member—5 years.

(3) A member is eligible for reappointment.

#### **4 Protection and immunities of member**

A member has, in the performance of functions performed as a member, the same protection and immunities as a Judge of the Supreme Court.

#### **5 Remuneration**

(1) The following members are entitled to be paid remuneration (including travelling and subsistence allowances) in accordance with the *Statutory and Other Offices Remuneration Act 1975*—

- (a) a presidential member,
- (b) any other member appointed on a full-time basis by the member's instrument of appointment or by a later instrument executed by the Minister.

(2) A member who is a Public Service employee is not entitled to receive remuneration under this Act while receiving remuneration as a Public Service employee.

(3) Any other member is entitled to be paid remuneration (including travelling and subsistence allowances) in respect of work done as a member as the Minister determines from time to time in respect of the member.

#### **6 Vacancy in office**

(1) The office of a member becomes vacant if the member—

- (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 Minister, or
- (d) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
- (e) 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
- (f) becomes a mentally incapacitated person, or
- (g) 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

(h) is removed from office under this clause.

(2) The Minister may remove a member from office for incapacity, incompetence or misbehaviour.

## **7 Acting President**

(1) If the President is absent from duty, the most senior Deputy President is to be Acting President unless the Minister makes an appointment under subclause (2).

(2) The Minister may appoint a Deputy President or other member to be Acting President during the absence of the President from duty.

(3) The Minister may make any appointment for a particular absence or for any absence that occurs from time to time.

(4) An Acting President has the functions of the President and anything done by an Acting President in the exercise of those functions has effect as if it had been done by the President.

(5) In this clause, **absence from duty** includes a vacancy in the office of President.

## **8 Acting Deputy Presidents**

(1) If a Deputy President is absent from duty, the Minister may appoint a person to be an Acting Deputy President during the absence of the Deputy President.

(2) The Minister may make an appointment for a particular absence or for any absence that occurs from time to time.

(3) The Minister may also appoint such additional Acting Deputy Presidents as the Minister determines may be necessary having regard to the workload and the need for the proper and efficient exercise of the Commission's functions.

(4) A person may be appointed as an Acting Deputy President only if the person is eligible to be appointed as a Deputy President.

(5) An Acting Deputy President may be appointed for up to 12 months but may, despite the expiration of that period, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the Acting Deputy President before the expiration of that period.

(6) A retired judicial officer may be appointed as an Acting Deputy President even though that person has reached the age of 72 years (or will have reached that age before the

appointment expires).

- (7) An Acting Deputy President has the functions of a Deputy President and anything done by an Acting Deputy President in the exercise of those functions has effect as if it had been done by a Deputy President.
- (8) Clause 3 does not apply to an Acting Deputy President.
- (9) In this clause—  
**absence from duty** includes a vacancy in the office of a Deputy President and an absence due to a Deputy President being Acting President in accordance with clause 7.

## 9 Acting principal member

- (1) If a principal member is absent from duty, the Minister may appoint a person to be an acting principal member during the absence of the principal member.
- (2) The Minister may make an appointment for a particular absence or for any absence that occurs from time to time.
- (3) The Minister may also appoint such additional acting principal members as the Minister determines may be necessary having regard to the workload and the need for the proper and efficient exercise of the Commission's functions.
- (4) A person may be appointed as an acting principal member only if the person is eligible to be appointed as a principal member.
- (5) An acting principal member may be appointed for up to 12 months but may, despite the expiration of that period, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the acting principal member before the expiration of that period.
- (6) An acting principal member has the functions of a principal member and anything done by an acting principal member in the exercise of those functions has effect as if it had been done by a principal member.
- (7) Clause 3 does not apply to an acting principal member.
- (8) In this clause—  
**absence from duty** includes a vacancy in the office of a principal member and an absence due to a principal member being an Acting Deputy President in accordance with clause 8.

## 10 Seniority

- (1) The members have seniority according to the following order of precedence—



- (a) the President,
  - (b) Deputy Presidents according to the days on which their appointments took effect or, if the appointments of 2 of them took effect on the same day, according to the precedence assigned to them by their instruments of appointment,
  - (c) principal members according to the days on which their appointments took effect or, if the appointments of 2 of them took effect on the same day, according to the precedence assigned to them by their instruments of appointment,
  - (d) senior members according to the days on which their appointments took effect or, if the appointments of 2 of them took effect on the same day, according to the precedence assigned to them by their instruments of appointment,
  - (e) general members according to the days on which their appointments took effect.
- (2) If a person is reappointed under this Act, the person's seniority is to be determined as if there had been no break in the person's service.

#### **11 Members and former members may complete unfinished matters**

- (1) This clause applies to a member (an ***affected member***) dealing with any matters relating to proceedings before the Commission that have been heard or partly heard (or were otherwise the subject of deliberations) by the member if, during the proceedings, either or both of the following occur—
- (a) the member ceases to have a qualification specified by a Division Schedule for a Commission Division or enabling legislation for participation in the proceedings other than because of any of the following reasons—
    - (i) misconduct or unsatisfactory conduct of the member,
    - (ii) the mental incapacity of the member,
    - (iii) the member becoming bankrupt or insolvent,
  - (b) the member ceases to be a member because of the expiration of the period of the member's appointment.
- (2) An affected member may, despite becoming an affected member, complete or otherwise continue to deal with any matters in the proceedings concerned.
- (3) While completing or otherwise dealing with matters referred to in subclause (2), the affected member is taken to have and may exercise all the rights and functions of a member that the affected member had immediately before becoming an affected member.

## 12 Leave

- (1) The entitlement of a member to annual and other leave is to be as stated in the instrument of the member's appointment.
- (2) A member may be granted leave—
  - (a) in the case of the President—by the Minister, and
  - (b) in any other case—by the President.

## 13 Superannuation and leave—preservation of rights

- (1) An eligible member—
  - (a) may continue to contribute to any superannuation scheme to which the eligible member was a contributor immediately before becoming an eligible member, and
  - (b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme, as if the eligible member had continued to be such a contributor during service as a member.
- (2) Service by the eligible member as a member is taken to be service as an officer in the eligible member's previous employment for the purposes of any law under which the member continues to contribute to the scheme or by which an entitlement under the scheme is conferred.
- (3) The eligible member is to be regarded as an officer or employee, and the State is to be regarded as the employer, for the purposes of the scheme.
- (4) This clause ceases to apply to the eligible member if the eligible member becomes a contributor to another superannuation scheme, but the eligible member is not prevented from receiving a resignation benefit from the first superannuation scheme.
- (5) An eligible member retains any rights to annual leave, extended or long service leave and sick leave accrued or accruing in the eligible member's previous employment.
- (6) An eligible member is not entitled to claim, under both this Act and any other Act, dual benefits of the same kind for the same period of service.
- (7) In this clause—

**eligible member** means a member who, immediately before holding that office, was a public servant or an officer or employee of a public authority declared by an Act or proclamation to be an authority to which this clause applies.

**superannuation scheme** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and that is established by or under an Act.

#### **14 Provisions where judicial officer is holding office as member**

- (1) The appointment of a person who is the holder of a judicial office as a member, or service by a person who is the holder of a judicial office as a member, does not affect—
  - (a) the person's tenure of that judicial office, or
  - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as a member is, for all purposes, taken to be service as the holder of that judicial office.
- (3) This clause is subject to clause 6.

#### **15 Disclosure of pecuniary and other interests**

The regulations may make provision for or with respect to—

- (a) the disclosure by members of interests (whether pecuniary or otherwise) that could conflict with the proper performance of the functions of a member in proceedings, and
- (b) the participation of members in proceedings in which there may be a conflict of interest (including the effect of participation on the validity of decisions made in the proceedings).

#### **16 Effect of other Acts**

- (1) The office of a member 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.
- (2) If, by or under any Act, provision is made—
  - (a) requiring a person who is the holder of a specified office to devote the whole of the person's time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a non-full-time member or from accepting and retaining any remuneration payable to the person under this Act as a non-full-time member.
- (3) In this clause—

**non-full-time member** means a member holding office other than on a full-time basis.

## 17 Oaths

The Minister may require oaths to be taken by the President and any Deputy President.

## Schedule 3 Workers Compensation Division

section 13

### Part 1 Interpretation

#### 1 Definitions

In this Schedule—

**Division function** means a function of the Commission allocated to the Division by this Schedule.

**Division Head** means the Division Head of the Division.

**Division member** means a member who is assigned to the Division.

**substantive Division function** means a Division function other than a Division function exercised by a registrar.

**the Division** means the Workers Compensation Division of the Commission.

### Part 2 Composition of Division

#### 2 Division members

The Division is composed of the following members—

- (a) the Division Head,
- (b) any other members assigned to the Division by or under this Act.

### Part 3 Functions of Division

#### 3 Functions allocated to Division

- (1) The functions of the Commission in relation to the workers compensation legislation are allocated to the Division.

**Note—**

Section 5(2) provides that a reference in this Act (however expressed) to the exercise by the Commission of its functions in relation to enabling legislation includes a reference both to its functions under the enabling legislation and its functions under this Act or any other legislation in relation to the enabling legislation.

- (2) Without limiting subclause (1), the functions of the Commission in relation to the workers compensation legislation include the following—

- (a) expedited assessments under Part 5 of Chapter 7 of the [Workplace Injury](#)

*Management and Workers Compensation Act 1998,*

- (b) the resolution of disputes about work capacity decisions within the meaning of the *Workers Compensation Act 1987,*
- (c) the assessment of costs under provisions concerning assessments made by regulations for the purposes of section 347(4) of the *Workplace Injury Management and Workers Compensation Act 1998.*

## **Part 4 Special constitution requirements**

### **4 Constitution generally**

Except as provided by this Part or sections 351 and 352 of the *Workplace Injury Management and Workers Compensation Act 1998,* the Commission when exercising its substantive Division functions is to be constituted by—

- (a) 1 Division member who is a non-presidential member, or
- (b) the Division Head (but only if the Division Head is a Deputy President).

### **5 Constitution for costs assessments and appeals against costs assessments**

(1) This clause applies to the exercise of—

- (a) a substantive Division function in respect of an assessment of costs by the Commission under provisions for assessments of costs made by regulations for the purposes of section 347(4) of the *Workplace Injury Management and Workers Compensation Act 1998* (a **costs assessment function**), and
- (b) a substantive Division function in respect of an appeal to the Commission against an assessment of costs under provisions for appeals made by regulations for the purposes of section 347(4) of the *Workplace Injury Management and Workers Compensation Act 1998* (a **costs assessment appeal function**).

- (2) The Commission, when exercising a costs assessment function, is to be constituted by 1 Division member who is a non-presidential member.
- (3) The Commission, when exercising a costs assessment appeal function, is to be constituted by 1 Division member who is a presidential member.

## **Part 5 Special practice and procedure**

### **6 Commission to attempt conciliation**

- (1) The Commission constituted by a non-presidential member is not, in the exercise of its substantive Division functions, to make an award or otherwise determine a dispute referred to the Commission for determination without first using the member's best endeavours to bring the parties to the dispute to a settlement acceptable to all of

them.

- (2) No objection may be taken to the making of an award or the determination of a dispute by the Commission constituted by a non-presidential member on the ground that the member had previously used the member's best endeavours to bring the parties to the dispute to a settlement.

## **7 Evidence of statements made in Commission**

In proceedings before a court with respect to a claim for work injury damages (other than proceedings under section 235A or 235C of the *Workplace Injury Management and Workers Compensation Act 1998* or under the *Crimes Act 1900* with respect to fraud), evidence of a statement made in proceedings before the Commission is not admissible unless the person who made the statement agrees to the evidence being admitted.

## **8 Powers of Commission to require evidence**

- (1) The Commission may require any person appearing before the Commission in proceedings allocated to the Division—
  - (a) to give evidence on oath or affirmation (and may, for that purpose, administer an oath or affirmation), and
  - (b) to answer any relevant question put to the person.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement duly made under this clause.  
Maximum penalty—50 penalty units.
- (3) A person is not required to answer a question under this clause if the answer to that question would tend to incriminate the person of an offence.

## **Part 6 Division functions exercisable by registrar**

### **9 Registrar may exercise expedited assessment functions if directed**

- (1) Despite Part 4, a registrar or any other member of staff of the Commission may, at the direction of the President, exercise any of the functions of the Commission referred to in clause 3(2).
- (2) The President may direct a registrar or any other member of staff of the Commission to refer the exercise of such a function in a particular matter to the Commission and the registrar or other member of staff must comply with the direction.
- (3) A registrar or any other member of staff of the Commission may refer a particular matter in the exercise of such a function to the Commission if the registrar or member of staff considers it would be more appropriate for the Commission to deal with the matter.

## Schedule 4 Motor Accidents Division

### Part 1 Interpretation

#### 1 Definitions

In this Schedule—

**Division function** means a function of the Commission allocated to the Division by this Schedule.

**Division Head** means the Division Head of the Division.

**Division member** means a member who is assigned to the Division.

**substantive Division function** means a Division function other than a Division function exercised by a registrar.

**the Division** means the Motor Accidents Division of the Commission.

### Part 2 Composition of Division

#### 2 Division members

The Division is composed of the following members—

- (a) the Division Head,
- (b) any other members assigned to the Division by or under this Act.

### Part 3 Functions of Division

#### 3 Functions allocated to Division

The functions of the Commission in relation to the motor accidents legislation are allocated to the Division.

**Note—**

Section 5(2) provides that a reference in this Act (however expressed) to the exercise by the Commission of its functions in relation to enabling legislation includes a reference both to its functions under the enabling legislation and its functions under this Act or any other legislation in relation to the enabling legislation.

### Part 4 Special constitution requirements

#### 4 Constitution generally

Except as provided by this Part, the Commission when exercising its substantive Division functions is to be constituted by 1 Division member.

## 5 (Repealed)

## 6 Functions under *Motor Accidents (Lifetime Care and Support) Act 2006*

The Commission, when exercising its substantive Division functions for the purposes of Division 2 of Part 3 of the *Motor Accidents (Lifetime Care and Support) Act 2006*, is to be constituted by 3 Division members.

## Part 5 Special practice and procedure

### 7 Evidence about assessment conference

- (1) In proceedings before a court with respect to a claim, evidence of a statement made during an assessment conference is not admissible unless the person who made the statement agrees to the evidence being admitted.
- (2) Subclause (1) does not apply in respect of proceedings before a court under—
  - (a) Division 6.6 of the *Motor Accident Injuries Act 2017*, or
  - (b) Part 4.6 of the *Motor Accidents Compensation Act 1999*.
- (3) In this clause—

**assessment conference** means any conference or other proceeding held with or before the Commission in connection with an assessment of a claim, and includes any such proceedings at which the parties (or some of them) participate by telephone, closed-circuit television or other means.

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

## Schedule 5 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.

## **Schedule 6 (Repealed)**