

CLAUSE NOTES

Workers Rehabilitation and Compensation Amendment Bill 2016

- Clause 1: Short Title**
This Clause provides that the short title of the amending legislation will be the *Workers Rehabilitation and Compensation Amendment Act 2016*.
- Clause 2: Commencement**
Under this clause, the Act will come into effect on 1 July 2017. If the Act has not been given Royal Assent by that day, a later day will be proclaimed.
- Clause 3: Principal Act**
This clause provides that the Principal Act is the *Workers Rehabilitation and Compensation Act 1988* (the Act). This Bill is making amendments to that Act.
- Clause 4: Section 3 amended (Interpretation)**
This clause amends, omits and inserts various definitions of the Act:
- “accredited medical practitioner”:** This definition is updated to reflect the changes in accreditation requirements. Medical practitioners will only need to be accredited if they intend to undertake an assessment of the degree of a worker’s permanent impairment for the purposes of the Act. This change results in the definition of “medical assessor” being redundant. The definition of medical assessor is therefore being omitted.
- “medical practitioner”:** The Act has previously relied upon the relevant definition in the *Acts Interpretation Act 1931*. The definition being inserted here broadens the definition to include any legally qualified medical practitioner of another jurisdiction, including other countries. The reading of this definition is supported by the insertion of a definition of “Health Practitioner Regulation National Law”.
- “workplace rehabilitation services”:** This amendment removes the provision of advice or assistance in relation to job seeking, or in arranging vocational re-education or training from the definition.
- Clause 5: Section 4 amended (Application of Act)**
This clause specifies that Commonwealth employees and workers employed by Commonwealth self-insurers under the *Commonwealth Safety Rehabilitation and Compensation Act 1988* are not covered by the Act. The insertion of this specific exclusion corrects a previous drafting oversight.
- Clause 6: Section 9 amended (Membership of Board)**
This clause changes the structure of the WorkCover Tasmania Board (the Board).

Rather than a representative membership, the Board will comprise of people selected on the basis of their skills and expertise, better ensuring the Board can effectively carry out its functions.

This amendment is intended to enhance the Board's ability to provide strategic governance across the broad range of matters within its purview.

Members of the Board will include five people nominated by the Minister, and appointed by the Governor, in addition to the relevant Secretary of Department and Departmental Unit Head, or their nominees,

- Clause 7:** **Section 10 amended (Functions of Board)**
This clause removes from this section functions which are either unnecessary or provided for elsewhere in the Act.
- Clause 8:** **Section 12 amended (Disclosure of interest)**
This clause broadens the disclosure of interest provisions, consistent with the Board's current guiding principles. In addition to disclosing and interests of a pecuniary interest in a matter for consideration of the Board, members will also be required to disclose any non-pecuniary interests that could conflict with the proper performance of their duties in relation to that matter.
- Clause 9:** **Section 25 amended (Liability of employers to compensate workers for injuries)**
This clause removes the need for a medical practitioner to be accredited under the Act for the purpose of certifying a diagnosis of undulant fever or brucellosis.
- This amendment is consistent with the intention that that accreditation for a medical practitioner is only required to assess a worker's degree of permanent impairment for the purposes of the Act.
- Clause 10:** **Section 26 substituted**
This clause will enable the Board to specify, by way of a notice in the Gazette, that an occupation or exposure is presumed to be the cause of a particular disease.
- The amendment will also enable the Board to adopt, with modifications as necessary, an instrument made by another person, or an organisation such as Safe Work Australia, specifying that an occupation or exposure is presumed to be the cause of a disease.
- This amendment will enable the list of deemed diseases to be responsive to relevant research and findings, as well as any developments at a national level.
- Clause 11:** **Section 28 amended (Review of operation of section 27)**
Section 28 provides that section 27 will be reviewed every twelve months. This clause will change the frequency of the reviews from annually to three-yearly. Given the small number of claims per annum, this amendment will

ensure more evidence for the review is available, thereby improving the effectiveness of the review.

Clause 12: Section 33A substituted

This clause updates the working of section 33A in circumstances where an employer is informed by a worker that the worker has been injured. The employer will still need to inform the worker that they may have a right to make a claim for compensation in relation to the injury. However, employers will be able to give this notification orally or in writing, rather than being required to serve the prescribed notice on the worker in writing.

Employers will remain exempt from this requirement if they are informed of the injury by way of a claim for compensation being made for that injury.

Clause 13: Section 34 amended (Form of claim for compensation)

This clause removes the requirement for a dependant claiming compensation to provide a death certificate in circumstances where there has been a work related death. Rather, it is intended that the Board will develop a relevant claim form for use. This process will more closely align with established practice following a death, and ease the associated red tape.

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

This clause removes from the Act a requirement for insurers to provide to the Board a copy of compensation claims within five days. Insurers will still need to provide details of the claims that have been made in each month in accordance with the relevant Determination made by the Board pursuant to section 114 of the Act.

This amendment removes duplication and eases the administrative burden associated with reporting, while not reducing the information insurers provide.

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

This clause provides two additional circumstances in which compensation will be paid to dependents in cases where a worker dies as a result of a work injury. In the case of death, compensation will now be payable to:

- A wholly dependent spouse or caring partner and any dependent children from a previous relationship, whether those children are partially or wholly dependent.
- A partially dependant spouse or caring partner and any dependent children, whether the children are partially or wholly dependent. This amendment also recognises that a worker may have a mix of wholly and partially dependent children.

The amendment corrects a previous drafting oversight and will reduce the need for the Worker's Rehabilitation and Compensation Tribunal to assess the level of dependency in these circumstances.

Clause 16: Section 71A inserted

This clause inserts a new section to provide a mechanism for the Board to issue, amend or revoke guidelines relating to the assessment of a workers degree of permanent impairment.

The amendment also provides that any guidelines that have been issued prior to the commencement of this section are taken to have been issued under this section.

The inserted section is intended to reflect the current practice; that is, that an assessment of the degree of impairment must be made according to the guidelines that are in effect on the date of assessment. This means that, for the purpose of determining which guideline must be used, the date of injury is not to be taken into account.

This amendment is not intended to cause a change to the existing practice or requirements in relation to the use of the guidelines or the assessment of a workers permanent impairment, until such time that that Board revokes or amends the current guidelines and/or issues new guidelines.

Clause 17: Section 72 amended (Assessment of degree of impairment)

This clause makes it clear that any assessment of a degree of impairment that has been validly made in accordance with a particular set of Guidelines remain valid, despite the fact that that particular set of Guidelines may subsequently be amended or revoked. It is not intended that the issuing of new Guidelines for the assessment of degree of permanent impairment act as a 'trigger' compelling all persons with a degree of permanent impairment to undergo a new assessment under the new Guidelines.

The amendments also clarify that an assessment is to be conducted in accordance with the specific Guideline (or AMA Guide where appropriate) that is in effect on the day that the assessment is made. They do not introduce new policy intent but rather confirm existing practice in this regard.

The amendments further update the term "medical assessor" to "an accredited medical practitioner" consistent with the changes made to the definition of these terms.

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

This clause ensures that the provision of advice in relation to job seeking, and advice or assistance in arranging vocational re-education or vocational training remain within the meaning of 'rehabilitation services', despite these services being removed from the definition of 'workplace rehabilitation services'.

Clause 19: Section 76 amended (Additional compensation for travelling expenses)

This clause corrects a drafting anomaly. The amended section refers to section 85, which has previously been repealed. The amendment will update the reference to section 90A(2), which deals with a medical review undertaken at the employer's or the employer's insurer's request.

Clause 20: Section 77A amended (Provision of certain services)
This clause updates the accreditation requirements so that a medical practitioner must only be accredited by the Board to assess the degree of a person's permanent impairment. All other services required by a medical practitioner under the Act may be undertaken without specific accreditation of the Board.

The clause does not create an offence for or prohibit an unaccredited medical practitioner from assessing the degree of a person's permanent impairment in accordance with the Guidelines, but such an assessment must only be made *for the purposes of the Act* if the relevant accreditation has been granted.

Clause 21: Section 77B amended (Application for accreditation)
This clause updates the provision for medical practitioners to apply for accreditation. Accreditation will only be required for medical practitioners who wish to assess the degree of a worker's permanent impairment. Medical practitioners will no longer need to hold or apply for accreditation to issue any other certificate required under the Act.

Clause 22: Section 77C amended (Grant, &c., of accreditation)
This clause amends the types of accreditation that may be granted by the Board. In relation to medical practitioners, the Board may only grant, or refuse to grant, medical practitioners accreditation to assess the degree of a workers permanent impairment. Medical practitioners will no longer need to hold or apply for accreditation to issue any other certificate required under the Act.

Under this amendment, no change to the Board's ability to grant, or refuse to grant, accreditation to a person as a workplace rehabilitation provider is intended. However, the amendment does change the requirements which must be fulfilled before either a person or medical practitioner may be granted accreditation. Specifically, a person will no longer need to undertake a course or training or fulfil any prescribed requirements. Rather, the Board will determine the specific requirements for accreditation. A relevant notice in the Gazette will be given when the requirements for accreditation are determined.

The amendment further makes it clear that the Board may grant accreditation to either an individual or a body corporate as a workplace rehabilitation provider.

Clause 23: Section 77D substituted
This clause removes the three year limitation of workplace rehabilitation provider accreditation. Rather than requiring a rehabilitation provider to reapply for accreditation every three years (or shorter period if specified in the accreditation), accreditation will remain in force until it is either revoked by the Board or surrendered by the person holding the accreditation.

The amendment further makes it clear that an accreditation is not in force during any period in which the accreditation is suspended.

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

This clause removes the need for a medical practitioner to be accredited under the Act to issue a certificate stating their opinion in relation to the extent of a workers recovery from a relevant injury.

This amendment is consistent with the intention that accreditation for a medical practitioner is only required to assess a worker's degree of permanent impairment for the purposes of the Act.

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

This clause will remove current age restrictions from the Act and ensure workers are not disadvantaged by changes to Commonwealth legislation in relation to the qualifying age for the aged pension.

This amendment responds to the Commonwealth Government increasing the qualifying age for the Age Pension by six months every two years, starting 1 July 2017, reaching 67 years by 1 July 2023. It removes reference to the specific age of 65 years and links the cessation of weekly payments to the pension age within the meaning of the Commonwealth *Social Securities Act 1991*.

The proposed amendment will eliminate any 'gap' between when a person's entitlement to weekly compensation payments ceases on account of age, and when their entitlement to the Age Pension may begin.

Clause 26: Section 97 Amended (Obligation on employers to insure)

The clause ensures that the requirements placed on employers with respect to providing information to the licensed insurer when a policy is terminated also apply if the policy expires.

The amendment also removes limitations on the liabilities against which an employer may insure, enabling insurers to deal with any matters of excess. Employers will no longer need to apply to the Board for a certificate allowing them to insure against the first weekly payment payable in case of incapacity, or for the first \$200 of any other benefits payable under the Act.

Clause 27: Section 102A repealed

This clause removes the requirement for insurers to provide industry rates to the Board, thereby reducing the regulatory burden on the sector.

Clause 28: Section 108 substituted

This clause removes the 36 month limitation on the duration of a licence or permit.

Under this amendment, any licence or permit in force immediately prior to the commencement of the Act, and any licence or permit granted after commencement will remain in force until it is revoked by the Board or surrendered by the licence or permit holder. The amendment also repeals provisions relating to the renewal of licences and permits, as renewals will no longer be required.

- Clause 29:** **Section 109 amended (Additional information to be supplied)**
This clause removes the reference to the renewal of a licence or permit under section 108. This reference is not required as licences and permits will no longer need to be renewed.
- Clause 30:** **Section 110 amended (Notice of refusal)**
This clause removes references to the renewal of a licence or permit under section 108. A notice relating to the refusal to grant a renewal of a licence or permit will not need to be given, as licences and permits will no longer need to be renewed.
- Clause 31:** **Section 111 amended (revocation of suspension of licences and permits)**
This clause removes the reference to the renewal of a licence or permit. This reference is not required as licences and permits will no longer need to be renewed.
- Clause 32:** **Section 112 amended (Appeals)**
This clause removes references to decisions of the Board refusing to renew a licence or permit. This reference is not required as licences and permits will no longer need to be renewed.
- Clause 33:** **Section 113 amended (publication of grant of, or revocation or suspension of, licences and permits)**
This clause removes reference to Board decision to refuse to renew a licence or permit. This reference is not required as licences and permits will no longer need to be renewed.
- Clause 34:** **Section 138AB amended (Claims for damages)**
This amendment achieves wording consistency throughout the Act in relation to “permanent impairment”.
- Clause 35:** **Section 141 amended (Interpretation)**
This amendment updates the definition of “injury management plan” and “return-to-work plan” to reflect amendments to section 143E relating to injury management and return-to-work plans. The intended purpose of each plan will be specified rather than specifying the period of incapacitation to which each plan relates.

An “injury management plan” will be in respect of an injured worker who is, or is likely to be, incapacitated “for an extended period” rather than for “28 days or more”.

A “return-to-work plan” will be a plan for the return to work of an injured worker, rather than for an injured worker who is, or is likely to be “incapacitated for work for more than 5 working days but less than 28 days”.

- Clause 36:** **Section 142 amended (Injury management programs to be complied with)**
This clause removes from the Act specific review timeframes for injury management programs. The amendment is intended to remove unnecessary complexity from the legislation, instead enabling the Board to specify outcome based requirements for injury management programs by using their existing authority to prescribe licence and permit conditions.
- Clause 37:** **Section 143 amended (Approval of injury management programs)**
This clause provides that the Board may specify that an injury management program remains in force for a period that is either longer or shorter than three years. If no specific period is specified, the injury management program will remain in force for three years.
- Clause 38:** **Section 143A amended (Employer to notify insurer of workplace injury)**
This clause corrects a drafting anomaly. The term ‘worker’s approved injury management plan’ in section 143(1)(b) will be replaced with ‘employer’s approved injury management plan’.
- Clause 39:** **Section 143D amended (Return-to-work co-ordinator may be required to be appointed)**
This clause amends the requirement to appoint a return-to-work coordinator, increasing the relevant threshold from 50 workers to 100 workers. This amendment will limit the obligation to appoint a return-to-work coordinator to larger employers and release smaller employers from this requirement.
- Clause 40:** **Section 143E amended (Return-to-work and injury management plans)**
This clause removes the obligation of an injury management co-ordinator to ensure that a return-to-work plan or injury management plan is prepared. It also removes references to specific periods of incapacitation to which each plan relates.

The amendment also creates an obligation for employers to ensure that a return-to-work plan or injury management plan is prepared in relation to an injured worker, within the period specified in the employer’s approved injury management plan.
- Clause 41:** **Section 143H amended (Issue of certificates)**
This clause extends the period of time for which a medical practitioner may certify that a worker is totally incapacitated for work, before providing a specific reason for the duration of the incapacity. This amendment is intended to improve efficiency and ease the burden on workers who are totally incapacitated for work. A medical practitioner will still need to provide a reason for an extended duration of total incapacitation, but only if the incapacitation is longer than 28 (instead of 14) days.

- Clause 42: Section 152 repealed**
This clause removes the obligation of employers to display in the workplace a copy of the Act and details of their insurance under the Act.
- Clause 43: Section 153 amended (False or misleading statements)**
This clause updates the offence provision in relation to false or misleading so that it applies to all medical practitioners that provide a certificate for the purpose of the Act.
- This amendment is consistent with the other amendments enabling medical practitioners to provide certificates for the purpose of the Act (other than to providing an assessment of a worker's permanent impairment).
- Clause 44: Section 164BAA inserted**
This clause provides for the transition of the Board from its existing membership to the amended membership structure.
The provisions state that all members of the Board, except the Secretary of the Department, are terminated on the day before commencement (that is, 30 June 2016, unless a later date of commencement is proclaimed). After commencement of the Act, the Board will comprise of two Departmental staff (including the Secretary) and five persons appointed by the Minister. If the five members have not been appointed prior to the commencement of the Act, the Secretary will act to the full capacity of the Board until all members of the Board have been appointed.
- This clause also contains a transition provision in relation to the operation of section 87, linking the cessation of entitlement to weekly payments with the age of eligibility to the age pension.
- The amendment provides that the amendment applies to all persons, irrespective of when the injury occurred or their claim for compensation made. It is intended that no worker will experience a 'gap' between their entitlement to weekly payments ceasing on account of their age, and the age at which they may be entitled to receive the age pension.
- Clause 45: Section 164C amended (Validation of certain guidelines, &c.)**
This amendment ensures that the Board will not be prevented from amending the October 2011 guidelines.
- Clause 46: Schedule 1 amended (Provisions with respect to membership of Board)**
This clause is a consequential amendment arising from the amended structure of the Board. It removes references to existing sections which will be repealed by clause 6.
- Clause 47: Schedule 2 amended (Provisions with respect to meeting of Board)**
This clause ensures that all members of the Board are entitled to vote and reflects the amended structure of the board by removing references to sections which will be repealed by clause 6.

Clause 48: Schedule 4 repealed

This clause removes Schedule 4 from the Act. Schedule 4 will no longer be required as amendments to section 26 will provide for the Board to specify an occupation or an exposure that is presumed to cause a disease.

Clause 49: Repeal of Act

This is a standard repeal provision to remove the empty shell of the Bill once all of its provisions have been transferred and come into effect in the Principal Act.