



New South Wales

Personal Injury Commission Amendment Bill 2022

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make the following amendments to the *Personal Injury Commission Act 2020* and motor accidents legislation in relation to the Motor Accidents Division of the Personal Injury Commission (the **Commission**)—

- (a) to allow the Commission to issue a summons to a person who is not a party to proceedings before the Commission,
- (b) to allow the Commission to require a person appearing in proceedings before the Commission to give evidence on oath or affirmation,
- (c) to require the Commission to attempt conciliation in relation to a claim for damages before assessing the claim,
- (d) to establish a new procedure for mediation of certain matters referred to the Commission for review or assessment and to provide for the appointment of mediators and the regulation of costs for legal services in relation to mediation,
- (e) to provide for the appointment of an acting Division Head.

The Bill also makes an amendment to the *Motor Accidents and Workers Compensation Legislation Amendment Act 2022* to clarify the scope of an uncommenced provision permitting the making of regulations about additional compensation payable to dependants of deceased workers where a lump sum death benefit is paid to the NSW Trustee.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Personal Injury Commission Act 2020 No 18

Schedule 1[1] enables the President of the Commission to give procedural directions relating to the practice and procedures of mediators. The amendment is consequent on the amendment made by **Schedule 2.1[3]**.

Schedule 1[2] allows the President of the Commission to appoint mediators consequent on the amendment made by **Schedule 2.1[3]**.

Schedule 1[4] makes the amendment mentioned in paragraph (a) of the Overview. **Schedule 1[3]** makes a consequential amendment.

Schedule 1[5] makes the amendment mentioned in paragraph (b) of the Overview. **Schedule 1[7]** makes a consequential amendment.

Schedule 1[6] allows the Minister to appoint the President, a Deputy President or a principal member of the Commission to be an Acting Division Head during the absence of a Division Head or a vacancy in the office of a Division Head.

Schedule 1[8] requires the Commission to attempt conciliation before making an assessment of a claim for damages under the *Motor Accident Injuries Act 2017* or a claim under the *Motor Accidents Compensation Act 1999*. The Commission must use its best endeavours to bring the parties to a settlement.

Schedule 2 Amendment of motor accidents legislation

Schedule 2.1[3] inserts proposed Division 7.3 into the *Motor Accident Injuries Act 2017*, which establishes a new procedure for mediation of matters referred for review or assessment under the Act, Divisions 7.4–7.6. The President of the Commission may refer a matter for mediation by a mediator before allocating the matter to a medical assessor, a merit reviewer, a review-panel or the Commission. The mediator is to issue a certificate stating the mediation was attempted and whether or not the parties reached agreement. The proposed Division also provides for the procedure for allocating a matter for review or assessment after an unsuccessful mediation, the powers of mediators and the making of regulations about the fees paid in connection with mediation. **Schedule 2[1] and [2]** make consequential amendments.

Schedule 2.1[4] allows regulations under the *Motor Accident Injuries Act 2017* to make provision about the fees payable for conciliation in relation to the assessment of a claim for damages. The amendment is consequent on the amendment made by **Schedule 1[8]**.

Schedule 2.1[5] authorises the expenditure incurred by the Commission in providing mediation services under proposed Division 7.3 to be paid from the Motor Accidents Operational Fund.

Schedule 2.1[6] contains provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2.2 amends the *Motor Accident Injuries Regulation 2017* by prescribing the maximum costs for legal services provided to a claimant or an insurer in connection with a mediation under proposed Division 7.3 of the *Motor Accident Injuries Act 2017*.

Schedule 2.3 makes an amendment to the *Motor Accidents Compensation Act 1999* to enable regulations under the Act to make provision about the fees payable for conciliation in relation to the assessment of a claim. The amendment is consequent on the amendment made by **Schedule 1[8]**.

Schedule 3 Amendment of Motor Accidents and Workers Compensation Legislation Amendment Act 2022 No 25

Schedule 3[2] clarifies the scope of an uncommenced provision of the *Motor Accidents and Workers Compensation Legislation Amendment Act 2022* permitting the making of regulations under the *Workers Compensation Act 1987* prescribing the kinds of fees payable as additional compensation to dependants of deceased workers where a lump sum death benefit is paid to the NSW Trustee. The amendment ensures the provision permits the making of regulations prescribing a method for determining the amount of additional compensation payable, in addition to the kinds of fees for which compensation is payable. **Schedule 3[1] and [3]** make consequential amendments.



New South Wales

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New South Wales

Personal Injury Commission Amendment Bill 2022

No. , 2022

A Bill for

An Act to amend the *Personal Injury Commission Act 2020* in relation to the functions of the Motor Accidents Division of the Personal Injury Commission and to make miscellaneous amendments to related legislation; and for other purposes.

The Legislature of New South Wales enacts—	1
1 Name of Act	2
This Act is the <i>Personal Injury Commission Amendment Act 2022</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1 Amendment of Personal Injury Commission Act 2020 No 18

[1] Section 21 Procedural directions

Insert at the end of section 21(1)(b)—

, or

(c) mediators.

[2] Section 39 Appointment of mediators

Insert after section 39(1)(a)—

(a1) mediators for the purposes of the *Motor Accident Injuries Act 2017* to mediate on matters referred for review or assessment under the Act, Division 7.4–7.6, or

[3] Section 51 Summons to appear at conference or hearing

Omit “Subject to subsection (2), the” from section 51(1). Insert instead “The”.

[4] Section 51(2)

Omit the subsection.

[5] Section 51A

Insert after section 51—

51A Powers of Commission to require evidence

(1) The Commission may require a person appearing in proceedings before the Commission—

(a) to give evidence on oath or affirmation, and may, for that purpose, administer an oath or affirmation, and

(b) to answer a 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 section.

Maximum penalty—50 penalty units.

(3) A person is not required to answer a question under this section if the answer to the question would tend to incriminate the person of an offence.

[6] Schedule 2 Provisions relating to members of Commission

Insert after clause 9—

9A Acting Division Head

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

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

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

(4) In this clause—

	<i>absence from duty</i> includes a vacancy in the office of a Division Head.	1
[7]	Schedule 3 Workers Compensation Division	2
	Omit Schedule 3, Part 5, clause 8.	3
[8]	Schedule 4 Motor Accidents Division	4
	Insert before clause 7—	5
7AA	Commission to attempt conciliation	6
(1)	This clause applies to the Commission in the exercise of its substantive Division functions in relation to the assessment of a claim for damages for the purposes of—	7 8 9
(a)	the <i>Motor Accident Injuries Act 2017</i> , Part 7, Division 7.6, and	10
(b)	the <i>Motor Accidents Compensation Act 1999</i> , Chapter 4, Part 4.4.	11
(2)	The Commission is not to make an assessment of a claim for damages without first using the Commission’s best endeavours to bring the parties to the dispute to a settlement acceptable to all of them.	12 13 14
(3)	No objection may be taken to the making of an assessment by the Commission on the ground that the Commission had previously used its best endeavours to bring the parties to a settlement.	15 16 17
(4)	Subclause (1) does not apply to—	18
(a)	the exercise of a substantive Division function for the purposes of the <i>Motor Accident Injuries Act 2017</i> , section 6.34 or 7.34, or	19 20
(b)	the exercise of a substantive Division function for the purposes of the <i>Motor Accidents Compensation Act 1999</i> , section 92 or 111, or	21 22
(c)	the exercise of a substantive Division function for the purposes of the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> , Part 3, Division 2, or	23 24 25
(d)	an assessment of a dispute about a miscellaneous claims assessment matter under the <i>Motor Accident Injuries Act 2017</i> , Part 7, Division 7.6, Subdivision 3 in relation to a claim for damages.	26 27 28
(5)	In this clause—	29
	<i>claim for damages</i> means—	30
(a)	a claim for damages under the <i>Motor Accident Injuries Act 2017</i> , or	31
(b)	a claim under the <i>Motor Accidents Compensation Act 1999</i> .	32

Schedule 2	Amendment of motor accidents legislation	1
2.1	Motor Accident Injuries Act 2017 No 10	2
[1]	Part 7 Dispute resolution	3
	Renumber Division 7.3 as Division 7.2.	4
[2]	Section 7.9 Internal review of insurer's decisions	5
	Renumber the section as section 7.2.	6
[3]	Division 7.3	7
	Insert after Division 7.2, as renumbered by item [2]—	8
	Division 7.3 Mediation	9
	7.3 Mediation of matter before allocation	10
	The President may, before allocating a matter referred for review or assessment under Division 7.4–7.6 to a decision-maker, a review panel or the Commission, refer the matter for mediation by a mediator under this Division.	11 12 13
	7.4 Mediator to bring parties to agreement	14
	(1) The mediator must use the mediator's best endeavours to bring the parties to agreement on the matter referred for mediation.	15 16
	(2) The mediator is to issue a certificate in the form approved by the President stating—	17 18
	(a) that mediation was attempted, and	19
	(b) whether or not the parties reached agreement.	20
	7.5 Referral of matter for allocation or assessment	21
	(1) If a mediator issues a certificate under section 7.4 stating the parties did not reach agreement in relation to a matter, the mediator must refer the matter to—	22 23
	(a) for a merit review or a review under Division 7.4—the President, or	24
	(b) for a medical assessment, including a further medical assessment, or a review under Division 7.5—the President, or	25 26
	(c) for an assessment under Division 7.6—the Commission.	27
	(2) The President must allocate a matter to a decision-maker or review panel, as applicable, as soon as practicable after the matter is referred to the President under subsection (1)(a) or (b).	28 29 30
	(3) The Commission must assess a matter as soon as practicable after it is referred to the Commission under subsection (1)(c).	31 32
	7.6 Powers of mediators	33
	(1) For the purposes of and in relation to a mediation under this Division, a mediator has all the functions of the Commission under the <i>Personal Injury Commission Act 2020</i> , sections 49–51 and those sections apply in relation to the mediation in the same way as they apply in relation to proceedings before the Commission.	34 35 36 37 38
	(2) A mediator may assess the claimant's costs payable by an insurer in relation to the mediation of a matter under this Division.	39 40

(3)	An Australian legal practitioner is not entitled to be paid or recover legal costs for legal services provided to a party to a claim, whether the claimant or the insurer, in relation to the claim unless payment of those legal costs is permitted by the regulations.	1 2 3 4
(4)	A claimant or an insurer, or an Australian legal practitioner acting for a claimant or an insurer in relation to the relevant claim, has the same right of appeal against an assessment made under this section as the claimant, insurer or legal practitioner would have under the <i>Legal Profession Uniform Law Application Act 2014</i> , section 89 if the assessment were a decision of a costs assessor under the Act, Part 7 in relation to a bill of costs.	5 6 7 8 9 10
7.7	Mediation fees	11
(1)	The regulations may make provision about the fees to be paid in connection with mediation under this Division.	12 13
(2)	In particular, the regulations may specify the amount of a fee or the method by which the fee is to be calculated, and may specify by whom and in what circumstances the fee is payable.	14 15 16
(3)	Fees payable under the regulations under this section are payable into the SIRA Fund.	17 18
[4]	Section 8.8 Claims assessment fees	19
	Insert “, including conciliation in relation to the assessment of a claim” after “Division 7.6” in section 8.8(1), definition of <i>claims assessment fees</i> .	20 21
[5]	Section 10.12 Motor Accidents Operational Fund (the SIRA Fund)	22
	Insert at the end of section 10.12(3)(b)(ii)—	23
	, and	24
	(iii) the expenditure incurred by the Commission in providing mediation services under this Act.	25 26
[6]	Schedule 4 Savings, transitional and other provisions	27
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	28
Part	Provision consequent on enactment of Personal Injury Commission Amendment Act 2022	29 30
	Application of amendments	31
(1)	An amendment made to this Act or the regulations under this Act by the amending Act extends to—	32 33
(a)	a motor accident occurring before the commencement of the amendment, but not before 1 December 2017, and	34 35
(b)	a claim made before the commencement of the amendment, but not before 1 December 2017, and	36 37
(c)	applications for review or assessment made, but not allocated to a decision-maker, a review panel or the Commission, before the commencement of the amendment.	38 39 40
(2)	In this clause—	41
	<i>amending Act</i> means the <i>Personal Injury Commission Amendment Act 2022</i> .	42

2.2 Motor Accident Injuries Regulation 2017

Schedule 1 Maximum costs for legal services

Insert after Part 1, clause 6—

7 Mediation

The maximum costs for legal services provided to a claimant or an insurer in connection with a mediation under the Act, Division 7.3 are as follows—

- (a) for a mediation involving a dispute about a regulated merit review matter within the meaning of clause 1—12 monetary units,
- (b) for a mediation involving a medical dispute under the Act, Division 7.5—12 monetary units,
- (c) for a mediation involving a regulated miscellaneous claims matter within the meaning of clause 3—12 monetary units,
- (d) otherwise—nil.

2.3 Motor Accidents Compensation Act 1999 No 41

Section 155 Claims assessment fees

Insert “, including conciliation in relation to the assessment of a claim” after “Part 4.4” in section 155(1), definition of *claims assessment fees*.

Schedule 3	Amendment of Motor Accidents and Workers Compensation Legislation Amendment Act 2022	1
	No 25	2
		3
[1] Section 2 Commencement		4
	Omit “Schedule 2.1[1] commences” from section 2(2).	5
	Insert instead “Schedule 2.1[1] and [2A] commence”.	6
[2] Schedule 2.1 Workers Compensation Act 1987 No 70		7
	Omit Schedule 2.1[1], proposed section 25(1A). Insert instead—	8
	(1A) If the lump sum death benefit is paid to the NSW Trustee for the benefit of a dependant in accordance with section 85 after the commencement of this subsection, the employer must also pay compensation for the cost of investing or otherwise managing the sum for the dependant’s benefit.	9 10 11 12
	(1B) The regulations may make provision about the compensation payable under subsection (1A).	13 14
	(1C) Without limiting subsection (1B), the regulations may provide for the following—	15 16
	(a) the kinds of fees for which the compensation is payable,	17
	(b) the method for determining the amount of compensation payable, including the matters to which the Commission must have regard in making the determination.	18 19 20
[3] Schedule 2.1[2A]		21
	Insert after Schedule 2.1[2]—	22
[2A] Section 85 Payments to NSW Trustee for benefit of beneficiary		23
	Insert “, including compensation payable for the cost of investing or otherwise managing the sum for the dependant’s benefit” after “award)” in section 85(1)(a).	24 25