

c2020-100E
OPP--OPPOSITION

LEGISLATIVE COUNCIL

Personal Injury Commission Bill 2020

First print

Proposed amendments

- No. 1 **Functions of Division Heads**
Page 3, clause 5(1) (definition of *mediator*), line 20. Omit “the President”. Insert instead “a Division Head of a Commission Division”.
- No. 2 **Functions of Division Heads**
Page 3, clause 5(1) (definition of *medical assessor*), line 21. Omit “the President”. Insert instead “a Division Head of a Commission Division”.
- No. 3 **Functions of Division Heads**
Page 3, clause 5(1) (definition of *merit reviewer*), line 24. Omit “the President”. Insert instead “a Division Head of a Commission Division”.
- No. 4 **Assignments to Commission Divisions**
Page 6, clause 9(3). Insert after line 29—
 (b1) the Commission Division or Divisions to which the member has been assigned, and
- No. 5 **Qualifications of members**
Page 6, clause 10(2), line 39. Omit all words on that line. Insert instead—
 (b) is an Australian lawyer of 7 years’ standing and has, in the opinion of the Minister, special knowledge, skill or expertise in relation to any class of matter in respect of which the Commission has jurisdiction.
- No. 6 **Qualifications of members**
Page 7, clause 10(3), lines 2 and 3. Omit all words on those lines. Insert instead—
 (b) has, in the opinion of the Minister, special knowledge, skill or expertise in relation to any class of matter in respect of which the Commission has jurisdiction.
- No. 7 **Qualifications of members**
Page 7, clause 10(4), lines 8 and 9. Omit all words on those lines. Insert instead—
 (b) has, in the opinion of the Minister, special knowledge, skill or expertise in relation to any class of matter in respect of which the Commission has jurisdiction.

No. 8 **Assignments to Commission Division**

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

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

No. 9 **Functions of Division Heads**

Page 8, clause 16(1)(d) and (e), lines 37–40. Omit all words on those lines.

No. 10 **Functions of Division Heads**

Page 9, clause 17(1). Insert after line 18—

- (a1) to manage members assigned to that Division, and
- (a2) to appoint medical assessors, merit reviewers and mediators for the purposes of enabling legislation allocated to that Division and exercise general direction and control over the exercise of their functions, and

No. 11 **President must consent to making of Commission rules**

Page 10, clause 19. Insert after line 45—

- (7A) Despite subsections (6) and (7), a Commission rule cannot take effect unless the President consents to the rule being made either by—
 - (a) voting for it at the meeting at which it is proposed to be made, or
 - (b) giving written consent for its making before or after the meeting.

No. 12 **Commission rules**

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

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

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- (k) the way for notifying the parties to proceedings of decisions of, or other action taken by, the Commission in the proceedings,
 - (l) the form, use and effect of the seal of the Commission,
 - (m) the specification of exceptions, limitations or other restrictions in relation to a provision of this Act or enabling legislation that is expressed to be subject to the Commission rules.

No. 13 **Functions of Division Heads**

Page 18, clause 33(1), line 7. Omit “The President”. Insert instead “A Division Head of a Commission Division”.

No. 14 **Qualifications of merit reviewers**

Page 18, clause 33. Insert after line 14—

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

No. 15 **Functions of Division Heads**

Page 18, clause 33(4), line 20. Omit “President”. Insert instead “Division Head”.

No. 16 **Functions of Division Heads**

Page 18, clause 33(6), line 23. Omit “President”. Insert instead “Division Head”.

No. 17 **Functions of Division Heads**

Page 18, clause 36(1), line 40. Omit “President”. Insert instead “Division Head of the Commission Division to which the enabling legislation concerned is allocated”.

No. 18 **Functions of Division Heads**

Page 19, clause 39(1), line 26. Omit “The President”. Insert instead “A Division Head of a Commission Division”.

No. 19 **Qualifications of mediator**

Page 19, clause 39. Insert after line 31—

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

No. 20 **Functions of Division Heads**

Page 19, clause 39(2), line 33. Omit “President”. Insert instead “Division Head of the Commission Division to which the enabling legislation concerned is allocated”.

No. 21 **Functions of Division Heads**

Page 20, clause 39(5)(f), line 6. Omit “the President”. Insert instead “a Division Head”.

No. 22 **Functions of Division Heads**

Page 20, clause 39(5)(g), line 7. Omit “the President”. Insert instead “a Division Head”.

No. 23 **Functions of Division Heads**

Page 20, clause 39(6), line 8. Omit “The President”. Insert instead “A Division Head”.

No. 24 **Legal representation**

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

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

No. 25 **Annual reporting**

Page 30, clause 66. Insert after line 14—

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

operational fund means each of the following—

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

No. 26 **Review of Act**

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

68 Review of Act

- (1) The Minister is to undertake 2 reviews of this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

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- (2) The reviews are to be undertaken as soon as possible after the period of 2 years, and then 7 years, from the date of assent to this Act.
 - (3) A report on the outcome of each review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years or 7 years (as the case requires).

No. 27 **Workers Compensation Independent Review Officer**

Page 64, Schedule 5.10[1]. Insert after line 27—

ILARS means the Independent Legal Advice and Review Service established by section 27E.

ILARS guidelines—see section 27F.

No. 28 **Workers Compensation Independent Review Officer**

Page 65, Schedule 5.10. Insert after line 20—

[8A] Section 27 Functions of Independent Review Officer

Insert after section 27(a)—

- (b) to manage and administer ILARS (including by issuing ILARS guidelines),

[8B] Chapter 2, Part 3

Insert after Division 2—

Division 3 Independent Legal Advice and Review Service

27E Independent Legal Advice and Review Service

- (1) There is to be an Independent Legal Advice 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 seeking advice regarding decisions of insurers under the Workers Compensation Acts.

27F 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.

27G 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.

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- (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.