



New South Wales

Personal Injury Commission Bill 2020

Explanatory note

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

Overview of Bill

The objects of this Bill are—

- (a) to establish the Personal Injury Commission and provide for its functions, and
- (b) to repeal, and make other consequential amendments to, certain other legislation.

Summary of operation of this Bill

Background

Currently, certain functions under workers compensation legislation are exercised by the Workers Compensation Commission (the *WCC*) established under the *Workplace Injury Management and Workers Compensation Act 1998*.

The State Insurance Regulatory Authority constituted under the *State Insurance and Care Governance Act 2015* (*SIRA*) provides various dedicated dispute resolution services under motor accidents legislation.

This has resulted in some processes being duplicated, particularly in connection with medical assessments. For example, the President of the WCC is responsible for appointing medical specialists to carry out medical assessments for workers compensation matters while SIRA is responsible for their appointment for motor accident matters.

Principal reforms to be introduced by proposed Act

The following are the principal reforms to be introduced by the proposed Act—

- (a) to establish an independent Personal Injury Commission (**PIC**) that is not a court to replace the WCC, headed by a President who is a judge of a court of record,
- (b) to provide for PIC (and its members and officers) to carry out some of the motor accident dispute resolution functions currently carried out by SIRA,
- (c) to require PIC to deal with proceedings justly, quickly, cost effectively and with as little formality as possible,
- (d) to enable PIC to provide its services in a consolidated and streamlined way (including by using a common registry),
- (e) to create separate Divisions of PIC to deal with its specialist workers compensation and motor accidents jurisdiction, while encouraging the use of common practice and procedure wherever appropriate,
- (f) to create a rule committee for PIC to make rules to regulate its practice and procedure,
- (g) to provide for medical assessors for both workers compensation legislation and motor accidents legislation and for the President of PIC to appoint them, along with merit reviewers for motor accident matters and mediators,
- (h) to provide a mechanism to deal with proceedings that cannot be dealt with by PIC or its officers because they involve federal jurisdiction that can only be exercised by a court.

These reforms are not intended to affect the underlying substantive law concerning the entitlements of injured persons to damages or other compensation or assistance under workers compensation legislation or motor accidents legislation.

Outline of provisions

Part 1 Preliminary

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 on the date of assent to the proposed Act, except for the amendments made to other legislation by Schedule 5. Those amendments will commence on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act.

Clause 4 requires the proposed Act to be interpreted, and discretionary powers conferred by the proposed Act to be exercised, in a way that promotes its objects.

Clause 5 defines certain words and expressions used in the proposed Act. In particular, the following expressions are defined—

enabling legislation is defined to mean—

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

motor accidents legislation is defined to mean—

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

Workers Compensation Acts is defined to have the same meaning as in the *Workplace Injury Management and Workers Compensation Act 1998*.

workers compensation legislation is defined to mean—

- (a) workers compensation legislation within the meaning of the *Workplace Injury Management and Workers Compensation Act 1998*, and

- (b) any other Act prescribed by the regulations (including instruments under the prescribed Act).

Part 2 Establishment of Commission

Division 2.1 Establishment

Division 2.1 provides for the establishment of PIC.

PIC will be established on 1 December 2020 or, if required, on a later day fixed by the Governor by proclamation (referred to in the proposed Act as the *establishment day*).

The Division permits the President and other members of PIC (including Division Heads) to be appointed before the establishment day to facilitate the process of establishing PIC. Provision is also made for the Rule Committee of PIC to be constituted before the establishment day to make Commission rules in anticipation of the establishment of PIC.

Division 2.2 Membership

Division 2.2 provides for PIC to consist of the following members—

- (a) the President (who must be a judge of a court of record),
- (b) Deputy Presidents,
- (c) principal members,
- (d) senior members,
- (e) general members.

The Division also provides for the appointment, and the qualifications for the appointment, of members.

Division 2.3 Commission Divisions

Division 2.3 provides that the functions of PIC are to be allocated and exercised in the following Divisions of PIC (referred to in the proposed Act as a *Commission Division*)—

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

The Division recognises that each Commission Division will have a Division Schedule. The Division Schedule for a Commission Division is a Schedule to the proposed Act that provides for the composition and functions of that Division. The provisions of a Division Schedule for a Commission Division prevail to the extent of any inconsistency between those provisions and any other provisions of the proposed Act.

The Division provides for the appointment of a Division Head for each Commission Division and the assignment of members to those Divisions.

Division 2.4 Functions of President and Division Heads

Division 2.4 sets out the functions of the President and the Division Heads of the Commission Divisions.

Division 2.5 Delegations

Division 2.5 enables the President and the Division Heads of the Commission Divisions to delegate their functions to other members of PIC and to registrars and other staff members if authorised by a Division Schedule or the Commission rules.

Division 2.6 Commission rules and procedural directions

Division 2.6 provides for there to be a Rule Committee of PIC to make Commission rules for PIC to govern its practice and procedure. The President is also empowered to issue procedural directions.

Division 2.7 Registrars and other staff

Division 2.7 provides for the employment and functions of registrars (including a principal registrar) and other staff to assist PIC in the exercise of its functions.

Part 3 Functions and constitution of Commission

Division 3.1 Functions

Division 3.1 provides that PIC has the jurisdiction and functions that may be conferred or imposed on it by or under the proposed Act, enabling legislation or any other legislation.

Division 3.2 Determination of federal proceedings

Division 3.2 enables certain persons, with the leave of the District Court, to commence proceedings in the Court for the determination of applications that PIC (or certain decision-makers appointed by the President) cannot determine because they involve the exercise of federal jurisdiction (that is, jurisdiction referred to in section 75 or 76 of the Commonwealth Constitution).

Division 3.3 Constitution

Division 3.3 enables the President, subject to any special provisions in a Division Schedule for a Commission Division, to give directions concerning how PIC is to be constituted to determine proceedings.

Part 4 Medical assessors, merit reviewers and mediators

Division 4.1 Medical assessors and merit reviewers

Division 4.1 enables the President to appoint—

- (a) medical assessors for the purposes of the *Workplace Injury Management and Workers Compensation Act 1998*, and
- (b) medical assessors for the purposes of the *Motor Accident Injuries Act 2017* or *Motor Accidents Compensation Act 1999* (or both), and
- (c) merit reviewers for the purposes of the *Motor Accident Injuries Act 2017*.

The Division also provides for the functions and training of medical assessors and merit reviewers.

Division 4.2 Mediators

Division 4.2 enables the President to appoint—

- (a) mediators for the purposes of the *Workplace Injury Management and Workers Compensation Act 1998* to mediate on claims for work injury damages within the meaning of that Act as and when required to do so by the Division Head of the Workers Compensation Division, or
- (b) mediators for any other purposes prescribed by the regulations.

The Division also provides for the functions of mediators.

Part 5 Practice and procedure

Division 5.1 Introduction

Division 5.1 provides that each of the provisions of Part 5 (including as applied by the Commission rules) is subject to enabling legislation and the Commission rules.

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

The Division allows the Commission rules to apply provisions of Part 5 (whether with or without modification) to proceedings before medical assessors and merit reviewers and before panels hearing appeals against, or reviews of, their decisions.

The Division also provides for the following—

- (a) the guiding principle for the proposed Act and the Commission rules, in their application to proceedings in PIC, is to facilitate the just, quick and cost-effective resolution of the real issues in the proceedings,
- (b) PIC is to seek to give effect to the guiding principle when exercising its powers under the proposed Act or Commission rules or when interpreting their provisions,
- (c) proceedings in any matter before PIC are to be conducted with as little formality and technicality as the proper consideration of the matter permits, including providing for PIC not to be bound by the rules of evidence.

Division 5.2 Commencement of proceedings

Division 5.2 provides for—

- (a) what constitutes an application to PIC, and
- (b) applications to be made in the time and manner prescribed by enabling legislation or the Commission rules, and
- (c) PIC to be able to order service of documents outside New South Wales.

Division 5.3 Participation in proceedings

Division 5.3—

- (a) enables SIRA to intervene in proceedings before PIC, and
- (b) provides for entitlements to representation before PIC, and
- (c) confers power on PIC to require certain documents and other information to be provided in connection with proceedings, and
- (d) confers power on PIC to provide certain documents and other information to parties and certain other interested persons, and
- (e) enables the Division Head of a Commission Division to issue summonses requiring the attendance of certain persons at conferences or hearings before PIC in connection with proceedings before PIC.

Division 5.4 Conduct of proceedings

Division 5.4—

- (a) provides that proceedings need not be conducted by formal hearing and may be conducted by way of a conference between the parties, including a conference at which the parties (or some of them) participate by telephone, closed-circuit television or other means, and
- (b) enables the President to reconstitute PIC if members dealing with a matter become unavailable after the consideration of the matter by PIC has commenced, and

- (c) enables PIC to dismiss proceedings without proceeding to the merits in certain circumstances.

Division 5.5 Determination of issues and proceedings

Division 5.5—

- (a) provides that if PIC is constituted by more than one member in proceedings, the opinion of the majority is taken to be the decision of PIC if the members are divided in opinion, and
- (b) provides that, except as otherwise provided by the proposed Act or enabling legislation, a decision of PIC under the Workers Compensation Acts is final and binding on the parties and is not subject to appeal or review, and
- (c) enables PIC to reconsider any matter that has been dealt with by it in the Workers Compensation Division and rescind, alter or amend any decision previously made or given by PIC in that Division, and
- (d) requires PIC to publish certain decisions in accordance with the Commission rules.

Part 6 Enforcement

Part 6 provides for—

- (a) the recovery of amounts PIC has ordered to be paid, and
- (b) proceedings for offences under the proposed Act to be dealt with summarily before the Local Court.

Part 7 Miscellaneous

Part 7—

- (a) provides that the proposed Act binds the Crown in all its capacities, and
- (b) provides that no proof is required (unless evidence to the contrary is given) concerning the constitution of PIC, its decisions and the appointment or qualifications of, or the holding of office by, members of PIC and certain other persons, and
- (c) confers certain protections from liability on persons representing parties in proceedings in PIC, witnesses before PIC and particular officers of PIC, and
- (d) enables the Governor to make regulations for the purposes of the proposed Act, and
- (e) requires the President to provide an annual review of the operations of PIC, and
- (f) repeals the *Workers Compensation Commission Rules 2011* on the establishment day, and
- (g) requires the Minister to conduct a review of the proposed Act after the period of 3 years commencing on the establishment day.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act, including—

- (a) provisions for the abolition of the Workers Compensation Commission and certain existing motor accident services provided by SIRA on the establishment day, and
- (b) the transfer of existing members of the Workers Compensation Commission and certain other existing officers of the Commission and SIRA, and
- (c) provisions conferring power of the Governor to make regulations of a savings or transitional nature (including in respect of current or pending proceedings).

Schedule 2 Provisions relating to members of Commission

Schedule 2 contains additional provisions relating to members, including provisions concerning remuneration and the vacation of office.

Schedule 3 Workers Compensation Division

Schedule 3 is the Division Schedule for the Workers Compensation Division of PIC. It includes provisions for the allocation of functions to the Division and the constitution of PIC when exercising functions allocated to the Division.

Schedule 4 Motor Accidents Division

Schedule 4 is the Division Schedule for the Motor Accidents Division of PIC. It includes provisions for the allocation of functions to the Division and the constitution of PIC when exercising functions allocated to the Division.

Schedule 5 Amendment of other legislation

Schedule 5 makes consequential amendments to certain legislation, including the motor accidents legislation and workers compensation legislation.