

TASMANIA

WORKERS REHABILITATION AND COMPENSATION AMENDMENT BILL 2016

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WORKERS REHABILITATION AND COMPENSATION AMENDMENT BILL 2016

*(Brought in by the Minister for Building and Construction, the
Honourable Guy Barnett)*

A BILL FOR

**An Act to amend the *Workers Rehabilitation and
Compensation Act 1988***

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Workers
Rehabilitation and Compensation Amendment
Act 2016*.

2. Commencement

This Act commences on 1 July 2017 or, if this
Act has not received the Royal Assent by that
day, a later day that is proclaimed.

3. Principal Act

In this Act, the *Workers Rehabilitation and
Compensation Act 1988** is referred to as the
Principal Act.

*No. 4 of 1988

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4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting “to assess the degree of a worker’s permanent impairment” after “section 77C” in the definition of *accredited medical practitioner*;
- (b) by inserting the following definition after the definition of *Fund*:

***Health Practitioner Regulation
National Law*** means –

- (a) the Health Practitioner Regulation National Law –
 - (i) as in force from time to time, set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland; and
 - (ii) as it applies as a law of Tasmania or another State or a Territory; and

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- (b) the law of another State or a Territory that substantially corresponds to the law referred to in paragraph (a);
- (c) by omitting the definition of *medical assessor*;
- (d) by inserting the following definition after the definition of *medical panel*:

medical practitioner means –

- (a) a person registered under the Health Practitioner Regulation National Law in the medical profession; and
 - (b) a person who is authorised under a law of another country to carry out all of the functions in respect of which the person would, if they were carried out in Australia, be required to be registered under the Health Practitioner Regulation National Law in the medical profession;
- (e) by omitting paragraphs (h) and (i) from the definition of *workplace rehabilitation services*.

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5. Section 4 amended (Application of Act)

Section 4(5) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) who is employed by or on behalf of the Crown in right of the Commonwealth or by a person, or body, that is licensed, or taken to be licensed, under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth; or

6. Section 9 amended (Membership of Board)

Section 9 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (b), (c), (d), (e) and (f) from subsection (1) and substituting the following paragraphs:
 - (b) the head of the unit of administration, of the Department, that is allocated, by the Secretary, responsibility for administering this Act, or a person nominated by that head; and
 - (c) subject to subsection (5), 5 persons nominated by the Minister.
- (b) by omitting subsections (2) and (3);

- (c) by omitting from subsection (4) “subsection (1)(b), (c), (d), (e) and (f)” and substituting “subsection (1)(c)”;
- (d) by omitting subsections (6), (7), (8), (9) and (10).

7. Section 10 amended (Functions of Board)

Section 10 of the Principal Act is amended as follows:

- (a) by omitting paragraph (c);
- (b) by omitting from paragraph (f) “Part XI” and substituting “injury management and to encourage and support the return to work of injured workers as soon as possible”;
- (c) by omitting paragraph (h);
- (d) by omitting paragraph (l).

8. Section 12 amended (Disclosure of interest)

Section 12(1) of the Principal Act is amended by omitting “pecuniary interest” and substituting “interest (whether pecuniary or otherwise)”.

9. Section 25 amended (Liability of employers to compensate workers for injuries)

Section 25(2)(b) of the Principal Act is amended by omitting “an accredited medical practitioner” and substituting “a medical practitioner”.

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10. Section 26 substituted

Section 26 of the Principal Act is repealed and the following section is substituted:

26. Presumption as to cause of disease

- (1) The Board, by notice, may specify an occupation, or an exposure, to be an occupation or exposure that is to be presumed to contribute to a substantial degree to a disease specified in the notice.
- (2) A notice under subsection (1) may specify an occupation, or an exposure, by adopting, with the modifications, omissions, or additions, if any, specified in the notice, an instrument that –
 - (a) is made by Safe Work Australia or another person or body that is prescribed; and
 - (b) specifies an occupation, or an exposure, to be an occupation or exposure that is to be presumed to contribute to a substantial degree to a disease specified in the instrument.
- (3) Subject to section 25(2), if a worker –
 - (a) suffers a disease that is specified in a notice under subsection (1); and

- (b) has been employed in an occupation, or has been subject to an exposure at the person's workplace, that is specified in the notice to be presumed to contribute to a substantial degree to the disease –

it is to be presumed, in the absence of evidence to the contrary, that the worker's employment contributed to a substantial degree to that disease.

- (4) In this section –

Safe Work Australia means Safe Work Australia established by section 5 of the *Safe Work Australia Act 2008* of the Commonwealth.

11. Section 28 amended (Review of operation of section 27)

Section 28(1)(b) of the Principal Act is amended by omitting “12-month” and substituting “3-year”.

12. Section 33A substituted

Section 33A of the Principal Act is repealed and the following section is substituted:

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33A. Employer given notice of injury must inform worker of right to claim

- (1) An employer who is informed by a worker of an injury to the worker must, within 14 days, inform the worker, orally or in writing, that the worker may have a right to make a claim for compensation in relation to the injury.

Penalty: Fine not exceeding 10 penalty units.

- (2) Subsection (1) does not apply in relation to an injury if the employer is informed of the injury by the service on the employer of a claim for compensation.

13. Section 34 amended (Form of claim for compensation)

Section 34 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (2A);
- (b) by omitting from subsection (3) “or subsection (2A)(b)”.

14. Section 36 amended (Employer to forward accident report and claim)

Section 36 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) An employer must –
 - (a) immediately on receiving a claim for compensation, complete the employer's report section of the form referred to in section 34(1)(a); and
 - (b) within 5 working days after receiving the claim, forward the completed claim and a copy of the claim to his or her licensed insurer, if any; and
 - (c) retain a copy of the claim for the employer's own records.

15. Section 67 amended (Amount of compensation in case of death)

Section 67(2) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “and paragraph (ab) does not apply” after “caring partner”;
- (b) by inserting the following paragraph after paragraph (a):
 - (ab) a wholly dependent spouse (or wholly dependent caring partner) and one or more children, who are not children of the spouse or partner and each of whom is wholly or partially dependent, the

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lump sum is to be an amount calculated in accordance with subsection (3) to be paid to each such spouse, caring partner or child according to the level of his or her dependency; or

(c) by inserting the following paragraph after paragraph (b):

(ba) a partially dependent spouse (or partially dependent caring partner) and one or more children, each of whom is wholly or partially dependent, the lump sum is to be an amount calculated in accordance with subsection (3) to be paid to each such spouse, caring partner or child according to the level of his or her dependency; or

(d) by omitting from paragraph (c) “equally to” and substituting “divided equally between”;

(e) by omitting from paragraph (d) “the child or children” and substituting “each such child”.

16. Section 71A inserted

After section 71 of the Principal Act, the following section is inserted in Division 1:

71A. Assessment guidelines

- (1) The Board may issue guidelines in relation to the assessment of the degree of impairment.
- (2) The Board must give notice in the *Gazette* of –
 - (a) the issuing of guidelines under subsection (1); and
 - (b) the place, which may be an internet address, where copies of the guidelines may be viewed or purchased.
- (3) Guidelines issued by the Board under subsection (1) come into effect on and from –
 - (a) the day on which notice of the issuing of the guidelines is published in the *Gazette* under subsection (2); or
 - (b) a later day specified in the notice.
- (4) Subject to subsection (6), on and from the day on which guidelines issued by the Board under subsection (1) come into effect, until such guidelines are revoked, the guidelines have effect for the purposes of determining how an assessment of the degree of impairment of an injury is to be made, whether the

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injury occurs before or after the
guidelines come into effect.

- (5) The Board may amend or revoke guidelines issued by the Board under subsection (1).
- (6) On and from the day on which an amendment under subsection (5) to guidelines issued by the Board under subsection (1) comes into effect, until such guidelines are revoked or further amended under this section, the guidelines, as so amended, have effect for the purposes of determining how an assessment of the degree of impairment of an injury is to be made, whether the injury occurs before or after the guidelines come into effect or are so amended.
- (7) The Board must give notice in the *Gazette* of the amendment or revocation under subsection (5) of guidelines under subsection (1).
- (8) A notice under subsection (7) of the amendment of guidelines must specify a place, which may be an internet address, where copies of the guidelines, as amended by the amendment, may be viewed or purchased.
- (9) A notice under subsection (2) or (7) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

- (10) The Board must ensure that copies of guidelines that are issued under subsection (1), as those guidelines are amended if at all under subsection (5), are, while they are in effect, available for purchasing or viewing at a place, which may be an internet address, of which notice has been given in the *Gazette*.
- (11) Guidelines to which section 164C applies are to be taken to be guidelines issued under this section until they are revoked, if at all, under subsection (5).

17. Section 72 amended (Assessment of degree of impairment)

Section 72 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “a medical assessor” and substituting “an accredited medical practitioner”;
- (b) by omitting from subsection (1)(a) “issued by the Board” and substituting “, issued under section 71A, as in effect on the date on which the assessment is made”;
- (c) by inserting in subsection (1)(b) “as in effect on the date on which the assessment is made” after “Guides”;
- (d) by inserting the following subsection after subsection (2):

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- (3) If an assessment of a degree of impairment of a person is, at any time, validly made under this section in accordance with guidelines or a method prescribed for the purposes of subsection (1), as the case may be –
 - (a) the assessment is not to be taken to be invalid by reason only that the guidelines, or the prescribed method, have or has ceased to be in effect or have or has subsequently been amended; but
 - (b) the assessment ceases to apply in relation to the person on and from the day on which a subsequent assessment of the person is made under this section in accordance with guidelines, or a method prescribed for the purposes of subsection (1), as amended if at all, that is or are in force on the day on which the subsequent assessment is made.

18. Section 74 amended (Interpretation of Division 2 of Part VI)

Section 74 of the Principal Act is amended by inserting after paragraph (b) in the definition of *rehabilitation services* the following paragraph:

- (ba) advice in relation to job-seeking or advice or assistance in arranging vocational re-education or vocational training; or

19. Section 76 amended (Additional compensation for travelling expenses)

Section 76(1)(a)(i) of the Principal Act is amended by omitting “under section 85” and substituting “required under section 90A(2)”.

20. Section 77A amended (Provision of certain services)

Section 77A of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) A medical practitioner must not, for the purposes of this Act, assess the degree of a person’s permanent impairment, unless the medical practitioner has been accredited by the Board to assess the degree of a worker’s permanent impairment.

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21. Section 77B amended (Application for accreditation)

Section 77B(1) of the Principal Act is amended by omitting “issue a certificate required to be issued under this Act” and substituting “be accredited to assess the degree of a worker’s permanent impairment”.

22. Section 77C amended (Grant, &c., of accreditation)

Section 77C of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsections:

(1) Subject to subsection (2), the Board may, by notice in writing served on –

(a) a medical practitioner, grant, or refuse to grant, to the medical practitioner accreditation to assess the degree of a worker’s permanent impairment; or

(b) a person, grant, or refuse to grant, to the person accreditation as a workplace rehabilitation provider.

(1A) The Board may grant accreditation to a person, whether

the person is a natural person or a body corporate.

(1B) The Board must determine, by instrument in writing, the Board's requirements for accreditation.

(1C) The Board may, by instrument in writing, amend or revoke a determination under subsection (1B) of the Board's requirements for accreditation.

(1D) The Board must give notice in the *Gazette* of –

(a) a determination under subsection (1B) or an amendment or revocation under subsection (1C); and

(b) the place, which may be an internet address, at which copies of the determination, amendment or revocation may be viewed, downloaded or purchased.

(1E) A determination under subsection (1B) or an amendment or revocation under subsection (1C) comes into effect on and from –

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- (a) the day on which notice of the issuing of the determination, amendment or revocation is published in the *Gazette* under subsection (1D); or
 - (b) a later day specified in the notice.
- (1F) The Board must ensure that copies of a determination under subsection (1B) or an amendment or revocation under subsection (1C) are, while the determination is in effect, available for purchasing or viewing at a place, which may be an internet address, of which notice has been given in the *Gazette*.
- (1G) A notice under subsection (1D) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (b) by omitting paragraph (a) from subsection (2) and substituting the following paragraph:
 - (a) has satisfied the Board's requirements under subsection (1B); and
- (c) by omitting paragraph (ab) from subsection (2).

23. Section 77D substituted

Section 77D of the Principal Act is repealed and the following section is substituted:

77D. Duration of accreditation

- (1) An accreditation comes into force on the day on which it is granted and remains in force until it is revoked or surrendered under this Act but is not to be taken to be in force during any period in respect of which the accreditation is suspended.
- (2) A person who holds an accreditation may, by notice to the Board, surrender the accreditation.

24. Section 86 amended (Cases in which employer may terminate or reduce payments)

Section 86(1)(c) of the Principal Act is amended by omitting “an accredited medical practitioner” and substituting “a medical practitioner”.

25. Section 87 amended (Cessation on account of age of entitlement to weekly payments)

Section 87 of the Principal Act is amended as follows:

- (a) by inserting the following subsection before subsection (1):

(1AA) In this section –

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pension age, in relation to a worker, means the pension age, within the meaning of the *Social Security Act 1991* of the Commonwealth, in relation to the worker.

- (b) by omitting from subsection (1)(a) “on or before the date on which the worker attains the age of 64 years, on his attaining the age of 65 years” and substituting “12 months or more before the date on which the worker attains the pension age – on the date on which the worker attains the pension age”;
- (c) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:
 - (b) if the injury occurs less than 12 months before the date on which the worker attains the pension age – on the date one year after the injury occurs.
- (d) by omitting from subsection (2) “age of 65 years” and substituting “date on which the worker attained the pension age”;
- (e) by omitting from subsection (3)(a) “age of 65 years” and substituting “date on which the worker attained the pension age”;

- (f) by omitting from subsection (3)(b) “the age of 65 years” and substituting “the pension age”.

26. Section 97 amended (Obligation of employers to insure)

Section 97 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “arising out of and” and substituting “arising out of or”;
- (b) by omitting subsections (1A), (1B) and (1C);
- (c) by inserting in subsection (7) “or expiration” after “termination”.

27. Section 102A repealed

Section 102A of the Principal Act is repealed.

28. Section 108 substituted

Section 108 of the Principal Act is repealed and the following section is substituted:

108. Duration of licences and permits

- (1) A licence or permit comes into force on the day on which it is granted and remains in force until it is revoked or surrendered under this Act.

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- (2) The holder of a licence or permit may, by notice to the Board, surrender the licence or permit.

29. Section 109 amended (Additional information to be supplied)

Section 109(1) of the Principal Act is amended by omitting “or for the purposes of section 108(4)”.

30. Section 110 amended (Notice of refusal)

Section 110 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “employer; or” and substituting “employer –”;
- (b) by omitting paragraph (c).

31. Section 111 amended (Revocation or suspension of licences and permits)

Section 111(1)(a) of the Principal Act is amended by omitting “or renewal”.

32. Section 112 amended (Appeals)

Section 112 of the Principal Act is amended as follows:

- (a) by omitting paragraph (e) from subsection (1);

- (b) by omitting from subsection (2)(c) “section 102 or 107;” and substituting “section 102 or 107; and”;
- (c) by omitting paragraph (d) from subsection (2);
- (d) by omitting paragraph (a) from subsection (3);
- (e) by omitting from subsection (3) “refusal,”.

33. Section 113 amended (Publication of grant of, or revocation or suspension of, licences and permits)

Section 113 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “granted;” and substituting “granted; or”;
- (b) by omitting paragraph (b).

34. Section 138AB amended (Claims for damages)

Section 138AB of the Principal Act is amended as follows:

- (a) by inserting in subsection (5) “permanent” after “worker’s”;
- (b) by inserting in subsection (6) “permanent” after “degree of”.

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35. Section 141 amended (Interpretation)

Section 141(1) of the Principal Act is amended as follows:

- (a) by omitting “for 28 days or more” from the definition of *injury management plan* and substituting “for an extended period”;
- (b) by omitting “injury management in respect of an injured worker who is, or is likely to be, totally or partially incapacitated for work for more than 5 working days but less than 28 days” from the definition of *return-to-work plan* and substituting “the return to work of an injured worker”.

36. Section 142 amended (Injury management programs to be complied with)

Section 142 of the Principal Act is amended by omitting subsections (5) and (6).

37. Section 143 amended (Approval of injury management programs)

Section 143(9)(b) of the Principal Act is amended by omitting “the period, of not more than 3 years, specified in the approval” and substituting “a period of 3 years, unless a longer or shorter period is specified in the approval”.

38. Section 143A amended (Employer to notify insurer of workplace injury)

Section 143A(1)(b) of the Principal Act is amended by omitting “worker’s” and substituting “employer’s”.

39. Section 143D amended (Return-to-work co-ordinator may be required to be appointed)

Section 143D(1) of the Principal Act is amended by omitting “50 workers” and substituting “100 workers”.

40. Section 143E amended (Return-to-work and injury management plans)

Section 143E of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) If a worker suffers a significant injury, the employer must ensure that any return-to-work plan, or injury management plan, that is required under the employer’s approved injury management program to be prepared in relation to a worker who has suffered a significant injury, is prepared within the period specified in that program.

(b) by omitting subsections (5) and (6).

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41. Section 143H amended (Issue of certificates)

Section 143H(1) of the Principal Act is amended as follows:

- (a) by omitting “14 days” first occurring and substituting “28 days”;
- (b) by omitting from paragraph (a) “14 days” and substituting “28 days”.

42. Section 152 repealed

Section 152 of the Principal Act is repealed.

43. Section 153 amended (False or misleading statements)

Section 153(1) of the Principal Act is amended by omitting “An accredited medical practitioner” and substituting “A medical practitioner”.

44. Section 164BAA inserted

After section 164A of the Principal Act, the following section is inserted in Part XIII:

164BAA. Transitional provisions consequent on enactment of *Workers Rehabilitation Amendment Act 2016*

- (1) In this section –

amending Act means the *Workers Rehabilitation and Compensation Amendment Act 2016*;

commencement day means the day on which section 9 of this Act is amended by the amending Act.

- (2) The appointment of a person who, immediately before the commencement day, is a member of the Board by virtue of being appointed under section 9(1)(b), (c), (d), (e) or (f), as in force before that day, is terminated on that day.
- (3) A person whose appointment as a member of the Board is terminated under subsection (2) is not entitled to any compensation or other payment in respect of that termination.
- (4) If, on the commencement day, all of the members referred to in section 9(1)(c) have not been appointed under that section as in force on and from that day –
 - (a) the Secretary is to be taken to be a member of the Board; and
 - (b) the Board is, despite section 9, to be comprised by the Secretary alone –

until all members have been appointed under section 9(1)(c) as in force after that day.

- (5) A person who was, immediately before the commencement day, an accredited person under section 77C, is to be taken to have been accredited under that

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section as in force after the
commencement day.

- (6) The amendments to section 87 made by the amending Act apply in relation to an injury of a worker and a claim in relation to such an injury whether the injury or claim occurred or was made before or after the day on which those amendments commence.
- (7) Section 108 applies in relation to a licence or permit that is in force immediately before the commencement day.

45. Section 164C amended (Validation of certain guidelines, &c.)

Section 164C(5) of the Principal Act is amended by inserting “or amending” after “revoking”.

46. Schedule 1 amended (Provisions with respect to membership of Board)

Clause 5 of Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting from subclause (2)(b) “section 9(1)(b), (c), (d), (e) or (f)” and substituting “section 9(1)(b) or (c)”;
- (b) by omitting from subclause (3) “section 9(1)(b), (c), (d), (e) or (f)” and substituting “section 9(1)(b) or (c)”.

47. Schedule 2 amended (Provisions with respect to meetings of Board)

Clause 2 of Schedule 2 to the Principal Act is amended as follows:

- (a) by omitting from subclause (1) “, of whom at least one is a member nominated under paragraph (b) of section 9(1) and at least one is a member nominated under paragraph (c) of that section,”;
- (b) by omitting subclause (2A);
- (c) by omitting from subclause (3) “and entitled to vote”.

48. Schedule 4 repealed

Schedule 4 to the Principal Act is repealed.

49. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which this Act commences.