

Workers Compensation Legislation Amendment Bill 2025

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**Workers Compensation Legislation
Amendment Bill 2025**

No , 2025

A Bill for

An Act to amend workers compensation legislation and related legislation to implement changes to liability and entitlements for psychological injuries; and to make miscellaneous amendments to improve the effective operation of the workers compensation scheme.

Exposure draft

Workers Compensation Legislation Amendment Bill 2025 [NSW]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Workers Compensation Legislation Amendment Act 2025*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Workers Compensation Act 1987 No 70

[1] Part 1, Division 1

Insert before section 1—

Division 1 General

[2] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

AIDS means Acquired Immune Deficiency Syndrome.

AWE means the average weekly total earnings of adults in full-time employment in New South Wales issued by the Australian Bureau of Statistics.

CPI means the consumer price index for Sydney issued by the Australian Bureau of Statistics.

HIV means Human Immunodeficiency Virus.

indictable criminal conduct—

- (a) means the commission of an indictable offence, and
- (b) includes conduct of a person that would constitute an indictable offence were it not for the fact the person must not, or may not, be held to be criminally responsible for the conduct because of the person's age or mental illness or impairment.

lump sum death benefit—see section 25(1)(a).

primary psychological injury—see section 8B.

procedural directions has the same meaning as in the *Personal Injury Commission Act 2020*.

psychological injury—see section 8A.

reasonable management action—see section 8D.

relevant event—see section 8E.

secondary psychological injury—see section 8C.

WPI means the wage price index ordinary time, hourly rates of pay excluding bonuses, all sectors (NSW) issued by the Australian Bureau of Statistics.

[3] Part 1, Division 2

Insert after section 7A—

Division 2 Interpretation provisions—psychological injuries

8 Purpose of division

- (1) This division provides for—
 - (a) interpretative provisions relating to psychological injuries, and
 - (b) other matters relating to the application of the Workers Compensation Acts to psychological injuries.
- (2) This part does not—
 - (a) extend the definition of ***injury*** in section 4, or
 - (b) affect the requirement in section 4 that—

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- (i) a personal injury is an injury that has arisen out of or in the course of employment, and
- (ii) a disease injury is a disease that is contracted in the course of employment but only if the employment was the main contributing factor to contracting the disease.

8A Meaning of “psychological injury”

In this Act, *psychological injury* means an injury that is a mental or psychiatric disorder that causes significant behavioural, cognitive or psychological dysfunction.

8B Meaning of “primary psychological injury”

In this Act, *primary psychological injury* means a psychological injury that is not a secondary psychological injury.

8C Meaning of “secondary psychological injury”

In this Act, *secondary psychological injury* means a psychological injury to the extent the psychological injury arises as a consequence of, or secondary to, a physical injury.

8D Meaning of “reasonable management action”

- (1) In this Act, *reasonable management action* means management action—
 - (a) taken in a reasonable way, and
 - (b) that is reasonable in all the circumstances.
- (2) Without limiting subsection (1), reasonable management action in relation to a worker includes each of the following actions, if taken in a reasonable way and reasonable in all the circumstances—
 - (a) appraisal of or feedback about the worker’s performance,
 - (b) counselling of the worker,
 - (c) suspension or stand-down of the worker’s employment,
 - (d) disciplinary action taken in relation to the worker’s employment,
 - (e) transfer of the worker’s employment,
 - (f) demotion, redeployment or retrenchment of the worker,
 - (g) dismissal of the worker,
 - (h) promotion of the worker,
 - (i) reclassification of the worker’s employment position,
 - (j) provision of leave of absence to the worker,
 - (k) provision to the worker of a benefit connected with the worker’s employment,
 - (l) training a worker in relation to the worker’s employment,
 - (m) investigation by the worker’s employer of alleged misconduct—
 - (i) by the worker, or
 - (ii) of another person relating to the employer’s workforce in which the worker was involved or to which the worker was a witness,
 - (n) communication in connection with an action mentioned in paragraph (a)–(m),
 - (o) another action prescribed by the regulations.

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8E Meaning of “relevant event”

- (1) In this Act, a **relevant event** means—
- (a) being subjected to an act of violence or a threat of violence, or
 - (b) being subjected to indictable criminal conduct, or
 - (c) witnessing an incident that leads to death or serious injury, or the threat of death or serious injury, including the following—
 - (i) an act of violence,
 - (ii) indictable criminal conduct,
 - (iii) a motor accident, a natural disaster, a fire or another accident, or
 - (d) experiencing vicarious trauma within the meaning of section 8H, or
 - (e) being subjected to conduct that a tribunal, commission or court has found is sexual harassment, or
 - (f) being subjected to conduct that a tribunal, commission or court has found is racial harassment, or
 - (g) being subjected to conduct that a tribunal, commission or court has found is bullying, or
 - (h) another event prescribed by the regulations.
- (2) In this section—
- act of violence** has the same meaning as in the *Victims Rights and Support Act 2013*.
- bullying**, in relation to a worker, means an individual or a group of individuals repeatedly behaving unreasonably towards the worker or a group of workers of which the worker is a member.
- racial harassment**, in relation to a worker, means an act that is—
- (a) reasonably likely in all the circumstances to offend, insult, humiliate or intimidate the worker, and
 - (b) done because of the race, colour or national or ethnic origin of the worker.
- sexual harassment**, in relation to a worker, means a person who makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the worker or engages in other unwelcome conduct of a sexual nature in relation to the worker.

8F Primary psychological injuries—sexual harassment, racial harassment and bullying

Notification of a primary psychological injury caused by sexual harassment, racial harassment or bullying is taken not to be an initial notification for the 1998 Act, Chapter 7, Part 3, Division 3A unless the worker provides a copy of the finding of harassment or bullying made by the tribunal, commission or court.

Note— See section 8E(1)(e)–(g) which provides that a tribunal, commission or court must have found the conduct to have been sexual harassment, racial harassment or bullying for the conduct to be a relevant event and section 8G which provides that no compensation is payable for a primary psychological injury to a worker unless a relevant event or series of relevant events caused the primary psychological injury.

8G Primary psychological injuries

- (1) No compensation is payable for a primary psychological injury to a worker unless—

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- (a) a relevant event or a series of relevant events caused the primary psychological injury, and
 - (b) there is a real and substantial connection between the relevant event or series of relevant events and the worker's employment, and
 - (c) employment is the main contributing factor to the primary psychological injury.
- (2) No compensation is payable for a primary psychological injury caused by a worker experiencing vicarious trauma if the act or omission that caused the injury was an act or omission for which the worker has criminal responsibility.
Example— the worker is an accessory to the act or omission that caused the injury
- (3) The regulations may provide for matters relating to primary psychological injuries, including—
 - (a) the type of matters or circumstances an insurer must take into account when determining whether an injury is a primary psychological injury, and
 - (b) the evidence a worker must provide for a claim in relation to a primary psychological injury.

8H Vicarious trauma

- (1) A worker experiences ***vicarious trauma*** if the worker becomes aware of any of the following acts or incidents that resulted in the injury to, or death of, a person (the ***victim***) with whom the worker has a close work connection—
 - (a) an act of violence,
 - (b) indictable criminal conduct,
 - (c) a motor accident, a natural disaster, a fire or another accident,
 - (d) an act or incident prescribed by the regulations.
- (2) The worker has a ***close work connection*** with the victim only if—
 - (a) there is a real and substantial connection between the worker and the victim, and
 - (b) the connection arose because of the worker's employment.

8I Physical and primary psychological injuries caused by same act or omission

- (1) This section applies if a worker has a physical injury and a primary psychological injury caused by the same act or omission.
- (2) The worker is entitled to compensation on the basis of whichever injury gives the worker the greater entitlement to compensation.

[4] Section 11A No compensation for psychological injury caused by reasonable actions of employer

Omit section 11A(1) and (3). Insert instead—

- (1) No compensation is payable under this Act in relation to a psychological injury if a significant cause of the psychological injury was—
 - (a) reasonable management action taken or proposed to be taken by an employer in relation to a worker, or
 - (b) a worker's expectation of reasonable management action being taken in relation to the worker, or
 - (c) a worker's perception of reasonable management action taken or being taken in relation to the worker.

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Note— A psychological injury includes a primary psychological injury and a secondary psychological injury.

[5] Section 11A(6)

Omit the subsection.

[6] Section 19 Presumptions relating to certain employment

Omit section 19(1)(b). Insert instead—

- (b) either—
 - (i) for a person to whom Schedule 6, Part 19H, clause 20 or 25 applies—the employment is deemed to have been a substantial contributing factor to the disease, or
 - (ii) otherwise—the employment is deemed to have been the main contributing factor to the disease.

[7] Section 19B Presumptions relating to certain employment in relation to COVID-19

Omit section 19(5). Insert instead—

- (5) For this Act, it is presumed, unless the contrary is established, that a worker the subject of a presumption under subsection (1) is incapable of work as a result of COVID-19 for the period—
 - (a) starting on the date of the injury, and
 - (b) ending on a date established in accordance with the regulations, unless sooner ended by the death of the worker.
- (5A) The regulations may provide for when a worker is incapable of work for subsection (5).

[8] Section 25 Death of worker leaving dependants

Omit “\$750,000” from section 25(1)(a). Insert instead “\$955,950”.

[9] Section 25(1)(b)

Omit “\$66.60”. Insert instead “\$171.10”.

[10] Part 3, Division 1A

Insert after section 32—

Division 1A Compensation payable on death—death benefit disputes

32AA Interpretation

- (1) In this division—
death benefit dispute means a dispute about liability for a lump sum death benefit that has been referred for determination by the Commission.
- (2) For the purposes of determining whether a person is a dependant of a deceased person under this division—
 - (a) the deceased person is taken to be a worker, and
 - (b) the death of the person is taken to have resulted from an injury.

Note— See the 1998 Act, section 4, definition of *dependants*.

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32AB Application

- (1) This division applies to a claim that is the subject of a death benefit dispute.
- (2) This division has effect despite the 1998 Act, section 234.

32AC Settlement of claim where liability disputed

- (1) A party to a death benefit dispute may lodge with the Commission a proposed agreement for an amount to be paid in settlement of the part of the claim that relates to the lump sum death benefit under Division 1.
- (2) The amount proposed to be paid in settlement must not be more than the amount of the lump sum death benefit otherwise payable under Division 1.
- (3) The parties to the agreement must include the insurer and—
 - (a) each dependant of the deceased person, or
 - (b) if there are no dependants—the legal personal representative of the deceased person.
- (4) The Commission must not entertain proceedings to give effect to the agreement unless satisfied—
 - (a) there is a reasonable basis for the insurer to dispute liability for the death benefit compensation, and
 - (b) the amount of compensation proposed to be paid in settlement of the claim is reasonable in the circumstances, and
 - (c) each dependant of the deceased person is a party to the agreement or, if the Commission is satisfied there are no dependants, the legal personal representative of the deceased person is a party to the agreement.
- (5) For subsection (4)(a), there is a reasonable basis for an insurer to dispute liability only if the dispute is based on—
 - (a) facts provable on the material available to the Commission, and
 - (b) a reasonably arguable view of the law.
- (6) In proceedings for the death benefit dispute, each party to the agreement must be represented by an Australian legal practitioner unless otherwise directed by the Commission.
- (7) If the Commission makes a determination to give effect to an agreement under this division—
 - (a) the insurer is taken to have accepted liability for death benefit compensation for the death, and
 - (b) subject to paragraph (c), death benefit compensation is payable in accordance with Division 1 as if the death had resulted from an injury, and
 - (c) the amount of lump sum death benefit payable under section 25 is the amount provided by the agreement as executed.
- (8) The Workers Compensation Guidelines may make provision in relation to the management of a claim to which an agreement under this division relates.
- (9) The Commission rules and procedural directions may provide for matters relating to—
 - (a) applications under this section, and
 - (b) the procedure for making a determination to give effect to an agreement under this division.

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[11] Section 34 Maximum weekly compensation amount

Omit “\$1,838.70” from section 34(1). Insert instead “\$2,569.60”.

[12] Section 38, heading

Insert “—**injuries other than primary psychological injuries**” after “**130**)”.

[13] Sections 38(3)(b), 40(1)(d) and 41(5)(b)

Omit “\$155” wherever occurring. Insert instead “\$225”.

[14] Section 38(9)

Insert after section 38(8)—

- (9) This section does not apply to a worker who has a primary psychological injury unless the injury results in a degree of permanent impairment of at least 31%.

Note— Under section 39A, the maximum duration of weekly payments for primary psychological injuries is 130 weeks. However, section 39A does not apply to primary psychological injuries that result in a permanent impairment of at least 31%.

[15] Section 38A Special provision for workers with highest needs

Omit “\$788.32” from section 38A(1) wherever occurring.

Insert instead “\$1,020”.

[16] Section 39, heading

Insert “—**injuries other than primary psychological injuries**” after “**years**”.

[17] Section 39(3)–(5)

Omit subsection (3). Insert instead—

- (3) For this section, the degree of permanent impairment that results from an injury must be assessed under Part 6.
- (4) If weekly payments of compensation become payable to a worker after compensation under this division ceases to be payable to the worker, compensation under this division is once again payable to the worker but only from the date of—
- (a) the worker’s further principal assessment under Part 6, or
- (b) an assessment under the 1998 Act, Chapter 7, Part 7.
- (5) This section does not apply in relation to primary psychological injuries.

Note— Under section 39A, the maximum duration of weekly payments for primary psychological injuries is 130 weeks.

[18] Section 39A

Insert after section 39—

39A Cessation of weekly payments after 130 weeks—primary psychological injuries

- (1) Despite any other provision of this division, a worker has no entitlement to weekly payments of compensation under this division in relation to a primary psychological injury after an aggregate period of 130 weeks, whether or not consecutive, for which a weekly payment has been paid or is payable to the worker in relation to the primary psychological injury.

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- (2) This section does not apply to an injured worker whose injury results in permanent impairment if the degree of permanent impairment resulting from the injury is at least 31%.

Note— For workers with at least 31% permanent impairment, entitlement to compensation may continue after 130 weeks but entitlement after 130 weeks is still subject to this division.

- (3) For this section, the degree of permanent impairment that results from an injury must be assessed under—
- (a) Part 6, or
 - (b) the 1998 Act, Chapter 7, Part 7.
- (4) If weekly payments of compensation become payable to a worker after compensation under this division ceases to be payable to the worker, compensation under this division is once again payable to the worker but only from the date of the worker's further assessment.

[19] Section 43 Work capacity decisions by insurers

Omit “pre-injury average weekly earnings or” from section 43(1)(d).

[20] Section 43(2)(b)

Omit “1998 Act.”. Insert instead—

1998 Act,

- (c) a decision about the amount of an injured worker's pre-injury average weekly earnings.

[21] Section 44BAA

Omit the section. Insert instead—

44BA Decision may be determined by Commission

A work capacity decision under section 43 may proceed to determination by the Commission.

44BB Regulations

The regulations may provide for the procedures to be followed by insurers in connection with—

- (a) the making of work capacity decisions, including the adjustment of an amount of weekly payments as a result of work capacity decisions, and
- (b) the making of decisions about pre-injury average weekly earnings, including the adjustment of weekly payments as a result of decisions.

[22] Section 59A Limit on payment of compensation

Omit section 59A(2). Insert instead—

- (2) The compensation period in relation to an injured worker is as follows—
- (a) for an injury other than a primary psychological injury—
 - (i) if the injury has resulted in a degree of permanent impairment assessed under Part 6 to be 10% or less, or the degree of permanent impairment has not been assessed as provided by that part, the period of 2 years starting on—
 - (A) the day on which the claim for compensation in relation to the injury was first made, if weekly payments of

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- compensation are not payable or have not been paid to the worker, or
- (B) the day on which weekly payments of compensation cease to be payable to the worker, if weekly payments of compensation are payable or have been paid to the worker, or
- (ii) if the injury has resulted in a degree of permanent impairment assessed as provided by Part 6 to be more than 10% but not more than 20%, the period of 5 years starting on—
 - (A) the day on which the claim for compensation in relation to the injury was first made, if weekly payments of compensation are not payable or have not been paid to the worker, or
 - (B) the day on which weekly payments of compensation cease to be payable to the worker, if weekly payments of compensation are payable or have not been paid to the worker,
- (b) for a primary psychological injury—the period of 1 year starting on—
 - (i) the day on which the claim for compensation in relation to the primary psychological injury was first made, if weekly payments of compensation are not payable or have not been paid to the worker, or
 - (ii) the day on which weekly payments of compensation cease to be payable to the worker, if weekly payments of compensation are payable or have been paid to the worker.

[23] Section 59A(4)

Insert at the end of section 59A(4)—

Note— See sections 38, 39 and 39A which limit the weekly payments of compensation to a worker.

[24] Section 59A(5)

Omit the subsection. Insert instead—

- (5) This section does not apply to—
 - (a) for an injury other than a primary psychological injury—a worker with high needs, as defined in Division 2, or
 - (b) for a primary psychological injury—a worker with highest needs, as defined in Division 2.

[25] Section 60 Compensation for cost of medical or hospital treatment and rehabilitation etc

Omit “reasonably necessary” wherever occurring in section 60(1), (2B) and (2C)(a).

Insert instead “reasonable and necessary”.

[26] Section 60AA Compensation for domestic assistance

Omit “reasonably necessary” from section 60AA(1) wherever occurring.

Insert instead “reasonable and necessary”.

[27] Section 65 Determination of degree of permanent impairment

Omit the section.

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[28] Section 65A, heading

Omit the heading. Insert instead—

65A Special provisions for primary psychological injuries and secondary psychological injuries

[29] Section 65A(3)

Omit “15%”. Insert instead “31%”.

[30] Section 65A(5)

Omit the subsection.

[31] Section 65B

Insert after section 65A—

65B Special provision for HIV/AIDS

(1) Permanent impairment compensation is not payable for permanent impairment that is HIV/AIDS if the impairment resulted from voluntary sexual activity or illicit drug use.

(2) This subsection does not limit the operation of section 14.

[32] Section 66 Entitlement to compensation for permanent impairment

Omit “\$19,540” from section 66(2)(a). Insert instead “\$25,070”.

[33] Section 66(2)(a)

Omit “\$2,940”. Insert instead “\$3,770”.

[34] Section 66(2)(b)

Omit “\$78,200”. Insert instead “\$100,350”.

[35] Section 66(2)(b)

Omit “\$4,840”. Insert instead “\$6,210”.

[36] Section 66(2)(c)

Omit “\$242,010”. Insert instead “\$310,580”.

[37] Section 66(2)(d)

Omit “\$309,020”. Insert instead “\$396,570”.

[38] Section 66(2)(e)

Omit “\$376,030”. Insert instead “\$482,560”.

[39] Section 66(2)(f)

Omit “\$443,030”. Insert instead “\$568,550”.

[40] Section 66(2)(g)

Omit “\$510,040”. Insert instead “\$654,540”.

[41] Section 66(2)(h)

Omit “\$577,050”. Insert instead “\$740,550”.

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[42] Section 66A Agreements for compensation

Omit the section.

[43] Section 67A Special provisions for HIV/AIDS

Omit the section.

[44] Section 68B Deductions for previous injuries and pre-existing conditions—operation of sections 15, 16, 17 and 22

Omit the section.

[45] Section 73 Reimbursement for costs of medical certificate and examination

Omit the section.

[46] Section 79 Definitions

Omit the section.

[47] Sections 80 and 81

Omit the sections. Insert instead—

80 Adjustment of amounts of benefits by WPI

- (1) An adjustable amount for a year under a relevant provision must be calculated in accordance with the following formula—

$$A \times \frac{B}{C}$$

where—

A is the adjustable amount for the previous year.

B is the index number for the previous year.

C is the index number for the year before the previous year.

- (2) If an amount calculated under subsection (1) for a year (the *current year*) would, for any reason, be less than the amount calculated for the previous year, the adjustable amount for the current year must be same as the previous year.
- (3) If an amount calculated under subsection (1) for a year is expressed as including cents, the amount must be rounded up to the next higher whole number of dollars.

- (4) In this section—

adjustable amount means—

- (a) for the 12 months starting on 1 April 2025—each of the amounts specified in a relevant provision, and
- (b) for each subsequent period of 12 months starting on 1 April in a year—the amount specified in a relevant provision as adjusted under this division.

index number means—

- (a) the number prescribed by the regulations, or
- (b) if a number is not prescribed by the regulations—the WPI for December.

relevant provision means—

- (a) the following provisions—

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- (i) sections 25, 34, 37 and 40,
- (ii) Schedule 6, Part 19H, clause 2, and
- (b) the 1998 Act, section 297(2), and
- (c) the *Workers' Compensation (Dust Diseases) Act 1942*, section 8(2B)(b)(i).

[48] Section 82A Indexation—weekly payments

Omit section 82A(1), formula, definitions of ***B*** and ***C***.

Insert instead—

B is—

- (a) the number prescribed by the regulations, or
- (b) if a number is not prescribed by the regulations—CPI for December of the previous year.

C is—

- (a) the number prescribed by the regulations, or
- (b) if a number is not prescribed by the regulations—CPI for December of the year before the previous year.

[49] Section 82A(2)

Omit the subsection. Insert instead—

- (2) In this section—
review date means 1 April in each year.

[50] Section 82B Indexation of certain amounts—according to average weekly earnings

Omit “the financial year beginning on 1 July 2012 and each subsequent financial year” from section 82B(1).

Insert instead “the year beginning on 1 April 2026 and each subsequent year starting on 1 April”.

[51] Section 82B(1)

Omit “\$155” from section 82B(1), formula, definition of ***A***. Insert instead “\$240”.

[52] Section 82B(1)

Omit the formula, definitions of ***B*** and ***C***. Insert instead—

B is the AWE for November of the previous year.

C is the AWE for November of the year before the previous year.

[53] Section 82B(2)

Omit “the start of each financial year”. Insert instead “each review date”.

[54] Section 82B(2)

Omit “that financial year”. Insert instead “the year beginning on the review date”.

[55] Section 82B(3)

Omit “the start of a financial year”. Insert instead “a review date”.

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[56] Section 82B(3)

Omit “that financial year is”. Insert instead “the year starting on the review date is”.

[57] Section 82B(3)

Omit “effect for that financial year”. Insert instead “effect for that year”.

[58] Section 82B(4)

Insert after section 82B(3)—

- (4) In this section—
review date means 1 April in each year.

[59] Section 82BA Indexation—compensation amount for workers with highest needs

Omit “\$788.32” from section 82BA(1), formula, definition of *A*. Insert instead “\$1,020”.

[60] Section 82BA(1)

Omit the formula, definitions of *B* and *C*. Insert instead—

B is the CPI for December of the previous year.

C is the CPI for December of the year before the previous year.

[61] Section 82BA(2), definition of “review date”

Omit “and 1 October”.

[62] Section 82C

Omit the section. Insert instead—

82C Indexation—no reduction

If an amount calculated under section 82A, 82B or 82BA for a year (the *current year*) would, for any reason, be less than the amount calculated for the previous year, the adjustable amount for the current year must be same as the previous year.

[63] Section 82D

Omit the section. Insert instead—

82D Rounding up

If an amount calculated under this division for a year is expressed as including cents, the amount must be rounded up to the next higher whole number of dollars.

[64] Section 82F Indexation—compensation for permanent impairment

Omit “the financial year beginning on 1 July 2016 and each subsequent financial year” from section 82F(1).

Insert instead “the year beginning on 1 April 2026 and each subsequent year beginning on 1 April”.

[65] Section 82F(1)

Omit section 82F(1), formula, definitions of *B* and *C*. Insert instead—

B is the CPI for December of the previous year.

C is the CPI for December of the year before the previous year.

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[66] Section 82F(2)

Omit the subsection.

[67] Section 82F(3)

Omit “the start of each financial year”. Insert instead “each review date”.

[68] Section 82F(3)

Omit “that financial year”. Insert instead “the year beginning on the review date”.

[69] Section 82F(4)

Omit “the start of a financial year”. Insert instead “a review date”.

[70] Section 82F(4)

Omit “that financial year is”. Insert instead “the year beginning on the review date is”.

[71] Section 82F(4)

Omit “effect for that financial year”. Insert instead “effect for that year”.

[72] Section 82F(5)

Insert after section 82(4)—

- (5) In this section—
review date means 1 April in each year.

[73] Section 82G

Omit the section. Insert instead—

82G Indexation—no reduction

If an amount calculated under section 82F for a year (the *current year*) would, for any reason, be less than the amount calculated for the previous year, the adjustable amount for the current year must be same as the previous year.

[74] Section 82H Indexation—rounding

Insert at the end of section 82H—

- (2) If an amount calculated under this division for a year is expressed as including cents, the amount must be rounded up to the next higher whole number of dollars.

[75] Section 87E Compensation that may be commuted

Insert after section 87E(2)—

- (3) If compensation referred to in subsection (1) is commuted to a lump sum as provided by this division, any liability for work injury damages in relation to the same injury is extinguished.

[76] Section 87EAA Medical expenses compensation not to be commuted for catastrophic injuries

Omit “Authority is satisfied that, and certifies that it is satisfied that,” from section 87EAA(1).

Insert instead “President is satisfied that”.

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[77] Section 87EA Preconditions to commutation

Omit “Authority is satisfied that, and certifies that it” from section 87EA(1).

Insert instead “President”.

[78] Section 87EA(2) and (2A)

Omit section 87EA(2). Insert instead—

- (2) Despite subsection (1), a liability in relation to an injury may be commuted to a lump sum under this division in a particular case if the President is satisfied—
 - (a) the case is of a class prescribed by the regulations as a class to which this subsection applies, and
 - (b) the circumstances of the case satisfy the requirements prescribed by the regulations as requirements that must be satisfied for this subsection, and
 - (c) unless the regulations otherwise provide, the lump sum to which the liability will be commuted is not inadequate and not excessive.
- (2A) In considering whether the lump sum to which a liability will be commuted is not inadequate and not excessive, the President may have regard to the following matters—
 - (a) a dispute about liability to pay compensation under the Workers Compensation Acts,
 - (b) each of the following—
 - (i) the injury,
 - (ii) the worker’s age,
 - (iii) the worker’s general health,
 - (iv) the worker’s occupation at the time the injury occurred,
 - (v) any other relevant matter,
 - (c) the worker’s ability to compete in an open labour market,
 - (d) benefits from another source that the worker may be entitled to.

[79] Section 87EA(3)

Omit “Authority”. Insert instead “President”.

[80] Section 87EA(4)

Omit the subsection.

[81] Section 87EB

Insert after section 87EA—

87EB Commission rules

The Commission rules and procedural directions may provide for—

- (a) the procedure for an application for a determination under section 87EAA(1) or 87EA(1) or (2), and
- (b) the documentation to accompany the application.

[82] Section 87F Commutation by agreement

Insert after section 87F(2)—

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- (2A) The regulations may require the provision of independent financial advice to a worker, at the expense of the insurer, before the worker enters into a commutation agreement and the requirement applies despite any other provision of this section.

[83] Section 87F(4)

Omit “has 14 days after entering into a commutation agreement in which to withdraw from the agreement by giving notice in writing to the insurer”.

Insert instead “may withdraw from a commutation agreement by giving written notice to the insurer and the President at any time before the commutation agreement notice is approved under this division”.

[84] Section 87F(6) and (7)

Omit “registered” wherever occurring.

Insert instead “approved”.

[85] Section 87F(6)

Omit “Registration”. Insert instead “Approval”.

[86] Section 87H, heading

Omit the heading. Insert instead—

87H Approval of commutation

[87] Section 87H(1)

Omit “registration of the agreement by the President”.

Insert instead “approval of the agreement”.

[88] Section 87H(1), note

Omit “registered”. Insert instead “approved”.

[89] Section 87H(1A)

Insert after section 87H(1)—

- (1A) The Commission rules and procedural directions may provide for the procedure for making applications under this division.

[90] Section 87H(2)

Omit the subsection. Insert instead—

- (2) The President must refuse to approve a commutation agreement unless the President is satisfied—
- (a) about the matters referred to in section 87EA(1) or (2), and
 - (b) for a liability to which section 87EAA applies—that the injury is not a catastrophic injury within the meaning of that section.

[91] Section 87H(3)

Omit “registering”. Insert instead “approving”.

[92] Section 87H(3)

Omit “register”. Insert instead “approve”.

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[93] Section 87H(3), (4) and (6)

Omit “registered” wherever occurring. Insert instead “approved”.

[94] Section 87H(5)

Omit the subsection. Insert instead—

- (5) In reviewing a commutation agreement, the Commission may have regard to the following matters—
 - (a) a dispute about liability to pay compensation under the Workers Compensation Acts,
 - (b) each of the following—
 - (i) the injury,
 - (ii) the worker’s age,
 - (iii) the worker’s general health,
 - (iv) the worker’s occupation at the time the injury occurred,
 - (v) any other relevant matter,
 - (c) the worker’s ability to compete in an open labour market,
 - (d) benefits from another source to which the worker may be entitled.

[95] Section 87I Payment

Omit “The annual report of the Authority” from section 87I(3).

Insert instead “The annual review of the Commission”.

[96] Part 4A

Insert before Part 5—

Part 4A Special entitlement to expenses for medical or related treatment

148B Work pressure

- (1) If, as a result of a work pressure disorder experienced by a worker, it is reasonable and necessary that medical or related treatment be provided to the worker, the worker’s employer must pay the cost of the medical or related treatment (a *special work pressure payment*) to the worker.
- (2) An employer is not required to make a special work pressure payment to a worker for medical or related treatment provided more than 8 weeks after the worker is first provided with medical or related treatment for the work pressure disorder after the employer is notified of the work pressure disorder.
- (3) A worker is not entitled to a special work pressure payment from an employer if the employer has made a special work pressure payment to the worker in relation to a previous instance of a work pressure disorder experienced by the worker.
- (4) The maximum amount an employer is liable to pay for workplace rehabilitation services as part of a special work pressure payment must be determined by the Authority.
- (5) Except as provided by the regulations, the provisions of the workers compensation legislation apply in relation to a work pressure disorder in the same way the provisions would apply if—

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- (a) a work pressure disorder were an injury, and
 - (b) a special work pressure payment were a payment of compensation for injury, and
 - (c) an application for payment of a special work pressure payment were a payment for compensation.
- (6) To avoid doubt, an application for payment of a special work pressure payment is not a claim for compensation.
- (7) Workers Compensation Guidelines may provide for the following—
 - (a) the form and way in which an application for a special work pressure payment must be made,
 - (b) requirements for notification of a work pressure disorder in connection with an entitlement to a special work pressure payment,
 - (c) requirements about the evidence of a work pressure disorder that must be provided in connection with an application for a special work pressure payment.
- (8) In this section—
 - medical or related treatment***—
 - (a) has the same meaning as in Part 3, Division 3, but
 - (b) includes out-patient hospital treatment and workplace rehabilitation services.
 - work pressure disorder*** means a mental or psychiatric disorder caused by or arising from the pressures placed on a worker in the course of the worker's employment but only if the employment was the main contributing factor to the worker experiencing the disorder.

[97] Section 151H

Omit the section. Insert instead—

151H No damages unless permanent impairment at certain threshold

- (1) No damages may be awarded unless the injury results in—
 - (a) the death of the worker, or
 - (b) a degree of permanent impairment of the injured worker, assessed under Part 6 or the 1998 Act, Chapter 7, Part 7, that meets the threshold specified in subsection (2).
 - Note—** Part 6 provides for how the degree of permanent impairment is assessed.
- (2) The threshold for the degree of permanent impairment is—
 - (a) at least 15% for a physical injury, and
 - (b) at least 31% for a psychological injury.
- (3) In assessing whether the threshold has been met—
 - (a) impairment resulting from physical injury must be assessed separately from impairment resulting from psychological injury, and
 - (b) in assessing impairment resulting from psychological injury, no regard must be given to impairment that results from secondary psychological injury.
 - Note—** Subsections (2) and (3) do not prevent an award of damages for both a physical and psychological injury together once the permanent impairment threshold has been met for one or the other.

- (4) In assessing the degree of permanent impairment that results from a physical injury, no regard must be given to any impairment or symptoms arising from a psychological injury.
- (5) The degree of impairment that arises from an injury must be assessed under—
 - (a) Part 6, or
 - (b) the 1998 Act, Chapter 7, Part 7.

[98] Part 6

Insert after Part 5—

Part 6 Determination of degree of permanent impairment

Division 1 Preliminary

152 Definitions

In this part—

dispute assessment means an assessment under the 1998 Act, Chapter 7, Part 7 of the degree of permanent impairment of an injured worker.

further principal assessment means the second or subsequent principal assessment made of a worker in relation to an injury for which a principal assessment has been made.

permanent impairment agreement—see section 153O(1).

permanent impairment assessment means—

- (a) a principal assessment, or
- (b) a dispute assessment.

permanent impairment assessor means—

- (a) an assessor included on the SIRA register of permanent impairment assessors, or
- (b) a medical assessor.

Note— See the 1998 Act, section 4(1), definition of **medical assessor**.

principal assessment means an assessment of the degree of permanent impairment of an injured worker under Division 2 by an assessor included on the SIRA register of permanent impairment assessors.

principal assessment certificate means a certificate issued under section 153L.

SIRA register of permanent impairment assessors means the register kept under section 153J(3).

Note. *Consequential amendments are to be drafted to ensure that references in the Workers Compensation Acts to the ‘assessment of the degree of permanent impairment’ means references to permanent impairment that is the subject of a permanent impairment assessment under this Part or an assessment under the 1998 Act, Chapter 7, Part 3.*

153 Degree of permanent impairment to be assessed under this part

The degree of permanent impairment that results from an injury must be assessed as provided by this division.

153A Requirement for legal advice before permanent impairment assessment

Before an injured worker is seen by a permanent impairment assessor to start the permanent impairment assessment the injured worker must obtain independent legal advice about the full legal implication of the assessment, including—

- (a) implications in relation to any entitlement of the injured worker to compensation under this Act or to benefits under another law, including a law of the Commonwealth, and
- (b) the desirability of the worker obtaining independent financial advice about the financial consequences of the impact of the assessment.

153B Assessment of permanent impairment

- (1) A permanent impairment assessment of an injured worker for the purposes of the Workers Compensation Acts must be made in accordance with—
 - (a) this part, and
 - (b) Workers Compensation Guidelines—
 - (i) issued for that purpose, and
 - (ii) as in force at the time the assessment is made.

Note— Section 65A provides for impairment arising from psychological injuries to be assessed separately from impairment arising from physical injuries.

- (2) Impairments that result from more than one injury arising out of the same incident are to be assessed together to assess the degree of permanent impairment of the injured worker.
- (3) Impairments that result from the same injury must be assessed together to assess the degree of permanent impairment of the injured worker.
- (4) A permanent impairment assessment must not be completed unless the permanent impairment assessor is satisfied—
 - (a) the impairment is permanent, and
 - (b) the degree of permanent impairment is fully ascertainable
- (5) If a permanent impairment assessor is not satisfied of the matters mentioned in subsection (4)(a) and (b), the permanent impairment assessment of the worker must not be completed until a permanent impairment assessor is satisfied of the matters.
- (6) If a permanent impairment assessor declines to complete a permanent impairment assessment under subsection (4), proceedings before a court or the Commission may be adjourned until the assessment is completed.
- (7) A permanent impairment assessment may be conducted outside New South Wales.

153C Deduction for previous injury or pre-existing condition or abnormality

- (1) In assessing the degree of permanent impairment resulting from an injury, there must be a deduction for any proportion of the impairment that is due to—
 - (a) a previous injury, whether or not it is an injury for which compensation has been paid or is payable under Part 3, Division 4, or
 - (b) a pre-existing condition or abnormality.
- (2) If the extent of a deduction under this section, or a part of a deduction, will be difficult or costly to determine, for example because of an absence of medical evidence, it must be assumed, to avoid disputation, the deduction, or the

relevant part of the deduction, is 10% of the impairment, unless this assumption is at odds with the available evidence.

Example of deduction— If the degree of permanent impairment is assessed as 30% and this subsection operates to require a 10% reduction in that impairment to be assumed, the degree of permanent impairment is reduced from 30% to 27%, a reduction of 10%.

- (3) The reference in subsection (2) to medical evidence is a reference to medical evidence accepted or preferred by the permanent impairment assessor in connection with the permanent impairment assessment of the matter.

- (4) The Workers Compensation Guidelines may make provision for or with respect to the determination of the deduction required by this section.

Note— Section 153D makes provision for how this section applies for the purpose of determining the degree of permanent impairment and associated pain and suffering for injuries to which section 15, 16, 17 or 22 applies.

153D Deductions for previous injuries and pre-existing conditions—operation of sections 15, 16, 17 and 22

- (1) In assessing the degree of permanent impairment resulting from an injury for the apportionment of liability under section 22—

- (a) there must be no deduction under section 153C for any proportion of the impairment that is due to an injury for which liability must be apportioned, but
- (b) without affecting any deduction under that section for any proportion of the impairment that is due to—
 - (i) another injury, or
 - (ii) a pre-existing condition or abnormality.

- (2) In assessing the degree of permanent impairment resulting from an injury to which section 15 applies, section 153C applies to the assessment subject to the following—

- (a) there must be no deduction under section 153C for a proportion of the permanent impairment that is due to the worker's employment in previous relevant employment except any proportion for which compensation under the following provisions has been paid or is payable—
 - (i) Part 3, Division 4 as in force at any time,
 - (ii) the former Act, section 16,
- (b) for paragraph (a), **previous relevant employment** is employment to the nature of which the disease was due by a previous employer who—
 - (i) is liable under section 15 to contribute in relation to the degree of permanent impairment resulting from an injury, or
 - (ii) would be liable as mentioned in paragraph (a) if the requirement to contribute were not limited to employers who employed the worker during a particular period,
- (c) for permanent impairment of the back, neck or pelvis, a reference in this subsection to previous relevant employment is limited to employment after the commencement of this Act.

Note— Section 15 applies to injuries that are diseases of a nature contracted by a gradual process.

- (3) In assessing the degree of permanent impairment for an injury to which section 16 applies, section 153C applies to assessment subject to the following—

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- (a) there must be no deduction under section 153C for a proportion of the permanent impairment that is due to the worker's employment in previous relevant employment except any proportion for which compensation under the following provisions has been paid or is payable—
 - (i) Part 3, Division 4 as in force at any time,
 - (ii) the former Act, section 16,
- (b) for paragraph (a), **previous relevant employment** is employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration by a previous employer who—
 - (i) is liable under section 16 to contribute in relation to the degree of permanent impairment being assessed, or
 - (ii) would be liable as mentioned in paragraph (a) if the requirement to contribute were not limited to employers who employed the worker during a particular period,
- (c) for permanent impairment of the back, neck or pelvis, a reference in this subsection to previous relevant employment is limited to employment after the commencement of this Act.

Note— Section 16 applies to injuries that consist of the aggravation, acceleration, exacerbation or deterioration of a disease.

- (4) In assessing the degree of permanent impairment resulting from an injury to which section 17 applies, section 153C applies to the assessment subject to the following—
 - (a) there must be no deduction under section 153C for a proportion of the permanent impairment that is due to the worker's employment in previous relevant employment, except any proportion for which compensation under the following provisions has been paid or is payable—
 - (i) Part 3, Division 4 as in force at any time,
 - (ii) the former Act, section 16,
 - (b) for paragraph (a), **previous relevant employment** is employment to the nature of which the disease was due by a previous employer who—
 - (i) is liable under section 17 to contribute in relation to the degree of permanent impairment being assessed, or
 - (ii) would be liable as mentioned in paragraph (a) if the requirement to contribute were not limited to employers who employed the worker during a particular period.

Note— Section 17 applies to an injury that is a loss, or further loss, of hearing which is of a nature to be caused by a gradual process.

153E Special provisions for HIV/AIDS

- (1) For the purposes of determining the degree of permanent impairment as a result of an injury, HIV and AIDS are each considered to result in a degree of permanent impairment of 100%.
- (2) The regulations may provide for methods for determining, for the purposes of this Act, whether a person is living with HIV/AIDS.
- (3) Regulations need not be made under subsection (2) and, in the absence of regulations, the determination of whether a person is living with HIV/AIDS must be on the basis of medical opinion.

Note— The amendment of this section, formerly section 67A, by the *Equality Legislation Amendment (LGBTIQA+) Act 2024* to refer to "living with HIV/AIDS" merely

modernises language and not intended to change the application of workers compensation legislation and other applicable legislation.

153F Costs of permanent impairment assessment

- (1) An employer is not liable to pay the costs of or in relation to a permanent impairment assessment incurred by the insurer or worker unless the assessment is—
 - (a) a principal assessment or further principal assessment, or
 - (b) a dispute assessment, or
 - (c) another assessment permitted by the Workers Compensation Acts or regulations made under the Workers Compensation Acts.
- (2) Costs will not be payable to an insurer or worker for more than 1 permanent impairment assessment of the worker unless—
 - (a) for the purposes of disputing a permanent impairment assessment, or
 - (b) in circumstances where the parties agree there appears to be an unexpected and material deterioration in the worker's condition since the original permanent impairment assessment was conducted.
- (3) The Authority may, for the purposes of meeting the costs, set fees, by order in the Gazette, for the carrying out of permanent impairment assessments or make other arrangements for meeting the costs.
- (4) If a worker is required to submit for examination under this part, the worker is entitled to recover from the worker's employer, in addition to any compensation otherwise provided—
 - (a) the amount of any wages lost by the worker by reason of submitting for examination, and
 - (b) the cost to the worker of any fares, travelling expenses and maintenance necessarily and reasonably incurred in so submitting to the examination.
- (5) If it is necessary for a worker to travel for an examination for the purposes of a permanent impairment assessment and the worker is not reasonably able to travel unescorted, the fares, travelling expenses and maintenance referred to in this section include fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort for the worker provided to enable the worker to be examined.
- (6) If the cost of fares, travelling expenses and maintenance referred to in this section includes the cost of travel by private motor vehicle, the cost must be calculated at the rate fixed for the purposes of section 64.
- (7) The regulations may provide for matters relating to legal costs relating to permanent impairment assessments.

Division 2 Principal assessment

153G Who must carry out permanent impairment assessment

A principal assessment must be made by an assessor or assessors—

- (a) included on the SIRA register of permanent impairment assessors, and
- (b) either—
 - (i) agreed by the insurer and worker, or
 - (ii) if the insurer and worker are unable to agree on the assessor or assessors within a period specified in the Workers Compensation Guidelines—appointed by the Authority.

153H Permanent impairment assessment process

- (1) An application may be made to the Authority for a principal assessment.
- (2) An application under subsection (1) must be made in accordance with the regulations.
- (3) The following matters relating to the principal assessment must be agreed between the insurer and the worker—
 - (a) the body system, body structure or disorder to be assessed,
 - (b) all medical and allied health information, including results of clinical investigations, relevant to the assessment of the injury,
 - (c) other matters specified in Workers Compensation Guidelines.
- (4) If the principal assessment relates to 2 or more body systems, body structures or disorders, the assessment must be conducted by 2 or more permanent impairment assessors.
- (5) For subsection (4), one of the permanent impairment assessors must be the lead assessor, appointed by the Authority, to coordinate and calculate the final degree of permanent impairment resulting from the individual assessments of permanent impairment by the individual assessors.

153I One assessment only of degree of permanent impairment

Subject to section 153M, only one principal assessment may be made of an injured worker in relation to—

- (a) the same injury, or
- (b) more than one injury arising from the same incident.

153J Permanent impairment assessors

- (1) The Workers Compensation Guidelines may provide for matters relating to the approval of permanent impairment assessors for principal assessments under this division.
- (2) Without limiting subsection (1), Workers Compensation Guidelines may provide for—
 - (a) the approval of permanent impairment assessors, including the processes and procedures for the approval of assessors, and
 - (b) the functions of permanent impairment assessors, and
 - (c) conditions to be imposed on the approval of permanent impairment assessors, and
 - (d) training requirements for permanent impairment assessors, and
 - (e) the monitoring of services provided by permanent impairment assessors, and
 - (f) how the performance of permanent impairment assessors must be assessed.
- (3) The Authority must—
 - (a) keep a register of permanent impairment assessors approved under this section, and
 - (b) publish the register on the Authority's website.

- (4) The Authority may, in publishing the register under subsection (3)(b), include the names and contact details of permanent impairment assessors approved under this section.
- (5) The maximum amount an employer is liable for in relation to the cost of a permanent impairment assessor must be set by the Authority by order published on the NSW legislation website.
- (6) A permanent impairment assessor whose approval under this section is revoked may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision to revoke the approval.

153K Powers of permanent impairment assessor on assessment

- (1) The permanent impairment assessor conducting a principal assessment may—
 - (a) consult with any medical practitioner or other health care professional who is treating or has treated the worker, and
 - (b) call for the production of the medical records, including X-rays and the results of other tests, and other information the permanent impairment assessor considers necessary or desirable for the purposes of assessing the degree of permanent impairment, and
 - (c) require the worker to submit for examination by the permanent impairment assessor.
- (2) If a worker refuses to submit for examination by the permanent impairment assessor if required to do so, or in any way obstructs the examination, the following are suspended until the examination has taken place—
 - (a) the worker's right to recover compensation in relation to the injury,
 - (b) the worker's right to weekly payments.
- (3) The Workers Compensation Guidelines may provide for matters relating to the medical records and other information to be produced by the insurer or the worker under subsection (1)(b), including the nature and volume of information to be provided.

153L Referral of medical dispute to Commission

A medical dispute, within the meaning of section 319, arising from a principal assessment may be referred to the Commission under the 1998 Act, Chapter 7, Part 7.

153M Certificate of principal assessment

- (1) The permanent impairment assessor to whom a principal assessment is referred must give a certificate (a *principal assessment certificate*) about the worker's degree of permanent impairment to—
 - (a) each of the parties, and
 - (b) the Authority,
- (2) A principal assessment certificate must be in a form approved by the Authority and must—
 - (a) set out details of the degree of permanent impairment, and
 - (b) certify the permanent impairment assessor's assessment of the degree of permanent impairment, and
 - (c) set out the permanent impairment assessor's reasons for the assessment, and

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- (d) set out the facts on which the assessment is based.

153N Further principal assessments

- (1) A further principal assessment may be made of an injured worker only—
 - (a) if the permanent impairment assessor declined, under section 153B(4), to make a principal assessment when a principal assessment was last conducted in relation to the worker, or
 - (b) if the worker and insurer agree that it appears there has been an unexpected and material deterioration in the worker's condition since the last principal assessment of the worker was conducted, or
 - (c) in circumstances prescribed by the regulations.
- (2) For subsection (1)(b), an unexpected and material deterioration in the worker's condition since the original principal assessment was made occurs only if—
 - (a) at the time of the original principal assessment there was no reasonable cause to believe the worker's condition would deteriorate, and
 - (b) the deterioration results in an increase in the worker's degree of permanent impairment of at least a further 20 percentage points.

Example— A worker was originally assessed at 25% permanent impairment under this part. For a further assessment to be treated as a further principal assessment, the worker must have an assessment of at least 45% permanent impairment, in addition to otherwise meeting the requirements of this section.
- (3) For subsection (2), age-related deterioration must not to be taken into account in deciding whether an unexpected and material deterioration in a worker's condition has occurred.

153O Personal liability of assessors on SIRA register of permanent impairment assessors

- (1) An assessor included on the SIRA register of permanent impairment assessors is not personally subject to liability for anything done—
 - (a) in good faith, and
 - (b) for the purpose of exercising a function under this Act.
- (2) In this section—

done includes omitted to be done.

liability means civil liability and includes action, claim or demand.

Division 3 Permanent impairment agreements

153P Entering into permanent impairment agreements

- (1) After a principal assessment is conducted of an injured worker, the worker and the employer or insurer may enter into a written agreement (a **permanent impairment agreement**)—
 - (a) under which the worker and the employer or insurer agree as to the degree of permanent impairment that has resulted from the injury, and
 - (b) in which there is a provision in which the employer or insurer certifies the employer or insurer is satisfied the worker obtained independent legal advice before entering into the permanent impairment assessment.

Note— If the injured worker and the employer or insurer cannot agree on a permanent impairment agreement, a dispute about the degree of permanent impairment of the injured worker is a medical dispute for the purposes of the 1998 Act, Chapter 7, Part 7.
- (2) A permanent impairment agreement is of no force or effect if—

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- (a) the agreement does not include a provision in which the employer or insurer certifies the employer or insurer is satisfied the worker has obtained, or has waived the right to obtain, independent legal advice before entering into the agreement, or
 - (b) it is established the worker was induced to enter the agreement as a result of fraud or misrepresentation.
- (3) Subsection (2) has effect despite the 1998 Act, section 234.
Note— The 1998 Act, section 234 provides that the 1998 Act and this Act apply despite any contract to the contrary.
- (4) If an insurer and worker fail to enter into a permanent impairment agreement—
 - (a) the insurer must give notice of the decision not to enter into the agreement in accordance with the 1998 Act, sections 78 and 79 and the regulations, and
 - (b) the decision not to enter into the agreement may be referred to the Commission for determination.**Note—** The 1998 Act, section 105 provides that the Commission has exclusive jurisdiction to examine, hear and determine all matters arising under this Act and the 1998 Act.
- (5) If a worker enters into a permanent impairment agreement in relation to an injury, the permanent impairment compensation to which the worker is entitled in relation to the injury is the compensation payable in relation to the degree of permanent impairment agreed.
- (6) The parties to a permanent impairment agreement may agree to change the degree of permanent impairment of the injured worker by—
 - (a) agreeing to vary the permanent impairment agreement, or
 - (b) entering into a further permanent impairment agreement in place of the original permanent impairment agreement.
- (7) Permanent impairment agreements, and the payments made under the agreements, must be recorded in accordance with the Workers Compensation Guidelines.
- (8) Nothing in this section prevents a permanent impairment agreement from containing provisions about the payment of costs.

153Q Permanent impairment agreement evidence of certain matters

- (1) The permanent impairment agreement must be used for the purposes of establishing entitlement for the following—
 - (a) weekly payments,
 - (b) medical expenses compensation,
 - (c) lump sum compensation,
 - (d) commutations,
 - (e) work injury damages.
- (2) A permanent impairment agreement is, in relation to the following matters, conclusive evidence of—
 - (a) the degree of permanent impairment of the worker as a result of the injury,
 - (b) whether any proportion of permanent impairment is due to a previous injury or pre-existing condition or abnormality,

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- (c) the nature and extent of any loss of hearing suffered by the worker,
 - (d) whether impairment is permanent,
 - (e) whether the degree of permanent impairment is fully ascertainable.
- (3) A permanent impairment agreement is, for a matter not mentioned in subsection (2)(a)–(e), evidence but not conclusive evidence of a matter stated in the agreement.
- (4) Subsection (2) does not apply to proceedings in the Commission or a court about the degree of permanent impairment of the injured worker.

153R Permanent impairment agreement does not prevent further principal assessment

A permanent impairment agreement does not prevent a further principal assessment being made of an injured worker under section 153N.

Note— A further principal assessment may result in a dispute about the degree of permanent impairment of the injured worker that is a medical dispute for the purposes of the 1998 Act, Chapter 7, Part 7. See also section 153P(6) which provides the degree of permanent impairment may be changed by varying the permanent impairment agreement or entering into a further permanent impairment agreement.

153S Division subject to decisions of the Commission

This division is subject to a decision made by the Commission determining permanent impairment and entitlements of injured workers.

[99] Section 160 Recovery of excess from employer

Omit “prescribed excess amount determined by the Workers Compensation Market Practice and Premiums Guidelines in respect of that policy” from section 160(1), definition of *prescribed excess amount*.

Insert instead “excess amount prescribed by the regulations”.

[100] Section 160(1), definition of “small business employer”

Omit the definition.

[101] Section 160(4A)

Omit the subsection.

[102] Section 160(9)

Insert after section 160(8)—

- (9) The regulations may provide for matters relating to the payment of the prescribed excess amount including the circumstances in which the prescribed excess amount must be paid.

[103] Section 173AA

Insert after section 173A—

173AA Offence for large employers to fail to give insurers information relevant to underinsurance

- (1) A large employer must not recklessly fail to comply with a requirement under workers compensation legislation for the large employer to give an insurer the following—
- (a) information about the wages of workers employed by the large employer,

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- (b) other information that enables the insurer to accurately calculate a workers compensation premium for workers employed by the large employer.
Maximum penalty—
- (2) For subsection (1), recklessness may also be established by proof of intention or knowledge.
- (3) In this section—
large employer means—

[104] Part 7, Division 4A

Insert after Division 4—

Division 4A Enforceable undertakings

209A Definition

In this division—

insurer means—

- (a) a licensed insurer, or
- (b) a self-insurer.

209B Authority may accept undertaking

- (1) The Authority may accept a written undertaking given by an insurer in relation to a contravention or alleged contravention by the insurer in relation to the Workers Compensation Acts.
- (2) The giving of an undertaking does not constitute an admission of guilt by the insurer in relation to the contravention or alleged contravention to which the undertaking relates.

209C Notice of decision

- (1) The Authority must give the insurer seeking to give an undertaking under this division written notice of—
 - (a) the Authority's decision to accept or reject the undertaking, and
 - (b) the reasons for the decision.
- (2) The Authority must, as soon as practicable after making a decision to accept or reject the undertaking, publish notice of the decision on the Authority's website.

209D When undertaking is enforceable

An undertaking under this division takes effect and becomes enforceable—

- (a) when the insurer receives notice of the Authority's decision to accept the undertaking, or
- (b) at a later date specified by the Authority.

209E Compliance with undertaking

An insurer must not contravene an undertaking given by the insurer under this division that is in effect.

Maximum penalty—

Exposure draft

Workers Compensation Legislation Amendment Bill 2025 [NSW]
Schedule 1 Amendment of Workers Compensation Act 1987 No 70

209F Contravention of undertaking

- (1) The Authority may apply to the District Court for an order if an insurer contravenes an undertaking given under this division.
- (2) If the Court is satisfied the insurer that made the undertaking has contravened the undertaking, the Court, in addition to imposing a penalty, may make one or both of the following orders—
 - (a) an order directing the insurer to comply with the undertaking,
 - (b) an order discharging the undertaking.
- (3) In addition to the orders referred to in subsection (2), the Court may make other orders the Court considers appropriate in the circumstances, including orders directing the insurer to pay to the State—
 - (a) the costs of the proceedings, and
 - (b) the reasonable costs of the Authority in monitoring compliance with the undertaking in the future.
- (4) This section does not prevent proceedings being brought for the contravention or alleged contravention of this Act to which the undertaking relates.

209G Withdrawal or variation of undertaking

- (1) An insurer who has given an undertaking under this division may at any time, with the written agreement of the Authority—
 - (a) withdraw the undertaking, or
 - (b) vary the undertaking.
- (2) However, the provisions of the undertaking may not be varied to provide for a different alleged contravention of the Workers Compensation Acts.
- (3) The Authority may at any time, with the written agreement of the insurer, withdraw its decision to accept an undertaking.
- (4) The Authority must, as soon as practicable after an undertaking is withdrawn or varied, publish on the Authority's website notice of—
 - (a) the withdrawal or variation, and
 - (b) the reasons for the withdrawal or variation.

209H Proceedings and civil penalties for alleged contravention

- (1) No proceedings may be brought against an insurer, and a civil penalty may not be issued to an insurer, for a contravention or alleged contravention of the Workers Compensation Acts if—
 - (a) an undertaking under this division is in effect in relation to the contravention, or
 - (b) an undertaking under this division has been given and completely discharged by the insurer.
- (2) The Authority may accept an undertaking in relation to a contravention or alleged contravention before proceedings in relation to the contravention have been finalised.
- (3) If the Authority accepts an undertaking before the proceedings are finalised, the Authority must take all reasonable steps to have the proceedings discontinued as soon as possible.

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[105] Section 225 Definitions

Insert in alphabetical order in section 225(1)—

ICNSW has the same meaning as in the *State Insurance and Care Governance Act 2015*.

[106] Sections 227, 229–236 and 238

Omit “the Authority” wherever occurring. Insert instead “ICNSW”.

[107] Sections 229–231 and 238, headings

Omit “**Authority**” wherever occurring. Insert instead “**ICNSW**”.

[108] Schedule 6 Savings, transitional and other provisions

Omit “\$76,700” from Part 3, clause 2(2) and (4) wherever occurring.
Insert instead “\$197,100”.

[109] Schedule 6, Part 3, clause 2(3)(b) and (4)

Omit “\$38.30” wherever occurring.
Insert instead “\$98.40”.

[110] Schedule 6, Part 4, clause 4(b)(i) and (2)

Omit “\$44.80” wherever occurring.
Insert instead “\$115.10”.

[111] Schedule 6, Part 4, clause 4(1)(b)(ii) and (2)

Omit “\$22.50” wherever occurring.
Insert instead “\$57.80”.

[112] Schedule 6, Part 4, clause 4A(2)(a) and (3)(a)

Omit “\$196.00” wherever occurring.
Insert instead “\$503.60”.

[113] Schedule 6, Part 4, clause 4A(2)(b) and (3)(b)

Omit “\$155.90” wherever occurring.
Insert instead “\$400.60”.

[114] Schedule 6, Part 4, clause 4A(2)(c) and (3)(c)

Omit “\$141.60” wherever occurring.
Insert instead “\$363.90”.

[115] Schedule 6, Part 4, clause 4A(2)(c) and (3)(c)

Omit “\$127.50” wherever occurring.
Insert instead “\$327.60”.

[116] Schedule 6, Part 4, clause 7(2)(a) and (4)

Omit “\$341.30” wherever occurring.
Insert instead “\$877.00”.

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Schedule 1 Amendment of Workers Compensation Act 1987 No 70

[117] Schedule 6, Part 19H, clause 2(1)

Omit “\$906.25”. Insert instead “\$1,266.50”.

[118] Schedule 6

Insert before Part 20 with appropriate part and clause numbering—

**Part Provisions consequent on Workers Compensation
Legislation Amendment Act 2025**

Definition

In this part—

amendment Act means the *Workers Compensation Legislation Amendment Act 2025*.

Note. Transitional provisions and consequential amendments to this Act and other relevant Acts are to be inserted after the substantive amendments are finalised.

Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 45B

Insert after section 45A—

45B Independent allied health consultants

- (1) The Workers Compensation Guidelines may provide for matters relating to the approval of independent allied health practitioners to assist with proactively managing claims.
- (2) Without limiting subsection (1), the Workers Compensation Guidelines may provide for the following—
 - (a) the approval of independent allied health practitioners, including the processes and procedures for the approval,
 - (b) the functions of approved independent allied health practitioners,
 - (c) conditions to be imposed on the approval of independent allied health practitioners,
 - (b) the monitoring of services provided by approved independent allied health practitioners.
- (3) The names and contact details of approved independent allied health practitioners may be made available by publication on the Authority's website.
- (4) An independent allied health practitioner who is aggrieved by a decision of the Authority to revoke the practitioner's approval under this section may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
- (5) The maximum amount an employer is liable for the cost of an approved independent allied health practitioner must be set by the Authority by order published on the NSW legislation website.

[2] Section 78 Insurer to give notice of decisions

Omit "the compensation" from section 78(1)(b). Insert instead—

- the compensation, or
- (c) to not enter into a permanent impairment agreement following the issue of a principal assessment certificate under the 1987 Act, Part 6.

Note— Section 105 provides that the Commission has exclusive jurisdiction to examine, hear and determine all matters arising under the Workers Compensation Acts.

[3] Section 231A

Insert after section 231—

231A Employers not entitled to attend medical treatment or medical examination

Neither an employer nor the employer's representative is entitled to attend either of the following unless the worker requests the attendance—

- (a) medical treatment of the worker,
- (b) a medical examination of the worker.

[4] Chapter 7, Part 3, Division 1AA

Insert after Chapter 7, Part 3, heading—

Division 1AA Application of part

264A Application of part

- (1) Divisions 1–3 do not apply in relation to a primary psychological injury caused by sexual harassment, racial harassment or bullying.
- (2) Division 3A applies in relation to primary psychological injuries caused by conduct that a tribunal, commission or court has found is sexual harassment, racial harassment or bullying.

[5] Section 280 Provisional acceptance of liability

Insert after section 280(2)—

- (3) This section does not apply to liability for medical expenses compensation to which the 1987 Act, section 148B applies.

[6] Chapter 7, Part 3, Division 3A

Insert after section 280—

Division 3A Special provisions for primary psychological injuries caused by sexual or racial harassment or bullying

280AA Application of division

This division applies to a claim in relation to a primary psychological injury caused by conduct that a tribunal, commission or court has found is sexual harassment, racial harassment or bullying (a *relevant injury*).

Note— This division applies only in relation to claims made after the commencement of this section.

280AAA How claim is made

- (1) A claim must be made in accordance with the applicable requirements of the Workers Compensation Guidelines.
- (2) The Workers Compensation Guidelines may provide for the following matters in connection with the making of a claim—
 - (a) the form in which a claim must be made,
 - (b) the way in which a claim must be made,
 - (c) the information that a claim must contain,
 - (d) specified documents and other material required to accompany or form part of a claim,
 - (e) other matters prescribed by the regulations.
- (3) Without limiting this section, the Workers Compensation Guidelines may require that a claim be accompanied by a form of authority signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or workplace rehabilitation services to the claimant in connection with the injury to which the claim relates to give the insurer information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim.
- (4) The failure to make a claim as required by this section is not a bar to the recovery of compensation or work injury damages if it is found that the failure was occasioned by ignorance, mistake or other reasonable cause or because of a minor defect in form or style.

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Workers Compensation Legislation Amendment Bill 2025 [NSW]
Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

- (5) Except to the extent that the Workers Compensation Guidelines otherwise provide, an insurer can waive a requirement of the Guidelines in relation to the making of a claim on the insurer.
- (6) The Workers Compensation Guidelines may require an insurer to notify a worker of a failure by the worker to comply with a requirement of the Guidelines in relation to the making of a claim, and may provide for the waiver of the failure by the worker if the insurer fails to give the required notification.

280AAB Time within which claim for compensation must be made

- (1) Compensation must not be recovered unless a claim for the compensation has been made within 6 months after a finding by a Tribunal, Commission or Court that the relevant injury was caused by conduct that is sexual harassment, racial harassment or bullying.
- (2) If a claim for compensation was made by an injured worker within the period required by this section, this section does not apply to a claim for compensation in relation to the death of the worker resulting from the relevant injury to which the worker's claim related.
- (3) For this section, a person is considered to have made a claim for compensation when the person makes any claim for compensation relation to of the relevant injury, even if the person's claim did not relate to the particular compensation in question.
- (4) The failure to make a claim within the period required by this section is not a bar to the recovery of compensation if it is found that—
 - (a) the failure was occasioned by ignorance, mistake, absence from the State or other reasonable cause, and
 - (b) the claim is made within 3 years after a finding by a Tribunal, Commission or Court that the relevant injury was caused by conduct that is sexual harassment, racial harassment or bullying.
- (5) The failure to make a claim within the period required by this section is not a bar to the recovery of compensation if the insurer determines to accept the claim outside that period.
- (6) An insurer must not determine to accept a claim made more than 3 years after the relevant injury happened except with the approval of the Authority.
- (7) If 2 or more persons are liable or partly liable for compensation, whether or not that liability arises from the same or from different injuries, a claim is, for this section, taken to have been made when a claim is made on any one of the persons.

280AAC Time within which claim for work injury damages must be made

Court proceedings for the recovery of work injury damages must not be commenced until a claim for the damages has been made.

280AAD Lump sum compensation claims must made at same time

- (1) All claims for permanent impairment compensation for a relevant injury must, as far as practicable, be made at the same time.
- (2) A legal practitioner or agent who acts for a worker when a claim is made is not entitled to recover costs from the worker or the employer in relation to a claim made later, including a claim made by later amendment of proceedings, unless there is a good reason for the claim being made later.

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Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

280AAE Action by employer in respect of claims, injuries and compensation

- (1) An employer, not being a self-insurer, who receives a claim or other documentation in relation to a claim for a relevant injury must, within 7 days after receiving the claim or documentation, forward it to the employer's insurer.
Maximum penalty—
- (2) An employer who receives a request from the employer's insurer for specified information or documentation in relation to a claim for a relevant injury, must, within 7 days after receipt of the request, give the insurer the specified information or documentation that is in the employer's possession or is reasonably obtainable by the employer.
Maximum penalty—
- (3) An employer who has received compensation money under this Act for a relevant injury from an insurer must, as soon as practicable, pay the money to the person entitled to the compensation.
Maximum penalty—
- (4) A person is not guilty of an offence for a failure to comply with a provision of this section if there was a reasonable excuse for that failure.
- (5) In this section—
employer's insurer means the insurer who the employer believes is liable to indemnify the employer for the claim or injury.
notified injury means an injury to a worker notified to an insurer.

280AB Liability to be accepted and weekly payments commenced within 21 days

- (1) Within 21 days after a claim for weekly payments is made the insurer on whom the claim is made must determine the claim by—
 - (a) accepting liability and commencing weekly payments, or
 - (b) disputing liability.

Note— Section 280AE makes failure to comply with this section an offence. Section 280AC requires notice of a dispute to be given.
- (2) Subsection (1) does not apply if the insurer has a reasonable excuse for not determining the claim within 21 days after the claim is made.
- (3) The Workers Compensation Guidelines may provide for what constitutes a reasonable excuse for subsection (2).
- (4) If liability is accepted, the entitlement to weekly payments is taken to have commenced from the date of lodgement of an application or initiating process in the tribunal, commission or court that determined the worker had been subject to conduct that is racial harassment, sexual harassment or bullying.

280AC Disputing liability

- (1) If an insurer disputes liability in relation to a claim or an aspect of a claim, the insurer must give notice of the dispute to the claimant.
- (2) The notice must contain the following—
 - (a) a statement of the reason the insurer disputes liability,
 - (b) a statement to the effect that the worker can also seek advice or assistance from the worker's trade union organisation or from a lawyer,
 - (c) other information prescribed by the regulations.

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- (3) A statement of reasons in a notice under this section must indicate the provision of the workers compensation legislation on which the insurer relies to dispute liability.
- (4) A notice under this section must be expressed in plain language.

280AD Claims for weekly compensation—commencement of payments

- (1) Weekly payments of compensation must commence as soon as practicable, but not later than 21 days, after the claim for compensation is made.
- (2) If the person on whom a claim is made disputes liability in accordance with section 280AC to make the weekly payments within 21 days after the claim for compensation is made, the obligation under this section to commence the weekly payments, or the balance of the weekly payments in dispute, does not apply.
- (3) If an insurer has a reasonable excuse for failing to commence weekly payments of compensation, or the balance of weekly payments in dispute, within 21 days after the claim for compensation is duly made, subsections (1) and (2) apply to the weekly payments as if a reference in the subsections to 21 days were a reference to the period that ends on the earlier of the following—
 - (a) 56 days after the claim is made,
 - (b) when the person ceases to have the reasonable excuse.
- (4) An insurer who has or anticipates having a reasonable excuse for failing to commence weekly payments of compensation, or the balance of weekly payments, must notify the claimant in writing as soon as practicable.
- (5) This section ceases to apply if the claim for compensation is withdrawn.

280AE Offences—weekly payments

- (1) A person on whom a claim for weekly payments of compensation is made is guilty of an offence if the person fails to commence the payments within the time required by section 280AD.
Maximum penalty—
- (2) A person on whom a claim for weekly payments of compensation is made is guilty of an offence if the person refers a matter which the person knows is not a genuine dispute for the purpose of delaying, without good cause, the commencement of weekly payments of compensation.
Maximum penalty—

280AF Commission may determine matter arising under division

The Commission has jurisdiction to determine a matter arising under this division.

[7] Section 297 Directions for interim payment of weekly payments or medical expenses compensation

Omit “\$7,500” wherever occurring in section 297(2), including the note.

Insert instead “\$11,080.20”.

[8] Section 314 What constitutes threshold dispute

Omit “is at least 15%, or” from section 314(1) and (2) wherever occurring.

Insert instead “meets the threshold set out in the 1987 Act, section 151H”.

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[9] Section 314(1), note

Omit “section 322 (4)”. Insert instead “the 1987 Act, section 153B”.

[10] Section 314

Insert after section 314(3)—

- (4) A permanent impairment agreement that specifies the degree of permanent impairment of an injured worker also constitutes acceptance by the parties to the agreement of the degree of permanent impairment for the claim for work injury damages.

[11] Part 7, heading

Omit “assessment”. Insert instead “disputes”.

[12] Section 320

Insert after section 319—

320 Application of part

This part applies only to a medical assessment conducted for the purposes of a medical dispute before the Commission.

[13] Section 322

Omit the section.

[14] Section 322A, heading

Insert “for medical dispute” after “impairment”.

[15] Section 322A(1)

Omit the subsection.

[16] Section 322A(1A)

Omit “A reference in subsection (1) to an assessment includes an assessment of the degree of permanent impairment”.

Insert instead “Only one assessment of the degree of permanent impairment may be”.

[17] Section 322A

Insert at the end of the section—

Note— The assessment of permanent impairment under this part must be conducted in accordance with the 1987 Act, Part 6.

[18] Section 323

Omit the note to the section. Insert instead—

Note— The 1987 Act, Part 6 makes provision for the purposes of calculating workers compensation lump sum benefits for permanent impairment and associated pain and suffering in cases to which the 1987 Act, section 15, 16, 17 or 22 applies.

[19] Section 337 Maximum lawyer and agent costs

Omit “reports).” from section 337(1)(b). Insert instead—

reports),

- (c) funding for ILARS within the meaning of the *Personal Injury Commission Act 2020*, Schedule 5,

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- (d) a scale of maximum costs for legal and associated costs provided by the Independent Review Officer under the *Personal Injury Commission Act 2020*, including providing for no costs to be payable for certain matters or in particular circumstances.

Schedule 3 Amendment of Personal Injury Commission Act 2020 No 18

Section 43A

Insert after section 43—

43A Commission may appoint tutor for person under legal incapacity

- (1) This section applies if proceedings directly or significantly affect a person under legal incapacity.
- (2) The Commission may appoint a person the Commission considers appropriate, including a person from the Guardian Ad Litem Panel, to—
 - (a) separately represent the person, and
 - (b) support the person.
- (3) A tutor must not commence or carry on proceedings except by a solicitor, unless the Commission orders otherwise.
- (4) The Commission may give directions in relation to the conduct of a tutor.
- (5) The Commission rules and procedural directions may provide for matters relating to tutors, including the conduct of tutors.
- (6) In this section—

Guardian Ad Litem Panel means the Guardian Ad Litem Panel constituted under the *Children and Young Persons (Care and Protection) Act 1998*.

person under legal incapacity has the same meaning as in the *Civil Procedure Act 2005*.

Schedule 4 Amendment of other legislation

4.1 Workers Compensation Regulation 2016

[1] Clause 5C COVID-19—matters relating to incapacity

Omit clause 5C(1) and (2). Insert instead—

- (1) For the 1987 Act, section 19B(5), the relevant date is the date that marks the end of the expected duration of the worker’s incapacity for work as a result of COVID-19 that is specified in the certificate of capacity.

[2] Clause 5C(3)(a)

Omit “in relation to whom the presumption under section 19B(5) of the 1987 Act is rebutted”.