

c2020-095F
GRNS--The Greens

LEGISLATIVE COUNCIL

Personal Injury Commission Bill 2020

First print

Proposed amendments

- No. 1 **Compensation Claims Independent Review Officer**
Page 2, clause 2. Insert after line 7—
 (1A) Schedule 4A commences on the establishment day.
- No. 2 **Compensation Claims Independent Review Officer**
Page 3, clause 5(1). Insert after line 17—
 Independent Review Officer means the Compensation Claims Independent
 Review Officer appointed under Schedule 4A.
- No. 3 **Compensation Claims Independent Review Officer**
Page 5, clause 7(2). Insert after line 29—
 (b1) appointment as the Independent Review Officer,
- No. 4 **Compensation Claims Independent Review Officer**
Page 5, clause 7. Insert after line 32—
 (2A) To avoid doubt, the provisions of clauses 2–4 of Schedule 4A apply in relation
 to the appointment of the Independent Review Officer before the
 establishment day even though those provisions have not commenced.
- No. 5 **Compensation Claims Independent Review Officer**
Page 32, Schedule 1, clause 2(1). Insert after line 10—
 current WIRO means any person who, immediately before the establishment
 day, was the Workers Compensation Independent Review Officer under the
 Workplace Injury Management and Workers Compensation Act 1998.
- No. 6 **Compensation Claims Independent Review Officer**
Page 32, Schedule 1, clause 4(1). Insert after line 37—
 (e1) Workers Compensation Independent Review Officer under the
 Workplace Injury Management and Workers Compensation Act 1998,
- No. 7 **Compensation Claims Independent Review Officer**
Page 35, Schedule 1, line 1. Insert “**WIRO**,” after “**concerning**”.

No. 8 **Compensation Claims Independent Review Officer**

Page 35, Schedule 1. Insert after line 2—

7A Transfer of current WIRO

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

No. 9 **Compensation Claims Independent Review Officer**

Page 35, Schedule 1. Insert after line 26—

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

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

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

No. 10 **Compensation Claims Independent Review Officer**

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

No. 11 **Compensation Claims Independent Review Officer**

Page 46. Insert after line 15—

Schedule 4A Compensation Claims Independent Review Officer

Part 1 Introduction

1 Definitions

In this Schedule—

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

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- (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*.

compensation legislation means—

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

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 compensation 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 a Compensation Claims 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,

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- (b) to inquire into and report to the Minister on any matters arising in connection with the operation of this Act or the compensation 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 compensation 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 compensation 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.

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 compensation 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.

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.

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

14 Delegation of functions

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

- (a) any member of staff of the Independent Review Officer, or
- (b) any person, or any class of persons, authorised for the purposes of this clause by the regulations.

No. 12 Compensation Claims Independent Review Officer

Page 47, Schedule 5. Insert before line 31—

5.4A Government Sector Employment Act 2013 No 40

Schedule 1 Public Service agencies

Insert in alphabetical order in Part 3—

Office of the Compensation Claims
Independent Review Officer

*Compensation Claims Independent Review
Officer

No. 13 Compensation Claims Independent Review Officer

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

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

No. 14 Compensation Claims Independent Review Officer

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

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

Insert after section 212(3)(c2)—

- (c3) the remuneration of the Independent Review Officer (within the meaning of the *Personal Injury Commission Act 2020*) and staff

of the Independent Review Officer and costs incurred in connection with the exercise of the functions of the Independent Review Officer arising under this Act,

No. 15 **Compensation Claims Independent Review Officer**

Page 64, Schedule 5.10. Insert after line 35—

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

Omit the definition. Insert instead—

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

No. 16 **Compensation Claims Independent Review Officer**

Page 65, Schedule 5.10. Insert after line 20—

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

Omit the Part.

No. 17 **Compensation Claims Independent Review Officer**

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

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

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

Omit the paragraph. Insert instead—