

SUMMARY OF WORKCOVER, MOTOR ACCIDENT AND CIVIL LIABILITY LEGISLATION IN AUSTRALIA RELEVANT TO PSYCHIATRISTS.

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INTRODUCTION

There are a multiplicity of schemes with regard to workers compensation, motor accident/transport accident and personal injury claims. A recent Productivity Commission report highlights the lottery like nature of the various schemes. The Commission suggested a national disability insurance scheme. This has become the policy of the Federal Government. It is estimated it will cost \$16 billion dollars a year, current schemes cost \$8 billion dollars a year so funding will remain a major stumbling block in the implementation of a national scheme.

In the meantime, we, as forensic psychiatrists are involved in implementing some of the provisions of the legislation in our own particular state or territory schemes. We have only limited knowledge of the legislation in our own jurisdiction and virtually none about other states and territories.

I have reviewed all the current legislation and edited it to highlight those aspects that are of relevance to forensic psychiatrists to fill that gap in knowledge. Of course we are not interested in being lawyers but we can be better informed psychiatrists.

Despite the differences between the schemes most have certain features in common. This is particularly so with regard to workers compensation schemes with the use of methods of impairment assessment based on the American Medical Association Guides to the Evaluation of Permanent Impairment, threshold levels for having a 'serious injury', exclusion of psychiatric impairment secondary to physical injury and of psychiatric injury arising from some management decisions.

Motor/transport accident schemes are either no fault or compulsory third party schemes. Civil liability schemes vary widely, particularly with regard to methods of determining compensation and some have threshold levels of impairment before a claim can proceed.

I have also provided some information about the methods used by the Department of Veterans' Affairs with regard to providing pensions to veterans

The American Medical Association Guides to the Evaluation of Permanent Impairment have been a major disappointment because of the unworkable nature of Chapter 14 Mental and behaviour Disorders in both the 4th and 5th editions. .

Chapter 14 "Mental and Behavioural Disorders" in both editions has been replaced in all states except Queensland and the Northern Territory. Victoria developed the Clinical Guidelines to the Rating of Psychiatric Impairment that was a revision of the Table in AMA2, now revised as the Guide to the Evaluation of Psychiatric Impairment for Clinicians (GEPIC). Later the Psychiatric Impairment Rating Scale (PIRS) was implemented in New South Wales attempting to make AMA4 workable. This was developed initially for the Motor Accident Authority and then adopted the New South Wales WorkCover Scheme and has since been utilised for workers compensation schemes in a number of other states including Western Australia, South Australia, and Tasmania.

SUMMARY OF THE VARIOUS AUSTRALIAN SCHEMES

WORKERS COMPENSATION SCHEMES

AUSTRALIAN CAPITAL TERRITORY

The Australian Capital Territory scheme makes little mention of psychiatric or psychological injury. It refers to medical referees. There is no comment on payment for permanent impairment and no mention of any threshold. There is a lump-sum payment for brain damage up to 100% of an indexed amount. Psychiatrists appear to have a limited role.

COMMONWEALTH

ComCare

ComCare is the Commonwealth equivalent of workers compensation legislation in the states. Some private companies had been granted licences to use the ComCare scheme instead of workers compensation scheme in the state in which the company is located. This leads to a significant cost benefit for the company.

The ComCare scheme has similar definitions of injury and disease to the other schemes. Psychological injury arising from some actions taken by management or the expectations of such actions are excluded. This aspect of the legislation has been incorporated into some state schemes. Compensation paid includes weekly payments, payments for medical and like expenses and if there is a permanent impairment, a lump sum is paid depending on the level of impairment. Payment is for both economic and non-economic loss. Noneconomic loss is defined as 'loss or damage of a non-economic kind suffered by the employee (including pain and suffering, a loss of expectation of life or a loss of the amenities or enjoyment of life) as a result of that injury or impairment and of which the employee is aware'.

Non-economic loss may be characterised as the 'lifestyle effects' of an impairment. 'Lifestyle effects' are a measure of an individual's mobility and enjoyment of, and participation in, social relationships, and recreation and leisure activities. The employee must be aware of the losses suffered.

Determination of the compensation for non-economic loss is done by using a formula incorporating the degree of permanent impairment and the degree of non-economic loss. Permanent impairment is determined using the ComCare Guides. Chapter 5 of these Guides is very basic. There is a definition of the term, 'activities of daily living'. For example an impairment of 20 per cent requires:

Any two of the following accompanied by a need for some supervision and direction in activities of daily living:

- > reactions to stresses of daily living which cause modification of daily living patterns*
- > marked disturbance in thinking*
- > definite disturbance in behaviour.*

Department of Veterans Affairs Pensions

Psychiatrists are asked to determine the level of impairment for a veteran so the Department can make a decision about the appropriate level of disability pension. The method used is the Guide for the Assessment of the Rate of Pensions for Veterans, the GARP. This assesses disability and impairment using 10 measures including level of distress, work capacity, social functioning, treatment and other matters. A formula is used to derive the final figure.

Psychiatrists are also requested to provide reports about veterans who have appealed the determination of the Department to the Administrative Appeals Tribunal.

NEW SOUTH WALES

New South Wales scheme is called WorkCover. Impairment is assessed using WorkCover Guidelines. The method used for assessing psychiatric impairment is the Psychiatric Impairment Rating Scale PIRS. This can be done by an approved medical specialist (with suitable training, a medical referee or a medical panel. Psychiatric impairment is assessed separately from physical injury and only psychiatric impairment that is not secondary to physical injury is compensable. The threshold is 15% or more.

NORTHERN TERRITORY

The Northern Territory has a scheme where the level of permanent impairment is assessed using chapter 14 of AMA 4 with no revision. The initial threshold is 5% but between 5% and 10% the percentage is 2% and then ranges from 8% to 12%. After 14% that percentage then applies i.e. 15%=15%. If there is a dispute about the level of medical impairment, a medical panel is constituted that ultimately determines the level of permanent impairment.

QUEENSLAND

Queensland defines injury as including disease, aggravation but has a similar exclusionary clause as in the Commonwealth legislation with regard to any psychiatric or psychological disorder arising out of reasonable management action .

Impairment is defined as a loss of, or loss of efficient use of, any part of worker's body and permanent impairment is an impairment that is stable and stationary and not likely to improve with further medical or surgical treatment. (This definition is used in most legislation).

In deciding the degree of impairment that could result from the injury, a psychiatric or psychological injury must not be combined with another injury.

The degree of permanent impairment for a psychiatric or psychological injury must be assessed by a medical assessment tribunal, all other injuries only require assessment by a single doctor. The tribunal must determine the work-related impairment (WRI) excluding pre-existing injury and non-compensable injury. The tribunal must also determine whether or not the incapacities partial or total and whether it is permanent or temporary.

The tribunal uses a combination of AMA 4 and the following table to determine permanent impairment. There is no obvious threshold.

600 Psychiatric impairment from trauma (major depression or psychosis)	0-100	301
6001 Adjustment disorder with Anxiety/depression	0-100	301
6002 PTSD	0-100	301
6003 other psychiatric disorder	0-100	301

SOUTH AUSTRALIA

South Australia has instituted a system of medical panels who are required to answer medical questions (similar to the system in Victoria). The threshold for serious injury is 5% or more. The method used is the New South Wales WorkCover Guidelines and AMA 5. For psychiatric impairment assessment this means use of the PIRS. Psychiatric impairment secondary to physical injury is excluded. Impairment unrelated to the work injury is excluded. There is a table of specific injuries, e.g. loss of an eye with a particular sum for that injury. This table does not include any specific sum for mental injury

WHOLE PERSON IMPAIRMENT	MINIMUM AMOUNT PAYABLE (indexed from 1999)
5-9%	\$10,000
10-29%	\$17,500
30-54%	\$75,000
55-69%	\$250,000
70-100%	\$400,000

TASMANIA

Tasmania has developed Workcover Tasmania Guidelines to the assessment of permanent impairment. It has developed a system of Medical Panels who are required to answer medical questions. The method of psychiatric impairment is AMA 4 and the PIRS for psychiatric assessment. The threshold is 5% for physical injury and 10% for psychiatric injury. The whole person impairment is combined with the basic salary producing a lump-sum payment. Any psychiatric impairment that is regarded as secondary to physical injury is not compensable. There is no mention about psychiatric or psychological injury being excluded if they arise as a result of actions by management.

VICTORIA

The injured worker receives weekly payment for 130 weeks, it was 104 weeks. If a worker has a 'serious injury' the worker will receive weekly payments and payments of medical and like expenses indefinitely. Victoria has a threshold level for serious injury of 30%. Impairment is determined using the

AMA4 but chapter 4 has been replaced with a modified form of AMA2 now called the GEPIC. Psychiatrists must have completed a training program in the use of this instrument. There is a system of Medical Panels who are required to answer medical questions. Impairment that is regarded as secondary to physical injury is not counted.

A psychiatric or psychological injury is not compensable if it arose as a result of certain management actions. The opinion of the Medical Panel is final unless there are issues with regard to natural justice.

WESTERN AUSTRALIA

Western Australia has instituted a system of Medical Specialist Panels with a register of approved medical specialists. Approved Medical Specialists must have had training in the WorkCover WA Guides and training in the use of the AMA Guides. All other training in impairment assessment approved by WorkCover WA or appropriate US accreditation. The Medical Specialists Panels deal with disputes about levels of permanent impairment. The decision of the Panel is final. The level of permanent impairment must be 15% or more, the PIRS is used to determine impairment. Psychiatric impairment secondary to physical injury is not counted.

WA continues to have a system of "table of maims", a list of defined injuries for which a lump sum compensation is paid. Unlike 'tables' in similar legislation in the other states, psychiatric disability has been retained. The table below indicates the factors assessed. The psychiatrist is expected to estimate to provide a figure between 1-100 reflecting the disability of the worker. These concepts are decades old and have never been satisfactorily defined. There has never been a specific method prescribed, use of the relevant impairment guide is of no use as this refers to disability rather than impairment. In essence, my response is that if a worker, because of a psychiatric injury is unable to work in any capacity, then the figure with regard to '8' is 100. I have never understood the meaning of 'Total and incurable paralysis of the limbs or of mental powers.'

BODY AND MENTAL

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9. Total and incurable paralysis of the limbs or of mental powers	100

TRANSPORT/MOTOR ACCIDENT SCHEMES

The situation with regard to transport accident schemes has remained much more disparate with New South Wales, the Northern Territory, Tasmania and Victoria, having no fault schemes. The ACT, Queensland, South Australia and Western Australia have compulsory third-party insurance schemes.

ACT

The ACT motor accidents scheme defines personal injury as meaning bodily injury and including psychological or psychiatric injury (nervous or mental shock). A panel of medical experts may be established for reporting on the medical condition of claimants and their prospects for rehabilitation. There is a system of mandatory final offers that must identify how much of the offer is for pain and suffering.

NEW SOUTH WALES

Motor accident compensation is managed by the Motor Accident Authority. Compensation is paid for economic loss and for noneconomic loss. Noneconomic loss means:

- (a) pain and suffering, and
- (b) loss of amenities of life, and
- (c) loss of expectation of life, and
- (d) disfigurement.

The MAA Medical Guidelines, amongst other things allow for assessing permanent impairment. When there is a medical dispute the matter is referred to a medical assessor or medical assessors. The medical assessor or assessors are required to give a certificate. Any such certificate with regard to a medical assessment matter is conclusive evidence and can only be rejected on the grounds of denial of procedural fairness. The PIRS is used to determine psychiatric impairment. Impairment secondary to physical injury is excluded. The threshold level is greater than 10%. A party to a medical dispute may apply for a Review Panel of Medical Assessors consisting of at least three assessors. In the legislation the maximum amount awarded for non economic losses is \$284,000, this amount is indexed.

NORTHERN TERRITORY

Compensation for a permanent psychiatric injury requires a threshold of impairment of 5% with a sliding scale until 15% when the full percentage is combined with the total sum allowed under the legislation, a psychiatric impairment of 20 % would lead to a payment of 20% of the total sum. The current edition of the AMA Guides is used (now AMA6). There is no exclusion for psychiatric injury secondary to physical injury.

QUEENSLAND

Queensland has a compulsory third-party insurance scheme and fault is an issue. To obtain full compensation claimant must demonstrate that they were not at fault with regard to the accident. Personal injury includes psychological or psychiatric injury. Damages can be for pain and suffering. The court is required to assess an injury scale value (ISV) on a scale from 0-100. The PIRS is used to determine the level

of permanent psychiatric impairment. A medical expert must fulfil certain requirements to assess a PIRS rating and this must be provided in the form of a PIRS report. This is combined with a number of factors including degree of insight, age and life expectancy, pain and suffering, loss of amenities of life and the likelihood that difficulties would have merged in any event to produce the ISV. For example a very high PIRS rating may lead to a low ISV if the claimant has reduced insight. The PIRS excludes psychiatric impairment secondary to physical injury.

SOUTH AUSTRALIA

South Australia has a compulsory third-party scheme. This is paid for through the registration process. Compensation is paid to victims of road crashes with the owner or driver of a registered motor vehicle or a passenger is at fault. The scheme is administered by Allianz SA. Psychiatrists appear to play no role in determining the level of impairment.

TASMANIA

Tasmania has a system administered by the Motor Accident Insurance Board. Matters of compensation payments are made by the Motor Accident Compensation Tribunal. Claimants are required to have a medical examination. There is no mention about any method of determining psychiatric impairment. It is a no fault scheme. Claimants are also entitled to pursue a common-law claim if the other driver was at fault.

VICTORIA

Victoria has a no fault scheme administered by the Transport Accident Commission. The scheme involves weekly payments for up to 3 years and payment of medical and like expenses. Psychiatrists using the GEPIC (for which they require training) determine claimant's level of psychiatric impairment excluding any impairment that is secondary to physical injury. Claimants receive payments on a sliding scale from 10% and above. Children injured in transport accident are assessed and if they have level of impairment of 10% or more they receive payments for medical and like expenses. After they have reached the age of 18 a final impairment level is determined. If a claimant has a level of impairment of 30% or more with regard to a psychiatric impairment they receive ongoing benefits.

WESTERN AUSTRALIA

Western Australia has a compulsory third-party insurance scheme. Claimants are told:

To make a claim, you must be able to establish that the driver or owner of a motor vehicle (other than you) was at fault, whether completely or in part.

Receiving an injury doesn't mean you can automatically claim compensation. You may not be able to claim if:

- *you were totally at fault;*
- *the person at fault was not the owner or driver of a motor vehicle (e.g. a pedestrian or push cyclist); or the person at fault was the driver or owner of a vehicle registered in another state or Territory.*

Compensation for pain and suffering is assessed based on a percentage of the maximum amount that can be awarded [\$364,000 as at July 1,2012). The maximum amount is generally awarded to a person who has sustained a catastrophic injury e.g. quadriplegia.

All claims for pain and suffering have to exceed a minimum threshold of \$18,000 [the threshold amount as at 1 July 2012). For example, if the claim for pain and suffering is assessed at \$30,000 the entitlement would be \$12,000 after deducting the minimum threshold amount of \$18,000.

The threshold amount gradually reduces for claims assessed for pain and suffering between \$55,000 and \$73,000 and does not apply to assessments over \$73,000 [as at 1 July 2012).

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PERSONAL INJURY CLAIMS

The legislation for personal injury claims is remarkably similar in some states. A number of changes were implemented in about 2002 or thereabouts to reduce the amount of compensation payable. Such methods included establishing threshold levels of impairment, apportioning blame for injuries, limiting claims of medical negligence and restricting the total amount payable. Psychiatrists have had a role in assessing levels of impairment when thresholds must be met for the claim to proceed. Most civil liability Acts have a section absolving ‘good samaritans’ of liability and allowing that an apology or expression of regret is not an admission of liability nor is such an expression admissible in court.

ACT

The legislation recognises injuries only arising from mental or nervous shock but damages are not awarded for pure mental harm to a person unless the harm consists of a recognised psychiatric illness. Expert medical evidence may be given by an expert appointed by the parties, by the court or by an expert who has provided a health service for the claimant. He caught determines damages the noneconomic loss including pain and suffering and may rely on precedents. There is no threshold level of impairment required.

Certain organisations may develop insurance schemes to limit the liability of their members. These schemes have to be reviewed by the Minister.

NEW SOUTH WALES

In NSW, for civil liability cases, a threshold of 15% of “a most extreme case” applies with a sliding scale of damages up to 33%, where full damages may be claimed. The “most extreme case” is said to be a relatively fairer means of assessing injury than use of the ‘whole person impairment’ test, as it allows judicial consideration of the actual impact of an injury, rather than an arbitrary assessment of impairment.

An award for non-economic loss is compensation for the pain and suffering caused by an injury, as opposed to economic loss (loss of wages or future income). This is designed to compensate an individual for their lost quality and enjoyment of life, such as incapacity to engage in sport, family activities, recreational pursuits and other things as a result of their injuries.

Central to balancing fairness and community cost in personal injury is determining the relevance of fault and personal responsibility for damages. The legislation reflects the community view that if somebody behaves carelessly and injures another person they should held responsible for that carelessness.

No damages are awarded for non-economic loss unless the severity of the non-economic loss is at least 15% of a most extreme case. The maximum amount of damages awarded for non-economic loss is \$350,000(indexed), but the maximum amount is only awarded in a most extreme case. If the severity of the non-economic loss is equal to or greater than 15% of a most extreme case, the damages for non-economic loss are determined according to a sliding scale with impairments of 33% and above at the full percentage level. The amount payable

for non-economic loss is determined by multiplying the maximum amount with the sliding scale and from 33% onwards, the amount payable is the same proportion of the maximum amount. Psychiatrists are required to determine the percentage with no guidance.

NORTHERN TERRITORY

"personal injury" includes a fatal injury, a prenatal injury, a psychological or psychiatric injury, a disease; and the aggravation, exacerbation or acceleration of a pre-existing injury or condition.

"permanent impairment" means impairment that is assessed to be permanent impairment in accordance with the American Medical Association Guides to the Evaluation of Permanent Impairment.

A court, in determining the degree of permanent impairment suffered by an injured person, does so on the basis of the degree of permanent impairment with the American Medical Association Guides to the Evaluation of Permanent Impairment used by qualified medical practitioners.

The maximum amount of damages awarded for non-economic loss is \$350 000 (indexed) with a threshold of at least 5% impairment and then on a sliding scale to 15% and from then to 85% that percentage of the maximum amount and then the maximum amount.

QUEENSLAND

In Queensland as elsewhere personal injury includes fatal injury; prenatal injury; psychological or psychiatric injury and disease.

The liability of a defendant at fault is limited to an amount reflecting that proportion of fault the court considers just and equitable having regard to the extent of the defendant's responsibility for the loss or damage.

General damages is damages for pain and suffering; loss of amenities of life; loss of expectation of life or disfigurement. The court assesses an injury scale value, that is a numerical value on a scale running from 0 to 100 using rules provided in a regulation; and considering the injury scale values given to similar injuries in the past.

SOUTH AUSTRALIA

South Australia's Act is largely based on the NSW model and attempts to limit who can claim and caps the maximum payment. It enables professional and occupational associations to obtain approval for schemes to cap the liability of their members in instances of negligence involving economic loss or property damage.

The provisions include:

- the protection of 'good Samaritans';
- caps (\$241,500) and thresholds (seven days impairment or \$2,750 in medical expenses) for general damages, and a regulated scale of damages related to the severity of injury;
- limits on who can sue for nervous shock;
- protection for expressions of regret.
- providing a defence to a negligence action for doctors and other professionals if they have acted in accordance with a practice widely held by respected practitioners to be a proper practice

- A person (the "defendant") does not owe a duty to the plaintiff to take care not to cause the [plaintiff](#) mental harm unless a reasonable person in the [defendant's](#) position would have foreseen that a person of normal fortitude in the [plaintiff's](#) position might, in the circumstances of the case, suffer a psychiatric illness.

The court decides whether or not the mental harm was suffered as a result of a sudden shock such as witnessing a person being killed injured or put in peril at an accident scene. The nature of the relationship between the plaintiff and the person involved in the accident and whether or not there was any pre-existing relationship between them.

An assessment of the circumstances in which the physical injury led to mental harm.

Damages can only be awarded for non-economic loss if the injured person was unable to lead a normal life for at least seven days and there had been a minimum amount of medical expenses incurred in connection with the injury.

The injured person's total non-economic loss is assigned a numerical value (the "scale value") on a scale running from 0 to 60 depending on the level of severity of the injury and the scale value is multiplied by a specified figure according to the level of the scale value. For example, if the [scale value](#) is 20 or less but more than 10—by adding to \$11 500 an amount calculated by multiplying the number by which the [scale value](#) exceeds 10 by \$2 300.

An example provided is that A is injured in an accident that occurred in 2003 and claims damages for personal injury. The case is one in which the criteria under which damages for non-economic loss may be awarded are satisfied. In assessing those damages, A's total non-economic loss is assigned by the court a [scale value](#) of 23. The damages for non-economic loss will, therefore, be \$44 850, calculated as follows:

$$\$34500 + (3 \times \$2300) = \$44850$$

Damages may only be awarded for mental harm if the injured person was physically injured in the accident or was present at the scene of the accident when the accident occurred; or where a close relative was killed, injured or endangered. Damages can only be awarded for "pure mental harm" (meaning no physical injury) if the harm consists of a recognised psychiatric illness.

An expression of regret is no admission of liability or fault.

A "good Samaritan" includes a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently in need of emergency assistance; or a medically qualified person who, acting without expectation of payment or other consideration, gives advice by telephone or some other form of telecommunication about the treatment of a person who is apparently in need of emergency medical assistance. Such a "good Samaritan" incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting a person in apparent need of emergency assistance.

TASMANIA

The Tasmanian Act is very similar to the equivalent Acts in New South Wales and South Australia.

Damages includes any form of monetary compensation;

Non-economic loss means pain or suffering, loss of amenities of life; loss of enjoyment of life, curtailment of life expectancy; bodily or mental harm;

Personal injury includes pre-natal injury; impairment of a person's physical or mental condition; and disease.

If the amount of non-economic loss is assessed to be not more than Amount A, no damages are to be awarded for non-economic loss. If the amount of non-economic loss is assessed to be more than Amount A but not more than Amount B, damages awarded for non-economic loss are calculated by multiplying the amount awarded by 1.25 and subtracting the amount A. If the amount of non-economic loss is more than Amount B, damages awarded for non-economic loss are an amount equal to the amount assessed. As of 30 June 2004 amount A was \$4000 and has been subsequently indexed. B is 5 times A. In determining damages for non-economic loss, a court may refer to earlier decisions to establish the appropriate award.

Pure mental harm (impairment of a person's mental condition) means mental harm that is other than consequential mental harm (this is an impairment of a person's mental condition as a consequence of a personal injury).

The damages are payable if the personal injury arose wholly or in part from mental or nervous shock. But the plaintiff must have witnessed, at the scene, a close family member being killed, injured or put in peril or the immediate aftermath of the close family member being killed or injured.

There is no liability to pay damages for pure mental harm unless the harm consists of a recognised psychiatric illness.

A person does not owe a duty to another person to take care not to cause mental harm unless a reasonable person ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.

A good samaritan is not liable in any civil proceeding for anything done, or not done, by him or her in good faith and without recklessness.

Evidence of an apology is not admissible in any civil proceedings as evidence of liability or fault.

VICTORIA

The Victorian legislation consists of the Wrongs Act and subsequent amendments.

The Wrongs Act does not refer to "good Samaritans" or to an apology or expression of regret not being admissible as evidence of liability. There is the usual definition of injury.

Injury means personal or bodily injury and includes pre-natal injury, psychological or psychiatric injury, disease; but also includes aggravation, acceleration or recurrence of an injury or disease.

For a claim to proceed the level of impairment must be more than 5% for any injury other than a psychiatric injury. For a psychiatric injury the level of impairment must be more than 10%. The level of impairment for a psychiatric injury is determined using the GEPIC that replaces chapter 14 in AMA4. Psychiatric injury secondary to physical injury does not count. The assessor must have done an approved training program.

Where there are disputes about thresholds the matter is referred to the Medical Panel established by the accident compensation act. The medical question is a question as to the threshold level.

Psychiatrists are also asked by plaintiff lawyers to comment on the need, cost and duration of appropriate treatment and whether or not the condition is stable and the prognosis. The condition does not have to be stable for an impairment level to be assessed.

WESTERN AUSTRALIA

The Civil Liability Act 2002 (WA) (the Act) applies to all claims in respect of personal injury arising from incidents occurring after 1 January 2003. It introduced a sliding scale applicable to general damages in claims for personal injury and death, as well as caps on damages for loss of earning capacity and loss of gratuitous services. For example, the Act imposes a \$12,000 minimum threshold for general damages. The concept of proportionate liability to claims other than personal injury claims was also applied.

A court cannot make an award of personal injury damages for mental harm unless the harm consists of a recognised psychiatric illness.

Excerpts For Psychiatrists from ACT Legislation regarding Workers Compensation Claims

WORKERS COMPENSATION ACT 1951 - SECT 4

Meaning of injury

(1) In this Act:

"injury" means a physical or mental injury (including stress), and includes aggravation, acceleration or recurrence of a pre-existing injury.

(2) In this section:

"mental injury (including stress)" does not include a mental injury (including stress) completely or mostly caused by reasonable action taken, or proposed to be taken, by or on behalf of an employer in relation to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker.

SECT 6

Meaning of totally incapacitated

For this Act, an injured worker is totally incapacitated for work if—

- (a) there is no suitable paid employment reasonably available to the worker that the worker can do because of a functional impairment caused by the injury; or
- (b) the worker is taken, or declared, to be totally incapacitated under section 35 (When is a worker taken to be totally incapacitated?).

SECT 7

Meaning of partially incapacitated

For this Act, an injured worker is partially incapacitated for work if, because of a functional impairment caused by the injury, the worker—

- (a) cannot do all the work the worker could do before the injury; and
- (b) is not totally incapacitated.

SECT 26

Gradual onset of incapacity

- (1) This section applies if, because of the gradual onset of a worker's injury, it appears that the level of the worker's average pre-incapacity weekly earnings, or average pre-incapacity weekly hours, have been affected.
- (2) The worker's average pre-incapacity weekly earnings, or average pre-incapacity weekly hours, must be set at an amount that fairly represents the weekly amount that the worker would have been earning or working if the level had not been affected.

SECT 27

Compensation for death or incapacity through disease

- (1) If—
 - (a) a worker contracts a disease or suffers an aggravation, acceleration or recurrence of a disease; and
 - (b) any employment of the worker by his or her employer was a substantial contributing factor to the contraction of the disease or the aggravation, acceleration or recurrence whether or not the disease was contracted or the aggravation, acceleration or recurrence was suffered in the course of that employment;subsections (2) to (5) have effect.
- (2) If the worker dies or is totally or partially incapacitated for work as a result of the disease, or the worker received medical treatment in relation to the disease, then, for this Act, unless the contrary intention appears—
 - (a) the contraction of the disease, or the aggravation, acceleration or recurrence of the disease is a personal injury to the worker arising out of the employment of the worker by the worker's employer; and
 - (b) the date of the injury is the earliest of the following:
 - (i) the date of the death;
 - (ii) the date of the start of the incapacity;
 - (iii) the date when the medical treatment was first received.
- (3) If a liability of an employer in relation to a disease of a worker arises under this section, any other employer who, before that liability so arising, employed the worker in any employment that caused or contributed to the disease is, subject to subsection (4), liable to pay to the employer from whom compensation is recoverable the contribution that is, in default of agreement, settled by arbitration.
- (4) An employer is not liable under subsection (2) or (3) in relation to a disease if the worker, at the time of entering the employment of that employer, made a wilful and false representation that the worker did not suffer, or had not previously suffered, from that disease.
- (5) A claimant for compensation under this section in relation to a worker's disease must, if so required, give the employer who is liable to pay compensation to the claimant with the information about the names and addresses of the worker's other employers that the claimant possesses.

SECT 29

Compensation for disease

- (1) Any employment in which a worker who has contracted a disease was engaged at any time before symptoms of the disease first became apparent is, unless the contrary is established, taken for this Act to have been a substantial contributing factor to the worker's contracting the disease if the incidence of the disease among people who have engaged in that kind of employment is significantly greater than the incidence of the disease among people who have engaged in employment generally in the place where the worker was ordinarily employed.
- (2) Any employment in which a worker who has suffered an aggravation, acceleration or recurrence of a disease was engaged at any time before symptoms of the aggravation, acceleration or recurrence first became apparent is, unless the contrary is established, taken for this Act to have been a substantial contributing factor to the aggravation, acceleration or recurrence if the incidence of the aggravation, acceleration or recurrence of the disease among people suffering from the disease who

have engaged in that kind of employment is significantly greater than the incidence of the aggravation, acceleration or recurrence of the disease among people suffering from the disease who have engaged in employment generally in the place where the worker was ordinarily employed.

- (3) The death of a worker is taken for this Act to have been substantially contributed to by a disease if, apart from that disease, the death of the worker would have happened at a significantly later time.
- (4) An incapacity for work or facial disfigurement of a worker is taken for this Act to have been substantially contributed to by a disease if, apart from the disease—
 - (a) the incapacity or disfigurement would not have happened; or
 - (b) the incapacity would have begun, or the disfigurement would have happened, at a significantly later time; or
 - (c) the extent of the incapacity or disfigurement would have been significantly less.

SECT 31

General entitlement to compensation for personal injury

- (1) An employer is liable to pay compensation under this Act if a worker of the employer suffers personal injury arising out of, or in the course of, the worker's employment.
- (2) However, if the injury is caused by a disease, the injury is taken to have arisen out of, or in the course of, the worker's employment only if the employment substantially contributes to the injury.
- (3) Also, an injury suffered by a worker partly or completely because the worker had any of the following pre-existing conditions is taken to have arisen out of, or in the course of, the worker's employment only if the employment substantially contributes to the injury:
 - (a) diseased heart valve;
 - (b) coronary artery disease;
 - (c) aortic aneurism;
 - (d) cerebral aneurism;
 - (e) any other condition prescribed by regulation for this section.

SECT 35

When is a worker taken to be totally incapacitated?

- (1) In this Act, a worker is taken to be totally incapacitated for work if—
 - (a) a doctor certifies that the worker is partially incapacitated for work; and
 - (b) the partial incapacity prevents the worker from performing the duties the worker performed before becoming incapacitated; and
 - (c) the employer cannot provide appropriate alternative employment; and
 - (d) the worker cannot find appropriate alternative employment.
- (3) For subsection (1), the worker is taken to be totally incapacitated from the time when the worker became partially incapacitated until 1 of the following happens:
 - (a) the worker becomes totally incapacitated;
 - (b) the employer provides the worker with appropriate alternative employment;
 - (c) the worker finds appropriate alternative employment.

SECT 43

Stopping payments for total incapacity

- (1) A worker stops being entitled to weekly compensation for total incapacity for a compensable injury at the earliest of the following times:
 - (a) when the worker stops being totally incapacitated because of the injury;
 - (b) when the worker returns to work;
 - (c) when the worker dies.
- (2) However, if the worker stops being entitled to weekly compensation under subsection (1) (a) or (b), the worker may again become entitled to weekly compensation for the compensable injury if the worker again becomes totally or partially incapacitated because of the injury.

SECT 48

Meaning of loss

In this chapter:

"loss", in relation to a thing—

- (a) means—
 - (i) the loss of the thing; or
 - (ii) the permanent loss of the use, or efficient use, of the thing; and
- (b) includes the following:
 - (i) permanent musculoskeletal impairment, or another permanent impairment;
 - (ii) a loss, damage, impairment, disfigurement or disease mentioned in schedule 1 (Compensation for permanent injuries).

SECT 51

Compensation for permanent injuries generally

- (1) A worker who has suffered a loss mentioned in an item of schedule 1 as the result of a compensable injury is entitled to receive from the worker's employer, as compensation for the loss, the percentage of the single loss amount mentioned in that item.
- (2) For this section, the loss is to be worked out when the last of the following happens:
 - (a) the worker's employer became liable to pay compensation;
 - (b) it is unlikely that there will be an improvement or further improvement in the use, or efficient use, of the injured part of the body.
- (3) If a payment of compensation under this part has been made in relation to an injury, nothing prevents a further payment of compensation under this part from being made in relation to the same injury if there is an increase in the loss of the efficient use of the injured part of the body.
Example of loss of efficient use of injured part of body
a loss, or further loss, of sight in an injured eye

SECT 55

Compensation for combination of items

If a loss (other than the impairment of the back, neck or pelvis) may be compensated by a combination of items in schedule 1 (Compensation for permanent injuries) or by a proportionate loss of a single item, the loss is to be compensated by a proportionate loss of the single item.

SECT 61

Deduction for previous injury or pre-existing condition

- (1) In working out the compensation payable under this part for a loss (the initial loss), an amount must be deducted from the compensation (the deductible proportion) for any proportion of the loss attributable to—
 - (a) a previous injury (whether or not it is an injury for which compensation has been paid, or is payable, under this part); or
 - (b) a pre-existing condition or abnormality.
- (2) In subsection (1), it does not matter whether the initial loss is a total or partial loss.
- (3) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to work out, it is to be assumed that the deductible proportion for the loss (or the relevant part of the loss) is 10% of the loss, unless this assumption is contrary to the available evidence.

CHAPTER 9--COMMON LAW DAMAGES

PART 9.1--INTERPRETATION AND APPLICATION--CH 9

- 180. Definitions—ch 9
- 181. References to person who recovers damage etc
- 182. Payments by DI fund manager

PART 9.2--CHOICE OF LAW

- 182A. Definitions—pt 9.2
- 182B. Meaning of substantive law
- 182C. Meaning of damages claim
- 182D. Applicable substantive law for damages claims
- 182E. Claims to which pt 9.2 applies

PART 9.3--COMPENSATION AND COMMON LAW DAMAGES

- 182F. Lump sum claims—notice by lawyers to clients about repayment
- 183. Remedies against employer and stranger
- 184. No compensation if damages received
- 185. Dependants recovering damages and not claiming compensation
- 186. Discharge of liability out of payments into court

SECT 180

Definitions—ch 9

In this chapter:

"damages" includes an amount paid under a compromise or settlement of a claim for damages, whether or not a legal proceeding had been started, but does not include an amount paid for costs incurred in relation to a proceeding in a court.

"injury", in relation to a worker, includes damage to the worker's contact lenses, crutches, prosthesis, spectacles or other artificial aid.

SECT 182C

Meaning of damages claim

- (1) For this part, "damages claim" means a claim for damages in relation to a work-related injury to a worker caused, or claimed to have been caused by—
 - (a) the negligence or other tort of the employer or a person for whose acts the employer is vicariously liable; or
 - (b) a breach of contract by the employer.
- (2) Also, "damages claim" includes a claim for damages in relation to an injury caused, or claimed to have been caused, by negligence or another tort even if the damages are claimed in an action for breach of contract or other action.

SECT 182E

Claims to which pt 9.2 applies

This part applies only to a damages claim against 1 or more of the following people:

- (a) the employer;
- (b) a person who is vicariously liable for the acts of the employer;
- (c) a person for whose acts the employer is vicariously liable.

SECT 201

Medical referees

- (1) The Minister may appoint 1 or more doctors as medical referees for this Act.
Note: For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.
- (2) The Minister may appoint a doctor as a medical referee only if satisfied that the doctor has the experience and expertise to adequately perform the duties of a medical referee.
- (3) A medical referee must not act as medical referee in relation to an injury if the medical referee's services have been used as a doctor in relation to the injury by, or on behalf of, the employer, worker or insurer.
- (4) A person appointed as a medical referee is to be paid the fees decided by the Minister for the exercise of the person's functions as a medical referee.
- (5) An appointment under subsection (1) is a notifiable instrument.
Note: A notifiable instrument must be notified under the Legislation Act.

SCHEDULE 1

Schedule 1 Compensation for permanent injuries

Brain damage		
45	permanent brain damage if not, or not completely an <u>injury</u> otherwise compensable under this schedule	100

ACT Compensation for Motor Accidents

including excerpts for psychiatrists from the *Insurance Authority Act 2005* and the *Road Transport (Third-Party Insurance) Act 2008*

The ACT Treasury website states:

In the ACT there is Compulsory Third Party Insurance

Fault must be established for a claim to succeed. A CTP personal injury claim form may be lodged by:

any person who has sustained personal injury as a result of a motor vehicle accident in the ACT for which they were not at fault. This may include a driver, motorcyclist (or cyclist), passenger or pedestrian, but not the driver of the vehicle at fault. dependants or the estate of someone fatally injured as a result of a motor vehicle accident in the ACT for which the deceased person was not at fault. If the injured person was partially at fault that person can still claim but the entitlement will be reduced by the extent of the contributory negligence.

Insurance Authority Act 2005

7 The authority

(1) **The Australian Capital Territory Insurance Authority** is established.

8 Functions of authority

The authority has the following functions:

- (a) to carry on the business of insurer of territory risks;
- (b) to take out insurance of territory risks with other entities;
- (c) to satisfy or settle claims in relation to territory risks (including claims that may not necessarily be valid in law);
- (d) with the Treasurer's approval, to take action for the realising, enforcing, assigning or extinguishing rights against third parties arising out of or in relation to its business, including, for example—
 - (i) taking possession of, dealing with or disposing of, property; or
 - (ii) carrying on a third party's business as a going concern;
- (e) to develop and promote good practices for the management of territory risks;
- (f) to give advice to the Minister about insurance and the management of territory risks;
- (g) to exercise any other function given to it under this Act or another territory law.

Road Transport (Third-Party Insurance) Act 2008 - Sect 6

What is a personal injury?

In this Act:

"personal injury" means bodily injury and includes -

- (a) psychological or psychiatric injury; and
- (b) damage to spectacles, contact lenses, dentures, hearing aids, crutches, wheelchairs, artificial limbs and prosthetic devices; and

- (c) death.

Examples –

- psychological or psychiatric injury
- mental or nervous shock

SECT 70

What is a motor accident medical report?

In this Act:

"motor accident medical report", for a motor accident, means a medical report prepared by a doctor about the personal injuries caused to the injured person by the motor accident.

SECT 117

Panel of recognised medical experts

- (1) The CTP regulator—
 - (a) may establish a panel of experts for reporting on the medical condition of claimants and their prospects of rehabilitation; and
 - (b) must revise the membership of the panel at least once every 3 years by adding to, or removing, the names of the experts who constitute the panel.
- (2) In deciding on the composition of the panel, the CTP regulator—
 - (a) must consult with each professional body—
 - (i) prescribed by regulation; and
 - (ii) in the way prescribed by regulation; and
 - (b) may only include an expert on the panel if—
 - (i) the expert's inclusion is endorsed by each relevant professional body; or
 - (ii) the CTP regulator is satisfied there is good reason for inclusion of the expert on the panel despite the absence of endorsement by each relevant professional body.

SECT 120

Examination by expert if no agreement

- (1) This section applies if a respondent wants to obtain an expert report about 1 or more of the matters mentioned in section 118 (1) (Parties may jointly arrange for expert report) but fails to obtain the claimant's agreement.
- (2) The claimant must comply with a request by the respondent to undergo, at the respondent's expense, either or both of the following:
 - (a) a medical examination by a doctor to be selected by the claimant from a panel of at least 3 doctors with appropriate qualifications and experience in the relevant field nominated by the respondent in the request;
 - (b) an assessment of cognitive, functional or vocational capacity by an expert to be selected by the claimant from a panel of at least 3 experts with appropriate qualifications and experience in the relevant field nominated by the respondent in the request.
- (3) However, a claimant is not obliged to undergo an examination or assessment under this section if the examination or assessment is unreasonable or unnecessarily repetitious.

- (4) If 3 doctors or experts with appropriate qualifications and experience in the relevant field are not available for inclusion on a panel under subsection (2), the number on the panel may be reduced to 2.

SECT 141

Mandatory final offers

- (1) This section applies if, for a motor accident claim—
- (a) the compulsory conference has been dispensed with under section 137 (Compulsory conference may be dispensed with); or
 - (b) the motor accident claim is not settled at the compulsory conference.
- (2) The claimant and the respondent for the motor accident claim must exchange written final offers (each of which is a mandatory final offers).
- (3) However, if a respondent denies liability altogether, the respondent must give the claimant a written notice of denial (a mandatory final notice).
- (4) If the respondent gives the claimant a mandatory final notice, for this Act, the respondent is taken to have given the claimant a mandatory final offer of \$0.
- (5) A mandatory final offer must identify how much of the offer is for pain and suffering.

ACT Civil Law (Wrongs) Act 2002
excerpts for psychiatrists

Dictionary

(see s 2)

"accident" means an incident out of which personal injury arises, and includes a motor accident.

"agreed expert", for chapter 6 (Expert medical evidence)—see section 84.

"apology", for part 2.3 (Apologies)—see section 13.

"appointed expert", for chapter 6 (Expert medical evidence)—see section 84.

apportionable claim, for chapter 7A (Proportionate liability)—see section 107B.

"claim" -

- (a) for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49; and
- (b) for chapter 6 (Expert medical evidence)—see section 82; and
- (c) for part 7.1 (Damages for personal injuries—exclusions and limitations)—see section 92.

"claimant" -

- (a) for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49; and
- (b) for chapter 7A (Proportionate liability)—see section 107C.

"consequential mental harm", for part 3.2 (Mental harm)—see section 32.

- (b) for chapter 5 (Personal injuries claims—pre-court procedures)—see section 49; and
- (c) for part 7.1 (Damages for personal injuries—exclusions and limitations)—see section 92; and
- (h) for schedule 4 (Professional standards)—see schedule 4, section 4.2.

"damage" -

"evidence", for chapter 6 (Expert medical evidence)—see section 82.

"expert", for chapter 6 (Expert medical evidence)—see section 82.

"expert medical evidence", for chapter 6 (Expert medical evidence)—see section 82.

"family member", of a person, for part 3.2 (Mental harm) - see section 32.

"harm", for chapter 4 (Negligence) - see section 40.

"medical issue", for chapter 6 (Expert medical evidence) - see section 82.

"mental harm", for part 3.2 (Mental harm) - see section 32.

"negligence" -

- (a) for part 3.2 (Mental harm)—see section 32; and

"personal injury" means bodily injury, and includes -

- (a) mental or nervous shock; and
- (b) death.

"pure mental harm", for part 3.2 (Mental harm)—see section 32.

SECT 5

Protection of good samaritans from liability

- (1) A good samaritan does not incur personal civil liability for an act done or omission made honestly and without recklessness in assisting, or giving advice about the assistance to be given to, a person who is apparently—
 - (a) injured or at risk of being injured; or
 - (b) in need of emergency medical assistance.
- (2) However, the protection does not apply if—
 - (a) the liability falls within the ambit of a scheme of compulsory third-party motor vehicle insurance; or
 - (b) the good samaritan's capacity to exercise appropriate care and skill was, at the relevant time, significantly impaired by a recreational drug.

Example - scheme of compulsory third-party motor vehicle insurance

the scheme under the *Road Transport (Third-Party Insurance) Act 2008*

Note: An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) In this section:

"good samaritan" means—

- (a) a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently—
 - (i) injured or at risk of being injured; or
 - (ii) in need of emergency medical assistance; or
- (b) a medically qualified person who, acting without expectation of payment or other consideration, gives advice by telephone or another form of telecommunication about the treatment of a person who is apparently—
 - (i) injured or at risk of being injured; or
 - (ii) in need of emergency medical assistance.

"medically qualified"—a person is *medically qualified* if the person—

- (a) is a doctor; or
- (b) has professional qualifications in a field of health care that are recognised under an Act; or
- (c) works, or has worked, as a member of the ambulance service or in another paramedical capacity.

SECT 14

Effect of apology on liability etc

- (1) An apology made by or on behalf of a person in relation to an incident claimed to have been caused by the person—
 - (a) is not (and must not be taken to be) an express or implied admission of fault or liability by the person in relation to the incident; and
 - (b) is not relevant to deciding fault or liability in relation to the incident.

- (2) Evidence of an apology made by or on behalf of a person in relation to an incident claimed to have been caused by the person is not admissible in any civil proceeding as evidence of the fault or liability of the person in relation to the incident.

SECT 32

Definitions—pt 3.2

In this part:

"child", of a person, means the son, daughter, grandson, granddaughter, stepson or stepdaughter of the person, or someone to whom the person is acting in place of a parent.

"consequential mental harm", to a person, means mental harm to the person that is a consequence of bodily injury to the person.

"family member", of a person, means—

- (a) a domestic partner;
- (b) a parent or child of the person; or
- (c) a brother, sister, half-brother or half-sister of the person.

"mental harm", to a person, means impairment of the person's mental condition.

"negligence" means failure to exercise reasonable care and skill.

"parent", of a person, means the father, mother, grandfather, grandmother, stepfather or stepmother of the person, or someone acting in place of a parent to the person.

"pure mental harm", to a person, means mental harm to the person other than consequential mental harm.

SECT 33

Personal injury arising from mental or nervous shock

In an action for personal injury, the plaintiff is not prevented from recovering damages only because the injury arose completely or partly from mental or nervous shock.

SECT 35

Mental harm—damages

- (1) Damages must not be awarded for pure mental harm to a person resulting from negligence unless the harm consists of a recognised psychiatric illness.
- (2) Damages must not be awarded for economic loss for consequential mental harm to a person resulting from negligence unless the harm consists of a recognised psychiatric illness.

SECT 40
Definitions—ch 4

In this chapter:

"harm" means harm of any kind, and includes—

- (a) personal injury; and
- (b) damage to property; and
- (c) economic loss.

"negligence" means failure to exercise reasonable care and skill.

SECT 42

Standard of care

For deciding whether a person (the *defendant*) was negligent, the standard of care required of the defendant is that of a reasonable person in the defendant's position who was in possession of all the information that the defendant either had, or ought reasonably to have had, at the time of the incident out of which the harm arose.

CHAPTER 6--EXPERT MEDICAL EVIDENCE

- 81. Purpose—ch 6
- 82. Definitions—ch 6
- 83. Application—ch 6
- 84. Limitation on expert medical evidence
- 85. Agreed expert
- 86. Appointed expert
- 87. Role of expert
- 88. Documents etc to be given to expert
- 89. If agreed or appointed expert unavailable
- 90. Costs of experts

SECT 81

Purpose—ch 6

The purpose of this chapter is to define the role, and limit the number, of witnesses who may give expert medical evidence in a proceeding based on a claim.

SECT 82
Definitions—ch 6

In this chapter:

"agreed expert"—see section 84.

"appointed expert"—see section 84.

"claim" means a claim (however described) for damages based on a liability for personal injury, whether the liability is based in tort or contract or on another form of action (including breach of statutory duty), and, for a fatal injury, includes a claim for the dead person's dependants or estate.

"evidence" means evidence given orally or in writing.

"expert", in relation to an issue, means a person who has specialised knowledge about matters relevant to the issue based on the person's training, study or experience.

"expert medical evidence" means opinion evidence on a medical issue given by an expert in relation to the issue.

"medical issue"—an issue is a *medical issue* if it relates to—

- (a) the medical condition or prospects of rehabilitation of a person; or
- (b) the cognitive, functional or vocational capacity of a person; or
- (c) the question whether particular medical treatment amounts to professional negligence.

SECT 84

Limitation on expert medical evidence

- (1) Expert medical evidence may be given in a proceeding in a court based on a claim only by—
 - (a) an expert appointed by the parties under section 85 or section 89 (1) (an *agreed expert*); or
 - (b) an expert appointed by the court under section 86 or section 89 (2) (an *appointed expert*).
- (2) However, an expert who has provided a health service for a claimant in relation to the claim may also give expert medical evidence in the proceeding.

(3) In this section:

"health service"—

- (a) means a service provided to someone (the "service user") for any of the following purposes:
 - (i) assessing, recording, maintaining or improving the physical, mental or emotional health, comfort or wellbeing of the service user;
 - (ii) diagnosing or treating an illness, disability, disorder or condition of the service user; and
- (b) includes a service provided by a health practitioner in the practitioner's capacity as a health practitioner.

SECT 85

Agreed expert

- (1) The parties to the proceeding may agree, in writing, to appoint 1 stated person to give expert medical evidence in the proceeding.
- (2) The agreed expert may be (but need not be)—
 - (a) a person who prepared an expert report for the parties under section 65 (Respondent and claimant may jointly arrange for expert report); or
 - (b) a person on a panel mentioned in section 67 (Examination by expert if no agreement).
- (3) The agreed expert may give evidence in the proceeding as an expert on any issue on which the expert is qualified to give evidence based on the expert's specialised knowledge.

SECT 86

Appointed expert

- (1) If the parties do not appoint an agreed expert, the court may, on application by 1 or more of the parties or on its own initiative, appoint a stated person to give expert medical evidence in the proceeding.
- (2) The court may appoint an additional expert, or additional experts, to give expert medical evidence in the proceeding if—

- (a) expert medical evidence is required on 2 or more issues in the proceeding and the agreed or appointed expert is not qualified to give evidence on all the issues based on the expert's specialised knowledge; or
 - (b) the court considers that the interests of justice otherwise require it.
- (3) The court must not appoint more than 1 expert to give expert medical evidence on any particular issue unless the court considers that the interests of justice require it.
- (4) The court must not appoint a person to give expert medical evidence on an issue unless the court is satisfied the person is an expert in relation to the issue.
- (5) An appointed expert may be (but need not be)—
- (a) a person who prepared an expert report for the parties under section 65 (Respondent and claimant may jointly arrange for expert report); or
 - (b) a person on a panel mentioned in section 67 (Examination by expert if no agreement).
- (6) An appointed expert may give evidence in the proceeding as an expert on any issue on which the expert is qualified to give evidence based on the expert's specialised knowledge.

SECT 87

Role of expert

- (1) The role of an agreed or appointed expert is to assist the court impartially on the issue or issues on which the expert is giving expert medical evidence.
- (2) The expert's primary duty is to the court.
- (3) The expert is not an advocate for a party to the proceeding.
- (4) In giving evidence in relation to the question whether particular medical treatment amounts to professional negligence, the expert must have regard to whether the treatment was in accordance with an opinion widely held by a significant number of respected practitioners in Australia in the relevant field.

SECT 88

Documents etc to be given to expert

The parties to a proceeding must ensure that—

- (a) all reports and other documents or information relevant to the issue or issues on which an agreed or appointed expert is to give evidence are made available to the expert; and
- (b) the expert is jointly briefed by the parties or the parties have equal opportunity to brief the expert.

SECT 90

Costs of experts

The costs and expenses of an agreed or appointed expert must be paid by the parties in equal shares or as otherwise agreed by them or ordered by the court.

SECT 99

Tariffs for damages for non-economic loss

- (1) In deciding damages for non-economic loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceeding.
- (2) For that purpose, the parties to the proceeding or their lawyers may bring the court's attention to awards of damages for non-economic loss in those earlier decisions.
- (3) This section does not change the rules for deciding other damages.
- (4) In this section:

"non-economic loss" includes the following:

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of expectation of life;
- (d) disfigurement.

SECT 107B

Application of ch 7A—apportionable claims

- (1) This chapter applies to apportionable claims.
- (2) An "apportionable claim" is—
 - (a) a claim for economic loss or damage to property in an action for damages (whether in tort, under contract or otherwise) arising from a failure to take reasonable care; or
 - (b) a claim for economic loss or damage to property in an action for damages under the *Australian Consumer Law (ACT)* , section 236 for a contravention of that law, part 3.1 (Unfair practices).
- (3) However, none of the following is an *apportionable claim* :
 - (a) a claim arising out of personal injury;
 - (b) a consumer claim;
 - (c) a claim prescribed by regulation for this paragraph.
- (4) Also, without limiting subsection (3), none of the following is an *apportionable claim* :
 - (a) a claim under the *Discrimination Act 1991* ;
 - (b) a claim to which the *Road Transport (Third-Party Insurance) Act 2008* , chapter 4 (Motor Accident Claims) applies;
 - (c) a claim under the *Workers Compensation Act 1951* .
- (5) A regulation made for subsection (3) (c) may make provision in relation to their application to claims arising from acts or omissions that happened before the regulation was notified.
- (6) For this chapter, there is a single apportionable claim in a proceeding in relation to the same loss or damage even if the claim for the loss or damage is based on more than 1 cause of action (whether or not of the same or a different kind).

SCHEDULE 4

Schedule 4 Professional standards

Part 4.1 Preliminary—professional standards

4.1 Objects—sch 4

The objects of this schedule are—

- (a) to enable the creation of schemes to limit the civil liability of professionals and others; and
- (b) to facilitate the improvement of occupational standards of professionals and others; and
- (c) to protect consumers of the services provided by professionals and others; and
- (d) to establish a council to supervise the preparation and application of schemes and to assist in the improvement of occupational standards and protection of consumers.

4.2 Definitions—sch 4

In this schedule:

"damages" means—

- (a) damages awarded in relation to a claim or counter-claim or claim by way of set-off; or
- b) costs in relation to the proceedings ordered to be paid in relation to such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by a defendant); or
- (c) any interest payable on the amount of the damages or costs.

"occupational association" means a corporation—

- (a) that represents the interests of people who are members of the same occupational group; and
- (b) the membership of which is limited mainly to members of the occupational group.

"occupational group" includes a professional group and a trade group.

"occupational liability" means civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted to be done by a member of an occupational association acting in the performance of the member's occupation.

"scheme" means a scheme for limiting the occupational liability of members of an occupational association, and includes an interstate scheme.

"this jurisdiction" means the ACT.

4.2A Amount payable under an insurance policy—sch 4

In this schedule:

"amount payable", under an insurance policy in relation to an occupational liability, includes—

- (a) defence costs payable in relation to a claim, or notification that may lead to a claim (other than reimbursement of the defendant for time spent in relation to the claim), but only if the costs are payable out of the one sum insured under the policy in relation to the occupational liability; and
- (b) the amount payable under or in relation to the policy by way of excess.

Part 4.2 Limitation of liability

Division 4.2.1 Making, amendment and revocation of schemes

4.4 Preparation and approval of schemes

- (1) An occupational association may prepare a scheme.
- (2) The council may, on the application of an occupational association, prepare a scheme.
- (3) The council may, on the application of an occupational association, approve a scheme prepared under this section.
- (4) A scheme prepared under this section may indicate an intention to operate as a scheme of this jurisdiction only, or of both this jurisdiction and another jurisdiction.

4.5 Public notification of schemes

- (1) Before approving a scheme, the council must publish a notice in a daily newspaper—
 - (a) explaining the nature and significance of the scheme; and
 - (b) stating where a copy of the scheme can be obtained or inspected; and
 - (c) inviting comments and submissions within a stated time, but at least 21 days after the day the notice is published.

- (2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the council must also publish a similar notice in the other jurisdiction in accordance with the requirements of the corresponding law of that jurisdiction that relates to the approval of a scheme prepared in that jurisdiction.

4.13 Review of schemes

- (1) The Minister may direct the council to review the operation of a scheme.
- (2) The council must comply with a direction under subsection (1), but may on its own initiative review the operation of a scheme at any time (whether before or after the scheme ceases to have effect).
- (3) A review may, but need not, be conducted to decide—
 - (a) for a scheme prepared under this schedule—whether the scheme should be amended or revoked or whether a new scheme should be made; or
 - (b) for an interstate scheme—whether the operation of the scheme should be ended in relation to this jurisdiction.

4.14 Amendment and revocation of schemes

- (1) An occupational association may prepare an instrument amending or revoking a scheme that relates to its members.

Division 4.2.2 Content of schemes

4.15 People to whom scheme applies

- (1) A scheme may provide that it applies to—
 - (a) everyone within an occupational association; or
 - (b) a stated class or classes of people within an occupational association.
- (2) A scheme applying in relation to an occupational association may provide that the occupational association may, on application by a person, exempt the person from the scheme.

4.17 Limitation of liability by insurance arrangements

A person to whom a scheme applies, and against whom a proceeding relating to occupational liability is brought, is not liable in damages in relation to the cause of action above the monetary ceiling if the person can satisfy the court that—

- (a) the person has the benefit of an insurance policy insuring the person against the occupational liability to which the cause of action relates; and
- (b) the amount payable under the policy for the occupational liability is at least the amount of the monetary ceiling stated in the scheme in relation to the class of person and the kind of work to which the cause of action relates.

4.22 Amount below which liability may not be limited

- (1) A scheme may affect the liability for damages arising from a single cause of action only to the extent that the liability results in damages exceeding an amount (at least \$500 000) decided by the council and stated in the scheme.
- (2) In making a decision, the council must consider—
 - (a) the number and amounts of claims made against people within the occupational association concerned; and
 - (b) the need to adequately protect consumers.
- (3) A council decision—
 - (a) takes effect when an amendment of the scheme giving effect to the decision takes effect; and
 - (b) applies only to a cause of action that arises after the decision takes effect.

4.22A Liability in damages not reduced to below relevant limit

The liability in damages of a person to whom a scheme applies is not reduced below the relevant limitation imposed by a scheme in force under this schedule because the amount available to be paid to the claimant under the insurance policy required for this schedule for the liability is less than the relevant limitation.

Division 4.2.3 Effect of schemes

4.24 Limit of occupational liability by schemes

- (1) To the extent provided under this schedule and the provisions of the scheme, a scheme limits the occupational liability of a person in relation to a cause of action based on an act or omission if the scheme applied to the person when the act or omission happened.
- (2) The limitation of liability applying to the cause of action is the limitation provided under the scheme when the act or omission giving rise to the cause of action concerned happened.

4.25 Limitation of amount of damages

- (1) A limitation under a scheme of an amount of damages is a limitation of the amount of damages that may be awarded for a single claim and is not a limitation of the amount of damages that may be awarded for all claims arising out of the same act or omission.

4.28 Duration of scheme

- (1) A scheme must state a period of not longer than 5 years that it is to remain in force after its commencement.

Part 4.3 Compulsory insurance

4.30 Occupational association may require members to insure

- (1) An occupational association may require its members to hold insurance against occupational liability.
- (3) The occupational association may set the standards with which the insurance must comply.
- (4) The occupational association may set different standards of insurance for different classes of members.
- (5) The standards are in addition to other statutory requirements and must not be inconsistent with them.

Part 4.4 Risk management

4.32 Risk management strategies by occupational associations

- (1) If an occupational association seeks the council's approval of a scheme under section 4.4 (Preparation of schemes and recommendation by council), it must give the council—
 - (a) a detailed list of the risk management strategies it intends to implement for its members; and

Part 4.5 Complaints and disciplinary matters

4.35 Complaints and Discipline Code

- (1) A scheme may adopt the provisions of the model code set out in schedule 5 with any changes recommended by the council.
- (2) The changes may include provisions for the making and deciding of complaints and the imposition and enforcement of disciplinary measures against members of an occupational association, including (but not limited to) the following:

Part 4.6 Professional standards council

Division 4.6.1 Establishment and functions of council

4.36 The council

- (1) The Professional Standards Council (the *council*) is established.
- (2) The council—
 - (a) is a corporation; and
 - (b) must have a seal.

4.37 Functions of council

- (1) The council has the following functions:
 - (a) to give advice to the Minister about—
 - (i) giving notice of the approval of schemes, and their amendment and revocation; and
 - (ii) the operation of this schedule; and

- (iii) anything else relating to the occupational liability of members of occupational associations;
- (b) to give advice to occupational associations about policies of insurance for part 4.2 (Limitation of liability);
- (c) to encourage and assist in the improvement of occupational standards of members of occupational associations;
- (d) to encourage and assist in the development of self-regulation of occupational associations, including giving advice and assistance about the following:
 - (i) codes of ethics;
 - (ii) codes of practice;
 - (iii) quality management;
 - (iv) risk management;
 - (v) resolution of complaints by clients;
 - (vi) voluntary mediation services;
 - (vii) membership requirements;
 - (viii) discipline of members;
 - (ix) continuing occupational education;
- (e) to monitor the occupational standards of members of occupational groups;
- (f) to monitor the compliance by an occupational association with its risk management strategies;
- (g) to publish advice and information about the matters mentioned in this subsection;
- (h) to conduct forums, approved by the Minister, on issues of interest to members of occupational groups;
- (i) to collect, analyse and provide the Minister with information on issues and policies about the standards of occupational groups;
- (j) any other functions given to it under this schedule, under any other territory law, or under the law of another jurisdiction.

- (2) The council is not authorised to give advice about occupational standards prescribed under another Act or statutory instrument.
- (3) Any advice given to the Minister by the council may be given with or without a request of the Minister.

Division 4.6.2 Membership of council

4.38 Membership of council

The council is to consist of 11 people appointed by the Minister who have the experience, skills and qualifications the Minister considers appropriate to enable them to make a contribution to the work of the council.

4.41 Term of appointment

A member is to be appointed for not longer than 3 years.

4.42 Allowances of members

A member is entitled to be paid the allowances decided by the Minister.

Schedule 5 Occupational associations—model code

Model code

5.1 Name of code

This code is the Occupational Associations (Complaints and Discipline) Code.

5.2 Meaning of *council*

In this code:

"council" means the Professional Standards Council established under the *Civil Law (Wrongs) Act 2002*, schedule 4.

5.3 What actions may be the subject of a complaint?

- (1) A complaint may be made that a member of the occupational association has acted (or has failed to act) in such a way as to justify the taking of disciplinary action against the member under this code.
- (2) A complaint may be made and dealt with even though the person about whom it is made has ceased to be a member.

5.4 Who may make a complaint?

Any person may make a complaint (including the occupational association and the council).

5.5 How is a complaint made?

- (1) A complaint may be made to the occupational association.
- (2) The complaint must be in writing and contain the particulars of the allegations on which it is founded.
- (3) The occupational association must notify the council of each complaint made to it (other than a complaint made by the council).

5.6 What happens after a complaint is made?

- (1) The occupational association must consider a complaint as soon as practicable after the complaint is made to it or notified to it by the council.
- (2) The association may do any 1 or more of the following:
 - (a) require the complainant to provide further particulars of the complaint;
 - (b) carry out an investigation into the complaint;
 - (c) attempt to resolve the complaint by conciliation;
 - (d) decline to consider the complaint (because, for example, the complaint is frivolous, vexatious, misconceived or lacking in substance);
 - (e) conduct a hearing into the complaint.

Note An example is part of the code, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The occupational association is bound by the rules of natural justice in conducting a hearing into the complaint.

5.7 What action may be taken after a hearing into a complaint?

- (1) After an occupational association has conducted a hearing into a complaint against a person, it may, if it finds the complaint substantiated, do any 1 or more of the following:
 - (a) caution or reprimand the person;

- (b) impose conditions relating to the carrying out of the person's occupation;
 - (c) require the person to complete specified courses of training or instruction;
 - (d) require the person to report about the carrying out of the person's occupation at the times, in the way and to the people specified by the association;
 - (e) order the person to obtain advice about the carrying out of the person's occupation from the people specified by the association;
 - (f) expel the person from membership of the association.
- (2) If the association does not find the complaint substantiated, it must dismiss the complaint.
- (3) The association is not entitled to make an award of compensation.

5.8 Notices of decisions

- (1) Within 30 days after the day a decision is made by an occupational association about a complaint, the complainant and the person against whom the complaint is made must be given a written statement of the decision.
- (2) The statement must include the reasons for the decision.

5.9 What rights of representation do parties to a complaint have?

The complainant and the person about whom the complaint is made are not entitled to legal representation during attempts to resolve the complaint by conciliation but are entitled to legal representation during a hearing into the complaint.

5.10 How may occupational association's functions under code be exercised?

A function of an occupational association under this code may, in accordance with a resolution of the association, be exercised by the executive body of the association or by a person or people appointed for the purpose by the executive body.

5.11 Protection from liability

- (1) A member of the executive body of an occupational association, or anyone acting in accordance with a resolution of the association, is not personally liable for anything done or omitted to be done honestly—
- (a) in the exercise of a function under this schedule; or

- (b) in the reasonable belief that the act or omission was in the exercise of a function under this schedule.
- (3) Any liability that, apart from subsection (1), would attach to a person attaches instead to the council.

Excerpts for psychiatrists

Regarding

the Commonwealth Safety, Rehabilitation and Compensation Act 1988

SAFETY, REHABILITATION AND COMPENSATION ACT 1988 - SECT 4

Interpretation

"aggravation" includes acceleration or recurrence.

"ailment" means any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development).

"approved Guide" means:

- (a) the document, prepared by Comcare in accordance with section 28 under the title "Guide to the Assessment of the Degree of Permanent Impairment", that has been approved by the Minister and is for the time being in force; and
- (b) if an instrument varying the document has been approved by the Minister--that document as so varied.

"compensation leave" means any period during which an employee is absent from his or her employment due to an incapacity for work resulting from an injury in respect of which compensation is payable under section 19 or 22.

"damages" includes any amount paid under a compromise or settlement of a claim for damages, whether or not legal proceedings have been instituted, but does not include an amount paid in respect of costs incurred in connection with legal proceedings.

"Defence Department" has the meaning given by the MRCA.

"disease" has the meaning given by section 5B.

"impairment" means the loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function.

"injury" has the meaning given by section 5A.

"medical treatment" means (amongst other sections):

- (e) an examination, test or analysis carried out on, or in relation to, an employee at the request or direction of a legally qualified medical practitioner or dentist and the provision of a report in respect of such an examination, test or analysis.

"MRCA" means the Military Rehabilitation and Compensation Act 2004 .

"non-economic loss" , in relation to an employee who has suffered an injury resulting in a permanent impairment, means loss or damage of a non-economic kind suffered by the employee (including pain and suffering, a loss of expectation of life or a loss of the amenities or enjoyment of life) as a result of that injury or impairment and of which the employee is aware.

"normal weekly earnings" means the normal weekly earnings of an employee calculated under section 8.

"permanent" means likely to continue indefinitely.

"significant degree" has the meaning given by subsection 5B(3).

"suitable employment" , in relation to an employee who has suffered an injury in respect of which compensation is payable under this Act, means:

- (a) in the case of an employee who was a permanent employee of the Commonwealth or a licensee on the day on which he or she was injured and who continues to be so employed--employment by the Commonwealth or the licensed corporation, as the case may be in work for which the employee is suited having regard to:
- (i) the employee's age, experience, training, language and other skills;
 - (ii) the employee's suitability for rehabilitation or vocational retraining;
 - (iii) where employment is available in a place that would require the employee to change his or her place of residence--whether it is reasonable to expect the employee to change his or her place of residence; and
 - (iv) any other relevant matter; and
- (b) in any other case--any employment (including self-employment), having regard to the matters specified in subparagraphs (a)(i), (ii), (iii) and (iv).
"therapeutic treatment" includes an examination, test or analysis done for the purpose of diagnosing, or treatment given for the purpose of alleviating, an injury.
- (3) For the purposes of this Act, any physical or mental injury or ailment suffered by an employee as a result of medical treatment of an injury shall be taken to be an injury if, but only if:
- (a) compensation is payable under this Act in respect of the injury for which the medical treatment was obtained; and
 - (b) it was reasonable for the employee to have obtained that medical treatment in the circumstances.
- Note:* However, members of the Defence Force with service after the MRC commencement date might be taken not to have suffered a physical or mental injury or ailment (see section 4AA and subsection 6A(2A)).
- (8) A reference in this Act to an injury suffered by an employee is, unless the contrary intention appears, a reference to an injury suffered by the employee in respect of which compensation is payable under this Act.
- (9) A reference in this Act to an incapacity for work is a reference to an incapacity suffered by an employee as a result of an injury, being:
- (a) an incapacity to engage in any work; or
 - (b) an incapacity to engage in work at the same level at which he or she was engaged by the Commonwealth or a licensed corporation in that work or any other work immediately before the injury happened.

SECT 5A

Definition of injury

- (1) In this Act:
"injury" means:
- (a) a disease suffered by an employee; or
 - (b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment; or

- (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (who suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.
- (2) For the purposes of subsection (1) and without limiting that subsection, reasonable administrative action is taken to include the following:
 - (a) a reasonable appraisal of the employee's performance;
 - (b) a reasonable counselling action (whether formal or informal) taken in respect of the employee's employment;
 - (c) a reasonable suspension action in respect of the employee's employment;
 - (d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee's employment;
 - (e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c) or (d);
 - (f) anything reasonable done in connection with the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment.

SECT 5B

Definition of disease

- (1) In this Act:
 - "disease" means:
 - (a) an ailment suffered by an employee; or
 - (b) an aggravation of such an ailment; that was contributed to, to a significant degree, by the employee's employment by the Commonwealth or a licensee.
- (2) In determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee's employment by the Commonwealth or a licensee, the following matters may be taken into account:
 - (a) the duration of the employment;
 - (b) the nature of, and particular tasks involved in, the employment;
 - (c) any predisposition of the employee to the ailment or aggravation;
 - (d) any activities of the employee not related to the employment;
 - (e) any other matters affecting the employee's health.

This subsection does not limit the matters that may be taken into account.
- (3) In this Act:
 - "significant degree" means a degree that is substantially more than material.

SECT 7

Provisions relating to diseases

- (1) Where:
 - (a) an employee has suffered, or is suffering, from a disease or the death of an employee results from a disease;
 - (b) the disease is of a kind specified by the Minister, by legislative instrument, as a disease related to employment of a kind specified in the instrument; and

- (c) the employee was, at any time before symptoms of the disease first became apparent, engaged by the Commonwealth or a licensed corporation in employment of that kind; the employment in which the employee was so engaged shall, for the purposes of this Act, be taken to have contributed, to a significant degree, to the contraction of the disease, unless the contrary is established.
- (2) Where an employee contracts a disease, any employment in which he or she was engaged by the Commonwealth or a licensed corporation at any time before symptoms of the disease first became apparent shall, unless the contrary is established, be taken, for the purposes of this Act, to have contributed, to a significant degree, to the contraction of the disease if the incidence of that disease among persons who have engaged in such employment is significantly greater than the incidence of the disease among persons who have engaged in other employment in the place where the employee is ordinarily employed.
- (3) Where an employee suffers an aggravation of a disease, any employment in which he or she was engaged by the Commonwealth or a licensed corporation at any time before symptoms of the aggravation first became apparent shall, unless the contrary is established, be taken, for the purposes of this Act, to have contributed, to a significant degree, to the aggravation if the incidence of the aggravation of that disease among persons suffering from it who have engaged in such employment is significantly greater than the incidence of the aggravation of that disease among persons suffering from it who have engaged in other employment in the place where the employee was ordinarily employed.
- (4) For the purposes of this Act, an employee shall be taken to have sustained an injury, being a disease, or an aggravation of a disease, on the day when:
- (a) the employee first sought medical treatment for the disease, or aggravation; or
 - (b) the disease or aggravation resulted in the death of the employee or first resulted in the incapacity for work, or impairment of the employee; whichever happens first.
- (5) The death of an employee shall be taken, for the purposes of this Act, to have resulted from a disease or an aggravation of a disease, if, but for that disease or aggravation, as the case may be, the death of the employee would have occurred at a significantly later time.
- (6) An incapacity for work or impairment of an employee shall be taken, for the purposes of this Act, to have resulted from a disease, or an aggravation of a disease, if, but for that disease or aggravation, as the case may be:
- (a) the incapacity or impairment would not have occurred;
 - (b) the incapacity would have commenced, or the impairment would have occurred, at a significantly later time; or
 - (c) the extent of the incapacity or impairment would have been significantly less.
- (7) A disease suffered by an employee, or an aggravation of such a disease, shall not be taken to be an injury to the employee for the purposes of this Act if the employee has at any time, for purposes connected with his or her employment or proposed employment by the Commonwealth or a licensed corporation, made a wilful and false representation that he or she did not suffer, or had not previously suffered, from that disease.

SECT 10
Recovery of damages

For the purposes of this Act, damages shall be taken to have been recovered by an employee, or by or for the benefit of a dependant of a deceased employee, when the amount of the damages was paid to or for the benefit of the employee or dependant, as the case may be.

SECT 14
Compensation for injuries

- (1) Subject to this Part, Comcare is liable to pay compensation in accordance with this Act in respect of an injury suffered by an employee if the injury results in death, incapacity for work, or impairment.
- (2) Compensation is not payable in respect of an injury that is intentionally self-inflicted.
- (3) Compensation is not payable in respect of an injury that is caused by the serious and wilful misconduct of the employee but is not intentionally self-inflicted, unless the injury results in death, or serious and permanent impairment.

SECT 19
Compensation for injuries resulting in incapacity

- (1) This section applies to an employee who is incapacitated for work as a result of an injury, other than an employee to whom section 20, 21, 21A or 22 applies.
- (2) Subject to this Part, Comcare is liable to pay to the employee in respect of the injury, for each week that is a maximum rate compensation week during which the employee is incapacitated.

SECT 24
Compensation for injuries resulting in permanent impairment

- (1) Where an injury to an employee results in a permanent impairment, Comcare is liable to pay compensation to the employee in respect of the injury.
- (2) For the purpose of determining whether an impairment is permanent, Comcare shall have regard to:
 - (a) the duration of the impairment;
 - (b) the likelihood of improvement in the employee's condition;
 - (c) whether the employee has undertaken all reasonable rehabilitative treatment for the impairment; and
 - (d) any other relevant matters.
- (3) Subject to this section, the amount of compensation payable to the employee is such amount, as is assessed by Comcare under subsection (4), being an amount not exceeding the maximum amount at the date of the assessment.
- (4) The amount assessed by Comcare shall be an amount that is the same percentage of the maximum amount as the percentage determined by Comcare under subsection (5).
- (5) Comcare shall determine the degree of permanent impairment of the employee resulting from an injury under the provisions of the approved Guide.

- (6) The degree of permanent impairment shall be expressed as a percentage.
- (9) For the purposes of this section, the maximum amount is \$80,000.

SECT 25

Interim payment of compensation

(1) Where Comcare:

- (a) makes a determination that an employee is suffering from a permanent impairment as a result of an injury; and
- (b) is satisfied that the degree of the impairment is equal to or more than 10% but has not made a final determination of the degree of impairment; Comcare shall, on the written request of the employee made at any time before the final determination is made, make an interim determination of the degree of permanent impairment under section 24 and assess an amount of compensation payable to the employee.

(2) The amount assessed by Comcare under subsection (1) shall be an amount that is the same percentage of the maximum amount specified in subsection 24(9) as the percentage determined by Comcare under subsection (1) to be the degree of permanent impairment of the employee.

(3) Where, after an amount of compensation has been paid to an employee following the making of an interim determination, Comcare makes a final determination of the degree of permanent impairment of the employee, there is payable to the employee an amount equal to the difference (if any) between the amount payable under section 24 on the making of the final determination and the amount paid to the employee under this section.

(4) Where Comcare has made a final assessment of the degree of permanent impairment of an employee (other than a hearing loss), no further amounts of compensation shall be payable to the employee in respect of a subsequent increase in the degree of impairment, unless the increase is 10% or more.

SECT 27

Compensation for non-economic loss

(1) Where an injury to an employee results in a permanent impairment and compensation is payable in respect of the injury under section 24, Comcare is liable to pay additional compensation in accordance with this section to the employee in respect of that injury for any non-economic loss suffered by the employee as a result of that injury or impairment.

(2) The amount of compensation is an amount assessed by Comcare under the formula:

$$(\$15,000 \times A) + (\$15,000 \times B)$$

where:

"A" is the percentage finally determined by Comcare under section 24 to be the degree of permanent impairment of the employee; and

"B" is the percentage determined by Comcare under the approved Guide to be the degree of non-economic loss suffered by the employee.

(3) This section does not apply in relation to a permanent impairment commencing before 1 December 1988 unless an application for compensation for non-economic loss in relation to that impairment has been made before the date of introduction of the Bill for the Act that inserted this subsection.

SECT 28

Approved Guide

- (1) Comcare may, from time to time, prepare a written document, to be called the "Guide to the Assessment of the Degree of Permanent Impairment", setting out:
- (a) criteria by reference to which the degree of the permanent impairment of an employee resulting from an injury shall be determined;
 - (b) criteria by reference to which the degree of non-economic loss suffered by an employee as a result of an injury or impairment shall be determined; and
 - (c) methods by which the degree of permanent impairment and the degree of non-economic loss, as determined under those criteria, shall be expressed as a percentage.
- (2) Comcare may, from time to time, by instrument in writing, vary or revoke the approved Guide.
- (3) A Guide prepared under subsection (1), and a variation or revocation under subsection (2) of such a Guide, must be approved by the Minister.
- (3A) A Guide prepared under subsection (1), and a variation or revocation under subsection (2) of such a Guide, is a legislative instrument made by the Minister on the day on which the Guide, or variation or revocation, is approved by the Minister.
- (4) Where Comcare, a licensee or the Administrative Appeals Tribunal is required to assess or re-assess, or review the assessment or re-assessment of, the degree of permanent impairment of an employee resulting from an injury, or the degree of non-economic loss suffered by an employee, the provisions of the approved Guide are binding on Comcare, the licensee or the Administrative Appeals Tribunal, as the case may be, in the carrying out of that assessment, re-assessment or review, and the assessment, re-assessment or review shall be made under the relevant provisions of the approved Guide.
- (5) The percentage of permanent impairment or non-economic loss suffered by an employee as a result of an injury ascertained under the methods referred to in paragraph (1)(c) may be 0%.
- (6) In preparing criteria for the purposes of paragraphs (1)(a) and (b), or in varying those criteria, Comcare shall have regard to medical opinion concerning the nature and effect (including possible effect) of the injury and the extent (if any) to which impairment resulting from the injury, or non-economic loss resulting from the injury or impairment, may reasonably be capable of being reduced or removed.
- (8) Comcare shall make copies of the "Guide to the Assessment of the Degree of Permanent Impairment" that has been approved by the Minister, and of any variation of that Guide that has been so approved, available upon application by a person and payment of the prescribed fee (if any).

SECT 57

Power to require medical examination

- (1) Where:
- (a) a notice has been given to a relevant authority under section 53 in relation to an employee; or
 - (b) an employee has made a claim for compensation under section 54;
- the relevant authority may require the employee to undergo an examination by one legally qualified medical practitioner nominated by the relevant authority.

(2) Where an employee refuses or fails, without reasonable excuse, to undergo an examination, or in any way obstructs an examination, the employee's rights to compensation under this Act, and to institute or continue any proceedings under this Act in relation to compensation, are suspended until the examination takes place.

(3) The relevant authority shall pay the cost of conducting any examination required under this section and is liable to pay to the employee an amount equal to the amount of the expenditure reasonably incurred by the employee in making a necessary journey in connection with the examination or remaining, for the purpose of the examination, at a place to which the employee has made a journey for that purpose.

(4) The matters to which the relevant authority is to have regard in deciding questions arising under subsection (3) include:

(a) the means of transport available to the employee for the journey;

(b) the route or routes by which the employee could have travelled; and

(c) the accommodation available to the employee.

(5) Where an employee's right to compensation is suspended under subsection (2), compensation is not payable in respect of the period of the suspension.

(6) An employee shall not be required to undergo an examination under this section at more frequent intervals than are specified by the Minister by legislative instrument.

PART VIII--LICENCES TO ENABLE COMMONWEALTH AUTHORITIES AND CERTAIN CORPORATIONS TO ACCEPT LIABILITY FOR, AND/OR MANAGE, CLAIMS SECT 98A

Outline of Part

(1) This Part enables the Commission to grant licences to Commonwealth authorities or eligible corporations.

(2) If a licence is granted to a Commonwealth authority, this Act continues to apply in relation to employees of the authority but, depending on the scope of the licence, the application of this Act is subject to either or both of the following:

(a) the acceptance by the authority of the whole or a part of the liability under this Act for payments in respect of injury, loss or damage suffered by, or the death of, some or all of its employees;

(b) the acceptance by the authority of the responsibility for managing certain claims under this Act in respect of injury, loss or damage suffered by, or the death of, some or all of its employees.

(3) If a licence is granted to an eligible corporation, this Act applies in relation to some or all of the employees of the corporation in a similar way to the way in which it applies to employees of the Commonwealth but the application is subject to:

(a) the acceptance by the corporation of the whole or a part of the liability under this Act for payments in respect of injury, loss or damage suffered by, or the death of, those employees; and

(b) the acceptance by the corporation of the function of managing claims under this Act in respect of that injury, loss, damage or death.

(4) If a licence is granted to a Commonwealth authority or to a corporation, the application of this Act is also subject to the conditions to which the licence is subject.

SECT 100

Minister may declare a corporation eligible to be granted a licence under this Part

(1) If the Minister is satisfied that it would be desirable for this Act to apply to employees of a corporation that:

- (a) is, but is about to cease to be, a Commonwealth authority; or
- (b) was previously a Commonwealth authority; or
- (c) is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority; the Minister may, by legislative instrument, declare the corporation to be eligible to be granted a licence under this Part.

(3) However, the Minister is not required to consider a request for a declaration under subsection(1).

Guide to the assessment of the degree of permanent impairment

Edition 2.1

Introduction to Edition 2.1 of the Guide

1. Impairment and non-economic loss

Under subsection 4(1) of the SRC Act, impairment means ‘the loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function’. It relates to the health status of an individual and includes anatomical loss, anatomical abnormality, physiological abnormality, and psychological abnormality. The degree of impairment is assessed by reference to the impact of that loss by reference to the functional capacities of a normal healthy person.

Non-economic loss is assessed in accordance with Part 1, Division 2 (see page 221) of this guide, and deals with the effects of the impairment on the employee’s life. Under subsection 4(1) of the SRC Act, for an employee who has suffered an injury resulting in a permanent impairment, it means: “loss or damage of a non-economic kind suffered by the employee (including pain and suffering, a loss of expectation of life or a loss of the amenities or enjoyment of life) as a result of that injury or impairment and of which the employee is aware”.

Non-economic loss may be characterised as the ‘lifestyle effects’ of an impairment. ‘Lifestyle effects’ are a measure of an individual’s mobility and enjoyment of, and participation in, social relationships, and recreation and leisure activities. The employee must be aware of the losses suffered. While employees may have equal ratings of whole person impairment it would not be unusual for them to receive different ratings for non-economic loss because of their different lifestyles.

3. Permanent impairment

Compensation is only payable for impairments which are permanent. Under subsection 4(1) of the SRC Act 'permanent' means 'likely to continue indefinitely'. Subsection 24(2) of the SRC Act provides that for the purposes of determining whether an impairment is permanent, the following matters shall be considered:

(a) the duration of the impairment

(b) the likelihood of improvement in the employee's condition

(c) whether the employee has undertaken all reasonable rehabilitative treatment for the impairment

(d) any other relevant matters.

Thus, a loss, loss of the use, damage, or malfunction, will be permanent if it is likely, in some degree, to continue indefinitely. For this purpose, regard shall be had to any medical opinion concerning the nature and effect (including possible effect) of the impairment, and the extent, if any, to which it may reasonably be capable of being reduced or removed.

4. Pre-existing conditions and aggravation

Where a pre-existing or underlying condition is aggravated by a work-related injury, only the impairment resulting from the aggravation is to be assessed. However, an assessment should not be made unless the effects of the aggravation of the underlying or pre-existing condition are considered permanent. In these situations, the pre-existing or underlying condition would usually have been symptomatic prior to the work-related injury and the degree of permanent impairment resulting from that condition is able to be accurately assessed.

If the employee's impairment is entirely attributable to the pre-existing or underlying condition, or to the natural progression of such a condition, the assessment for permanent impairment is nil.

Where the pre-existing or underlying condition was previously asymptomatic, all the permanent impairment arising from the work-related injury is compensable.

Glossary

Definitions in italics are from subsection 4(1) and 5A(1) and 5B(1) of the SRC Act.

Activities of daily living are those activities that an employee needs to perform to function in a non-specific environment (that is, to live). Performance of Activities of Daily Living is measured by reference to primary biological and psychosocial function.

Ailment means any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development).

Disease means:

- (a) an ailment suffered by an employee
- (b) an aggravation of such an ailment that was contributed to, to a significant degree, by the employee's employment by the Commonwealth or a licensee.

Impairment means the loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function.

Injury means:

- (a) a disease suffered by an employee
- (b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment
- (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee's employment), that is an aggravation that arose out of, or in the course of, that employment but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.

Loss of amenities means the effects on mobility, social relationships and recreation and leisure activities.

Non-economic loss in relation to an employee who has suffered an injury resulting in a permanent impairment, means loss or damage of a non-economic kind suffered by the employee (including pain and suffering, a loss of expectation of life or a loss of the amenities or enjoyment of life) as a result of that injury or impairment and of which the employee is aware.

Pain means physical pain.

Suffering means the mental distress resulting from the accepted conditions or impairment.

Chapter 5 - Psychiatric Conditions

5.0 Introduction

5.1 Psychiatric conditions

5.0 Introduction

In conducting an assessment, the assessor must have regard to the principles of assessment (see pages 23-26) and the definitions contained in the glossary (see pages 27-28).

For the purposes of Chapter 5, activities of daily living are those in Figure 5-A (see below). The examples provided below are not exhaustive and should not be seen as a substitute for assessor discretion when making decisions about impairment ratings.

Figure 5-A: Activities of daily living

Activity	Examples
Self care, personal hygiene	Bathing, grooming, dressing, eating, eliminating.
Communication	Hearing, speaking, reading, writing, using keyboard.
Physical activity	Standing, sitting, reclining, walking, stooping, squatting, kneeling, reaching, bending, twisting, leaning, carrying, lifting, pulling, pushing, climbing, exercising.
Sensory function	Tactile feeling.
Hand functions	Grasping, holding, pinching, percussive movements, sensory discrimination.
Travel	Driving or travelling as a passenger.
Sexual function	Participating in desired sexual activity.
Sleep	Having a restful sleep pattern.
Social and recreational	Participating in individual or group activities, sports activities, hobbies.

5.1 Psychiatric conditions

Table 5.1: Psychiatric conditions
(see note to Table 5.1 on following page)

% WPI	Description of level of impairment
0	Reactions to stresses of daily living without loss of personal or social efficiency and Capable of performing activities of daily living without supervision or assistance.
5	Despite the presence of one of the following employee is capable of performing activities of daily living without supervision or assistance: reactions to stresses of daily living with minor loss of personal or social efficiency · lack of conscience directed behaviour without harm to community or self · minor distortions of thinking.
10	Despite the presence of more than one of the following employee is capable of performing activities of daily living without supervision or assistance: reactions to stresses of daily living with minor loss of personal or social efficiency · lack of conscience directed behaviour without harm to community or self · minor distortions of thinking.
15	Any one of the following accompanied by a need for some supervision and direction in activities of daily living: reactions to stresses of daily living which cause modification to daily living patterns · marked disturbances in thinking · definite disturbance in behaviour.
20	Any two of the following accompanied by a need for some supervision and direction in activities of daily living: reactions to stresses of daily living which cause modification of daily living patterns · marked disturbance in thinking · definite disturbance in behaviour.
25	All of the following accompanied by a need for some supervision and direction in activities of daily living: reactions to stresses of daily living which cause modification of daily living patterns · marked disturbances in thinking · definite disturbances in behaviour.

30	<p>Any one of the following accompanied by a need for supervision and direction in activities of daily living: hospital discharges who require daily medication or regular therapy to avoid readmission loss of self-control and/or inability to learn from experience resulting in potential for considerable damage to self or community.</p>
40	<p>More than one of the following accompanied by a need for supervision and direction in activities of daily living: hospital discharges who require daily medication or regular therapy to avoid readmission loss of self-control and/or inability to learn from experience resulting in potential for considerable damage to self or community.</p>
50	<p>One of the following: severe disturbances of thinking and/or behaviour entailing potential or actual harm to self and/or others · need for supervision and direction in a confined environment.</p>
60	<p>Both of the following: severe disturbances of thinking and/or behaviour which entail potential or actual harm to self and/or others · need for supervision and direction in a confined environment.</p>
90	<p>Very severe disturbance in all aspects of thinking and behaviour requiring constant supervision and care in a confined environment, and assistance with all activities of daily living</p>

Notes to Table 5.1

2. Table 5.1 includes psychoses, neuroses, personality disorders and other diagnosable conditions. The assessment should be made on optimum medication at a stage where the condition is reasonably stable.
3. Supervision means the immediate presence of a suitable person, responsible in whole or in part for the care of the employee.
4. Assistance means the provision of assistance to the employee in performing the activities of daily living by a suitable person, responsible in whole or in part for the care of the employee
5. Direction means the provision of direction to the employee by a suitably qualified person, responsible in whole or in part for the care of the employee
6. Suitable person means a person capable of responsibly caring for the employee in an appropriate way
7. Suitably qualified person means a person with the necessary qualifications, experience and skills to provide appropriate direction to the employee. Such persons include medical practitioners, nursing staff and clinical psychologists.

Whole person impairment (or WPI) is the methodology used for expressing the degree of impairment of a person, resulting from an injury, as a percentage. WPI is based on the American Medical Association's Guides to the Evaluation of Permanent Impairment. WPI is a medical quantification of the nature and extent of the effect of an injury or disease on a person's functional capacity including Activities of Daily Living. This guide presents descriptions of impairments in chapters and tables according to body system. The extent of each impairment is expressed as a percentage value of the functional capacity of a normal healthy person.

**NEW SOUTH WALES WORKPLACE INJURY MANAGEMENT AND WORKERS
COMPENSATION ACT 1998 - SECT 119**

Medical examination of workers at direction of employer

119 Medical examination of workers at direction of employer

(cf former s 129)

- (1) A worker who has given notice of an injury must, if so required by the employer, submit himself or herself for examination by a medical practitioner, provided and paid by the employer.
- (2) A worker receiving weekly payments of compensation under this Act must, if so required by the employer, from time to time submit himself or herself for examination by a medical practitioner, provided and paid by the employer.
- (3) If a worker refuses to submit himself or herself for any examination under this section or in any way obstructs the examination:
 - (a) the worker's right to recover compensation under this Act with respect to the injury, or
 - (b) the worker's right to the weekly payments, is suspended until the examination has taken place.
- (4) A worker must not be required to submit himself or herself for examination by a medical practitioner under this section otherwise than in accordance with the WorkCover Guidelines or at more frequent intervals than may be prescribed by the WorkCover Guidelines.
- (5) The regulations may make provision for or with respect to requiring an employer or insurer to provide a worker, a worker's legal representative or any other person, within the period required by the regulations, with a copy of any medical opinion or report furnished to the employer or insurer by a medical practitioner in connection with an examination of the worker pursuant to a requirement under this section.
- (6) If an employer or insurer fails to provide a copy of an opinion or report as required by the regulations under subsection (5):
 - (a) the employer or insurer cannot use the opinion or report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the opinion or report for any other purpose prescribed by the regulations for the purposes of this section, and
 - (b) the opinion or report is not admissible in proceedings on such a dispute before the Commission, and
 - (c) the opinion or report may not be disclosed to an approved medical specialist or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

SECT 120

Medical examination of worker at direction of Commission

120 Medical examination of worker at direction of Commission

(cf former s 130)

- (1) The Commission or the Authority may, at any time or from time to time, require any worker:
 - (a) who claims compensation under this Act, or
 - (b) who is in receipt of weekly payments of compensation under this Act, to submit himself or herself for examination by an approved medical specialist on a date and at a place arranged by the Registrar.
- (2) If a worker refuses to submit himself or herself for any such examination or in any way obstructs the examination:
 - (a) the worker's right to recover compensation under this Act with respect to the injury, or
 - (b) the worker's right to weekly payments, is suspended until the examination has taken place.

SECT 121

Assessment of medical disputes by approved medical specialists

121 Assessment of medical disputes by approved medical specialists

- (1) In this section:

"approved medical specialist" means a medical practitioner who is on a list of medical practitioners approved from time to time by the Authority as approved medical specialists for the purposes of this section.

"medical dispute" means a disagreement between a worker and the employer as to:

 - (a) the worker's condition, or
 - (b) the worker's fitness for employment, but does not include a medical dispute concerning the extent of a loss, or further loss, of hearing due to boilermaker's deafness or any deafness of similar origin.

Note: See section 72 of the 1987 Act which requires a dispute concerning the extent of any such deafness to be referred to a medical panel under section 122.

- (2) A worker or employer can refer a medical dispute for assessment to:
 - (a) an approved medical specialist agreed to by the worker and employer,
 - (b) an approved medical specialist nominated by the Principal Conciliator if the worker and employer are not able to agree on the matter.

The worker and the employer can agree that some or all of the approved medical specialist's findings on the dispute are to be binding on them for the purposes of the worker's claim for compensation.

- (3) The approved medical specialist is to make an assessment of a dispute referred under this section and:
 - (a) make findings on the dispute as required by the terms of reference, and
 - (b) give a certificate as to those findings.

- (4) The certificate is, in any proceedings:
 - (a) conclusive evidence of those matters certified on which the parties agreed to be bound, and
 - (b) prima facie evidence of any other matters certified.
- (5) The fact that court proceedings have been commenced in respect of a claim for compensation does not affect the operation of this section in respect of a medical dispute concerning the claim, except as provided by subsections (6) and (7).
- (6) If a medical dispute is referred under this section after the commencement of court proceedings in respect of the compensation to which the referral relates, subsection (4) (a) does not apply to any certificate issued as a result of the referral unless the worker and the employer agree that subsection (4) (a) is to apply.
- (7) Once the hearing (or part of the hearing) of court proceedings that deals with a medical dispute has commenced, a medical dispute relating to the proceedings may not be referred under this section unless the other party consents or the court grants leave.
- (8) An approved medical specialist is competent to give evidence as to matters in a certificate given by the specialist under this section, but the specialist may not be compelled to give any such evidence.
- (9) A worker or employer who is a party to an agreement under this section may apply to the Authority for registration of the agreement and any certificate given under this section, and the Authority is to register the agreement and certificate. The Authority is to provide the Compensation Court with a copy of the agreements and certificates that are registered by the Authority under this section.
- (10) The regulations may make provision for or with respect to the approval of medical practitioners for the purposes of this section and the referral of medical disputes to approved medical specialists for the purposes of this section.
- (11) An approved medical specialist may:
 - (a) consult with any medical practitioner who is treating or has treated the worker in connection with the worker's claim, and
 - (b) call for the production of such medical records (including X-rays and the results of other tests) and other information as the approved medical specialist considers necessary or desirable for the purposes of the fair and proper consideration of the matter.
- (12) If a worker refuses to submit himself or herself for examination by the approved medical specialist to whom the medical dispute has been referred if required to do so, or in any way obstructs the examination:
 - (a) the worker's right to recover compensation under this Act with respect to the injury, or
 - (b) the worker's right to weekly payments, is suspended until the examination has taken place.
- (13) The fees of the approved medical specialist to whom a medical dispute is referred under this section are to be paid by the employer.

SECT 122

Referral of medical disputes to referee or panel on application of worker or employer

122 Referral of medical disputes to referee or panel on application of worker or employer

(cf former s 131)

(1) In this section:

"medical dispute" means a disagreement between a worker and the employer as to:

- (a) the worker's condition, or
 - (b) the worker's fitness for employment.
- (2) If there is a medical dispute, the registrar of the Compensation Court must, on the application of either the worker or the employer, refer the medical dispute to a medical panel or (if subsection (3) permits) to a medical referee, but only if:
- (a) the worker has submitted himself or herself for examination by a medical practitioner in accordance with a requirement of the employer under section 119 or has been examined by a medical practitioner selected by the worker, and
 - (b) the employer or worker (as the case may be) has furnished the other with a copy of the medical practitioner's report of the examination (being a report relevant to the medical dispute).
- (3) A medical dispute can be referred under this section to a medical referee only if the registrar is satisfied that it is not reasonably practicable in the circumstances to constitute a medical panel. A medical dispute must not in any circumstances be referred to a medical referee if the dispute concerns the extent of a loss, or a further loss, of hearing due to boilermaker's deafness or any deafness of similar origin.
- (4) The registrar of the Compensation Court may refuse to refer any such medical dispute to a medical referee or medical panel if the medical practitioner's report was not furnished to the other party within 30 days (or such longer period as the worker and the employer may agree) after it was received from the medical practitioner or within such longer period as the registrar of the Compensation Court, in the circumstances of the case, considers justified.
- (5) The medical referee or medical panel to whom a medical dispute is so referred is to give a certificate as to:
- (a) the worker's condition, or
 - (b) the worker's fitness for employment (specifying, where necessary, the kind of employment for which the worker is fit).
- (6) Any such certificate of a medical panel is conclusive evidence as to the matters certified, except in relation to the following:
- (a) the fitness of the worker for employment,
 - (b) the question of whether any of the following losses or impairments exist and, if so, the nature and extent of the loss or impairment:
 - (i) the loss of the sense of taste or smell,
 - (ii) the loss of sexual organs,
 - (iii) permanent brain damage,
 - (iv) the impairment of the back, neck or pelvis,
 - (v) any loss or impairment added to the Table to Division 4 of Part 3 of the 1987 Act by the regulations.

- (7) The fact that court proceedings have been commenced in respect of a claim for compensation does not affect the operation of this section in respect of a medical dispute concerning the claim, except as provided by subsections (8) and (9).
- (8) If an application for referral of a medical dispute is made under this section after the commencement of court proceedings in respect of the compensation to which the application relates, subsection (6) does not apply to any certificate issued on the application unless:
 - (a) the dispute concerns the extent of a loss, or further loss, of hearing due to boilermaker's deafness or any deafness of similar origin, or
 - (b) the dispute concerns compensation that is the subject of proceedings by reason of the amendment of a claim as referred to in section 102 (5), or
 - (c) the worker and the employer agree that subsection (6) is to apply.
- (9) Once the hearing (or part of the hearing) of court proceedings that deals with a medical dispute has commenced, an application may not be made under this section in respect of the medical dispute concerned unless the other party consents or the Compensation Court grants leave.
- (10) A medical panel or medical referee may call for the production of such medical records (including X-rays and the results of other tests) and other information as the panel or referee considers necessary or desirable for the purposes of the fair and proper consideration of the matter.
- (11) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical referee or medical panel to whom the medical dispute has been referred, or in any way obstructs the examination:
 - (a) the worker's right to recover compensation under this Act with respect to the injury, or
 - (b) the worker's right to weekly payments, is suspended until the examination has taken place.
- (12) If there is a disagreement between a worker and the employer as to whether or to what extent the incapacity of the worker is due to the injury, this section applies (subject to the regulations) as if the question were one as to the condition of the worker.
- (13) The rules of the Compensation Court may make provision for or with respect to:
 - (a) applications and certificates under this section, and
 - (b) the application of this section for the purposes of subsection (12).

SECT 123

Reference of medical disputes by Principal Conciliator

123 Reference of medical disputes by Principal Conciliator

(cf former s 131B)

- (1) When a medical dispute (as defined in section 122) is the subject of conciliation by a conciliator and concerns the compensation payable under section 66 of the 1987 Act, the Principal Conciliator may request the registrar of the Compensation Court to refer the dispute to a medical panel and the registrar is to refer the dispute accordingly.
- (2) The medical panel to whom a medical dispute is so referred is to give a certificate as to the worker's condition, in accordance with the terms of reference of the dispute.
- (3) The certificate of the medical panel is, in any proceedings, evidence (but not conclusive evidence) as to the matters certified.
- (4) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical panel to whom the medical dispute has been referred, or in any way obstructs the examination:
 - (a) the worker's right to recover compensation under this Act with respect to the injury, or
 - (b) the worker's right to weekly payments, is suspended until the examination has taken place.

SECT 124

Submission by Court, conciliator etc of matters to medical referee or panel for report

124 Submission by Court, conciliator etc of matters to medical referee or panel for report

(cf former s 132 and s 20 (1) (c) *Compensation Court Act 1984*)

- (1) The Compensation Court or a conciliator may refer to a medical referee or medical panel for report any matter which appears to be relevant to any question arising in proceedings before the Compensation Court or the conciliator.
- (2) The Authority may refer to a medical referee or medical panel for report any matter which appears to be relevant to the exercise of its functions.
- (3) A medical referee or medical panel is to submit a report to the Compensation Court or the conciliator or the Authority in accordance with the terms of a reference under this section.

SECT 126

Copies of certain medical reports to be supplied to worker

126 Copies of certain medical reports to be supplied to worker

(cf former s 134)

(1) In this section:

"insurer" means a licensed insurer or a former licensed insurer.

"medical report", in relation to an injured worker, means a written report by:

- (a) a medical practitioner by whom the worker has been referred to another medical practitioner for treatment or tests related to the injury, or
 - (b) a medical practitioner who has treated the injury, or
 - (c) a medical practitioner who has been consulted by a medical practitioner referred to in paragraph (a) or (b) in connection with treatment of, or tests related to, the injury.
- (2) The regulations may make provision for or with respect to requiring an employer or insurer in possession of a medical report relating to an injured worker to provide a copy of the report to the worker, the worker's legal representative or any other person, if the worker's claim is disputed.
- (3) If an employer or insurer fails to provide a copy of a report as required by the regulations under subsection (2):
- (a) the employer or insurer cannot use the opinion or report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the report for any other purpose prescribed by the regulations for the purposes of this section, and
 - (b) the report is not admissible in proceedings on such a dispute before the Commission, and
 - (c) the report may not be disclosed to an approved medical specialist or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

SECT 127

Admissibility of medical reports

127 Admissibility of medical reports

- (1) A medical report is admissible in proceedings before the Commission.
- (2) Subsection (1) is subject to any provision of the regulations relating to the giving of notice of the admission of the medical report.
- (3) Subsection (1) is also subject to any provision of the regulations relating to the number of medical reports that may be admitted in connection with a claim or any aspect of a claim.
- (4) A medical practitioner whose medical report is admissible under subsection (1) may be required, in accordance with the regulations, to attend and be cross-examined on the contents of the report.

- (5) In proceedings relating to the making of an interim award, a medical practitioner whose medical report is admissible in evidence under subsection (1) may not be required to attend and be cross-examined on the contents of the report without the leave of the Commission given in any case where the Commission is satisfied there is a real issue as to whether the worker is entitled to receive compensation from any of the parties.
- (6) In this section, "medical report" means any written report of a medical practitioner relating to the worker.

SECT 128

Admissibility and evidentiary value of certificates and reports of medical referees and panels

128 Admissibility and evidentiary value of certificates and reports of medical referees and panels

(cf former s 136 and s 20 (2) *Compensation Court Act 1984*)

- (1) A certificate or report given by a medical referee or medical panel is admissible in evidence in any proceedings before the Compensation Court.
- (2) In any proceedings before the Compensation Court, a certificate or report given by a medical panel is to the extent that it relates to the worker's condition (and except to the extent that it is conclusive evidence under this Division) prima facie evidence of the matters in the certificate or report.
- (3) When a certificate or report given by a medical panel is admitted in evidence in proceedings before the Compensation Court no further evidence is to be admitted in the proceedings in respect of the matters of which the certificate or report is prima facie evidence, except with the leave of the Court.
- (4) A medical referee is competent to give evidence as to matters in a certificate or report given by the referee or by a medical panel of which the referee was a member, but the referee may not be compelled to give any such evidence.

SECT 129

Power to correct mistakes in medical reports or certificates

129 Power to correct mistakes in medical reports or certificates

(cf former s 136A)

- (1) A medical referee or medical panel may, of the referee's or panel's own motion or on the application of a party to proceedings (and without formally reconvening), correct a certificate or report given by the referee or panel if it contains:
 - (a) a clerical mistake, or
 - (b) an error arising from an accidental slip or omission, or
 - (c) a material miscalculation of figures or material mistake in the description of any person, thing or matter referred to in the certificate or report, or
 - (d) a defect of form.

- (2) This section applies to a medical certificate given by a medical specialist pursuant to section 121 as if the medical specialist were a medical referee.

SECT 130

Rules of Court and regulations with respect to medical evidence

130 Rules of Court and regulations with respect to medical evidence

(cf former s 137)

- (1) The rules of the Compensation Court and the regulations may make provision for or with respect to:
- (a) the disclosure, by the furnishing of copies of reports or otherwise, of the nature of the expert medical evidence to be given (including the exclusion of any such evidence for non-compliance with any requirement for the disclosure of the nature of the evidence), and
 - (b) the disclosure of medical reports (including X-rays and the results of other tests) to medical referees and medical panels (including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report), and
 - (b1) limiting the number of medical reports in connection with a claim or any aspect of a claim and, in particular:
 - (i) limiting the number of medical reports that may be produced in connection with the conciliation of a dispute, and
 - (ii) limiting the number of medical reports that may be admitted in evidence in proceedings before the Compensation Court, and
 - (iii) limiting the medical reports that may be so admitted in evidence to those produced in connection with the conciliation of the dispute concerned, and
 - (iv) excluding the costs of excess medical reports from the costs recoverable in connection with a claim (whether the reports were obtained for the purposes of making or dealing with a claim or for the purposes of conciliation or court proceedings), and
 - (c) limiting the number of medical witnesses that may be called by any party, and
 - (d) the manner of referring matters to a medical referee or medical panel for report.
- (2) This section only authorises rules of the Compensation Court in connection with proceedings before that Court or matters referred to a medical panel or medical referee.

SECT 293

Medical assessment

293 Medical assessment

- (1) When a dispute referred for determination by the Commission concerns a medical dispute within the meaning of Part 7, the Registrar may, in accordance with this section, refer the medical dispute for medical assessment under Part 7, and defer determination of the dispute by the Commission pending the outcome of that medical assessment.
- (2) If the dispute concerns the degree of permanent impairment (including hearing loss) of an injured worker, the Registrar must refer that aspect of the dispute for assessment under Part 7 and defer determination of the dispute by the Commission pending the outcome of that medical assessment.
- (3) The Registrar may not refer for assessment:
 - (a) a medical dispute concerning permanent impairment (including hearing loss) of an injured worker where liability is in issue and has not been determined by the Commission, or
 - (b) a medical dispute other than a dispute concerning permanent impairment (including hearing loss) of an injured worker, except when dealing with the dispute under Part 5 (Expedited assessment).

SECT 314

What constitutes threshold dispute

314 What constitutes threshold dispute

- (1) For the purposes of this Part, there is considered to be a dispute as to whether the degree of permanent impairment of the injured worker resulting from an injury is sufficient for an award of damages if:
 - (a) the person on whom the claim is made has not accepted that the degree of permanent impairment of the injured worker resulting from the injury is at least 15%, or
 - (b) there is a dispute as to whether the degree of permanent impairment resulting from the injury is fully ascertainable.

Note: Under section 322 (4), an approved medical specialist may decline to make an assessment of the degree of permanent impairment of an injured worker until satisfied that the degree of permanent impairment is fully ascertainable.

- (2) There is considered to be no dispute as to whether the degree of permanent impairment of the injured worker resulting from an injury is sufficient for an award of damages if:
 - (a) the person on whom the claim is made has accepted that the degree of permanent impairment of the injured worker is at least 15%, or
 - (b) an approved medical specialist has given a medical assessment certificate certifying that the degree of permanent impairment of the injured worker is at least 15%.
- (3) For the purposes of this Part, acceptance by the person on whom a claim for work injury damages is made of the degree of permanent impairment of the injured worker for the purposes of a claim against the person by the injured worker for permanent impairment compensation also constitutes acceptance of the degree of permanent impairment for the purposes of the claim for work injury damages.

SECT 319

Definitions

319 Definitions

In this Act:

"approved medical specialist" means a medical practitioner appointed under this Part as an approved medical specialist.

"medical dispute" means a dispute between a claimant and the person on whom a claim is made about any of the following matters or a question about any of the following matters in connection with a claim:

- (a) the worker's condition (including the worker's prognosis, the aetiology of the condition, and the treatment proposed or provided),
- (b) the worker's fitness for employment,
- (c) the degree of permanent impairment of the worker as a result of an injury,
- (d) whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality, and the extent of that proportion,
- (e) the nature and extent of loss of hearing suffered by a worker,
- (f) whether impairment is permanent,
- (g) whether the degree of permanent impairment of the injured worker is fully ascertainable.

SECT 320

Appointment of approved medical specialists

320 Appointment of approved medical specialists

- (1) The President is, in accordance with criteria developed by the Minister, to appoint medical practitioners to be approved medical specialists for the purposes of this Part.
- (2) The terms of any such appointment may restrict an approved medical specialist to medical disputes of a specified kind.
- (2A) One or more approved medical specialists may be appointed as a senior approved medical specialist, either by the instrument of appointment of the approved medical specialist or by a later instrument executed by the President.
- (3) The President is to ensure that, as far as reasonably practicable, arrangements are in place to facilitate the taking place of assessments under this Part in the regional areas of the State.
- (4) The Authority may arrange for the provision of training and information to approved medical specialists to promote accurate and consistent assessments under this Part.
- (5) The Registrar may from time to time issue a list of the medical practitioners who are for the time being appointed as approved medical specialists under this section. The list is evidence of the appointments concerned.
- (6) A matter or thing done or omitted to be done by an approved medical specialist in the exercise of functions under this Act does not, if the matter or thing was done or omitted in good faith, subject the approved medical specialist personally to any action, liability, claim or demand.

SECT 321

Referral of medical dispute for assessment

321 Referral of medical dispute for assessment

- (1) A medical dispute may be referred for assessment under this Part by a court, the Commission or the Registrar, either of their own motion or at the request of a party to the dispute. The Registrar is to give the parties notice of the referral.
- (2) The parties to the dispute may agree on the approved medical specialist who is to assess the dispute but if the parties have not agreed within 7 days after the dispute is referred, the Registrar is to choose the approved medical specialist who is to assess the dispute.
- (3) The Commission may not refer for assessment under this Part a medical dispute concerning permanent impairment (including hearing loss) of an injured worker.
- (4) The Registrar may not refer for assessment under this Part:
 - (a) a medical dispute concerning permanent impairment (including hearing loss) of an injured worker where liability is in issue and has not been determined by the Commission, or
 - (b) a medical dispute other than a dispute concerning permanent impairment (including hearing loss) of an injured worker, except when dealing with the dispute under Part 5 (Expedited assessment).

SECT 322

Assessment of impairment

322 Assessment of impairment

- (1) The assessment of the degree of permanent impairment of an injured worker for the purposes of the Workers Compensation Acts is to be made in accordance with WorkCover Guidelines (as in force at the time the assessment is made) issued for that purpose.
- (2) Impairments that result from the same injury are to be assessed together to assess the degree of permanent impairment of the injured worker.
- (3) 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.

Note: Section 65A of the 1987 Act provides for impairment arising from psychological/psychiatric injuries to be assessed separately from impairment arising from physical injury.

- (4) An approved medical specialist may decline to make an assessment of the degree of permanent impairment of an injured worker until the approved medical specialist is satisfied that the impairment is permanent and that the degree of permanent impairment is fully ascertainable. Proceedings before a court or the Commission may be adjourned until the assessment is made.

SECT 322A

One assessment only of degree of permanent impairment

322A One assessment only of degree of permanent impairment

- (1) Only one assessment may be made of the degree of permanent impairment of an injured worker.
- (2) The medical assessment certificate that is given in connection with that assessment is the only medical assessment certificate that can be used in connection with any further or subsequent medical dispute about the degree of permanent impairment of the worker as a result of the injury concerned (whether the subsequent or further dispute is in connection with a claim for permanent impairment compensation, the commutation of a liability for compensation or a claim for work injury damages).
- (3) Accordingly, a medical dispute about the degree of permanent impairment of a worker as a result of an injury cannot be referred for, or be the subject of, assessment if a medical dispute about that matter has already been the subject of assessment and a medical assessment certificate under this Part.
- (4) This section does not affect the operation of section 327 (Appeal against medical assessment).

SECT 323

Deduction for previous injury or pre-existing condition or abnormality

323 Deduction for previous injury or pre-existing condition or abnormality

- (1) In assessing the degree of permanent impairment resulting from an injury, there is to be a deduction for any proportion of the impairment that is due to any previous injury (whether or not it is an injury for which compensation has been paid or is payable under Division 4 of Part 3 of the 1987 Act) or that is due to any pre-existing condition or abnormality.
- (2) If the extent of a deduction under this section (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding disputation) that the deduction (or the relevant part of it) is 10% of the impairment, unless this assumption is at odds with the available evidence.

Note: So if the degree of permanent impairment is assessed as 30% and subsection (2) 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 approved medical specialist in connection with the medical assessment of the matter.
- (4) The WorkCover Guidelines may make provision for or with respect to the determination of the deduction required by this section.

SECT 324

Powers of approved medical specialist on assessment

324 Powers of approved medical specialist on assessment

- (1) The approved medical specialist assessing a medical dispute 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 such medical records (including X-rays and the results of other tests) and other information as the approved medical specialist considers necessary or desirable for the purposes of assessing a medical dispute referred to him or her, and
 - (c) require the worker to submit himself or herself for examination by the approved medical specialist.
- (2) If a worker refuses to submit himself or herself for examination by the approved medical specialist if required to do so, or in any way obstructs the examination:
 - (a) the worker's right to recover compensation with respect to the injury, or
 - (b) the worker's right to weekly payments, is suspended until the examination has taken place.
- (3) This section extends to the assessment of a medical dispute in the course of an appeal or further assessment under this Part. An approved medical specialist who is a member of the Appeal Panel hearing the appeal or who is assessing the matter by way of further assessment has all the powers of an approved medical specialist under this section on an assessment of a medical dispute.

SECT 324

Powers of approved medical specialist on assessment

324 Powers of approved medical specialist on assessment

- (1) The approved medical specialist assessing a medical dispute 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 such medical records (including X-rays and the results of other tests) and other information as the approved medical specialist considers necessary or desirable for the purposes of assessing a medical dispute referred to him or her, and
 - (c) require the worker to submit himself or herself for examination by the approved medical specialist.
- (2) If a worker refuses to submit himself or herself for examination by the approved medical specialist if required to do so, or in any way obstructs the examination:
 - (a) the worker's right to recover compensation with respect to the injury, or
 - (b) the worker's right to weekly payments, is suspended until the examination has taken place.
- (3) This section extends to the assessment of a medical dispute in the course of an appeal or further assessment under this Part. An approved medical specialist who is a member of the Appeal Panel

hearing the appeal or who is assessing the matter by way of further assessment has all the powers of an approved medical specialist under this section on an assessment of a medical dispute.

SECT 326

Status of medical assessments

326 Status of medical assessments

- (1) An assessment certified in a medical assessment certificate pursuant to a medical assessment under this Part is conclusively presumed to be correct as to the following matters in any proceedings before a court or the Commission with which the certificate is concerned:
 - (a) the degree of permanent impairment of the worker as a result of an injury,
 - (b) whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality,
 - (c) the nature and extent of loss of hearing suffered by a worker,
 - (d) whether impairment is permanent,
 - (e) whether the degree of permanent impairment is fully ascertainable.
- (2) As to any other matter, the assessment certified is evidence (but not conclusive evidence) in any such proceedings.

SECT 327

Appeal against medical assessment

327 Appeal against medical assessment

- (1) A party to a medical dispute may appeal against a medical assessment under this Part, but only in respect of a matter that is appealable under this section and only on the grounds for appeal under this section.
- (2) A matter is appealable under this section if it is a matter as to which the assessment of an approved medical specialist certified in a medical assessment certificate under this Part is conclusively presumed to be correct in proceedings before a court or the Commission.
- (3) The grounds for appeal under this section are any of the following grounds:
 - (a) deterioration of the worker's condition that results in an increase in the degree of permanent impairment,
 - (b) availability of additional relevant information (but only if the additional information was not available to, and could not reasonably have been obtained by, the appellant before the medical assessment appealed against),
 - (c) the assessment was made on the basis of incorrect criteria,
 - (d) the medical assessment certificate contains a demonstrable error.
- (4) An appeal is to be made by application to the Registrar. The appeal is not to proceed unless the Registrar is satisfied that, on the face of the application and any submissions made to the Registrar, at least one of the grounds for appeal specified in subsection (3) has been made out.

- (5) If the appeal is on a ground referred to in subsection (3) (c) or (d), the appeal must be made within 28 days after the medical assessment appealed against, unless the Registrar is satisfied that special circumstances justify an increase in the period for an appeal.
 - (6) The Registrar may refer a medical assessment for further assessment under section 329 as an alternative to an appeal against the assessment (but only if the matter could otherwise have proceeded on appeal under this section).
- Note:** Section 329 also allows the Registrar to refer a medical assessment back to the approved medical specialist for reconsideration (whether or not the medical assessment could be appealed under this section).
- (7) There is to be no appeal against a medical assessment once the dispute concerned has been the subject of determination by a court or the Commission or agreement registered under section 66A of the 1987 Act.
 - (8) Section 345 of the *Legal Profession Act 2004* applies to and in respect of the provision of legal services in connection with an appeal under this section in the same way as it applies to and in respect of the provision of legal services in connection with a claim or defence of a claim for damages referred to in that section.

SECT 328

Procedure on appeal

328 Procedure on appeal

- (1) An appeal against a medical assessment is to be heard by an Appeal Panel constituted by 2 approved medical specialists and 1 Arbitrator, chosen by the Registrar.
- (2) The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made. The WorkCover Guidelines can provide for the procedure on an appeal.
- (3) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the medical assessment appealed against may not be given on an appeal by a party to the appeal unless the evidence was not available to the party before that medical assessment and could not reasonably have been obtained by the party before that medical assessment.
- (4) When attending an Appeal Panel for the purposes of an assessment, an injured worker is entitled to be accompanied by a person (whether or not a legal adviser or agent) to act as the injured worker's advocate and assist him or her to present his or her case to the Appeal Panel.
- (5) The Appeal Panel may confirm the certificate of assessment given in connection with the medical assessment appealed against, or may revoke that certificate and issue a new certificate as to the matters concerned. Section 326 applies to any such new certificate.
- (6) The decision of a majority of the members of an Appeal Panel is the decision of the Appeal Panel.

SECT 4 Definitions

4 Definitions

(1) In this Act:

"approved medical specialist" has the meaning given by section 319.

"injury":

- (a) means a personal injury arising out of or in the course of employment, and
- (b) includes:
 - (i) a disease contracted by a worker in the course of employment, where the employment was a contributing factor to the disease, or
 - (ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration, but
- (c) does not include (except in the case of a worker employed in or about a mine):
 - (i) a dust disease, or
 - (ii) the aggravation, acceleration, exacerbation or deterioration of a dust disease.

"medical assessment" means assessment of a medical dispute by an approved medical specialist under Part 7 of Chapter 7.

"medical certificate" means a certificate given by a medical practitioner.

"medical dispute" has the meaning given by section 319.

"medical expenses compensation" means compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses etc) of Part 3 of the 1987 Act.

"pain and suffering compensation" means compensation for pain and suffering under section 67 of the 1987 Act.

"permanent impairment compensation" means compensation for permanent impairment under section 66 of the 1987 Act.

"WorkCover Guidelines" means guidelines issued under section 376 (Issue of guidelines) can be found at: http://www.workcover.nsw.gov.au/formspublications/publications/Documents/workcover_guides_evaluation_permanent_impairment_3rd_edition_0970.pdf

NEW SOUTH WALES LEGISLATION

Excerpts with regard to

MOTOR ACCIDENTS ACT 1988 - SECT 49

Medical etc examination of claimant

49 Medical etc examination of claimant

- (1) A claimant must comply with any request by the person against whom the claim is made or the person's insurer:
 - (a) to undergo a medical examination by one or more medical practitioners nominated by that person or insurer (not being an examination that is unreasonable, unnecessarily repetitious or dangerous), or
 - (b) to undergo an assessment to determine functional and vocational capacity by an assessor nominated by that person or insurer and approved by the Authority, or
 - (c) to undergo a rehabilitation assessment in accordance with the guidelines referred to in section 37 (1).
- (2) If the claimant fails without reasonable excuse to comply with such a request, court proceedings cannot be commenced or continued in respect of the claim while the failure continues.
- (3) An examination or assessment under this section is at the cost of the person who requests it.

SECT 68

Definitions

68 Definitions

In this Part:

"motor accident" includes a transport accident referred to in section 69 (2).

"motor vehicle" includes (except in section 69) a form of transportation or conveyance included, immediately before the date of commencement of Part 2, within section 4 of the *Transport Accidents Compensation Act 1987*.

"non-economic loss" means:

- (a) pain and suffering, and
- (b) loss of amenities of life, and
- (c) loss of expectation of life, and
- (d) disfigurement.

SECT 79

Determination of non-economic loss-accidents occurring before midnight on 26.9.95

79 Determination of non-economic loss-accidents occurring before midnight on 26.9.95

- (1) This section applies only to motor accidents that occurred before midnight on 26 September 1995.
 - (a) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet.
 - (b) No damages shall be awarded for the non-economic loss of an injured person as a consequence of a motor accident unless the injured person's ability to lead a normal life has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 6 months by the injury suffered in the accident.
- (2) The amount of damages to be awarded for non-economic loss shall be a proportion, determined according to the severity of the non-economic loss, of the maximum amount which may be awarded.
- (3) The maximum amount which may be awarded for non-economic loss is \$180,000, but the maximum amount shall be awarded only in a most extreme case.
- (4) If the amount of non-economic loss is assessed to be \$15,000 or less, no damages for non-economic loss shall be awarded.
- (5) If the amount of damages to be awarded for non-economic loss in accordance with this section is more than \$15,000 but less than \$55,000, the following deductions shall be made from that amount:
 - (a) if the amount of damages is less than \$40,000-the amount to be deducted is \$15,000,
 - (b) if the amount of damages is not less than \$40,000-the amount to be deducted is \$15,000, or \$15,000 reduced by \$1,000 for every \$1,000 by which the amount of damages exceeds \$40,000.

SECT 79

Determination of non-economic loss-accidents occurring before midnight on 26.9.95

- (1) This section applies only to motor accidents that occurred before midnight on 26 September 1995.
- (1A) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet.

- (1B) No damages shall be awarded for the non-economic loss of an injured person as a consequence of a motor accident unless the injured person's ability to lead a normal life has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 6 months by the injury suffered in the accident.
- (2) The amount of damages to be awarded for non-economic loss shall be a proportion, determined according to the severity of the non-economic loss, of the maximum amount which may be awarded.
- (3) The maximum amount which may be awarded for non-economic loss is \$180,000, but the maximum amount shall be awarded only in a most extreme case.
- (4) If the amount of non-economic loss is assessed to be \$15,000 or less, no damages for non-economic loss shall be awarded.
- (5) If the amount of damages to be awarded for non-economic loss in accordance with this section is more than \$15,000 but less than \$55,000, the following deductions shall be made from that amount:
 - (a) if the amount of damages is less than \$40,000-the amount to be deducted is \$15,000,
 - (b) if the amount of damages is not less than \$40,000-the amount to be deducted is \$15,000, or \$15,000 reduced by \$1,000 for every \$1,000 by which the amount of damages exceeds \$40,000.

SECT 79A

Determination of non-economic loss-accidents occurring after midnight on 26.9.95

79A Determination of non-economic loss-accidents occurring after midnight on 26.9.95

- (1) This section applies only to motor accidents that occurred after midnight on 26 September 1995.
- (2) The object of this section is to limit the amount of damages for non-economic loss in cases of claims relating to relatively minor injuries, in order to achieve the object of the Act of more fully compensating those with more severe injuries at a cost the community can afford to meet.
- (3) No damages are to be awarded for the non-economic loss of an injured person as a consequence of a motor accident unless the injured person's ability to lead a normal life has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 12 months by the injury suffered in the accident.
- (4) No damages may be awarded for non-economic loss unless the severity of the non-economic loss of the injured person is at least 15 per cent of a most extreme case.
- (5) The maximum amount that may be awarded for non-economic loss is \$235,000, but the maximum amount is to be awarded only in a most extreme case.
- (6) If the severity of the non-economic loss is assessed to be equal to or greater than 15 per cent of a most extreme case, the damages for non-economic loss are to be determined according to the following Table:

Table	
Severity of the non-economic loss (as a proportion of a most extreme case)	Damages for non-economic loss (as a proportion of the maximum amount that may be awarded for non-economic loss)
15%	1%
16%	1.5%
17%	2%
18%	2.5%
19%	3%
20%	3.5%
21%	4%
22%	4.5%
23%	5%
24%	5.5%
25%	6.5%
26%	8%
27%	10%
28%	14%
29%	18%
30%	23%
31%	26%
32%	30%
33%	33%
34%-100%	34%-100% respectively

(7) An amount determined in accordance with subsection (6) is to be rounded to the nearest \$500 (with the amounts of \$250 and \$750 being rounded up).

The following are the steps required in the assessment of non-economic loss in accordance with this section:

- Step 1: Has the claimant demonstrated that his or her ability to lead a normal life has been, or in the near future is likely to be, significantly impaired for a continuous period of not less than 12 months? If not, there is no entitlement to damages for non-economic loss. If the claimant is able to satisfy this test, proceed to Step 2.
- Step 2: Determine the severity of the claimant's non-economic loss as a proportion of a most extreme case. The proportion should be expressed as a percentage, and may be assessed by reference to any Guidelines for the Assessment of Non-Economic Loss adopted by the regulations under this Act.
- Step 3: Confirm the maximum amount that may be awarded under section 79A for non-economic loss in the case of a most extreme case. This amount is indexed each year under section 80.
- Step 4: Use the Table to determine the percentage of the maximum amount payable in respect of the claim. The amount payable under section 79A for non-economic loss is then determined by multiplying the maximum amount payable in a most extreme case by the percentage set out in the Table.

It will be noted that where the proportion of a most extreme case is greater than 33%, the amount payable will be the same proportion of the maximum amount.

SECT 80

Indexation of amounts relating to non-economic loss

80 Indexation of amounts relating to non-economic loss

- (1) The Minister shall, on or before 1 October 1990 and on or before 1 October in each succeeding year, declare, by order published on the NSW legislation website, the amounts which are to apply, as from the date specified in the order, for the purposes of section 79 or 79A.

Note: See orders published in Gazettes No 120 of 28.9.1990, p 8681; No 134 of 27.9.1991, p 8354; No 119 of 25.9.1992, p 7040; No 104 of 24.9.1993, p 5917; No 132 of 30.9.1994, p 6060; No 119 of 29.9.1995, p 6939; No 107 of 20.9.1996, p 6434; No 104 of 26.9.1997, p 8212; No 139 of 25.9.1998, p 7698; No 114 of 1.10.1999, p 9659; No 127 of 29.9.2000, p 10835; No 135 of 7.9.2001, p 7576; No 154 of 27.9.2002, p 8397; No 154 of 26.9.2003, p 9621; No 149 of 24.9.2004, p 7662; No 120 of 30.9.2005, p 7908; No 120 of 29.9.2006, p 8492; No 127 of 21.9.2007, p 7221 and No 123 of 26.9.2008, p 9565. See now the *Motor Accidents (Determination of Non-Economic Loss) Order 2009* .

- (2) The amounts declared shall be each of the amounts applicable under section 79 or 79A (or those amounts as last adjusted under this section) adjusted by the percentage change in the amounts estimated by the Australian Statistician of the average weekly total earnings of full-time adults in New South Wales over the 4 quarters preceding the date of the declaration for which those estimates are, at that date, available.
- (3) An amount declared for the time being under this section shall apply to the exclusion of the corresponding amount under section 79 or 79A.

- (4) If the Australian Statistician fails or ceases to estimate the amounts referred to in subsection (2), the amounts declared shall be the amounts determined in accordance with the regulations.
- (5) In adjusting an amount to be declared for the purpose of section 79 (3) or 79A (5), the amount determined in accordance with subsection (2) is to be rounded to the nearest \$1,000 (with the amount of \$500 being rounded up).
- (6) In adjusting an amount to be declared for the purpose of section 79 (4) or (5), the amount determined in accordance with subsection (2) is to be rounded to the nearest \$500 (with the amounts of \$250 and \$750 being rounded up).

SECT 81A

Exemplary or punitive damages

81A Exemplary or punitive damages

A court shall not award exemplary or punitive damages to a person in respect of a motor accident.

SECT 82

Court to apportion damages etc

82 Court to apportion damages etc

Where a judgment is obtained for payment of damages in respect of the death of or injury to any person caused by the fault of the owner or driver of an insured motor vehicle in the use or operation of the vehicle as well as for damages in respect of any other matter, the court shall, as part of the judgment, declare what portion of the sum awarded by the judgment is in respect of the death or injury and shall apportion any costs awarded.

MOTOR ACCIDENTS COMPENSATION ACT 1999 - SECT 42

Definitions

42 Definitions

In this Chapter:

"insurer", in relation to a person, means the insurer who insures the person against the person's liability for damages in respect of a claim, whether or not under a third-party policy, and includes:

- (a) the Nominal Defendant, and
- (b) where a claim is handled on behalf of an insurer by another insurer, the other insurer.

"treatment" means:

- (a) medical treatment, or
- (b) dental treatment, or
- (c) the provision of rehabilitation services, or
- (d) the provision of attendant care services, or
- (e) the provision, replacement or repair of artificial members, eyes or teeth, crutches or other aids or spectacle glasses, whether or not at a hospital.

SECT 44

Medical Guidelines of Authority

44 Medical Guidelines of Authority

- (1) The Authority may issue guidelines ("MAA Medical Guidelines") with respect to the following:
 - (a) the appropriate treatment of injured persons,
 - (b) the appropriate procedures with respect to the provision of rehabilitation services or attendant care services for injured persons (including the circumstances in which rehabilitation services or attendant care services are required to be provided),
 - (c) the assessment of the degree of permanent impairment of an injured person as a result of an injury caused by a motor accident,
 - (d) the procedures for the referral of disputes for assessment or review of assessments, and the procedure for assessment and review of assessments, under Part 3.4.
- (2) The Authority may amend, revoke or replace MAA Medical Guidelines.
- (3) MAA Medical Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (4) MAA Medical Guidelines (including any amendment, revocation or replacement) are to be published in the Gazette and take effect on the day of that publication or, if a later day is specified in the Guidelines for that purpose, on the day so specified.
- (5) MAA Medical Guidelines:
 - (a) are not to be construed as requiring medical treatment to be carried out in accordance with MAA Medical Guidelines, and
 - (b) are to be consistent with a high standard of medical care, dental care, rehabilitation, aftercare and continuing care as exists in the community at that time.
- (6) MAA Medical Guidelines must be developed in consultation with relevant medical colleges, including the Royal Australasian College of Physicians, the Royal Australasian College of Surgeons, the Royal Australian College of General Practitioners, the Australian Orthopaedic Association, the para-medical professional associations and other relevant colleges and associations.
- (7) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to a guideline under this section in the same way as those sections apply to a statutory rule.

Note: For Guidelines issued pursuant to this section see Gazettes No 87 of 21.5.2004, p 3122; No 92 of 22.7.2005, p 3857; No 30 of 3.3.2006, p 1090; No 49 of 7.4.2006, p 2059; No 118 of 22.9.2006, p 8116; No 90 of 13.7.2007, p 4581 and No 87 of 11.7.2008, p 7059.

SECT 57

Definitions

57 Definitions

In this Part:

"medical assessment matters" means any of the matters referred to in section 58.

"medical assessor" means a person appointed under this Part to make an assessment under this Part.

"medical assessors review panel" means a panel of medical assessors convened under this Part to review an assessment under this Part.

"medical dispute" means a disagreement or issue to which this Part applies.

SECT 57A

Motor Accidents Medical Assessment Service

57A Motor Accidents Medical Assessment Service

- (1) The Authority is to establish in association with its operations a unit, to be known as the Motor Accidents Medical Assessment Service.
- (2) The Service is to consist of medical assessors and such officers of the Authority as the Authority determines.

SECT 59

Appointment of medical assessors

59 Appointment of medical assessors

- (1) The Authority is required to appoint medical practitioners and other suitably qualified persons to be medical assessors for the purposes of this Part.
- (2) The terms of any such appointment may restrict a medical assessor to disputes of a specified kind.
- (3) The Authority is to ensure that, as far as reasonably practicable, there are medical assessors appointed in the regional areas of the State.

SECT 59A

Protection of medical assessors

59A Protection of medical assessors

- (1) A matter or thing done or omitted to be done by a medical assessor under this Part in the exercise of the assessor's functions does not, if the matter or thing was done or omitted in good faith, subject the assessor personally to any action, liability, claim or demand.
- (2) A medical assessor is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as a medical assessor.
- (3) Any liability that would attach to a person were it not for the operation of subsection (1) attaches instead to the Crown.

SECT 60

Medical assessment procedures

60 Medical assessment procedures

- (1) A medical dispute may be referred to the Authority for assessment under this Part by either party to the dispute or by a court or claims assessor.
- (2) The Authority is to arrange for the dispute to be referred to one or more medical assessors.

SECT 61

Status of medical assessments

61 Status of medical assessments

- (1) The medical assessor or assessors to whom a medical dispute is referred is or are to give a certificate as to the matters referred for assessment.
- (2) Any such certificate as to a medical assessment matter is conclusive evidence as to the matters certified in any court proceedings or in any assessment by a claims assessor in respect of the claim concerned.
- (3) In any court proceedings, the court may (despite anything to the contrary in this section) reject a certificate as to all or any of the matters certified in it, on the grounds of denial of procedural fairness to a party to the proceedings in connection with the issue of the certificate, but only if the court is satisfied that admission of the certificate as to the matter or matters concerned would cause substantial injustice to that party.
- (4) If a certificate as to any matter is rejected under subsection (3), the court is to refer that matter again for assessment under this Part and adjourn the proceedings until a further certificate is given and admitted in evidence in the proceedings.

- (5) However, if a certificate as to whether or not the degree of permanent impairment of the injured person is greater than 10% is rejected under subsection (4), the court may, if it considers it appropriate, substitute a determination of the court as to the degree of permanent impairment of the injured person (assessed by the court in accordance with section 133) instead of referring that matter again for assessment under this Part.
- (6) Except as provided by subsection (6), a court may not substitute its own determination as to any medical assessment matter.
- (7) This section:
 - (a) does not prevent a court from referring a matter again for assessment under this Part (as provided for by section 62), and
 - (b) does not require a court to refer a matter again for assessment under this Part if the matter is not a medical assessment matter.
- (8) A certificate is to set out the reasons for any finding by the medical assessor or assessors as to any matter certified in the certificate in respect of which the certificate is conclusive evidence.
- (9) The following procedure is to apply if the assessment of more than one medical assessor is required to assess whether the degree of permanent impairment of the injured person is greater than 10% (not being an assessment of the degree of permanent impairment resulting from psychiatric or psychological injury):
 - (a) each medical assessor is to give a certificate as to the degree of permanent impairment of the injured person resulting from the particular injury or injuries with which the medical assessor's assessment is concerned,
 - (b) based on the matters certified in each such certificate a medical assessor nominated by the Authority for the purpose is to make an assessment of the total degree of permanent impairment resulting from all the injuries with which those certificates are concerned and is to give a certificate (a "combined certificate") as to that total degree of permanent impairment,
 - (c) the combined certificate is conclusive evidence as to whether the degree of permanent impairment of the injured person is greater than 10% and this section applies to the combined certificate accordingly.
- (10) If a medical assessor is satisfied that a certificate under this section contains an obvious error, the medical assessor may issue a replacement certificate to correct the error.

SECT 62

Referral of matter for further medical assessment

62 Referral of matter for further medical assessment

- (1) A matter referred for assessment under this Part may be referred again on one or more further occasions in accordance with this Part:
 - (a) by any party to the medical dispute, but only on the grounds of the deterioration of the injury or additional relevant information about the injury, or
 - (b) by a court or claims assessor.

(1A) A matter may not be referred again for assessment by a party to the medical dispute on the grounds of deterioration of the injury or additional relevant information about the injury unless the deterioration or additional information is such as to be capable of having a material effect on the outcome of the previous assessment.

(1B) Referral of a matter under this section is to be by referral to the member of staff designated by the Authority for the purpose (in this Part referred to as the "proper officer of the Authority").

(2) A certificate as to a matter referred again for assessment prevails over any previous certificate as to the matter to the extent of any inconsistency.

SECT 63

Review of medical assessment by review panel

63 Review of medical assessment by review panel

- (1) A party to a medical dispute may apply to the proper officer of the Authority to refer a medical assessment under this Part by a single medical assessor to a review panel of medical assessors for review.
- (2) An application for the referral of a medical assessment to a review panel may only be made on the grounds that the assessment was incorrect in a material respect.
- (2A) If a medical assessment under this Part (a "combined certificate assessment") is based on the assessments of 2 or more single medical assessors (resulting in a combined certificate as to the total degree of permanent impairment), the combined certificate assessment cannot be the subject of review under this section except by way of the review of any of the assessments of the single medical assessors on which the combined certificate assessment is based.
- (3) The proper officer of the Authority is to arrange for any such application to be referred to a panel of at least 3 medical assessors, but only if the proper officer is satisfied that there is reasonable cause to suspect that the medical assessment was incorrect in a material respect having regard to the particulars set out in the application.
- (3A) The review of a medical assessment is not limited to a review only of that aspect of the assessment that is alleged to be incorrect and is to be by way of a new assessment of all the matters with which the medical assessment is concerned.
- (4) The review panel may confirm the certificate of assessment of the single medical assessor, or revoke that certificate and issue a new certificate as to the matters concerned.
- (5) If on the review of a medical assessment of a single medical assessor on which a combined certificate assessment is based a new certificate is issued by the review panel, the review panel is also to issue a new combined certificate to take account of the results of the review.
- (6) Section 61 applies to any new certificate or new combined certificate issued under this section.
- (7) The MAA Medical Guidelines may limit the time within which an application under this section may be made.

SECT 65

MAA monitoring and oversight

65 MAA monitoring and oversight

- (1) Medical assessments under this Part are subject to relevant provisions of MAA Medical Guidelines relating to the procedures for the referral of disputes for assessment or review of assessments and the procedure for assessment.
- (2) The Authority may arrange for the provision of training and information to medical assessors to promote accurate and consistent medical assessments under this Part.
- (3) A medical assessor is not subject to control and direction by the Authority or any public servant with regard to any of the decisions of the assessor that affect the interests of the parties to a medical assessment, and the Authority or any public servant may not overrule or interfere with any such decision of a medical assessor in respect of any such assessment.

SECT 86

Medical and other examination of claimant

86 Medical and other examination of claimant

(cf s 49 MAA)

- (1) A claimant must comply with any request by the person against whom the claim is made or the person's insurer:
 - (a) to undergo a medical examination by one or more medical practitioners nominated by that person or insurer, or
 - (b) to undergo a rehabilitation assessment, an assessment to determine functional and vocational capacity or an assessment to determine attendant care needs, by an assessor nominated by that person or insurer, or
 - (c) to undergo an assessment in accordance with MAA Medical Guidelines, not being, in any such case, an examination or assessment that is unreasonable, unnecessarily repetitious or dangerous.
- (2) Any such examination or assessment is at the cost of the person who requests it. The claimant may decline to undergo the examination or assessment unless that person pays the claimant a reasonable sum to meet the reasonable and necessary costs and expenses incurred by the claimant in connection with the examination or assessment.
- (3) A claimant must comply with any request by a medical assessor or the Authority to undergo a medical examination or an assessment by the medical assessor for the purposes of a medical assessment under Part 3.4.
- (4) If the claimant fails without reasonable excuse to comply with such a request:
 - (a) the claim cannot be referred to the Authority for assessment under Part 4.4 and any such assessment cannot be continued while the failure continues, and

- (b) court proceedings cannot be commenced or continued in respect of the claim while the failure continues.
- (5) The regulations may prescribe a rate at which the cost of travel by any specified mode of transport is to be calculated for the purposes of the payment of travel costs under this section.

SECT 131

Impairment thresholds for award of damages for non-economic loss

131 Impairment thresholds for award of damages for non-economic loss

No damages may be awarded for non-economic loss unless the degree of permanent impairment of the injured person as a result of the injury caused by the motor accident is greater than 10%.

SECT 132

Assessment of impairment required before award of damages for non-economic loss if dispute over impairment threshold

132 Assessment of impairment required before award of damages for non-economic loss if dispute over impairment threshold

- (1) If there is a dispute about whether the degree of permanent impairment of an injured person is sufficient for an award of damages for non-economic loss, the court may not award any such damages unless the degree of permanent impairment has been assessed by a medical assessor under Part 3.4 (Medical assessment).
Note: The assessment of the medical assessor under Part 3.4 is conclusive in proceedings before the court-see section 61.
- (2) The court may, at any stage in proceedings for an award of damages for non-economic loss, refer the matter for assessment of the degree of permanent impairment under Part 3.4.
- (3) A medical assessor may decline to make an assessment under Part 3.4 of the degree of permanent impairment of an injured person until the assessor is satisfied that the impairment caused by the injury has become permanent. Court proceedings with respect to any such matter may be adjourned until the assessment is made.
- (4) Nothing in this section prevents:
 - (a) the degree of impairment being re-assessed under Part 3.4, or
 - (b) a claim from being settled at any time.

SECT 133

Method of assessing degree of impairment

133 Method of assessing degree of impairment

- (1) The assessment of the degree of permanent impairment of an injured person as a result of the injury caused by a motor accident is to be expressed as a percentage in accordance with this Part.
- (2) The assessment of the degree of permanent impairment is to be made in accordance with:
 - (a) MAA Medical Guidelines issued for that purpose, or
 - (b) if there are no such guidelines in force-the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition.
- (3) In assessing the degree of permanent impairment under subsection (2) (b), regard must not be had to any psychiatric or psychological injury, impairment or symptoms, unless the assessment of the degree of permanent impairment is made solely with respect to the result of a psychiatric or psychological injury.

SECT 134

Maximum of amount of damages for non-economic loss

134 Maximum of amount of damages for non-economic loss

- (1) The maximum amount that a court may award for non-economic loss is \$284,000.
- (2) If that amount is adjusted by the operation of section 146 (Indexation of amounts relating to award of damages), the applicable maximum amount is the amount as at the date the award is made.

SECT 135

Publication of information to assist determination of non-economic loss

135 Publication of information to assist determination of non-economic loss

(cf s 80A MAA)

- (1) The Authority may publish information, or promote the publication of information, to assist courts to determine the appropriate level of damages for non-economic loss as a result of motor accidents.
- (2) A court may have regard to any such information, but is not bound to act on it.

The MAA Guidelines can be found at

Guidelines for the assessment of permanent impairment of a person injured as a result of a motor vehicle accident (1 October 2007) *Highlighted version* <http://www.maa.nsw.gov.au/default.aspx?MenuID=170>

Civil Liability in NEW SOUTH WALES

Civil liability

For civil liability cases, a threshold of 15% of “a most extreme case” applies with a sliding scale of damages up to 33%, where full damages may be claimed. The “most extreme case” is a relatively fairer means of assessing injury than use of the ‘whole person impairment’ test, as it allows judicial consideration of the actual impact of an injury, rather than an arbitrary assessment of impairment.

What is an award for non-economic loss?

An award for non-economic loss is compensation for the pain and suffering caused by an injury, as opposed to economic loss (loss of wages or future income). This is designed to compensate an individual for their lost quality and enjoyment of life, such as incapacity to engage in sport, family activities, recreational pursuits and other things as a result of their injuries.

What is personal responsibility?

Central to balancing fairness and community cost in personal injury is determining the relevance of fault and personal responsibility for damages. When somebody behaves carelessly and injures another person they should be held responsible for that carelessness. The community expects people to take care of themselves, and equally expects people to take care of others. For example, employers should provide safety equipment. Employees should obey directions. Personal responsibility cuts both ways and laws should reflect this.

NEW SOUTH WALES CIVIL LIABILITY ACT 2002

3 Definitions

In this Act:

"court" includes tribunal, and in relation to a claim for damages means any court or tribunal by or before which the claim falls to be determined.

"damages" includes any form of monetary compensation but does not include:

- (a) any payment authorised or required to be made under a State industrial instrument, or
- (b) any payment authorised or required to be made under a superannuation scheme, or
- (c) any payment authorised or required to be made under an insurance policy in respect of the death of, injury to or damage suffered by the person insured under the policy.

"non-economic loss" means any one or more of the following:

- (a) pain and suffering,
- (b) loss of amenities of life,
- (c) loss of expectation of life,
- (d) disfigurement.

SECT 50

Standard of care for professionals

50 Standard of care for professionals

- (1) A person practising a profession ("a professional") does not incur a liability in negligence arising from the provision of a professional service if it is established that the professional acted in a manner that (at the time the service was provided) was widely accepted in Australia by peer professional opinion as competent professional practice.
- (2) However, peer professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.
- (3) The fact that there are differing peer professional opinions widely accepted in Australia concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.
- (4) Peer professional opinion does not have to be universally accepted to be considered widely accepted.

SECT 5R

Standard of contributory negligence

5R Standard of contributory negligence

- (1) The principles that are applicable in determining whether a person has been negligent also apply in determining whether the person who suffered harm has been contributorily negligent in failing to take precautions against the risk of that harm.
- (2) For that purpose:
 - (a) the standard of care required of the person who suffered harm is that of a reasonable person in the position of that person, and
 - (b) the matter is to be determined on the basis of what that person knew or ought to have known at the time.

SECT 16

Determination of damages for non-economic loss

16 Determination of damages for non-economic loss

- (1) No damages may be awarded for non-economic loss unless the severity of the non-economic loss is at least 15% of a most extreme case.
- (2) The maximum amount of damages that may be awarded for non-economic loss is \$350,000, but the maximum amount is to be awarded only in a most extreme case.
- (3) If the severity of the non-economic loss is equal to or greater than 15% of a most extreme case, the damages for non-economic loss are to be determined in accordance with the following Table:

Table

Severity of the non-economic loss (as a proportion of a most extreme case)	Damages for non-economic loss (as a proportion of the maximum amount that may be awarded for non-economic loss)
15%	1%
16%	1.5%
17%	2%
18%	2.5%
19%	3%
20%	3.5%
21%	4%
22%	4.5%
23%	5%
24%	5.5%
25%	6.5%
26%	8%
27%	10%
28%	14%
29%	18%
30%	23%
31%	26%
32%	30%
33%	33%
34%-100%	34%-100% respectively

(3) An amount determined in accordance with subsection (3) is to be rounded to the nearest \$500 (with the amounts of \$250 and \$750 being rounded up).

The following are the steps required in the assessment of non-economic loss in accordance with this section:

- Step 1: Determine the severity of the claimant's non-economic loss as a proportion of a most extreme case. The proportion should be expressed as a percentage.
- Step 2: Confirm the maximum amount that may be awarded under this section for non-economic loss in a most extreme case. This amount is indexed each year under section 17.

Step 3: Use the Table to determine the percentage of the maximum amount payable in respect of the claim. The amount payable under this section for non-economic loss is then determined by multiplying the maximum amount that may be awarded in a most extreme case by the percentage set out in the Table.

Where the proportion of a most extreme case is greater than 33%, the amount payable will be the same proportion of the maximum amount.

SECT 26C

No damages unless permanent impairment of at least 15%

26C No damages unless permanent impairment of at least 15%

No damages may be awarded (whether for economic or non-economic loss) unless the injury results in the death of the offender or in a degree of permanent impairment of the offender that is at least 15%.

SECT 26D

Assessment of permanent impairment

26D Assessment of permanent impairment

- (1) The degree of permanent impairment that results from an injury is to be assessed as provided by this Part and Part 7 (Medical assessment) of Chapter 7 of the *Workplace Injury Management and Workers Compensation Act 1998* (the "1998 WC Act").
- (2) Part 7 of Chapter 7 of the 1998 WC Act extends to an assessment of degree of permanent impairment for the purposes of this Part and for that purpose applies as if:
 - (a) an assessment under this Part were an assessment under and for the purposes of that Part of the 1998 WC Act, and
 - (b) a reference in that Part of the 1998 WC Act to a worker were a reference to an offender, and
 - (c) a reference in that Part of the 1998 WC Act to a worker's employer were a reference to the Crown, and
 - (d) section 330 (Costs of medical assessment) of the 1998 WC Act were omitted from that Part, and
 - (e) a reference in that Part to the WorkCover Guidelines were a reference to guidelines issued under subsection (2A), and
 - (f) the provisions of that Part applied with such other modifications as may be prescribed by the regulations.
- (2A) The Minister administering the CAS Act may, by order published in the Gazette, issue guidelines for the purposes of the application of Part 7 of Chapter 7 of the 1998 WC Act to offenders in respect of the same kinds of matters for which the WorkCover Guidelines may make provision for the purposes of that Part.

Note: The Minister may amend or repeal an order made under this subsection. See section 43 of the *Interpretation Act 1987*.

- (2B) Without limiting subsection (2A), an order made under that subsection may apply, adopt or incorporate (whether wholly or in part or with or without modifications) the provisions of the WorkCover Guidelines, either as published or as in force from time to time.
- (2C) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to an order made under subsection (2A) in the same way as they apply to a statutory rule.
- (3) If there is a dispute about the degree of permanent impairment of an injured offender, a court may not award damages unless the degree of permanent impairment has been assessed by an approved medical specialist in accordance with the 1998 WC Act.
- (3A) A dispute about the degree of permanent impairment of an injured offender cannot be referred for assessment unless the offender has provided the protected defendant with a medical report by a medical practitioner that assesses that the degree of permanent impairment of the injured offender is at least 15% and sets out the medical practitioner's reasons for that assessment.
- (4) A court may, at any stage in proceedings on a claim for damages, refer the matter for assessment of the degree of permanent impairment by an approved medical specialist in accordance with the 1998 WC Act.
- (5) Section 151H (No damages unless permanent impairment of at least 15%) of the *Workers Compensation Act 1987* applies for the purposes of an assessment under this Part of whether the degree of permanent impairment resulting from an injury is at least 15%.
- (6) In this section:
 - "modification" includes an addition, omission or substitution.
 - "WorkCover Guidelines" has the same meaning as it has in the 1998 WC Act.

PART 3 - MENTAL HARM

- 27. Definitions
- 28. Application of Part
- 29. Personal injury arising from mental or nervous shock
- 30. Limitation on recovery for pure mental harm arising from shock
- 31. Pure mental harm-liability only for recognised psychiatric illness
- 32. Mental harm-duty of care
- 33. Liability for economic loss for consequential mental harm

SECT 27

Definitions

27 Definitions

In this Part:

"consequential mental harm" means mental harm that is a consequence of a personal injury of any other kind.

"mental harm" means impairment of a person's mental condition.

"negligence" means failure to exercise reasonable care and skill.

"personal injury" includes:

- (a) pre-natal injury, and
- (b) impairment of a person's physical or mental condition, and
- (c) disease.

"pure mental harm" means mental harm other than consequential mental harm.

SECT 28

Application of Part

28 Application of Part

- (1) This Part (except section 29) applies to any claim for damages for mental harm resulting from negligence, regardless of whether the claim is brought in tort, in contract, under statute or otherwise.
- (2) Section 29 applies to a claim for damages in any civil proceedings.
- (3) This Part does not apply to civil liability that is excluded from the operation of this Part by section 3B.

SECT 29

Personal injury arising from mental or nervous shock

29 Personal injury arising from mental or nervous shock

In any action for personal injury, the plaintiff is not prevented from recovering damages merely because the personal injury arose wholly or in part from mental or nervous shock.

SECT 30

Limitation on recovery for pure mental harm arising from shock

30 Limitation on recovery for pure mental harm arising from shock

- (1) This section applies to the liability of a person ("the defendant") for pure mental harm to a person ("the plaintiff") arising wholly or partly from mental or nervous shock in connection with another person ("the victim") being killed, injured or put in peril by the act or omission of the defendant.
- (2) The plaintiff is not entitled to recover damages for pure mental harm unless:
 - (a) the plaintiff witnessed, at the scene, the victim being killed, injured or put in peril, or
 - (b) the plaintiff is a close member of the family of the victim.
- (3) Any damages to be awarded to the plaintiff for pure mental harm are to be reduced in the same proportion as any reduction in the damages that may be recovered from the defendant by or through the victim on the basis of the contributory negligence of the victim.
- (4) No damages are to be awarded to the plaintiff for pure mental harm if the recovery of damages from the defendant by or through the victim in respect of the act or omission would be prevented by any provision of this Act or any other written or unwritten law.

(5) In this section:

"close member of the family" of a victim means:

- (a) a parent of the victim or other person with parental responsibility for the victim, or
- (b) the spouse or partner of the victim, or
- (c) a child or stepchild of the victim or any other person for whom the victim has parental responsibility, or
- (d) a brother, sister, half-brother or half-sister, or stepbrother or stepsister of the victim.

"spouse or partner" means:

- (a) a husband or wife, or
- (b) a de facto partner,

but where more than one person would so qualify as a spouse or partner, means only the last person to so qualify.

SECT 31

Pure mental harm-liability only for recognised psychiatric illness

31 Pure mental harm-liability only for recognised psychiatric illness

There is no liability to pay damages for pure mental harm resulting from negligence unless the harm consists of a recognised psychiatric illness.

SECT 32

Mental harm-duty of care

32 Mental harm-duty of care

- (1) A person ("the defendant") does not owe a duty of care to another person ("the plaintiff") to take care not to cause the plaintiff mental harm unless the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.
- (2) For the purposes of the application of this section in respect of pure mental harm, the circumstances of the case include the following:
 - (a) whether or not the mental harm was suffered as the result of a sudden shock,
 - (b) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in peril,
 - (c) the nature of the relationship between the plaintiff and any person killed, injured or put in peril,
 - (d) whether or not there was a pre-existing relationship between the plaintiff and the defendant.
- (3) For the purposes of the application of this section in respect of consequential mental harm, the circumstances of the case include the personal injury suffered by the plaintiff.
- (4) This section does not require the court to disregard what the defendant knew or ought to have known about the fortitude of the plaintiff.

SECT 33

Liability for economic loss for consequential mental harm

33 Liability for economic loss for consequential mental harm

A court cannot make an award of damages for economic loss for consequential mental harm resulting from negligence unless the harm consists of a recognised psychiatric illness.

SECT 68

Definition

68 Definition

In this Part:

"apology" means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter whether or not the apology admits or implies an admission of fault in connection with the matter.

SECT 69

Effect of apology on liability

69 Effect of apology on liability

- (1) An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person:
 - (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter, and
 - (b) is not relevant to the determination of fault or liability in connection with that matter.
- (2) Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.

NORTHERN TERRITORY

WORKERS REHABILITATION AND COMPENSATION ACT

SECT 53

Compensation in respect of injuries

- (1) Subject to this Part, if a Territory worker suffers an injury within or outside the Territory and that injury results in or materially contributes to his or her:
 - (a) death;
 - (b) impairment; or
 - (c) incapacity,

there is payable by his or her employer to the worker or the worker's dependants, in accordance with this Part, such compensation as is prescribed.

- (2) Compensation under this Act is payable only in respect of employment that is connected with the Territory.
- (3) The fact that a worker is outside the Territory when the worker suffers an injury does not prevent compensation being payable under this Act in respect of employment that is connected with the Territory.
- (4) Compensation under this Act does not apply in respect of the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) applies to the worker's employment.

SECT 57

Compensation not payable in certain circumstances

Compensation is not payable under this Part in respect of an injury to a worker:

- (a) that was deliberately self inflicted; or
 - (b) (not being an injury resulting in his or her death or permanent or long-term incapacity) attributable to his or her serious and wilful misconduct.
-

WORKERS REHABILITATION AND COMPENSATION ACT - SECT 65

Long-term incapacity

- (1) This section applies to a worker who is totally or partially incapacitated for work as the result of an injury out of which his or her incapacity arose or that materially contributed to his or her incapacity.
- (1C) Compensation under subsection (1B):
 - (a) is payable to a worker only after the first 26 weeks of incapacity (for which compensation is payable under section 64 to the worker); and
 - (b) is in addition to any other compensation to which, under this Part, the worker is entitled; and
 - (c) is otherwise subject to this Part.
- (3) The normal weekly earnings of a worker for the purpose of calculating his or her loss of earning capacity or for the purposes of subsection (8) or (9) at a particular date shall be taken to be his or her normal weekly earnings immediately before the date on which he or she first became entitled to compensation multiplied by the average weekly earnings at the particular date and divided by the average weekly earnings applying at the date on which he or she first became entitled to compensation.
- (5) For the purposes of subsections (2) and (6), the most profitable employment available includes:
 - (a) self employment; and
 - (b) employment in a geographical location (including a place outside the Territory) away from the place where the worker normally resides where it would be reasonable to expect the worker to take up that employment and the person liable to pay compensation to the worker has undertaken to meet the reasonable expenses in moving him or her and his or her dependants to that location and other reasonable relocation expenses.
- (6) For the purposes of this section, a worker shall be taken to be totally incapacitated if he or she is not capable of earning any amount if he or she were to engage in the most profitable employment, if any, reasonably available to him or her, and having regard to the matters referred to in section 68.

Subdivision C--Compensation for permanent impairment

70. Definition
71. Compensation for permanent impairment
72. Assessment of permanent impairment
- 72A. Enforcement of entitlement to compensation .

SECT 70
Definition

In this Subdivision *permanent impairment* means an impairment or impairments assessed, in accordance with the prescribed guides, as being an impairment, or combination of impairments, of not less than 5% of the whole person.

SECT 71

Compensation for permanent impairment

- (1) In addition to any other compensation payable under this Part, a worker who suffers permanent impairment assessed at a percentage of the whole person equal to not less than 15% shall, subject to subsection (2), be paid compensation equal to that assessed percentage of 208 times average weekly earnings at the time the payment is made.
- (2) In addition to any other compensation payable under this Part, a worker who suffers permanent impairment assessed at not less than 85% of the whole person shall be paid compensation of 208 times average weekly earnings at the time the payment is made.
- (3) In addition to any other compensation payable under this Part, where a worker suffers permanent impairment assessed at a percentage of the whole person equal to less than 15%, the worker shall be paid compensation equal to the percentage specified in column 2 of the Table to this section of the relevant assessed percentage of permanent impairment specified opposite in column 1 of 208 times average weekly earnings at the time the payment is made.

TABLE

Column 1	Column 2
Degree of permanent impairment	Percentage of compensation payable
not less than 5%	
but less than 10%	2
10%	3
11%	4
12%	6
13%	8
14%	12

- (4) Compensation payable under this section is to be paid to the worker:

SECT 72

Assessment of permanent impairment

- (2) The level of permanent impairment for the purposes of section 71 shall be assessed in the first instance by a medical practitioner.
- (3) Where a person is aggrieved by the assessment of the level of permanent impairment by a medical practitioner, the person may, within 28 days after being notified of the assessment, apply to the Authority for a reassessment of that level.
- (3A) Subject to subsection (3B), the Authority must, as soon as practicable after receiving an application, refer the application to a panel of 3 medical practitioners to reassess the level of permanent impairment.
- (3B) The Authority is not required to refer an application to a panel unless satisfied that the assessment was properly conducted and is in accordance with the guides prescribed for the purposes of the definition of *permanent impairment* in section 70.
- (3C) The panel to whom an application is referred:
 - (a) must include at least one medical practitioner appearing to the Authority to have specialist knowledge of the type of impairment in question; and
 - (b) must not include the medical practitioner who originally assessed the level of impairment.
- (4) An assessment made by a panel under subsection (3A) as to the degree of permanent impairment of a worker:
 - (a) is taken to be the level of permanent impairment suffered by the worker for the purposes of section 71; and
 - (b) is not subject to review.
- (5) The costs incurred in carrying out an assessment or reassessment under this section shall be paid by the employer.

SECT 90B

Initial medical opinion

- (1) This section applies in relation to an employer after a claim for compensation is made under section 82, whether the employer decides under section 85 to accept, defer accepting, or dispute liability for the claim.
- (2) If the employer requires a medical opinion about the injury to which the claim relates, the employer must initially request the opinion of a medical practitioner who is treating or has treated the worker for the injury.
- (3) The request must be in writing and must include the following information:
 - (a) the medical opinion is required by the employer within 14 days after the treating medical
 - (b) if the opinion is not provided to the employer within that time, the employer may seek the opinion of another medical practitioner.
- (4) If the treating medical practitioner does not provide the medical opinion to the employer within the period specified in the request, the employer may seek the medical opinion of another medical practitioner.
- (5) This section does not prevent the employer from obtaining a medical opinion from any medical practitioner after the treating medical practitioner has provided the opinion as requested.

SECT 91

Medical examinations

- (1) An employer may require a worker who has made a claim for compensation to submit at reasonable intervals to an examination by a medical practitioner provided and paid for by the employer.
- (1A) Before each appointment for an examination under subsection (1), the employer must notify the medical practitioner who is treating the worker for the injury to which the claim relates of the name and contact details of the medical practitioner who will be examining the worker.
- (1B) The employer must give the worker's treating medical practitioner a copy of the report of the medical practitioner who examined the worker.
- (2) Subject to section 69, where a worker unreasonably refuses to have, or unreasonably obstructs, an examination under subsection (1), an employer may cancel or reduce the compensation payable to the worker under Subdivision B of Division 3 until the examination takes place.

WorkSafe Bulletin

This information bulletin has been developed to assist doctors who undertake permanent impairment assessments and reassessments which are covered in sections 70 to 72 of the *Workers Rehabilitation and Compensation Act* of the Northern Territory workers' compensation scheme.

Introduction

Section 71 of the Northern Territory *Workers Rehabilitation and Compensation Act* provides a mechanism by which workers may receive a lump sum payment for compensable injuries or illness which result in a permanent impairment.

When considering undertaking permanent impairment assessments, the doctor should feel confident that their experience, training and skills will lead to a balanced assessment.

For the purposes of the definition of "permanent impairment" in Section 70 of the Act, permanent impairment means an impairment or impairments assessed in accordance with the *American Medical Association Guides to the Evaluation of Permanent Impairment* (4th edition), as being an impairment, or a combination of impairments, of not less than 5% of the whole person.

The AMA Guides are available for perusal at the office of NT WorkSafe in Darwin.

The AMA Guides provide a structured set of medical criteria to establish medical ratings of permanent impairment.

It is important to note that a permanent impairment rating is not the same as a disability rating. Permanent medical impairment is related directly to the health status of the individual, whereas disability can only be determined within the context of the personal, social, or occupational demands that the individual is unable to meet as a result of the impairment.

Assessment Procedure

Before medical evaluation is undertaken to determine a rating of permanent impairment, the doctor should review the whole chapter of the AMA Guides which is applicable to the condition, in order to:

- ascertain the methodology involved;
- the nature of the particular criteria; and,
- determine the extent of the examination necessary to obtain enough clinical information to rate the impairment.

Careful attention should be paid to the definitions listed in the AMA Guides Glossary.

Please note if publications other than the Guides are referenced in the text of the assessment report it may render the assessment invalid.

Evaluation

- The first step in rating permanent impairment is to make a thorough clinical evaluation with particular attention to reviewing the history of the condition(s). Then a thorough physical examination should be done, supported by appropriate tests and diagnostic procedures.
- The second step is analysis of the history, clinical and laboratory findings to determine the nature and extent of the loss, loss of use of, or derangement of the affected body parts, systems or functions.
- The third step is the comparison of results of the analysis with the criteria that are specified in the AMA Guides for the particular body part, system or function.
- The final step in rating permanent impairment should take into account all relevant considerations in order to reach a "whole person" impairment rating.

When a single permanent impairment is present, the percent of impairment may be read directly from the text, or it can be related to a part of the body or to the "whole person" by referring to the appropriate tables.

When two or more impairments exist, the value of each impairment is determined separately and related to the "whole person" using the Combined Values Chart.

The final impairment value, whether the result of single or combined impairments, may be expressed in terms of the nearest 5%.

Once an assessment is made by the doctor, the award for the impairment will proceed under the provisions of the Act. Therefore, impairment should not be considered "permanent" until maximum medical improvement has been achieved and until, in the doctor's best clinical judgement, the impairment is static or well-stabilised; i.e. it is not likely to change by more than 3% over the next 12 months, with or without medical treatment.

If apportionment is needed (see the AMA Guides Glossary), the analysis must consider the nature of the impairment and its possible relationship to each alleged factor and provide an explanation of the medical basis for all conclusions and opinions.

Where there is a pre-existing injury/condition apportionment must be expressed for both the pre-existing injury and the compensable injury.

To establish that a factor could have contributed to the impairment, the analysis and explanation should include, in accordance with scientific and epidemiological principles, reference to the minimum exposure and to its timing that would have been necessary for the factor to have contributed to the impairment, and a discussion of the pathophysiology of the particular condition and of pertinent host characteristics.

The Report

The doctor should provide clear and well reasoned conclusions about medical matters that are supported by complete and accurate data.

The medical evaluation report should include information such as the following:

Medical Evaluation

- Narrative history of condition(s) with specific reference to onset and course of the condition, any available findings on previous investigations, treatment and responses to treatment.
- Results of the present clinical evaluation, including any of the following:
 - physical examination findings;
 - laboratory test results;
 - electrocardiogram;
 - radiographic studies;
 - mental status examination and psychological tests; and
 - other special tests or diagnostic procedures.
- Assessment of current clinical status.

Analysis of Findings

- Explanation of the impact of medical condition(s) on life activities.
- Explanation of the medical basis for any conclusion that the medical condition has, or has not become static or well-stabilised.

Results of Analysis

- Description of specific clinical findings related to each impairment, with reference to how the findings relate to the criteria described.
- Explanation of each percent of impairment rating, with reference to the applicable criteria.
- Summary list of all impairment ratings.
- Whole person rating for each condition then combined whole person rating using the Combined Values Chart when more than one impairment is present.

Reassessment Procedure – Medical Panel Reports

A person aggrieved by the assessment of the level of permanent impairment (a worker, an employer or insurer) may apply to NT WorkSafe for a reassessment. NT WorkSafe will arrange for a reassessment by a panel of three (3) medical practitioners. The guide for assessments also applies to the reassessment process.

Upon conclusion of the doctors' examinations, the panel is required to submit a single report. The wording of the report in general is to reflect that it is a consensus of the three doctors and not the opinion of an individual member of the panel. The report may be signed by either the chairman or all three panel members.

Please note that reference in the text of the report to the use of publications other than the AMA Guides may render the reassessment invalid.

Individual opinions can be used within the body of the report where there is more than one injury or disease to be reassessed and these require the use of the Combined Values Chart in the Guides to achieve an overall percentage figure.

If the panel believes that there are aspects of the injury or disease that may require the expertise of another specialist or further examinations (e.g. MRI, X-rays), the panel Chairperson should contact NT WorkSafe on 1800 250 713.

The panel's assessment of the level of permanent impairment is final.

NORTHERN TERRITORY LEGISLATION

regarding

MOTOR ACCIDENTS (COMPENSATION) ACT

PART 3- ENTITLEMENT TO BENEFITS

7 Benefits for death or injury resulting from motor accidents

PART 4- PAYMENTS IN RESPECT OF INJURIES

13 Compensation for loss of earning capacity

17 Compensation for loss of limb or other permanent impairment

PART 6--REVIEWS AND REFERRALS TO TRIBUNAL

Division 1 - Preliminary matters

28 Motor Accidents (Compensation) Appeal Tribunal

SECT 4

Definitions

In this Act:

"average weekly earnings", for a particular calendar year, means the Average Weekly Earnings for Full Time Adult Persons, Weekly Ordinary Time Earnings for the Northern Territory last published by the Australian Statistician before the commencement of the relevant calendar year.

"eligible person" means a person who is entitled to statutory benefits.

"medical practitioner" means a person registered, and practising, as a medical practitioner in Australia.

"permanent impairment", see section 4C.

"statutory benefits" means compensation or other benefits payable under this Act.

"Tribunal" means the Motor Accidents (Compensation) Appeal Tribunal established by section 28.

SECT 4C

Permanent impairment

- (1) The question whether an impairment or combination of impairments is permanent and, if so, the extent of the permanent impairment is to be determined by the Office.
- (2) The determination is to be made:
 - (a) in accordance with the American Medical Association Guides to the Evaluation of Permanent Impairment as published from time to time; and
 - (b) on the advice of a medical practitioner.
- (3) The extent of a permanent impairment is to be expressed as a percentage of the whole person in accordance with the relevant Guides.
- (4) An impairment is not considered to be a permanent impairment unless the extent of the impairment as assessed in accordance with this section is at least 5%.

SECT 7

Benefits for death or injury resulting from motor accidents

- (1) Subject to this Act, benefits are payable in accordance with this Act to, or in relation to, a person who suffers personal injury or dies in, or as a result of, a motor accident occurring in the Territory.
- (2) Subject to this Act, benefits are payable to, or in relation to, a resident of the Territory who suffers personal injury or dies in, or as a result of, a motor accident occurring outside the Territory if the accident:
 - (a) occurs in Australia; and
 - (b) is caused by or arises out of the use of a Territory motor vehicle.

SCHEDULE

Schedule - Injuries in respect of which special compensation is payable

None payable for psychological injury

SECT 17

Compensation for loss of limb or other permanent impairment

- (1) Compensation for permanent impairment is payable under this section to an eligible person if:
 - (a) the injury suffered in, or as a result of, the motor accident results in a permanent impairment; and
 - (b) the extent of the impairment, as assessed by the Office, is at least 5%.

- (1A) The amount of the compensation is, subject to subsection (2), the assessed percentage of the prescribed amount.
- (2) Where the percentage of permanent impairment of a person is assessed by the Office as a percentage of 5% or more but less than 15% as shown in Column 1 of the following Table, the percentage of the prescribed amount payable as compensation shall be that shown in Column 2 of the Table opposite to the relevant percentage in Column 1:

TABLE

Column 1	Column 2
Degree of impairment	Percentage of prescribed amount payable
not less than 5% but less than 10%	2
10%	3
11%	4
12%	6
13%	8
14%	12

- (3) In this section *prescribed amount*, in relation to a payment, means 208 times average weekly earnings at the time the payment is made.
- (4) After compensation based on an assessment of the extent of a permanent impairment has been paid, no further right to compensation under this section arises even though the extent of the impairment later increases.
- (5) Compensation for a permanent impairment may only be paid under this section to, or for the benefit of, a person who is, at the time of the payment, in Australia.

SECT 28

Motor Accidents (Compensation) Appeal Tribunal

- (1) The Motor Accidents (Compensation) Appeal Tribunal continues.
- (2) The Tribunal is constituted of a Judge of the Supreme Court.
- (3) A Judge of the Supreme Court has, when sitting as the Tribunal, the same privileges and immunities as when sitting to exercise the jurisdiction of the Supreme Court.
- (4) A witness, legal practitioner or other person appearing before the Tribunal has the same privileges and immunities as if the proceedings were proceedings of the Supreme Court.
- (5) An officer of the Tribunal has the same privileges and immunities (if any) as an officer exercising corresponding functions for the Supreme Court.
- (6) The reference to an officer of the Tribunal extends to any person acting on the authority or by direction of the Tribunal.

**NORTHERN TERRITORY - PERSONAL INJURIES (CIVIL CLAIMS) ACT
& PERSONAL INJURIES (LIABILITIES AND DAMAGES) ACT -**

excerpts for psychiatrists

PERSONAL INJURIES (CIVIL CLAIMS) ACT

SECT 3

Objectives

- (1) The objectives of this Act are to improve the efficiency of processes for the resolution of claims for damages for personal injuries and to assist the affordability of those claims.
- (2) The objectives of this Act are to be achieved generally by:
 - (a) providing for the resolution of claims before a proceeding is commenced in a court;
 - (b) promoting settlement of claims, if possible, at an early stage of the processes for resolution of claims;
 - (c) providing that a person is not entitled to commence a proceeding in respect of a claim without being fully prepared for resolution of the claim by settlement or trial;
 - (d) minimising the costs in relation to the making of claims;
 - (e) fixing appropriate awards of legal costs; and
 - (f) authorising the making of rules to provide for efficiency and equity in the resolution of claims and to regulate the commencement of proceedings in respect of unresolved claims.

SECT 4

Interpretation

- (1) In this Act, unless the contrary intention appears:

"damages" means damages for a personal injury.

"incident", in relation to a personal injury, means the incident, accident, circumstance, act or omission alleged to have caused the injury.

"medical expert" means a person lawfully practising in a branch of medicine, psychology, psychiatry, dentistry, pharmacology, occupational therapy, physiotherapy, rehabilitation, ergonomics or related field.

"medical report" means a statement in writing by a medical expert concerning an injured person and includes a document that the medical expert intends should be read with the statement, whether the document was in existence at the time the statement was made or was a document that he or she obtained or caused to be brought into existence subsequently.

"personal injury" includes:

- (a) a fatal injury;
- (b) a prenatal injury;
- (c) a psychological or psychiatric injury;
- (d) a disease; and
- (e) the aggravation, exacerbation or acceleration of a pre-existing injury or condition.

"rehabilitation" includes the use of medical, psychological, physical, social, educational or vocational measures:

- (a) to restore, as far as is reasonably possible, physical or mental functions lost or impaired as a result of a personal injury; or
- (b) to optimise, as far as is reasonably possible, the quality of life of a person who suffers the loss or impairment of physical or mental functions as a result of a personal injury.

PERSONAL INJURIES (LIABILITIES AND DAMAGES) ACT –

SECT 3

Definitions

In this Act, unless the contrary intention appears:

"damages" means damages for a personal injury.

"incident" means the incident, accident, circumstances or act alleged to have caused a personal injury.

"injured person" means a person who suffers a personal injury.

"personal injury" includes:

- (a) a fatal injury;
- (b) a prenatal injury;

- (c) a psychological or psychiatric injury;
- (d) a disease; and
- (e) the aggravation, exacerbation or acceleration of a pre-existing injury.

SECT 4

Application of Act

- (1) This Act applies in relation to all civil claims for damages for personal injuries, other than those excluded by virtue of this section, whether the claims arise under the common law or a statute.
- (2) This Act, other than Part 4, Division 6, applies only in relation to a personal injury alleged to have been caused by an incident that occurs after the commencement of this Act.
- (3) The following claims are excluded from the application of this Act other than Part 4, Division 6:
 - (a) a claim for benefits in respect of a death or an injury as a result of an accident within the meaning of the *Motor Accidents (Compensation) Act* ;
 - (b) a claim for compensation within the meaning of the *Workers Rehabilitation and Compensation Act* ;
 - (c) a claim for damages for a personal injury that is a dust-related condition;
 - (e) a claim, in relation to the supply of certain goods, in relation to loss or damage in the nature of a personal injury that is mentioned in section 106, 107, 118, 127 or 136 of Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* applying as a law of the Commonwealth or a State or Territory.
- (4) The Regulations may exclude a claim or class of claim from the operation of this Act or a provision of this Act other than Part 4, Division 6.
- (5) In this section:

"dust-related condition" means:

- (a) aluminosis, asbestosis, asbestos induced carcinoma, asbestos related pleural disease, bagassosis, berylliosis, byssinosis, coal dust pneumoconiosis, farmer's lung, hard metal pneumoconiosis, mesothelioma, silicosis, silico-tuberculosis or talcosis; or

- (b) any other pathological condition of the lungs, pleura or peritoneum that is attributable to dust.

SECT 8

Good Samaritans

- (1) A good Samaritan does not incur personal civil liability for a personal injury caused by an act done in good faith and without recklessness while giving emergency assistance to a person.
- (2) A good Samaritan with medical qualifications does not incur personal civil liability for advice, given in good faith and without recklessness, about the treatment of a person being given emergency medical assistance.
- (3) This section does not apply if the good Samaritan was intoxicated while giving the assistance or advice.
- (4) In this section:

"emergency assistance" means:

- (a) emergency medical assistance; or
- (b) any other form of assistance to a person whose life or safety is endangered in a situation of emergency.

"good Samaritan" means:

- (a) a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently in need of emergency assistance; or
- (b) a person with medical qualifications who, acting without expectation of payment or other consideration, gives advice about the treatment of a person who is apparently in need of emergency medical assistance.

"medical qualifications" means:

- (a) qualifications as a medical practitioner;
- (b) professional qualifications in a category of health care recognised by statute; or
- (c) qualifications as an ambulance officer or in another recognised paramedical capacity.

SECT 13
Expression of regret not admissible as evidence

An expression of regret about a personal injury made at any time before the commencement of a proceeding in respect of that injury is not admissible as evidence in that proceeding.

SECT 18

Definitions

In this Part, unless the contrary intention appears:

"impairment" means a loss, loss of use or derangement of any body part, organ system or organ function, or a combination of those impairments, but does not include a psychological or psychiatric injury prescribed by the Regulations.

"non-pecuniary loss" means permanent impairment suffered as a consequence of a personal injury.

"permanent impairment" means impairment that is assessed to be permanent impairment in accordance with the prescribed guides.

"prescribed guides" means:

- (a) the guides prescribed by the Regulations; or
- (b) if no guides are prescribed by the Regulations – the American Medical Association Guides to the Evaluation of Permanent Impairment (as modified by any regulation) as published from time to time.

SECT 24

Purpose of Division

The purpose of this Division is:

- (a) to abolish common law principles relating to the assessment and awarding of damages for pain and suffering, loss of amenities of life, loss of expectation of life or disfigurement; and
- (b) to provide for the assessment and awarding of damages other than for pecuniary loss on the basis of the degree of permanent impairment suffered by the injured person.

SECT 26

Assessment of degree of impairment

- (1) A court, in determining the degree of permanent impairment suffered by an injured person, must do so on the basis of evidence adduced under this section.
- (2) The claimant and the respondent may each adduce evidence for the purposes of subsection (1).
- (3) Evidence of permanent impairment is to be given only by a medical practitioner who has assessed the degree of permanent impairment in accordance with the prescribed guides and any applicable regulation.
- (4) The Regulations may provide for any matters in relation to the assessment of permanent impairment suffered by an injured person, including the following:
 - (a) the content of prescribed guides, including by modification of the American Medical Association Guides to the Evaluation of Permanent Impairment;
 - (b) procedures relating to the assessment of permanent impairment;
 - (c) the qualifications of medical practitioners who may give evidence under this section;
 - (d) the costs in connection with the assessment of impairment.

SECT 27

Damages for non-pecuniary loss

- (1) The maximum amount of damages a court may award for non-pecuniary loss is:
 - (a) on the commencement of this Part until the first declaration under section 28 takes effect – \$350 000; and
 - (b) at any time after the first declaration under section 28 takes effect – the amount declared and in force under section 28 at the time of the award.
- (2) A court must not award damages for non-pecuniary loss if the court determines the degree of permanent impairment to be less than 5% of the whole person.
- (3) When awarding damages for non-pecuniary loss, a court must award the following amount:

- (a) if the court determines the degree of permanent impairment to be 85% or more of the whole person – the maximum amount;
- (b) if the court determines the degree of permanent impairment to be not less than 15% and not more than 84% of the whole person – the relevant percentage of the maximum amount;
- (c) if the court determines the degree of permanent impairment to be a percentage of the whole person specified in column 1 of the Table – the amount specified in column 2 opposite the relevant percentage.

TABLE

Column 1	Column 2
Degree of permanent impairment as percentage of whole person	Amount of damages to be awarded
not less than 5% but less than 10%	2% of the maximum amount
10%	3% of the maximum amount
11%	4% of the maximum amount
12%	6% of the maximum amount
13%	8% of the maximum amount
14%	12% of the maximum amount

- (4) In subsection (3):

"maximum amount" means the maximum amount a court may award in accordance with subsection (1).

QLD WORKERS' COMPENSATION AND REHABILITATION ACT 2003 - SECT 31

31 Meaning of event

- (1) An event is anything that results in injury, including a latent onset injury, to a worker.
- (2) An event includes continuous or repeated exposure to substantially the same conditions that results in an injury to a worker.
- (3) A worker may sustain 1 or multiple injuries as a result of an event whether the injury happens or injuries happen immediately or over a period.
- (4) If multiple injuries result from an event, they are taken to have happened in 1 event.

SECT 32

32 Meaning of injury

- (1) An injury is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.
- (2) However, employment need not be a significant contributing factor to the injury if section 34(2) or 35(2) applies.
- (3) Injury includes the following—
 - (a) a disease contracted in the course of employment, whether at or away from the place of employment, if the employment is a significant contributing factor to the disease;
 - (b) an aggravation of the following, if the aggravation arises out of, or in the course of, employment and the employment is a significant contributing factor to the aggravation—
 - (i) a personal injury;
 - (ii) a disease;
 - (iii) a medical condition if the condition becomes a personal injury or disease because of the aggravation;
 - (c) loss of hearing resulting in industrial deafness if the employment is a significant contributing factor to causing the loss of hearing;
 - (d) death from injury arising out of, or in the course of, employment if the employment is a significant contributing factor to causing the injury;
 - (e) death from a disease mentioned in paragraph (a), if the employment is a significant contributing factor to the disease;
 - (f) death from an aggravation mentioned in paragraph (b), if the employment is a significant contributing factor to the aggravation.

- (4) For subsection (3)(b), to remove any doubt, it is declared that an aggravation mentioned in the provision is an injury only to the extent of the effects of the aggravation.
- (5) Despite subsections (1) and (3), injury does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances—
 - (a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment;
 - (b) the worker's expectation or perception of reasonable management action being taken against the worker;
 - (c) action by the Authority or an insurer in connection with the worker's application for compensation.

*Examples of actions that may be reasonable management actions taken in a reasonable way—
action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker
a decision not to award or provide promotion, reclassification or transfer of, or leave
of absence or benefit in connection with, the worker's employment*

SECT 37

37 Meaning of impairment

An impairment, from injury, is a loss of, or loss of efficient use of, any part of a worker's body.

SECT 38

38 Meaning of permanent impairment

A permanent impairment, from injury, is an impairment that is stable and stationary and not likely to improve with further medical or surgical treatment.

SECT 39

39 Meaning of work related impairment

- (1) A worker's work related impairment from injury is the worker's entitlement to lump sum compensation under section 180 expressed as a percentage of maximum statutory compensation calculated under section 183.
- (2) To remove any doubt, it is declared that a work related impairment only relates to injury arising out of, or in the course of, the worker's employment within the meaning of this division.

SECT 107

107 Meaning of QOTE

QOTE, for a financial year, is the seasonally adjusted amount of Queensland full-time adult persons ordinary time earnings as declared by the Australian Statistician in the statistician's report about average weekly earnings published immediately before the start of the financial year.

SECT 108

108 Compensation entitlement

- (1) Compensation is payable under this Act for an injury sustained by a worker.
- (2) However, if a worker's injury is an aggravation mentioned in section 32(3)(b), the worker is entitled to compensation for the injury only to the extent of the effects of the aggravation.

SECT 115

115 Overseas arrangements

- (1) If—
 - (a) an injury is sustained by a worker in another country in circumstances that, had the injury been sustained in Queensland, compensation would have been payable; and
 - (b) at the time of the injury, the worker's principal place of employment was in Queensland;

compensation is payable as if the injury were sustained in Queensland.

- (2) If—
 - (a) an injury is sustained by a worker in Queensland; and
 - (b) at the time of the injury, the worker's principal place of employment was in another country;

compensation is not payable for the injury.

- (3) For this section, a worker's principal place of employment is in a country if—
 - (a) the worker usually works in that country; or
 - (b) for a worker who usually works in more than 1 country—the employer's principal place of business is in that country.
- (4) In deciding whether a worker usually works in a country, regard must be had to the worker's work history with the employer and the intention of the worker and employer.

- (5) However, regard must not be had to any temporary arrangement under which the worker works in a country for a period of not longer than 6 months.

SECT 129

129 Self-inflicted injuries

Compensation is not payable for an injury sustained by a worker if the injury is intentionally self-inflicted.

SECT 130

130 Injuries caused by misconduct

- (1) Compensation is payable for an injury sustained by a worker that is caused by the worker's serious and wilful misconduct only if—
- (a) the injury results in death; or
 - (b) the insurer considers that the injury could result in a WRI of 50% or more.
- (2) However, compensation is not payable if the injury could result in a WRI of 50% or more arising from—
- (a) a psychiatric or psychological injury; or
 - (b) combining a psychiatric or psychological injury and another injury.
- (3) If the insurer and the worker can not agree that the worker's injury could result in a WRI of 50% or more—
- (a) the degree of impairment that could be sustained by the worker may be decided only by a medical assessment tribunal; and
 - (b) the insurer must refer the question of the degree of impairment to a tribunal for decision.
- (4) In this section—

serious and wilful misconduct of a worker does not include conduct engaged in at the express or implied direction of the worker's employer.

SECT 145

145 Application and object of pt 9

- (1) This part applies if a worker is totally or partially incapacitated because of injury for which compensation is payable.
- (2) The object of this part is to provide for weekly payments to the worker during the period of incapacity.

SECT 150

150 Total incapacity—workers whose employment is governed by an industrial instrument

- (1) The compensation payable to a totally incapacitated worker whose employment is governed by an industrial instrument is, for each week—
 - (a) for the first 26 weeks of the incapacity, the greater of the following—
 - (i) 85% of the worker's NWE;
 - (ii) the amount payable under the worker's industrial instrument; and
 - (b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the greater of the following—
 - (i) 75% of the worker's NWE;
 - (ii) 70% of QOTE; and
 - (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
 - (i) if a worker demonstrates to the insurer that the injury could result in a WRI of more than 15%—the greater of the following—
 - (A) 75% of the worker's NWE;
 - (B) 70% of QOTE; or
 - (ii) otherwise—an amount equal to the single pension rate.
- (2) However, the amount paid under subsection (1)(b) or (c) must not be more than the amount to which the worker would be entitled under subsection (1)(a).

SECT 151

151 Total incapacity—workers whose employment is not governed by industrial instrument

- (1) The compensation payable to a totally incapacitated worker whose employment is not governed by an industrial instrument is, for each week—
 - (a) for the first 26 weeks of the incapacity, the greater of the following—
 - (i) 85% of the worker's NWE;
 - (ii) 80% of QOTE; and
 - (b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the greater of the following—
 - (i) 75% of the worker's NWE;
 - (ii) 70% of QOTE; and
 - (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
 - (i) if a worker demonstrates to the insurer that the injury could result in a WRI of more than 15%—the greater of the following—
 - (A) 75% of the worker's NWE;
 - (B) 70% of QOTE; or
 - (ii) otherwise—an amount equal to the single pension rate.

- (2) However, the amount must not be more than the worker's NWE.

SECT 160

160 Total incapacity—reference about impairment to medical assessment tribunal

- (1) This section applies if—
 - (a) for section 150(1)(c)(i), 151(1)(c)(i), 152(1)(c)(i), 157(5)(c)(i) or 159(1)(c)(i), an insurer and a worker or a person can not agree that the injury could result in a WRI of more than 15%; or
 - (b) for section 150(1)(c)(ii), 151(1)(c)(ii), 152(1)(c)(ii), 157(5)(c)(ii) or 159(1)(c)(ii), an insurer and a worker or a person can not agree that the injury could result in a WRI of 15% or less.
- (2) The degree of impairment that could result from the injury may be decided only by a medical assessment tribunal.
- (3) The insurer must refer the question of impairment to a tribunal for decision.
- (4) In deciding the degree of impairment that could result from the injury, a psychiatric or psychological injury must not be combined with another injury.

SECT 178

178 Entitlement to assessment of permanent impairment and lump sum compensation

- (1) Under this part, an insurer or a worker is entitled to ask for an assessment to decide if a worker has sustained a degree of permanent impairment from injury.
- (2) If the worker is assessed under this part as having sustained a degree of permanent impairment, the worker is entitled to a payment, or an offer of payment, of lump sum compensation for the permanent impairment.
- (3) In particular circumstances, the worker may be entitled to a payment of additional lump sum compensation.

SECT 179

179 Assessment of permanent impairment

- (1) An insurer may decide, or a worker may ask the insurer, to have the worker's injury assessed to decide if the worker's injury has resulted in a degree of permanent impairment.

- (2) The insurer must have the degree of permanent impairment assessed—
 - (a) for industrial deafness—by an audiologist; or
 - (b) for a psychiatric or psychological injury—by a medical assessment tribunal;
or
 - (c) for another injury—by a doctor.
- (3) The degree of permanent impairment must be assessed in the way prescribed under a regulation and a report must be given to the insurer stating—
 - (a) the matters taken into account, and the weight given to the matters, in deciding the degree of permanent impairment; and
 - (b) any other information prescribed under a regulation.

SECT 180

180 Calculation of lump sum compensation

- (1) If, as a result of the assessment, a worker is entitled to lump sum compensation, the amount of the lump sum compensation must be calculated under a regulation having regard to the degree of permanent impairment and the table of injuries.
- (2) Without limiting subsection (1), lump sum compensation for injury must not include an amount for a degree of impairment attributable to—
 - (a) a condition existing before the injury; or
 - (b) a condition for which the worker is not entitled to compensation.
- (3) The amount of lump sum compensation is to be calculated as at the day the insurer makes an offer of lump sum compensation to the worker under section 187.

SECT 183

183 Calculation of WRI

- (1) If the worker is assessed as having a degree of permanent impairment, the insurer must calculate the worker's WRI.
- (2) The WRI must be calculated under a regulation having regard to—
 - (a) the worker's entitlement to lump sum compensation calculated under section 180; and
 - (b) if the worker had a previous entitlement to lump sum compensation for a similar injury other than industrial deafness—the previous entitlement; and
 - (c) if the worker previously had an entitlement to lump sum compensation for industrial deafness—the previous percentage loss of hearing.

- (3) However, in relation to an event, the worker's WRI for a psychiatric or psychological injury and the worker's WRI for another injury must not be combined in calculating the WRI for the worker's injury.

SECT 282

282 Worker to undergo medical examination

- (1) An insurer or a contributor may at any time ask the worker to undergo either or both of the following, whether at 1 time or at different times, at the expense of the insurer or contributor—
 - (a) a medical examination by a doctor to be selected by the worker from a panel of at least 3 doctors nominated in the request;
 - (b) an assessment of cognitive, functional or vocational capacity by a registered person to be selected by the worker from a panel of at least 3 persons with appropriate qualifications and experience nominated in the request.
- (2) The worker must comply with the request unless it would be unreasonable or unnecessarily repetitious.
- (3) If 3 doctors or persons with appropriate qualifications and experience are not available for inclusion on a panel, the number on the panel may be reduced to 2.

SECT 283

283 Joint expert reports

- (1) Some or all of the parties may jointly arrange for an expert report about—
 - (a) the event or events giving rise to the claim; or
 - (b) the worker's injury; or
 - (c) the worker's capacity to undertake specific rehabilitation programs; or
 - (d) the worker's capacity to undertake further work and earn income; or
 - (e) any other matter about the claim.
- (2) None of the parties is under an obligation to agree to a proposal to obtain a report.
- (3) The person preparing the report must be a person agreed to by the parties and have appropriate qualifications and experience in the relevant field.
- (4) The person preparing the report must give each party a copy of the report.
- (5) The cost of obtaining a report is to be paid by the parties in proportions agreed to in writing between them or, in default of agreement, in equal proportions.
- (6) This section does not prevent a party from obtaining a report other than under this section.

CHAPTER 11--MEDICAL ASSESSMENT TRIBUNALS

Part 1--Preliminary

SECT 490

490 Object of ch 11

The object of this chapter is to provide for an independent and non-adversarial system of medical review and assessment of—

- (a) injury and impairment sustained by workers or other persons for which compensation is payable under this Act or a former Act; and
- (b) other personal injury sustained by persons for which payment of an amount is payable under an Act prescribed under a regulation.

SECT 493

493 Panels for tribunals

- (1) The Governor in Council, by gazette notice, may appoint, for a specified period of not more than 3 years, a panel of doctors for designation to a tribunal.
- (2) Each appointee to a panel for a tribunal must be a specialist in the speciality for which the appointment is made.
- (3) The Governor in Council, by gazette notice, may also appoint—
 - (a) an appointee to a panel for a tribunal to be chairperson of the tribunal; and
 - (b) at least 2 appointees to a panel for a tribunal to be deputy chairpersons of the tribunal.

SECT 496

496 Proceedings of tribunals

For each tribunal—

- (a) the Authority may appoint a secretary; and
- (b) meetings are to be held at the place and time decided by the tribunal or, if there is no decision, as the secretary to the tribunal directs; and
- (c) if there is disagreement among the members of the tribunal, a decision of the tribunal is that of the majority of its members.

SECT 500

500 Reference to tribunals

- (1) An insurer may refer the following matters in relation to an injury under this Act to the appropriate tribunal for decision on the medical matters involved—
 - (a) a worker's application for compensation for an alleged injury;
 - (b) a worker's capacity for work;
 - (c) a worker's injury under section 245(3)(b), 258(1)(a)(ii) or 262(1)(b)(iii) or (iv);
 - (d) a worker's impairment under section 160;
 - (e) a worker's permanent impairment under section 179;
 - (f) a worker's level of dependency under section 193;
 - (g) a worker's permanent impairment reviewable under section 266;
 - (h) a worker's disfigurement as a result of injury.
- (2) An insurer may also, in relation to an injury mentioned in section 490A(1)(b), refer to the appropriate tribunal, for decision on the medical matters involved, a matter that could have been referred to a former tribunal under a former Act.

SECT 501

501 Reference about application for compensation

- (1) This section applies on a reference to a tribunal under section 500(1)(a).
- (2) If the insurer has not admitted that an injury was sustained by a worker, and the nature of the injury, the tribunal must decide—
 - (a) whether the matters alleged in the application for compensation constitute an injury to the worker and, if so, the nature of the injury; and
 - (b) whether an incapacity for work resulting from the injury—
 - (i) is total or partial; and
 - (ii) is permanent or temporary; and
 - (c) if the tribunal decides that the worker has sustained an injury under the table of injuries resulting in permanent impairment and the insurer asks—the nature and degree of the impairment.
- (3) For section 130, the tribunal must decide—
 - (a) the degree of permanent impairment that could result from the injury; and
 - (b) the nature and degree of the impairment.
- (4) For section 131(4), the tribunal must decide—
 - (a) whether special circumstances of a medical nature exist; and
 - (b) if special circumstances do exist—the nature and extent of the circumstances.

- (5) If subsections (2) to (4) do not apply, the tribunal must decide—
 - (a) whether an incapacity for work resulting from the injury—
 - (i) is total or partial; and
 - (ii) is permanent or temporary; and
 - (b) if the worker has sustained an injury under the table of injuries resulting in permanent impairment and the insurer asks—the nature and degree of the impairment.
- (6) The tribunal must assess the nature and degree of permanent impairment in the way prescribed under a regulation.

SECT 502

502 Reference about worker's capacity for work

- (1) This section applies on a reference to a tribunal under section 500(1)(b).
- (2) A reference under section 500(1)(b) may be made at any time and from time to time.
- (3) The tribunal must decide—
 - (a) whether, when it makes its decision, there exists in the worker an incapacity for work resulting from the injury for which the application for compensation was made; and
 - (b) whether the incapacity—
 - (i) is total or partial; and
 - (ii) is permanent or temporary; and
 - (c) if the worker has sustained an injury under the table of injuries resulting in permanent impairment and the insurer asks—the nature and degree of the impairment.
- (4) A tribunal must assess the nature and degree of permanent impairment in the way prescribed under a regulation.

SECT 503

503 Reference about worker's injury

- (1) This section applies on a reference to a tribunal under section 500(1)(c).
- (2) If the insurer has not admitted that an injury was sustained by a worker, and the nature of the injury, the tribunal must decide whether the matters alleged for the purpose of seeking damages constitute an injury to the worker and, if so, the nature of the injury.
- (3) Also, if the reference relates to a worker's injury under section 262(1)(b)(iii) or (iv), the tribunal must decide whether—

- (a) the deceased worker sustained an injury in the event; and
- (b) the injury caused the worker's death.

SECT 504

504 Reference about worker's impairment

- (1) This section applies on a reference to a tribunal under section 500(1)(d).
- (2) The tribunal must decide—
 - (a) the degree of permanent impairment that could result from the injury; and
 - (b) the nature and degree of the impairment.
- (3) The tribunal must assess the nature and degree of permanent impairment in the way prescribed under a regulation.

SECT 505

505 Reference about worker's permanent impairment

- (1) This section applies on a reference to a tribunal under section 500(1)(e).
- (2) The tribunal must decide—
 - (a) whether the worker has sustained a degree of permanent impairment; and
 - (b) if the worker has sustained a degree of permanent impairment—
 - (i) the degree of permanent impairment resulting from the injury; and
 - (ii) the nature and degree of the impairment.
- (3) The tribunal must assess the nature and degree of permanent impairment in the way prescribed under a regulation.

SECT 507

507 Reference about review of worker's permanent impairment

- (1) This section applies on a reference to a tribunal under section 500(1)(g).
- (2) The tribunal must review the medical evidence and decide—
 - (a) if there has been a further material deterioration in relation to the worker's permanent impairment; and
 - (b) the degree of the further permanent impairment.
- (3) The tribunal must assess the nature and degree of further permanent impairment in the way prescribed under a regulation.

SECT 511

511 Right to appear and be heard before tribunal

- (1) Despite any Act or law, this section is the only provision of law under which a person may be heard in relation to a matter referred to a tribunal, whether in relation to an injury mentioned in section 490A(1)(a) or (b).
- (2) On a reference to a tribunal, the worker is entitled to be heard before the tribunal in person or by the worker's representative.
- (3) Only the worker and any representative of the worker may be present or heard before the tribunal.
- (4) To remove any doubt, it is declared that an insurer, employer, or any other person (not being the worker) whose interests may be affected by a decision made by a tribunal can not be present, represented or heard before a tribunal.

SECT 515

515 Finality of tribunal's decision

- (1) Either of the following decisions of the tribunal is final and can not be questioned in a proceeding before a tribunal or a court, except under section 512—
 - (a) a decision on a medical matter referred to the tribunal under section 500;
 - (b) a decision under section 514(1).
-

WORKERS' COMPENSATION AND REHABILITATION ACT 2003 - SCHEDULE 6

-- DICTIONARY

aggravation includes acceleration.

doctor means a registered medical practitioner.

impairment see section 37.

injury—

- (a) generally—see section 32; or
- (b) f or chapter 4, part 6—see section 232A.

injury scale value see section 306O.

medical assessment tribunal means a medical assessment tribunal established under chapter 11.

medical condition means a condition of a medical nature that is not an injury under section 32.

medical treatment means—

- (a) treatment by a doctor, dentist, physiotherapist, occupational therapist, psychologist, chiropractor, osteopath, podiatrist or speech pathologist; or
- (b) assessment for industrial deafness by an audiologist; or
- (c) the provision of diagnostic procedures or skiagrams; or
- (d) the provision of nursing, medicines, medical or surgical supplies, curative apparatus, crutches or other assistive devices.

member of the family, of a deceased worker, see section 28.

minor injury means an injury of a person that does not require the hospitalisation of the person as an in-patient to properly treat the injury.

notice of assessment means a notice of assessment of permanent impairment issued by WorkCover under section 185.

NWE means normal weekly earnings.

permanent impairment see section 38.

QUOTE see section 107.

table of injuries means the table of injuries prescribed under a regulation.

work related impairment WRI see section 39.

Guidelines for the table of injuries

Part six Psychiatric or psychological injuries

1. Part six deals with psychiatric or psychological injuries. Any PI resulting from a psychiatric or psychological injury as defined in the *Diagnostic & Statistical Manual of Mental Disorders* (DSM) must be assessed using the AMA Guides.
2. As legislated, the relevant area of the AMA Guides is chapter 14. Any PI resulting from an injury must be expressed as a degree of whole-person impairment.

Column 1	Column 2	Column 3
PI Code Injury	Maximum degree of PI	AMA 4 Guide Ref page
6000 Psychiatric impairment from trauma (major depression or psychosis)	0-100	301
6001 Adjustment disorder with anxiety/depression	0-100	301
6002 PTSD	0-100	301
6003 other psychiatric disorder	0-100	301

MOTOR ACCIDENT CLAIMS IN QUEENSLAND

selected excerpts

Legislation

The following legislation applies to Compulsory Third Party (CTP) insurance claims in Queensland.

Civil Liability Act 2003
Civil Liability Regulation 2003
Motor Accident Insurance Act 1994
Motor Accident Insurance Regulation 2004

Online searches for the complete range of Queensland Government legislation may be conducted from the Office of the Queensland Parliamentary Counsel Web Site.

Legislation is available in Portable Document Format (PDF).

Civil Liability Act 2003
Page 64 Reprint 3A effective 1 September 2012

Schedule 2 Dictionary section 8

a professional see section 20.

harm means harm of any kind, including the following—

- (a) personal injury;
- (b) damage to property;
- (c) economic loss.

injury, for chapter 3, see section 51.

injury scale value see section 61(1)(a).

personal injury includes—

- (a) fatal injury; and
- (b) pre-natal injury; and
- (c) psychological or psychiatric injury; and
- (d) disease.

personal injury damages means damages that relate to the death of or injury to a person.

section 59A damages see section 59A(1).

Chapter 3 Assessment of damages for personal injury
Part 1 Preliminary
50 Application of ch 3

Subject to section 5, this chapter applies only in relation to an award of personal injury damages.

51 Definitions for ch 3

In this chapter -

general damages means damages for—

- (a) pain and suffering; or
- (b) loss of amenities of life; or
- (c) loss of expectation of life; or
- (d) disfigurement.

injury means personal injury.

Chapter 3 - 55

When earnings can not be precisely calculated

- (1) This section applies if a court is considering making an award of damages for loss of earnings that are unable to be precisely calculated by reference to a defined weekly loss.
- (2) The court may only award damages if it is satisfied that the person has suffered or will suffer loss having regard to the person's age, work history, actual loss of earnings, any permanent impairment and any other relevant matters.
- (3) If the court awards damages, the court must state the assumptions on which the award is based and the methodology it used to arrive at the award.

61 Assessment by court of injury scale

- (1) If general damages are to be awarded by a court in relation to an injury arising after 1 December 2002, the court must assess an injury scale value as follows -
 - (a) the injured person's total general damages must be assigned a numerical value (**injury scale value**) on a scale running from 0 to 100;
 - (b) the scale reflects 100 equal gradations of general damages, from a case in which an injury is not severe enough to justify any award of general damages to a case in which an injury is of the gravest conceivable kind;
 - (c) in assessing the injury scale value, the court must -
 - (i) assess the injury scale value under any rules provided under a regulation; and
 - (ii) have regard to the injury scale values given to similar injuries in previous proceedings.
- (2) If a court assesses an injury scale value for a particular injury to be more or less than any injury scale value prescribed for or attributed to similar particular injuries under subsection (1)(c), the court must state the factors on which the assessment is based that justify the assessed injury scale value.

Civil Liability Regulation 2003
Reprinted as in force on 1 July 2012

6 Rules for assessing injury scale value—Act, s 61(1)(c)(i)

- (1) This section and schedules 3 to 6 provide the rules under which a court must assess the injury scale value for an injury.
- (2) Schedule 4 provides the ranges of injury scale values for particular injuries that the court is to consider in assessing the injury scale value for those injuries.
- (3) For an injury not mentioned in schedule 4, a court, in assessing an injury scale value for the injury, may have regard to the ranges prescribed in schedule 4 for other injuries.
- (4) Schedule 3 provides matters to which a court is to have regard in the application of schedule 4.
- (5) Schedule 6 provides the psychiatric impairment rating scale that may be used with schedule 4.
- (6) Schedule 5 provides matters relevant to the application of schedule 6 and requirements with which a medical expert must comply in assessing a PIRS rating for a mental disorder of an injured person.

Schedule 6

Part 2 Mental disorders

General comment for items 10 to 13

This part includes references to ratings on the psychiatric impairment rating scale set out in schedule 6 (*PIRS ratings*). A PIRS rating is capable of being accepted by a court only if it is assessed by a medical expert as required under schedules 5 and 6 and provided to the court in a PIRS report.

Examples of factors affecting ISV assessment for items 10 to 13

- PIRS rating
- Degree of insight
- Age and life expectancy
- Pain and suffering
- Loss of amenities of life
- Likelihood difficulties would have emerged in any event
- If there is extreme psychological trauma, for example, intense helplessness or horror, the immediate adverse psychological reaction

10 Extreme mental disorder

41 to 65

Example of the injury

A mental disorder with a PIRS rating between 31% and 100%

Schedule 4

Civil Liability Regulation 2003

Page 36 Reprint 2B effective 1 July 2012

Comment about appropriate level of ISV

Despite a very high PIRS rating, an ISV at or near the bottom of the range may be appropriate if the injured person has reduced insight.

11 Serious mental disorder

11 to 40

Example of the injury

A mental disorder with a PIRS rating between 11% and 30%

12 Moderate mental disorder

2 to 10

Comment

There is generally only moderate impairment.

Example of the injury

A mental disorder with a PIRS rating between 4% and 10%

13 Minor mental disorder

0 to 1

Comment

For many persons who have suffered the injury there will be little or no impact on their lives.

Example of the injury

A mental disorder with a PIRS rating between 0% and 3%

Part 1 Explanation of the PIRS

1 PIRS rates permanent impairment caused by mental disorder

The PIRS set out in schedule 6 rates permanent impairment caused by a mental disorder.

Note: PIRS ratings are referred to in schedule 4, part 2. A PIRS rating is capable of being accepted by a court under schedule 3, section 6 only if it is—

- (a) assessed by a medical expert as required under this schedule and schedule 6; and
- (b) provided to the court in a PIRS report as required under section 12.

2 Areas of functional impairment

- (1) The PIRS consists of 6 scales, each of which rates permanent impairment in an area of function.
- (2) Each scale has 5 classes of impairment, ranging from little or no impairment to total impairment.

Part 2 Assessment of PIRS rating

3 Medical expert must comply with requirements

- (1) A medical expert must comply with this schedule and schedule 6 in assessing a PIRS rating for a mental disorder of an injured person.
- (2) The medical expert may give an assessment only if the medical expert has examined the injured person.

4 How to assess a PIRS rating

- (1) To assess a PIRS rating for a mental disorder of an injured person, a medical expert must follow the steps set out in this section.
- (2) Step 1—for each area of functional impairment set out in the PIRS, the medical expert must—
 - (a) decide which level of impairment set out in the PIRS describes the level of impairment caused by the mental disorder of the injured person; and
 - (b) read off from the PIRS the class, for example, class 1, that corresponds to the level that has been decided.

- (3) In deciding which level to choose for an area of functional impairment, the medical expert—
 - (a) must have regard to—
 - (i) the examples of indicators of the level of impairment set out in the PIRS for the area to the extent they are relevant in a particular case; and
 - (ii) all factors the medical expert considers relevant to the injured person's level of impairment, including, for example, the injured person's age and pre-existing functional capacity for the area; and
 - (b) may have regard to the range of percentages of impairment set out in the PIRS for the area as a guide to the level of impairment.

The examples of impairment set out in the PIRS assume a full pre-existing functional capacity for the area which may not be appropriate in a particular case.

- (4) Step 2—the medical expert must list the class number of the 6 classes read off under step 1 in ascending order.
- (5) Step 3—the medical expert must work out the median of the class numbers (the *median class score*) under section 6.
- (6) Step 4—the medical expert must work out the total of the class numbers (the *total class score*) by adding together all of the class numbers.
- (7) Step 5—from the conversion table in section 7, the medical expert must read off the percentage impairment, that corresponds to the particular median class score when found in conjunction with the particular total class score.
- (8) Subject to section 5, the percentage impairment is the PIRS rating assessed by the medical expert for the mental disorder of the injured person.

5 Assessment if pre-existing mental disorder

- (1) If an injured person has a pre-existing mental disorder, a medical expert must—
 - (a) work out a percentage impairment for the pre-existing mental disorder at the time immediately before the injury using the steps set out in section 4 (the *pre-injury rating*); and
 - (b) work out a percentage impairment for the current mental disorder using the steps set out in section 4 (the *post-injury rating*); and
 - (c) subtract the pre-injury rating from the post-injury rating.

Schedule 5

Civil Liability Regulation 2003

Page 162 Reprint 2B effective 1 July 2012

- (2) The remaining percentage impairment is the PIRS rating assessed by the medical expert for the mental disorder of the injured person.

Editor's note—

See also section 11 (Pre-existing mental disorder).

6 How to work out a median class score

- (1) A median class score is the number that would fall at the middle point between the third class number and the fourth class number if all the class numbers are listed in ascending order.
- (2) If the median class score under subsection (1) is not a whole number, the median class score must be rounded up to the nearest whole number.

Note: A median class score, as opposed to a mean class score or average class score, has the advantage of not being too influenced by 1 extreme score.

7 Conversion table

This section sets out the conversion table for use under section 4.

Median class score

	1	2	3	4	5
6	0%				
7	0%				
8	1%				
9	1%	4%			
10	2%	5%			
11	2%	5%			
12	2%	6%			
13	3%	7%	11%		
14	3%	7%	13%		
15		8%	15%		
16		9%	17%		
17		9%	19%	31%	
18		10%	22%	34%	
19			24%	37%	
20			26%	41%	
21			28%	44%	61%
22			30%	47%	65%
23				50%	70%
24				54%	74%
25				57%	78%
26				60%	83%
27					87%
28					91%
29					96%
30					100%



8 Example worksheet

This section sets out an example of a completed worksheet that could be used to assess a PIRS rating for a mental disorder.

Part 3 Particular cases

9 Refusal of treatment

- (1) This section applies if an injured person refuses treatment that could lead to a significant improvement in the level of permanent impairment caused by a mental disorder of the injured person.
- (2) Despite the injured person's refusal of treatment, a medical expert may assess a PIRS rating for the mental disorder of the injured person.

Area of functional impairment Class

1 Self-care and personal hygiene	1
2 Social and recreational activities	2
3 Travel	3
4 Social functioning	5
5 Concentration, persistence and pace	5
6 Adaptation	5

List of class numbers in ascending order: 1 2 3 5 5 5

Median class score (using section 6): 4

Total class score: 21

Percentage impairment (using conversion table in section 7): 44%

PIRS rating (if no pre-existing mental disorder): 44%

- (3) The refusal of treatment must not affect the medical expert's assessment of the PIRS rating.
- (4) The medical expert must note the refusal of treatment in the PIRS report and state in the report the likely effect of treatment and any reasons known to the medical expert for the refusal of treatment.
- (5) Subsection (6) applies if a PIRS report given to a court states that the injured person refuses treatment that could lead to a significant improvement in the level of permanent impairment caused by the mental disorder of the injured person.
- (6) The court may, in assessing the ISV for an injury or multiple injuries of the injured person, take into account the refusal of treatment and the matters stated in the PIRS report under subsection (4).
- (7) In this section—

PIRS report means a report under section 12.

10 Cognitive impairment

If a medical expert assessing a PIRS rating for a mental disorder of an injured person suspects the injured person has a cognitive impairment, the medical expert must take into account the following factors—

- (a) the relevant medical history of the injured person;
- (b) any medical treatment, and progress towards rehabilitation, for the cognitive impairment;
- (c) any results of radiological scans, including CT and MRI scans, electroencephalograms and psychometric tests made available to the medical expert.

11 Pre-existing mental disorder

If a medical expert assessing a PIRS rating for a mental disorder of an injured person considers the injured person had a pre-existing mental disorder, the medical expert must—

- (a) make appropriate enquiry into the pre-existing mental disorder; and
- (b) consider any psychiatric or psychological reports made available to the medical expert.

Part 4 Report of PIRS rating

12 Court to be given PIRS report

- (1) This section applies if a party to a proceeding wants a court to accept a PIRS rating assessed by a medical expert for a mental disorder of an injured person.
- (2) The party must give the court a written report from the medical expert stating the following matters—
 - (a) the mental disorder diagnosed by the medical expert;
 - (b) the PIRS rating assessed by the medical expert for the mental disorder of the injured person;
 - (c) how the PIRS rating is assessed, including—

- (i) for each area of functional impairment set out in the PIRS—
 - (A) the relevant clinical findings; and
 - (B) the level of impairment set out in the PIRS that the medical expert decided described the level of impairment caused by the mental disorder of the injured person; and
 - (C) the class set out in the PIRS that corresponds to the level that was decided; and
- (ii) the median class score and total class score worked out under section 4; and
- (iii) if the injured person had a pre-existing mental disorder, the information mentioned in subparagraphs (i) and (ii) in relation to the pre-injury rating and the post-injury rating as defined under section 5;
- (d) details of any cognitive impairment of the injured person.

Civil liability in Queensland. Excerpts for Psychiatrists

PERSONAL INJURIES PROCEEDINGS ACT 2002 -

SCHEDULE --

DICTIONARY

health care claim means a claim against a health care provider in relation to personal injury caused entirely or partly by the fault of the health care provider in providing health care.

health care provider means—

- (a) a provider; or
- (b) a provider of a public sector health service as defined under the Hospital and Health Boards Act 2011, schedule 2; or
- (c) a licensee of a private health facility as defined under the Private Health Facilities Act 1999.

incident, in relation to personal injury, means the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury.

injured person means a person who suffers personal injury.

personal injury includes—

- (a) fatal injury; and
- (b) prenatal injury; and
- (c) psychological or psychiatric injury; and
- (d) disease.

rehabilitation includes the use of medical, psychological, physical, social, educational or vocational measures—

- (a) to restore, as far as reasonably possible, physical or mental functions lost or impaired through personal injury; and
- (b) to optimise, as far as reasonably possible, the quality of life of a person who suffers the loss or impairment of physical or mental functions through personal injury.

CIVIL LIABILITY ACT 2003 - SECT 21

21 Proactive and reactive duty of doctor to warn of risk

- (1) A doctor does not breach a duty owed to a patient to warn of risk, before the patient undergoes any medical treatment (or at the time of being given medical advice) that will involve a risk of personal injury to the patient, unless the doctor at that time fails to give or arrange to be given to the patient the following information about the risk—
 - (a) information that a reasonable person in the patient's position would, in the circumstances, require to enable the person to make a reasonably informed decision about whether to undergo the treatment or follow the advice;
 - (b) information that the doctor knows or ought reasonably to know the patient wants to be given before making the decision about whether to undergo the treatment or follow the advice.
- (2) In this section—

patient, when used in a context of giving or being given information, includes a person who has the responsibility for making a decision about the medical treatment to be undergone by a patient if the patient is under a legal disability.

SECT 22

22 Standard of care for professionals

- (1) A professional does not breach a duty arising from the provision of a professional service if it is established that the professional acted in a way that (at the time the service was provided) was widely accepted by peer professional opinion by a significant number of respected practitioners in the field as competent professional practice.
- (2) However, peer professional opinion can not be relied on for the purposes of this section if the court considers that the opinion is irrational or contrary to a written law.
- (3) The fact that there are differing peer professional opinions widely accepted by a significant number of respected practitioners in the field concerning a matter does not prevent any 1 or more (or all) of the opinions being relied on for the purposes of this section.
- (4) Peer professional opinion does not have to be universally accepted to be considered widely accepted.
- (5) This section does not apply to liability arising in connection with the giving of (or the failure to give) a warning, advice or other information, in relation to the risk of harm to a person, that is associated with the provision by a professional of a professional service.

SECT 31

31 Proportionate liability for apportionable claims

- (1) In any proceeding involving an apportionable claim—
 - (a) the liability of a defendant who is a concurrent wrongdoer in relation to the claim is limited to an amount reflecting that proportion of the loss or damage claimed that the court considers just and equitable having regard to the extent of the defendant's responsibility for the loss or damage; and
 - (b) judgment must not be given against the defendant for more than that amount in relation to the claim.
- (2) If the proceeding involves both an apportionable claim and a claim that is not an apportionable claim—
 - (a) liability for the apportionable claim, to the extent it involves concurrent wrongdoers, is to be decided in accordance with this part; and
 - (b) liability for the other claim, and the apportionable claim to the extent it is not provided for under paragraph (a), is to be decided in accordance with the legal rules, if any, that, apart from this part, are relevant.
- (3) In apportioning responsibility between defendants in a proceeding the court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceeding.
- (4) This section applies to a proceeding in relation to an apportionable claim whether or not all concurrent wrongdoers are parties to the proceeding.

SECT 51

51 Definitions for ch 3

In this chapter—

general damages means damages for—

- (a) pain and suffering; or
- (b) loss of amenities of life; or
- (c) loss of expectation of life; or
- (d) disfigurement.

injury means personal injury.

SECT 61

61 Assessment by court of injury scale

- (1) If general damages are to be awarded by a court in relation to an injury arising after 1 December 2002, the court must assess an injury scale value as follows—
 - (a) the injured person's total general damages must be assigned a numerical value (injury scale value) on a scale running from 0 to 100;
 - (b) the scale reflects 100 equal gradations of general damages, from a case in which an injury is not severe enough to justify any award of general damages to a case in which an injury is of the gravest conceivable kind;
 - (c) in assessing the injury scale value, the court must—
 - (i) assess the injury scale value under any rules provided under a regulation; and
 - (ii) have regard to the injury scale values given to similar injuries in previous proceedings.
- (2) If a court assesses an injury scale value for a particular injury to be more or less than any injury scale value prescribed for or attributed to similar particular injuries under subsection (1)(c), the court must state the factors on which the assessment is based that justify the assessed injury scale value.

SECT 71

71 Meaning of expression of regret

An expression of regret made by an individual in relation to an incident alleged to give rise to an action for damages is any oral or written statement expressing regret for the incident to the extent that it does not contain an admission of liability on the part of the individual or someone else.

SECT 72

72 Expressions of regret are inadmissible

An expression of regret made by an individual in relation to an incident alleged to give rise to an action for damages at any time before a civil proceeding is started in a court in relation to the incident is not admissible in the proceeding.

Example—

Suppose a patient attended a health service and was diagnosed as suffering from gall stones. Removal of the gall bladder was recommended for treatment of the condition. The procedure was attempted, but there was an adverse outcome.

A health care provider stated that the provider was sorry that there was an adverse outcome.

The statement is inadmissible in any future proceeding against the health care provider in relation to a personal injury allegedly arising out of the procedure.

SECT 72C

72C Meaning of apology

An apology is an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, whether or not it admits or implies an admission of fault in relation to the matter.

SECT 72D

72D Effect of apology on liability

- (1) An apology made by or on behalf of a person in relation to any matter alleged to have been caused by the person—
 - (a) does not constitute an express or implied admission of fault or liability by the person in relation to the matter; and
 - (b) is not relevant to the determination of fault or liability in relation to matter.
- (2) Evidence of an apology made by a person is not admissible in any civil proceeding as evidence of the fault or liability of the person in relation to the matter.

SCHEDULE 2

-- DICTIONARY

harm means harm of any kind, including the following—

- (a) personal injury;
- (b) damage to property;
- (c) economic loss.

injury scale value see section 61(1)(a).

personal injury includes—

- (a) fatal injury; and
- (b) pre-natal injury; and
- (c) psychological or psychiatric injury; and
- (d) disease.

personal injury damages means damages that relate to the death of or injury to a person.

EXCERPTS FOR PSYCHIATRISTS

Regarding

SOUTH AUSTRALIA Workers Rehabilitation and Compensation Act 1986, the Workers Rehabilitation and Compensation Regulations 2010

The WorkCover Scheme operates under the Workers Rehabilitation and Compensation Act 1986. This Act sets up the structure of the Scheme, and in particular spells out how basic elements of the Scheme work, such as worker entitlements, rehabilitation and return to work, claims management, employer levies and dispute resolution.

After a significant review of the regulations operating under this Act, a new set of Workers Rehabilitation and Compensation Regulations 2010 commenced on 1 November 2010. This set of regulations mainly expands on parts of the Act in more detail. There is also a set of Workers Rehabilitation and Compensation (Territorial Application of Act) Regulations 2007 which specifically relate to recent harmonisation of 'cross border' workers compensation legislation in Australia.

WorkCoverSA itself is set up under the WorkCover Corporation Act 1994. This Act sets out WorkCover's objectives, powers, duties, functions, status and interaction with other bodies. There are two sets of regulations under this Act.

All South Australian Acts and Regulations are available on the South Australian Government's legislation site at: www.legislation.sa.gov.au.

Workers Rehabilitation and Compensation Act 1986 - Sect 3

3 - Interpretation

(1) In this Act, unless the contrary intention appears –

"compensable injury" means an injury that is compensable by virtue of section 30;

"compensation" includes any monetary benefit payable under this Act;

"Corporation" means the WorkCover Corporation of South Australia ;

"current work capacity", in relation to a worker, means a present inability arising from a compensable injury such that the worker is not able to return to his or her employment at the time of the occurrence of the injury but is able to return to work in suitable employment;

"disease" includes -

- (a) any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development; and
- (b) any injury to which section 31 applies;

"injured worker" - an injured worker is any worker who has suffered an injury (or, where the context admits, has died);

"injury", in relation to a worker, means -

- (a) any physical or mental injury including -
 - (i) loss, deterioration or impairment of a limb, organ or part of the body, or of a physical, mental or sensory faculty; or
 - (ii) a disease; or
 - (iii) disfigurement; or
- (b) where the context admits - the death of the worker, and includes a secondary injury;

"medical expert" means—

- (a) a legally qualified medical practitioner;
- (b) a registered dentist;
- (c) a registered psychologist;
- (d) a registered optician;
- (e) a registered physiotherapist;
- (f) a registered chiropractor;
- (g) a registered podiatrist;
- (h) a registered occupational therapist;
- (i) a registered speech pathologist;
- (j) registered osteopath;

"medical services" means -

- (a) attendance, examination or treatment by a medical expert (including the obtaining from a medical expert of a certificate or report); or
- (b) any diagnostic examination or test required for the purposes of treatment by a medical expert;

"no current work capacity", in relation to a worker, means a present inability arising from a compensable injury such that a worker is not able to return to work, either in his or her employment at the time of the occurrence of the injury or in suitable employment;

"non-economic loss" means -

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of expectation of life;
- (d) any other loss or detriment of a non-economic nature;

"notional weekly earnings" in relation to a worker means—

- (a) the worker's average weekly earnings; or
- (b) where an adjustment has been made under this Act to take account of changes in levels of earnings, the value of money or remuneration (including under section 37) or other relevant factors (or 1 or more of these)—the worker's average weekly earnings as so adjusted;

"recognised medical expert" means—

- (a) a legally qualified medical practitioner; or

- (b) in relation to injuries of a particular kind—a medical expert who is recognised by the Corporation as having specialised knowledge of, and experience in the treatment of, injuries of that kind;

"secondary injury" means an injury that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury;

"suitable employment", in relation to a worker, means employment in work for which the worker is currently suited, whether or not the work is available, having regard to the following:

- (a) the nature of the worker's incapacity and previous employment;
- (b) the worker's age, education, skills and work experience;
- (c) the worker's place of residence;
- (d) medical information relating to the worker that is reasonably available, including in any medical certificate or report;
- (e) if any rehabilitation programs are being provided to or for the worker;
- (f) the worker's rehabilitation and return to work plan, if any;

"trauma" means an event, or series of events, out of which a compensable injury arises;

"Tribunal" means the Workers Compensation Tribunal ;

SECT 30

30 - Compensability of injuries

- (1) Subject to this Act, an injury is compensable if it arises from employment.
- (4) However, an injury does not arise from employment if it arises out of, or in the course of, the worker's involvement in a social or sporting activity, except where the activity forms part of the worker's employment or is undertaken at the direction or request of the employer.

SECT 30A

30A - Psychiatric injuries

An injury consisting of an illness or disorder of the mind is compensable if and only if—

- (a) the employment was a substantial cause of the injury; and
- (b) the injury did not arise wholly or predominantly from -
 - (i) reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker; or
 - (ii) a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with the worker's employment; or
 - (iii) reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment; or
 - (iv) reasonable action taken in a reasonable manner under this Act affecting the worker.

SECT 43

43 - Lump sum compensation

- (1) Subject to this Act, if a worker suffers a compensable injury resulting in permanent impairment as assessed in accordance with section 43A, the worker is entitled (in addition

to any entitlement apart from this section) to compensation for non-economic loss by way of a lump sum.

- (2) Subject to this section, the lump sum will be an amount that represents a portion of the prescribed sum calculated in accordance with the regulations.
- (3) Regulations made for the purposes of subsection (2) must provide for compensation that at least satisfies the requirements of Schedule 3 taking into account the assessment of whole of person impairment under this Division.
- (4) An entitlement does not arise under this section if the worker's degree of permanent impairment is less than 5%.
- (5) An entitlement does not arise under this section in relation to a psychiatric impairment.
- (6) If a worker suffers 2 or more compensable injuries arising from the same trauma—
 - (a) the injuries may together be treated as 1 injury to the extent set out in the WorkCover Guidelines (and assessed together using any combination or other principle set out in the WorkCover Guidelines); and
 - (b) the worker is not entitled to receive compensation by way of lump sum under subsection (2) in respect of those injuries in excess of the prescribed sum.
- (7) If -
 - (a) a compensable injury consists of the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior compensable injury; and
 - (b) compensation by way of lump sum has been previously paid under this section, or a corresponding previous enactment,
there will be a reduction of the lump sum payable under this section in respect of the injury by the amount of the previous payment unless such a reduction is incorporated into the provisions of the WorkCover Guidelines.
- (8) For the purposes of this section, the "prescribed sum" is -
 - (a) unless a regulation has been made under paragraph (b)—\$400 000 (indexed); or
 - (b) a greater amount prescribed by regulation for the purposes of this definition.
- (9) In connection with the operation of subsection (8) -
 - (a) the amount to be applied with respect to a particular injury is the amount applying under that subsection at the time of the occurrence of that injury; and
 - (b) an amount prescribed by regulation under paragraph (b) of that subsection must be indexed so as to provide annual adjustments according to changes in the Consumer Price Index.
- (10) For the purposes of this section, any degree of impairment will be assessed in accordance with section 43A (and the WorkCover Guidelines).
- (11) Compensation is not payable under this section after the death of the worker concerned.
- (12) In this section –

"WorkCover Guidelines" means the guidelines published under section 43A (see below).

SECT 43A

43A - Assessment of impairment

- (1) This section sets out a scheme for assessing the degree of impairment that applies to a compensable injury that results in permanent impairment.
- (2) An assessment -
 - (a) must be made in accordance with the WorkCover Guidelines; and
 - (b) must be made by a legally qualified medical practitioner who holds a current accreditation issued by the Corporation for the purposes of this section.

- (3) The Minister will publish guidelines (the "WorkCover Guidelines") for the purposes of section 43 and this section.
- (4) The guidelines under subsection (3) -
 - (a) must be published in the Gazette; and
 - (b) may adopt or incorporate the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time; and
 - (c) must incorporate a methodology that arrives at an assessment of the degree of impairment of the whole person; and
 - (d) may specify procedures to be followed in connection with an assessment for the purposes of this Division; and
 - (e) may have effect on a day specified by the Minister by notice in the Gazette; and
 - (f) may be amended or substituted by the Minister from time to time.
- (5) The Minister must, before publishing or amending the WorkCover Guidelines, consult with -
 - (a) the Australian Medical Association (South Australia) Incorporated; and
 - (b) any other prescribed body.
- (6) The Corporation will establish an accreditation scheme for the purposes of subsection (2)(b).
- (7) The accreditation scheme -
 - (a) may provide for a term or period of accreditation, and for the suspension or cancellation of accreditation on specified grounds; and
 - (b) may specify terms or conditions of accreditation; and
 - (c) may be amended or substituted by the Corporation from time to time.
- (8) An assessment of the degree of impairment resulting from an injury for the purposes of this Division must -
 - (a) be made after the injury has stabilised; and
 - (b) subject to subsection (9), be based on the worker's current impairment as at the date of assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury.
- (9) An assessment must take into account the following principles:
 - (a) if a worker presents for assessment in relation to injuries which occurred on different dates, the impairments are to be assessed chronologically by date of injury;
 - (b) impairments from unrelated injuries or causes are to be disregarded in making an assessment;
 - (c) assessments are to comply with any other requirements specified by the WorkCover Guidelines or prescribed by the regulations.
- (10) An amendment or substitution in relation to the WorkCover Guidelines under subsection (4)(d) will only apply in respect of an injury occurring on or after the date the amendment or substitution takes effect.
- (11) A number determined under the WorkCover Guidelines with respect to a value of a person's degree of impairment may be rounded up or down according to any principle set out in the WorkCover Guidelines.

PART 6C- Medical Panels

Division 1--Establishment and constitution

- 98 Establishment
- 98A Constitution
- 98B Procedures

- 98C Validity of acts
- 98D Immunity of members

Division 2--Functions and powers

- 98E Interpretation
- 98F Functions
- 98G Powers and procedures on a referral
- 98H Opinions

Division 3--Related matters

- 98I Admissibility
- 98J Support staff

SECT 98

98 - Establishment

- (1) There will be such Medical Panels as are necessary for the purposes of this Act.
- (2) For the purpose of constituting Medical Panels, there is to be a list of legally qualified medical practitioners appointed by the Governor on the recommendation of the Minister.
- (3) For the purpose of making recommendations under subsection (2), the Minister must establish a selection committee in accordance with the regulations and seek and take into account nominations from that committee.
- (4) For the purpose of making nominations under subsection (3), the selection committee must invite expressions of interest in accordance with the regulations.
- (5) Subsection (4) does not apply if the Minister is simply seeking the advice of the selection committee about whether a particular medical practitioner should be re-appointed at the expiration of a term of office.
- (6) A person appointed under subsection (2) will be appointed on conditions, and for a term (not exceeding 3 years), determined by the Governor and, on the expiration of a term of office, is eligible for re-appointment.
- (7) The office of a person appointed under subsection (2) becomes vacant if the person—
 - (a) signs by written notice addressed to the Minister; or
 - (b) is removed from office by the Governor for -
 - (i) breach of, or non-compliance with, a condition of appointment; or
 - (ii) mental or physical incapacity to carry out duties of office satisfactorily; or
 - (iii) neglect of duty; or
 - (iv) dishonourable conduct; or
 - (v) incompetence; or
 - (c) completes a term of office and is not re-appointed; or
 - (d) ceases to be entitled to practise as a medical practitioner; or
 - (e) is convicted of an indictable offence or of an offence which, if committed in South Australia, would be an indictable offence; or
 - (f) is sentenced to imprisonment for an offence.
- (8) From the list of medical practitioners under subsection (2), the Minister must appoint (on terms and conditions determined by the Minister)—
 - (a) a Convenor; and
 - (b) a Deputy Convenor.
- (9) The Deputy Convenor may, subject to the direction of the Convenor, exercise the functions and powers conferred on the Convenor by or under this Act.

- (10) In the temporary absence of the Convenor, the Deputy Convenor has, and may exercise, the functions and powers conferred on the Convenor by or under this Act.

SECT 98A

98A - Constitution

- (1) A Medical Panel is to consist of the number of members, not exceeding 5, as is determined by the Convenor of Medical Panels in each particular case.
- (2) If a medical practitioner has been engaged to treat or examine, or to furnish a report in relation to, a worker (other than as a member of a Medical Panel), the medical practitioner is not to sit as a member of a Medical Panel examining the worker.
- (3) A member of a Medical Panel is entitled to fees, allowances and expenses approved by the Governor.
- (4) The fees, allowances and expenses are payable out of the Compensation Fund.
- (5) The Convenor must appoint a presiding member for each Medical Panel, who will have general responsibility for managing the operations of the Medical Panel in its particular case.

SECT 98B

98B - Procedures

- (1) A Medical Panel is not bound by the rules of evidence but may inform itself in any way it considers appropriate.
- (2) A Medical Panel may act informally and without regard to technicalities or legal forms.
- (3) A Medical Panel may engage consultants and seek expert advice as it considers necessary in any particular case.
- (4) The Convenor may give directions as to the arrangement of the business of the Panels.
- (5) The Minister may for the purposes of—
 - (a) ensuring procedural fairness in the procedures of the Medical Panels; and
 - (b) facilitating the proper administration of the Medical Panels, issue guidelines as to the procedures of Medical Panels.
- (6) The Minister must consult with the Attorney-General and the Convenor before issuing any guidelines under this section.
- (7) The Convenor may give directions as to the procedures of the Panels but may not give directions inconsistent with any guidelines issued by the Minister.
- (8) An act or decision of a majority of the members of a Medical Panel constitutes an act or decision of the Medical Panel.
- (9) Subject to this section and the other provisions of this Part, a Medical Panel may determine its own procedures.

SECT 98D

98D - Immunity of members

No personal liability attaches to a member of a Medical Panel for an act or omission by the member or the Medical Panel in good faith and in the exercise or purported exercise of powers or functions under this Act.

SECT 98F

98F—Functions

- (1) The function of a Medical Panel is to give an opinion on any medical question referred to it under this Act.
- (2) The Corporation or the Tribunal may, at any time or from time to time, require a worker—
 - (a) who claims compensation under this Act; or
 - (b) who is in receipt of weekly payments of compensation under this Act, to submit himself or herself for examination by a Medical Panel or to answer questions (or both) on a date and at a place arranged by the Convenor of Medical Panels so that the Medical Panel can determine any specified medical question.
- (3) In addition, a medical question that constitutes or forms part of, or arises in connection with, a matter that is the subject of a dispute under Part 6A must be referred to a Medical Panel.
- (4) A Medical Panel may decide not to give an opinion on a particular medical question if it appears to the Medical Panel that the question relates to a matter that falls outside the range of matters that should be subject to determination under this Part.

SECT 98H

98H - Opinions

- (1) A Medical Panel must form its opinion on a medical question referred under this Division within 60 days after the reference is made or such longer period as may be agreed by the Corporation or Tribunal (as the case requires).
- (2) The Medical Panel to which a medical question is so referred must give a certificate as to its opinion.
- (3) An opinion under subsection (2) must include a statement setting out the reason or reasons for the opinion provided by the Medical Panel.
- (4) For the purposes of determining any question or matter, the opinion of a Medical Panel on a medical question referred to the Medical Panel is to be adopted and applied by any body or person acting under this Act and must be accepted as final and conclusive irrespective of who referred the medical question to the Medical Panel or when the medical question was referred.

SECT 98I

98I—Admissibility

- (1) A certificate given by a Medical Panel is admissible in evidence in any proceedings under this Act.
- (2) A member of a Medical Panel is competent to give evidence as to matters in a certificate given by the Medical Panel of which he or she was a member, but the member may not be compelled to give any such evidence.
- (3) A consultant engaged to provide expert advice to a Medical Panel is competent to give evidence as to matters relating to that expert advice, but the consultant may not be compelled to give any such evidence.

SECT 108

108 - Medical examination at request of employer

- (1) Subject to subsection (2), the employer of a worker who has made a claim under this Act may require the Corporation to have the worker submit to an examination by a recognised medical expert nominated by the Corporation.
- (2) A worker shall not be required to submit to examinations under this section more frequently than is permitted by the regulations.
- (3) The Corporation may, if it thinks fit, charge the cost of an examination under this section to the employer.
- (4) If it appears that there has been undue delay in having a worker examined under this section, the Tribunal may, on application by the employer, give such directions to the Corporation as appear reasonable in the circumstances to expedite the examination.
- (5) The Corporation must comply, or take steps to secure compliance, with such a direction.

SECT 109

109 - Worker to be supplied with copy of medical report

Where a report is obtained for the purposes of this Act by the Corporation or an employer on the findings made, or the opinions formed, by a medical expert on the examination of a worker, the Corporation or the employer must, within 7 days after receiving the report, send a copy of the report to the worker.

SCHEDULE 3

Schedule 3 - Minimum amounts of compensation according to degree of impairment under regulations

Degree of whole of person assessment	Minimum compensation payable under regulations under section 43(2)
5%—9% (inclusive)	\$10 000 (indexed)
10%—29% (inclusive)	\$17 500 (indexed)
30%—54% (inclusive)	\$75 000 (indexed)
55%—69% (inclusive)	\$250 000 (indexed)
70%—100% (inclusive)	\$400 000 (indexed)

SCHEDULE 3A

Schedule 3A—No disadvantage—non-economic loss compensation

No compensation for 'stress', mental or psychological injury

SA WorkCover Guidelines

The WorkCover Guidelines are based on the American Medical Association's Guides to the evaluation of permanent impairment, 5th edition (AMA5) and the WorkCover Guide for the evaluation of permanent impairment, 3rd edition published by WorkCover NSW (the WorkCover NSW Guides).

1.5 Evaluating permanent impairment involves clinical assessment on the day of assessment, determining:

- whether the worker's compensable disability has resulted in impairment
- whether the compensable disability has reached Maximum Medical Improvement

- (MMI)
- whether the resultant impairment is permanent
- the degree of permanent impairment that results from the compensable disability
- and
- the proportion of permanent impairment due to any previous disability (compensable or otherwise).

This is in accordance with diagnostic and other objective criteria as detailed in the WorkCover Guidelines.

- 1.15 The WorkCover Guidelines are meant to assist legally qualified medical practitioners who are accredited with the Corporation to assess levels of permanent impairment. They are not meant to provide a 'recipe approach' to the assessment of permanent impairment. Legally qualified medical practitioners (assessors) are required to exercise their clinical judgment to determine whether the compensable disability has resulted in an impairment and whether the impairment is permanent. The degree of permanent impairment that results from the compensable disability must be determined using the tables, graphs and methodology in the WorkCover Guidelines and AMA5. Section 1.5 of Chapter 1 of AMA5 (p10) applies to the conduct of assessments and expands on this concept.
- 1.16 Most body systems, structures and disorders included in AMA5 are included in the WorkCover Guidelines. However, the Pain chapter (Chapter 18, AMA5) and the Mental and Behavioural Disorders chapter (Chapter 14, AMA5) are excluded.

The WorkCover NSW Guides use the Psychiatric Impairment Rating Scale

WORKERS REHABILITATION AND COMPENSATION REGULATIONS 2010 - SCHEDULE 4

REG 39

39 - Lump sum compensation (section 43 of Act)

- (1) For the purposes of section 43(2) of the Act, the portion of the prescribed sum to which a worker is entitled will be calculated in accordance with the table set out in Schedule 4, based on the worker's whole of person impairment assessed under Part 4 Division 5 of the Act. Pursuant to section 43(8)(b) of the Act, the amount of \$426 255 (index adjusted—2009) is prescribed for the purposes of the definition of "prescribed sum" under section 43 of the Act.

REG 47

47—Constitution of Medical Panels (section 98 of Act)

- (1) Pursuant to section 98(3) of the Act, the selection committee established by the Minister for the purpose of making recommendations under subsection (2) of that section is to consist of the following members:
- (a) 1 person, to be appointed by the Minister after consultation with the Minister for Health, who is to preside at meetings of the committee;

- (b) 1 person who is, in the opinion of the Minister, an appropriate person to represent the interests of employers;
 - (c) 1 person who is, in the opinion of the Minister, an appropriate person to represent the interests of workers;
 - (d) 1 person who is a member of the Australian Medical Association (South Australia) Incorporated;
 - (e) 1 person who is a member of the Medical Board of South Australia;
 - (f) at least 1, but not more than 5, persons -
 - (i) representing the colleges of medical practitioners from which the Minister expects appointments to be made to Medical Panels; or
 - (ii) who have an interest in the function of Medical Panels and are appointed following consultation by the Minister with the person appointed to preside at meetings of the committee.
- (2) The members of the selection committee will hold office on such terms and conditions as the Minister may determine.
 - (3) The committee will, subject to direction by the Minister as to the procedures it is to adopt, determine its own procedures.
 - (4) Pursuant to section 98(4) of the Act, the selection committee must, for the purpose of making nominations under subsection (3) of that section, by notice in publications considered by the committee to be suitable for the purpose, invite expressions of interest for appointment to the list of medical practitioners appointed by the Governor under section 98(2) of the Act within a period specified in the notice (being not less than 2 weeks, and not more than 4 weeks, from the date of publication of the notice).

REG 48

48—Medical examination requested by employers (section 108 of Act)

For the purposes of section 108(2) of the Act, a worker is not required to submit to examinations under section 108 more frequently than once in every 2 months.

Schedule 4—Scale of entitlements—section 43(2) of Act

For the purposes of this scale—

- (a) *WPI degree* is the worker's degree of whole of person impairment assessed under Part 4 Division 5 of the Act;
- (b) the amounts set out in Column 2 apply in respect of compensable injuries occurring before 1 January 2009;
- (c) the amounts set out in Column 3 apply in respect of compensable injuries occurring during 2009;

- (d) the amounts set out in Column 4 apply in respect of compensable injuries occurring during 2010 or a year succeeding 2010.

WPI degree	Compensation amount for 2008 and all preceding years	Compensation amount for 2009	Compensation amount for 2010 and succeeding years
0	0	0	0
1	0	0	0
2	0	0	0
3	0	0	0
4	0	0	0
5	\$10 000	\$10 514	\$10 657 (index adjusted—2009)
6	\$11 424	\$12 012	\$12 175 (index adjusted—2009)
7	\$12 874	\$13 536	\$13 720 (index adjusted—2009)
8	\$14 363	\$15 102	\$15 307 (index adjusted—2009)
9	\$15 902	\$16 720	\$16 947 (index adjusted—2009)
10	\$17 500	\$18 400	\$18 650 (index adjusted—2009)
11	\$19 168	\$20 154	\$20 427 (index adjusted—2009)
12	\$20 916	\$21 991	\$22 289 (index adjusted—2009)
13	\$22 753	\$23 923	\$24 248 (index adjusted—2009)
14	\$24 689	\$25 958	\$26 310 (index adjusted—2009)
15	\$26 731	\$28 105	\$28 486 (index adjusted—2009)
16	\$28 889	\$30 374	\$30 786 (index adjusted—2009)
17	\$31 170	\$32 772	\$33 216 (index adjusted—2009)
18	\$33 582	\$35 308	\$35 787 (index adjusted—2009)
19	\$36 132	\$37 990	\$38 505 (index adjusted—2009)

20	\$38 827	\$40 823	\$41 376 (index adjusted— 2009)
21	\$41 673	\$43 815	\$44 409 (index adjusted— 2009)
22	\$44 676	\$46 973	\$47 610 (index adjusted— 2009)
23	\$47 842	\$50 301	\$50 983 (index adjusted— 2009)
24	\$51 176	\$53 807	\$54 536 (index adjusted— 2009)
25	\$54 683	\$57 494	\$58 273 (index adjusted— 2009)
26	\$58 368	\$61 368	\$62 200 (index adjusted— 2009)
27	\$62 236	\$65 435	\$66 322 (index adjusted— 2009)
28	\$66 288	\$69 695	\$70 640 (index adjusted— 2009)
29	\$70 531	\$74 156	\$75 161 (index adjusted— 2009)
30	\$75 000	\$78 855	\$79 924 (index adjusted— 2009)
31	\$79 594	\$83 685	\$84 819 (index adjusted— 2009)
32	\$84 421	\$88 760	\$89 963 (index adjusted— 2009)
33	\$89 446	\$94 044	\$95 318 (index adjusted— 2009)
34	\$94 673	\$99 539	\$100 888 (index adjusted— 2009)
35	\$100 101	\$105 246	\$106 672 (index adjusted— 2009)
36	\$105 732	\$111 167	\$112 673 (index adjusted— 2009)
37	\$111 566	\$117 300	\$118 889 (index adjusted— 2009)
38	\$117 604	\$123 649	\$125 324 (index adjusted— 2009)
39	\$123 845	\$130 211	\$131 975 (index adjusted— 2009)
40	\$130 288	\$136 985	\$138 841 (index adjusted— 2009)
41	\$136 932	\$143 970	\$145 921 (index adjusted— 2009)

42	\$143 775	\$151 165	\$153 213 (index adjusted— 2009)
43	\$150 817	\$158 569	\$160 717 (index adjusted— 2009)
44	\$158 055	\$166 179	\$168 430 (index adjusted— 2009)
45	\$165 486	\$173 992	\$176 349 (index adjusted— 2009)
46	\$173 107	\$182 004	\$184 470 (index adjusted— 2009)
47	\$180 916	\$190 215	\$192 792 (index adjusted— 2009)
48	\$188 907	\$198 616	\$201 307 (index adjusted— 2009)
49	\$197 078	\$207 207	\$210 014 (index adjusted— 2009)
50	\$205 424	\$215 982	\$218 908 (index adjusted— 2009)
51	\$213 940	\$224 936	\$227 983 (index adjusted— 2009)
52	\$222 621	\$234 063	\$237 234 (index adjusted— 2009)
53	\$231 461	\$243 357	\$246 654 (index adjusted— 2009)
54	\$240 455	\$252 814	\$256 239 (index adjusted— 2009)
55	\$250 000	\$262 849	\$266 410 (index adjusted— 2009)
56	\$258 877	\$272 182	\$275 869 (index adjusted— 2009)
57	\$268 292	\$282 081	\$285 902 (index adjusted— 2009)
58	\$277 832	\$292 112	\$296 069 (index adjusted— 2009)
59	\$287 491	\$302 267	\$306 362 (index adjusted— 2009)
60	\$297 260	\$312 538	\$316 772 (index adjusted— 2009)
61	\$307 131	\$322 916	\$327 291 (index adjusted— 2009)

62	\$317 094	\$333 392	\$337 908 (index adjusted— 2009)
63	\$327 140	\$343 954	\$348 613 (index adjusted— 2009)
64	\$337 260	\$354 594	\$359 398 (index adjusted— 2009)
65	\$347 444	\$365 301	\$370 250 (index adjusted— 2009)
66	\$357 680	\$376 063	\$381 157 (index adjusted— 2009)
67	\$367 959	\$386 871	\$392 112 (index adjusted— 2009)
68	\$378 270	\$397 712	\$403 100 (index adjusted— 2009)
69	\$388 600	\$408 573	\$414 108 (index adjusted— 2009)
70	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
71	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
72	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
73	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
74	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
75	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
76	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
77	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
78	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
79	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
80	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
81	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
82	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
83	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)

84	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
85	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
86	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
87	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
88	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
89	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
90	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
91	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
92	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
93	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
94	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
95	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
96	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
97	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
98	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
99	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)
100	\$400 000	\$420 558	\$426 255 (index adjusted— 2009)

EXCERPTS FOR PSYCHIATRISTS

regarding

MOTOR ACCIDENTS IN SOUTH AUSTRALIA [also applicable to Personal Injury Claims]

Motor Accident Compensation Claims in South Australia

In South Australia, the Motor Accident Commission (MAC) is South Australia's Compulsory Third Party (CTP) insurer. The MAC provides \$360 million each year in compensation to road accident victims. In South Australia, CTP insurance is built in to the registration process – when you register your vehicle you also pay a CTP insurance premium that is designed to provide cover for people injured in road crashes.

The CTP Fund provides compensation for the victims of road crashes where the owner or driver of a registered motor vehicle or a passenger is at fault. The scheme is administered by Allianz S.A which means that Allianz is the insurance company which processes the claims for motor accident victims.

Once Allianz have received your claim, they will investigate the details of your accident to determine who was at fault, before they can pay out any compensation. The investigation may involve the obtaining of statements from all the parties involved including any witnesses.

MAC also manages the State Government's road safety communications program and provides funding for projects that aim to reduce the number and impact of road injuries and deaths.

If you have been injured in a car accident in South Australia, you can contact Allianz directly and lodge a claim for compensation yourself. However, you may wish to first seek legal advice from a lawyer.

Operation and management of the CTP Fund is the responsibility of MAC and is supported ultimately by a Government guarantee. Compulsory Third Party (CTP) insurance is governed by South Australian legislation, in part of three Acts of State Parliament: the Motor Vehicles Act 1959, Civil Liability Act 1936 and the Motor Accident Commission Act 1992.

MOTOR VEHICLES ACT 1959 - SECT 5

5 Interpretation

- (1) In this Act, unless the context otherwise requires or some other meaning is clearly intended -
 - "accident" means a collision or impact (whether caused accidentally or on purpose) resulting in damage to a motor vehicle;
 - "health professional" means a legally qualified medical practitioner, a registered optometrist or a registered physiotherapist;

CIVIL LIABILITY ACT 1936 - SECT 3

3 Interpretation

In this Act, unless the contrary intention appears—

"accident" means an incident out of which personal injury arises and includes a motor accident;

"consequential mental harm" means mental harm that is a consequence of bodily injury to the person suffering the mental harm;

"contributory negligence" means a failure by a person who suffers harm to exercise reasonable care and skill for his or her own protection or for the protection of his or her own interests;

"damages" means compensation or damages for harm and includes solatium (solatium" means compensation to a person for non-financial disadvantage) but does not include—

(a) workers compensation; or

(b) compensation under a statutory scheme for compensating victims of crime;

"harm" includes loss of life, personal injury, damage to property, economic loss and loss of any other kind;

"mental harm" means impairment of a person's mental condition;

"motor accident" means an incident in which personal injury arises out of the use of a motor vehicle;

"non-economic loss" means -

(a) pain and suffering; or

(b) loss of amenities of life; or

(c) loss of expectation of life; or

(d) disfigurement;

"personal injury" or "injury" means bodily injury and includes—

(a) mental harm;

(b) death;

"pure mental harm" means mental harm other than consequential mental harm;

SECT 33

33—Mental harm—duty of care

- (1) A person (the "defendant") does not owe a duty to another person (the "plaintiff") to take care not to cause the plaintiff mental harm unless a reasonable person in the defendant's position would have foreseen that a person of normal fortitude in the plaintiff's position might, in the circumstances of the case, suffer a psychiatric illness.
- (2) For the purposes of this section -
 - (a) in a case of pure mental harm, the circumstances of the case to which the court is to have regard include the following:
 - (i) whether or not the mental harm was suffered as the result of a sudden shock;
 - (ii) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in peril;

- (iii) the nature of the relationship between the plaintiff and any person killed, injured or put in peril;
 - (iv) whether or not there was a pre-existing relationship between the plaintiff and the defendant;
- (b) in a case of consequential mental harm, the circumstances of the case include the nature of the bodily injury out of which the mental harm arose.
- (3) This section does not affect the duty of care of a person (the "defendant") to another (the "plaintiff") if the defendant knows, or ought reasonably to know, that the plaintiff is a person of less than normal fortitude.

SECT 34

34 - General principles

- (1) A determination that negligence caused particular harm comprises the following elements:
 - (a) that the negligence was a necessary condition of the occurrence of the harm ("factual causation"); and
 - (b) that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused ("scope of liability").
- (2) Where, however, a person (the "plaintiff") has been negligently exposed to a similar risk of harm by a number of different persons (the "defendants") and it is not possible to assign responsibility for causing the harm to any one or more of them—
 - (a) the court may continue to apply the principle under which responsibility may be assigned to the defendants for causing the harm 1 ; but
 - (b) the court should consider the position of each defendant individually and state the reasons for bringing the defendant within the scope of liability.
- (3) For the purpose of determining the scope of liability, the court is to consider (amongst other relevant things) whether or not and why responsibility for the harm should be imposed on the negligent party.

SECT 41

41—Standard of care for professionals

- (1) A person who provides a professional service incurs no liability in negligence arising from the service if it is established that the provider acted in a manner that (at the time the service was provided) was widely accepted in Australia by members of the same profession as competent professional practice.
- (2) However, professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.
- (3) The fact that there are differing professional opinions widely accepted in Australia by members of the same profession does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.
- (4) Professional opinion does not have to be universally accepted to be considered widely accepted.

- (5) This section does not apply to liability arising in connection with the giving of (or the failure to give) a warning, advice or other information in respect of a risk of death of or injury associated with the provision of a health care service.

SECT 75

75—Expressions of regret

In proceedings in which damages are claimed for a tort, no admission of liability or fault is to be inferred from the fact that the defendant or a person for whose tort the defendant is liable expressed regret for the incident out of which the cause of action arose.

Personal Injury Claims in South Australia **Legislative excerpts for psychiatrists**

The Civil Liability Act 1936 remains the main Act in South Australia.

There have been significant changes to reduce the level of damages payable for personal injury claims.

□ The *Wrongs (Liability and Damages for Personal Injury) Amendment Act 2002* includes:

- the protection of ‘good Samaritans’;
- caps (\$241,500) and thresholds (seven days impairment or \$2,750 in medical expenses) for general damages, and a regulated scale of damages related to the severity of injury;
- caps on economic loss;
- a ban on interest on damages for non-economic or prospective losses;
- a 5 per cent discount rate for damages for loss of future earning capacity
- exclusion of damages for the cost of investing or managing an award;
- limits on recovery for gratuitous care;
- limits on who can sue for nervous shock;
- no damages for those injured while engaged in a serious criminal activity subject to certain protections;
- intoxication to result in an automatic minimum 25 per cent reduction (or 50 per cent if over 0.15 per cent blood alcohol) when courts are awarding bodily injury damages;
- reliance on the care and skill of an intoxicated person to result in an automatic 25 per cent (or 50 per cent if over 0.15 per cent blood alcohol) reduction in damages; and
- protection for expressions of regret.

□ *The Volunteers Protection Act 2001* protects volunteers of government and incorporated community organizations from personal liability.

□ SA currently has pre litigation procedures that provide opportunities for settlement of claims in an economical way.

□ The second stage of South Australia’s tort law reforms was enacted in the *Law Reform (Ipp Recommendations) Act 2004*. This legislation enacts the key liability recommendations of the Ipp Report, including:

- providing a defence to a negligence action for doctors and other professionals if they have acted in accordance with a practice widely held by respected practitioners to be a proper practice;
- removing liability for failure to warn of obvious risks, and providing that, for the purpose of a defence of voluntary assumption of risk, plaintiffs are deemed to be aware of obvious risks unless they can prove otherwise;
- in relation to limitation periods making it more difficult to obtain extensions of time beyond the statutory periods and providing for an early notification regime for children’s claims;

- codifying and clarifying the common law in relation to the causation, foreseeability and scope of liability principles of negligence; standard of care for professionals, and contributory negligence;
- restoration of the highway immunity for road authorities;
- capping of economic loss in loss of dependency claims; and
- the Act also extinguishes entitlement to damages for the costs of raising a healthy child in response to the High Court decision in *Cattanach v Melchior*.

□ The *Professional Standards Act 2004* has passed through Parliament. The Act is largely based on the NSW model and enables professional and occupational associations to obtain approval for schemes to cap the liability of their members in instances of negligence involving economic loss or property damage. South Australia's Act has not yet come into force pending national discussions regarding the establishment of a common Professional Standards Council in each jurisdiction.

CIVIL LIABILITY ACT 1936-South Australia-

SECT 3

3—Interpretation

In this Act, unless the contrary intention appears—

"accident" means an incident out of which personal injury arises and includes a motor accident;

"consequential mental harm" means mental harm that is a consequence of bodily injury to the person suffering the mental harm;

"contributory negligence" means a failure by a person who suffers harm to exercise reasonable care and skill for his or her own protection or for the protection of his or her own interests;

"damages" means compensation or damages for harm and includes solatium (Solatium (plural solatia) is a form of compensation for emotional rather than physical or financial harm.) but does not include—

- (a) workers compensation; or
- (b) compensation under a statutory scheme for compensating victims of crime;

"mental harm" means impairment of a person's mental condition;

"non-economic loss" means—

- (a) pain and suffering; or
- (b) loss of amenities of life; or
- (c) loss of expectation of life; or

- (d) disfigurement;

"personal injury" or "injury" means bodily injury and includes—

- (a) mental harm;
- (b) death;

SECT 33

33—Mental harm—duty of care

- (1) A person (the "defendant") does not owe a duty to another person (the "plaintiff") to take care not to cause the plaintiff mental harm unless a reasonable person in the defendant's position would have foreseen that a person of normal fortitude in the plaintiff's position might, in the circumstances of the case, suffer a psychiatric illness.
- (2) For the purposes of this section—
 - (a) in a case of pure mental harm, the circumstances of the case to which the court is to have regard include the following:
 - (i) whether or not the mental harm was suffered as the result of a sudden shock;
 - (ii) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in peril;
 - (iii) the nature of the relationship between the plaintiff and any person killed, injured or put in peril;
 - (iv) whether or not there was a pre-existing relationship between the plaintiff and the defendant;
 - (b) in a case of consequential mental harm, the circumstances of the case include the nature of the bodily injury out of which the mental harm arose.
- (3) This section does not affect the duty of care of a person (the "defendant") to another (the "plaintiff") if the defendant knows, or ought reasonably to know, that the plaintiff is a person of less than normal fortitude.

SECT 41

41—Standard of care for professionals

- (1) A person who provides a professional service incurs no liability in negligence arising from the service if it is established that the provider acted in a manner that (at the time the service was provided) was widely accepted in Australia by members of the same profession as competent professional practice.
- (2) However, professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.
- (3) The fact that there are differing professional opinions widely accepted in Australia by members of the same profession does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.
- (4) Professional opinion does not have to be universally accepted to be considered widely accepted.
- (5) This section does not apply to liability arising in connection with the giving of (or the failure to give) a warning, advice or other information in respect of a risk of death or injury associated with the provision of a health care service.

SECT 52

52—Damages for non-economic loss

- (1) Damages may only be awarded for non-economic loss if—
 - (a) the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least 7 days; or
 - (b) medical expenses of at least the prescribed minimum have been reasonably incurred in connection with the injury.
- (2) If damages are to be awarded for non-economic loss, they must be assessed as follows:
 - (a) the injured person's total non-economic loss is to be assigned a numerical value (the "scale value") on a scale running from 0 to 60 (the scale reflecting 60 equal gradations of non-economic loss, from a case in which the non-economic loss is not severe enough to justify any award of damages to a case in which the injured person suffers non-economic loss of the gravest conceivable kind);

- (b) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2002 by multiplying the scale value by \$1 710;
- (c) the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2003 as follows:
 - (i) if the scale value is 10 or less—by multiplying the scale value by \$1 150;
 - (ii) if the scale value is 20 or less but more than 10—by adding to \$11 500 an amount calculated by multiplying the number by which the scale value exceeds 10 by \$2 300;
 - (iii) if the scale value is 30 or less but more than 20—by adding to \$34 500 an amount calculated by multiplying the number by which the scale value exceeds 20 by \$3 450;
 - (iv) if the scale value is 40 or less but more than 30—by adding to \$69 000 an amount calculated by multiplying the number by which the scale value exceeds 30 by \$4 600;
 - (v) if the scale value is 50 or less but more than 40—by adding to \$115 000 an amount calculated by multiplying the number by which the scale value exceeds 40 by \$5 750;
 - (vi) if the scale value is 60 or less but more than 50—by adding to \$172 500 an amount calculated by multiplying the number by which the scale value exceeds 50 by \$6 900;
- (d) the damages for non-economic loss in relation to an injury arising from an accident that occurred in a subsequent calendar year are to be calculated in accordance with paragraph (c) but the amount arrived at is to be adjusted (to the nearest multiple of \$10) by multiplying it by a proportion obtained by dividing the Consumer Price Index for the September quarter of the previous calendar year by the Consumer Price Index for the September quarter 2002.

Example—

Suppose that A is injured in an accident that occurred in 2003 and claims damages for personal injury. The case is one in which the criteria under which damages for non-economic loss may be awarded are satisfied. In assessing those damages, A's total non-economic loss is assigned by the court a scale value of 23. The damages for non-economic loss will, therefore, be \$44 850, calculated as follows:

$$\$34\,500 + (3 \times \$3\,450) = \$44\,850$$

53—Damages for mental harm

- (1) Damages may only be awarded for mental harm if the injured person—
 - (a) was physically injured in the accident or was present at the scene of the accident when the accident occurred; or
 - (b) is a parent, spouse, domestic partner or child of a person killed, injured or endangered in the accident.
- (2) Damages may only be awarded for pure mental harm if the harm consists of a recognised psychiatric illness.
- (3) Damages may only be awarded for economic loss resulting from consequential mental harm if the harm consists of a recognised psychiatric illness.

SECT 75

75—Expressions of regret

In proceedings in which damages are claimed for a tort, no admission of liability or fault is to be inferred from the fact that the defendant or a person for whose tort the defendant is liable expressed regret for the incident out of which the cause of action arose.

WRONGS (LIABILITY AND DAMAGES FOR PERSONAL INJURY) AMENDMENT ACT 2002

"non-economic loss" means—

(a) pain and suffering; or

(b) loss of amenities of life; or

(c) loss of expectation of life; or

(d) disfigurement;

"personal injury" or "**injury**" means bodily injury and includes—

(a) mental and nervous shock; and

(b) death,

and "**injured**" has a corresponding meaning;

"prescribed maximum" means—

(a) in relation to an injury arising from an accident that occurred during 2002—\$2.2 million; or

(b) in relation to an injury arising from an accident that occurred in a subsequent calendar year—a sum (calculated to the nearest multiple of \$10) that bears to \$2.2 million the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;

"prescribed minimum" means—

(a) in relation to an injury arising from an accident that occurred during 2002—\$2 750;
or

(b)in relation to an injury arising from an accident that occurred in a subsequent calendar year—a sum (calculated to the nearest multiple of \$10) that bears to \$2 750 the same proportion as the Consumer Price Index for the September quarter of the preceding year bears to the Consumer Price Index for the September quarter 2001;

24A. This Part applies where damages are claimed for personal injury—

(a)arising from a motor accident (whether caused intentionally or unintentionally); or

(b)arising from an accident caused wholly or in part—

(i)by negligence; or

(ii)by some other unintentional tort on the part of a person other than the injured person;
or

(iii)by a breach of a contractual duty of care.

DIVISION 2—ASSESSMENT OF DAMAGES

Damages for non-economic loss

24B. (1) Damages may only be awarded for non-economic loss if—

(a)the injured person's ability to lead a normal life was significantly impaired by the injury for a period of at least 7 days; or

(b)medical expenses of at least the prescribed minimum have been reasonably incurred in connection with the injury.

(2) If damages are to be awarded for non-economic loss, they must be assessed as follows:

(a)the injured person's total non-economic loss is to be assigned a numerical value (the **scale value**) on a scale running from 0 to 60 (the scale reflecting 60 equal gradations of non-economic loss, from a case in which the non-economic loss is not severe enough to justify any award of damages to a case in which the injured person suffers non-economic loss of the gravest conceivable kind);

(b)the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2002 by multiplying the scale value by \$1 710;

(c)the damages for non-economic loss are to be calculated in relation to an injury arising from an accident that occurred during 2003 as follows:

(i)if the scale value is 10 or less—by multiplying the scale value by \$1 150;

- (ii) if the scale value is 20 or less but more than 10—by adding to \$11 500 an amount calculated by multiplying the number by which the scale value exceeds 10 by \$2 300;
- (iii) if the scale value is 30 or less but more than 20—by adding to \$34 500 an amount calculated by multiplying the number by which the scale value exceeds 20 by \$3 450;
- (iv) if the scale value is 40 or less but more than 30—by adding to \$69 000 an amount calculated by multiplying the number by which the scale value exceeds 30 by \$4 600;
- (v) if the scale value is 50 or less but more than 40—by adding to \$115 000 an amount calculated by multiplying the number by which the scale value exceeds 40 by \$5 750;
- (vi) if the scale value is 60 or less but more than 50—by adding to \$172 500 an amount calculated by multiplying the number by which the scale value exceeds 50 by \$6 900;
- (d) the damages for non-economic loss in relation to an injury arising from an accident that occurred in a subsequent calendar year are to be calculated in accordance with paragraph (c) but the amount arrived at is to be adjusted (to the nearest multiple of \$10) by multiplying it by a proportion obtained by dividing the Consumer Price Index for the September quarter of the previous calendar year by the Consumer Price Index for the September quarter 2002.

Example—

Suppose that A is injured in an accident that occurred in 2003 and claims damages for personal injury. The case is one in which the criteria under which damages for non-economic loss may be awarded are satisfied. In assessing those damages, A's total non-economic loss is assigned by the court a scale value of 23. The damages for non-economic loss will, therefore, be \$44 850, calculated as follows:

$$\$34\,500 + (3 \times \$3\,450) = \$44\,850.$$

Damages for mental or nervous shock

24C. Damages may only be awarded for mental or nervous shock if the injured person—

- (a) was physically injured in the accident or was present at the scene of the accident when the accident occurred; or
- (b) is a parent, spouse or child of a person killed, injured or endangered in the accident.

Exclusion of interest on damages compensating non-economic or future loss

24F. Interest is not to be awarded on damages compensating non-economic or future loss.

DIVISION 13—GOOD SAMARITANS

Good samaritans

38. (1) In this section—

"emergency assistance" means—

(a) emergency medical assistance; or

(b) any other form of assistance to a person whose life or safety is endangered in a situation of emergency;

"good samaritan" means—

(a) a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently in need of emergency assistance; or

(b) a medically qualified person who, acting without expectation of payment or other consideration, gives advice by telephone or some other form of telecommunication about the treatment of a person who is apparently in need of emergency medical assistance;

"medically qualified"—a person is to be regarded as medically qualified if the person—

(a) is a registered medical practitioner; or

(b) has professional qualifications in some field of health care that are statutorily recognised; or

(c) works or has worked as an ambulance officer or in some other recognised paramedical capacity.

(2) A good samaritan incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting a person in apparent need of emergency assistance.

(3) A medically qualified good samaritan incurs no personal civil liability for advice given about the assistance to be given to a person in apparent need of emergency medical assistance.

(4) However—

(a) the immunity does not extend to a liability that falls within the ambit of a scheme of compulsory third party motor vehicle insurance; and

(b) the immunity does not operate if the good samaritan's capacity to exercise due care and skill was, at the relevant time, significantly impaired by alcohol or another recreational drug.

DIVISION 14—EXPRESSIONS OF REGRET

Expressions of regret

39. In proceedings in which damages are claimed for a tort, no admission of liability or fault is to be inferred from the fact that the defendant or a person for whose tort the defendant is liable expressed regret for the incident out of which the cause of action arose.

Example—

Suppose that A was exposed to asbestos in 1986 but is not diagnosed with asbestosis until 2004. The assessment of A's damages for personal injury would be determined in accordance with the law that applied before the commencement of sections 3 and 4 of the *Wrongs Act (Liability and Assessment of Damages for Personal Injury) Amendment Act 2002*.

Excerpts of Work Cover Legislation in Tasmania relevant to Psychiatrists

WORKERS REHABILITATION AND COMPENSATION ACT 1988

SECT 3

3 Interpretation

(1) In this Act, unless the contrary intention appears –

accredited medical practitioner means a medical practitioner accredited under section 77C;

AMA Guides means –

- (a) the American Medical Association Guides to the Evaluation of Permanent Impairment, fourth edition, as modified by this Act; or
- (b) such later edition of those Guides as may be prescribed, as modified by this Act;

disease means any ailment, disorder, defect, or morbid condition, whether of sudden or gradual development;

injury includes –

- (a) a disease; and
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease where the employment was the major or most significant contributing factor to that recurrence, aggravation, acceleration, exacerbation or deterioration –

but does not, except for the purposes of section 97(1)(b) and

- (c) include an asbestos-related disease within the meaning of the Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011;

medical assessor means a medical practitioner accredited by the Board for the purposes of assessing the degree of a worker's permanent impairment in accordance with section 72 or 73;

medical panel means a medical panel formed under section 50;

medical question means a question relating to -

- (a) the existence, nature or extent of an injury; or
- (b) whether an injury is, or is likely to be, permanent or temporary; or
- (c) a worker's capacity for work or specific work duties; or
- (d) the loss, or the degree of loss, of any of the parts or faculties of the body; or
- (e) the permanent loss of the effective use of a part of the body; or
- (f) the assessment of the degree of permanent impairment, including whether the impairment is permanent;

(g) a medical service provided or to be provided to a worker for an injury, including the adequacy, appropriateness or frequency of that service; psychiatric impairment means an illness of the mind or a disorder of the mind;

Tribunal means the Workers Rehabilitation and Compensation Tribunal established under section 16:

workplace injury, in relation to a worker, means an injury for which the worker's employer is or may be liable to pay compensation under this Act;

- (2A) For the purposes of this Act, employment contributed to a disease to a substantial degree only if it is the major or most significant factor.
- (5) For the purposes of this Act, where a worker suffers an injury that is a disease, that injury shall be deemed to have occurred –
- (a) on the day on which the worker became totally or partially incapacitated by reason of that injury; or
 - (b) if a day cannot be ascertained under paragraph (a), on the day on which a medical practitioner has certified that the worker was first incapacitated by reason of that injury.

SECT 49

49. Procedure of Tribunal

- (3) Where a medical question arises in any proceedings before the Tribunal, the Tribunal may –
- (a) determine the medical question on any medical evidence presented to the Tribunal; or
 - (b) refer the medical question, subject to subsection (3A), to a medical panel formed under section 50.
- (3A) The Tribunal may only refer a medical question under subsection (3)(b) if –
- (a) there is a conflict of medical opinion presented to the Tribunal on the question between –
 - (i) a medical practitioner engaged by the worker; and
 - (ii) any medical practitioner provided and paid by the employer or insurer;and
 - (b) one or more of the parties wishes the proceedings to continue.
- (3B) If the parties to the proceeding cannot agree on the medical practitioner nominated by the Tribunal, the Tribunal must choose another medical practitioner who the Tribunal considers is appropriately qualified to provide the medical advice or opinion.
- (4) The Tribunal is bound by the determination of a medical panel given in response to a medical question referred to it under subsection (3)(b).

Division 4 - Medical panels

50	50	Medical panels
51	51	Determination by medical panel
52	52	Tribunal to be informed of findings

53	53	Representation before medical panel
54	54	Power of medical panel to examine worker
55	55	Failure to attend before medical panel
55A	55A	Liability of members of medical panel
55B	55B	Medical panel not bound by rules of evidence
55C	55C	Remuneration of members of panel

Division 4 - Medical panels 50. Medical panels

- (1) The Tribunal is to keep and maintain a register of suitably qualified medical practitioners who are willing to be selected on a medical panel.
- (2) On the referral of a medical question to a medical panel, the Tribunal is to select 2 or 3 practitioners, at least one of whom is to be a general practitioner, from the register to form the medical panel.
- (3) At least one of the medical practitioners is to have particular expertise in the medical field to which the question relates.
- (4) The Tribunal must appoint one of the medical practitioners to be chairperson of the panel.
- (5) The Tribunal must not nominate a medical practitioner to be a member of a medical panel for the purpose of obtaining a determination in response to a medical question in respect of a worker if the medical practitioner –
 - (a) has, in any capacity other than as a member of a medical panel, been involved in the examination or treatment of, or has provided medical services (including an assessment of impairment) to, the worker in relation to the injury in respect of which the medical advice or opinion is sought by the Tribunal; or
 - (b) informs the Tribunal that, for any reason, the medical practitioner's appointment to the medical panel could give rise to a conflict of interest.
- (6) The Tribunal is to ensure that the medical panel is provided with any information in its possession likely to assist in determining the medical question.

SECT 51

51. Determination by medical panel

- (1) If 2 or more members of a medical panel are in agreement as to the determination of a medical question, the determination of those members is taken to be the determination of the panel.
- (2) A medical panel is to make its determination as soon as practicable and, in any event, within 28 days after the medical question has been referred to it.
- (3) If the members of a medical panel do not agree as to the determination of a medical question, the question is to be returned to the Tribunal for its determination.

SECT 53

53. Representation before medical panel

- (1) A worker in respect of whom a claim for compensation relates is not entitled to be represented by any person at any attendance before a medical panel unless it appears to the medical panel that the worker should be allowed to be so represented.
- (2) A worker is entitled to be accompanied by a person of his or her choice at any attendance before a medical panel.

SECT 54

54. Power of medical panel to examine worker

- (1) A medical panel or member of a medical panel may conduct such medical examination of a worker to whom a claim for compensation relates as the medical panel or member considers necessary to determine a medical question referred to the panel under section 49(3)(b).
- (2) In conducting a medical examination, a medical panel or member of a medical panel may require the worker to answer questions, produce relevant documents or consent to the production of relevant documents by another person.
- (3) If a worker unreasonably refuses or neglects to answer questions, produce relevant documents or consent to the production of relevant documents, the Tribunal may suspend the worker's right to compensation under this Act until he or she answers the questions, produces the documents or consents to the production of the documents.

SECT 55A

55A. Liability of members of medical panel

No liability attaches to a member of a medical panel for an act or omission by the member or the medical panel in good faith and in the exercise or purported exercise of a power or in the performance or discharge, or purported performance or discharge, of a function or duty of the member or medical panel.

SECT 55B

55B. Medical panel not bound by rules of evidence

A medical panel is not bound by the rules of evidence but may inform itself on any matter relating to the medical question in any manner it thinks fit.

SECT 71

71. Compensation for permanent impairment

- (1) In addition to any other compensation payable under this Act, the amount of compensation payable under this section to a worker who suffers permanent impairment resulting from an injury which entitles the worker to compensation under this Act is to be calculated as at the date of the injury as follows:
 - (a) subject to paragraph (d), a worker who suffers permanent impairment assessed at a percentage of the whole person of less than 5% is not entitled to compensation under this section;

- (b) a worker who suffers permanent impairment assessed at a percentage of the whole person of between 5% and 70%, inclusive, is entitled to compensation calculated in accordance with the following formula:

$$\{18 + [6.1 \times (WPI - 5)]\} \times BS$$
where -
WPI is the percentage of whole person impairment;
BS is the basic salary;
- (c) a worker who suffers permanent impairment assessed at a percentage of the whole person equal to more than 70% is entitled to compensation of 415 units;
- (2) The amount of compensation payable under this section to a worker who suffers permanent psychiatric impairment which entitles the worker to compensation under this Act is to be calculated as at the date of the injury as follows:
- (a) a worker who suffers permanent psychiatric impairment assessed at a percentage of the whole person of less than 10% is not entitled to compensation under this section;
- (b) a worker who suffers permanent psychiatric impairment assessed at a percentage of the whole person of between 10% and 70%, inclusive, is entitled to compensation calculated in accordance with the following formula:

$$\{18 + [6.1 \times (WPI - 5)]\} \times BS$$
where -
WPI is the percentage of whole person impairment;
BS is the basic salary;
- (c) a worker who suffers permanent psychiatric impairment assessed at a percentage of the whole person equal to more than 70% is entitled to compensation of 415 units. (3) For the purposes of this section and section 138AB(4), a worker who suffers an injury resulting in, or consisting in whole or in part of, the loss of a foetus that the worker has carried for at least 16 weeks since conception is to be taken to have suffered a permanent impairment, in relation to that loss, that has been assessed at a percentage of the whole person equal to 20%.
- (4) The degree of impairment of a person for the purposes of subsection (3) and section 138AB(4) in respect of a workplace injury is in addition to any other degree of impairment that the person may be assessed to have suffered as a result of the injury.

SECT 72

72. Assessment of degree of impairment

- (1) An assessment of a degree of impairment is to be undertaken by a medical assessor in accordance with –
- (a) any relevant guidelines issued by the Board; or
- (b) if there are no such guidelines, the AMA Guides; or
- (c) if there are no such guidelines and the AMA Guides are not applicable or are unsuitable, any method as may be prescribed.

- (2) In assessing a degree of impairment of an injury –
 - (a) regard is not to be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, the physical injury; and
 - (b) the degree may comprise a combination of impairments arising out of the same incident or occurring on the same date assessed together using the combination tables in the AMA Guides; and
 - (c) if a worker presents for assessment in relation to injuries which occurred on different dates, the impairments are to be assessed separately; and
 - (d) an impairment arising otherwise than from the injury is not to be taken into account in assessing the degree of the impairment resulting from the injury.

SECT 77A

Division 2A - Accreditation 77A. Provision of certain services

- (1) A medical practitioner who resides, or is providing a medical service, in this State is not to issue a certificate referred to in section 34(1) or section 69(1) unless the medical practitioner has been accredited by the Board.
- (3) A person is not to provide a prescribed service in respect of an injury for which compensation is or may be payable under this Act unless the person belongs to a class of persons prescribed in relation to the prescribed service and that person has been accredited by the Board.
- (4) A person (in this section referred to as a "provider") is not to provide workplace rehabilitation services to another person for the purposes of this Act (including by reason only of supplying to the other person the services of a person employed or engaged by the provider) unless the provider has been accredited by the Board as a workplace rehabilitation provider.
- (5) Subsection (4) does not apply to a person, employed or engaged by the provider, who provides services to another person on behalf of the provider, if the provider is accredited by the Board.

SECT 77D

77D. Duration of accreditation

- (1) Except in a case to which subsection (2) applies, an accreditation remains in force for the period that the Board determines, unless it is sooner revoked or suspended in accordance with section 77F.
- (2) The accreditation of a person as a workplace rehabilitation provider remains in force for -
 - (a) 3 years; or
 - (b) a shorter period specified on the grant of accreditation –

unless it is sooner revoked or suspended in accordance with section 77F.

SECT 78

Division 3 - Special provisions relating to the payment of compensation in respect of injuries contracted by gradual process 78. Injuries contracted by gradual process

- (1) Where an injury suffered by a worker is of such a nature as to be contracted by a gradual process, compensation is payable by –
 - (a) the employer in whose employment the worker was when the injury occurred, if the injury was due to the nature of his employment with that employer; or
 - (b) the employer who last employed the worker if the nature of the employment was likely to have given rise to that injury, in any other case.
- (2) Subject to subsection (2A), an employer who, at any time during the period of 3 years immediately preceding the day on which an injury referred to in subsection (1) occurred to a worker, employed the worker in any employment to the nature of which the injury was due is liable to pay compensation and must make to the relevant employer referred to in subsection (1) such contribution as is agreed between the employers.
- (2A) Where a worker suffers industrial deafness, an employer who, at any time during the period of 10 years preceding the date of injury, employed the worker in any employment to the nature of which the injury was due is liable to pay compensation and must make to the relevant employer referred to in subsection (1) such contribution in respect of compensation for industrial deafness as is agreed between the employers.
- (3) Where the employers referred to in subsection (2) or subsection (2A) cannot agree as to the amount of contribution, any of the employers may refer the matter to the Tribunal for a determination as to the amount of contribution.

PART VII - Payment of compensation and related matters

Division 1A - Medical examinations and independent medical reviews

- 90A 90A Workers may be required to submit to independent medical reviews
- 90B 90B Reports in relation to reviews
- 90C 90C Disagreements, &c., about reviews
- 90D 90D Reliance on medical reports

SECT 90A

Division 1A - Medical examinations and independent medical reviews

90A. Workers may be required to submit to independent medical reviews

- (1) For the purposes of this Act, an independent medical review of a worker is a review, conducted by a single medical practitioner (other than a medical practitioner chosen by the worker) who has expertise in a field, or a part of a field, relevant to the worker's injury, and may include –
 - (a) one or more examinations of the worker; and
 - (b) a review of any diagnostic test results, or other medical records, in respect of the worker.
- (2) If a worker claims compensation or is receiving weekly payments, the worker's employer, or the employer's insurer, may require the worker to submit to an independent medical review of the worker by a medical practitioner.
- (3) A worker may only be required under subsection (2) to submit to an independent medical review if the employer or the employer's insurer –
 - (a) has discussed with the worker's primary treating medical practitioner the reasons why it is intended to have the review conducted; and

- (b) has informed the worker, in writing, of the reasons why it is intended to have the review conducted.
- (4) A worker who is required under subsection (2) to submit to an independent medical review by a medical practitioner -
 - (a) is to -
 - (i) submit, at a reasonable time, and at a reasonable place, of which the worker has been given reasonable notice in writing, to the review, including any examination conducted by the medical practitioner as part of the review; and
 - (ii) be taken to have given consent to the provision, to a medical practitioner nominated by the worker's employer, of any medical reports or records that relate to the injury to which the worker's claim for compensation relates; or
 - (b) is to, within 30 days, refer the matter under section 90C(2) to the Tribunal.
- (5) Subject to subsection (6), a worker is not required to submit to more than one independent medical review in any 3-month period.
- (6) Despite subsection (5), a worker is required to submit to an independent medical review if –
 - (a) the worker has suffered multiple injuries or the worker's injury requires the consideration of medical practitioners who are specialists in different fields or aspects of the injury; and
 - (b) the review is conducted by a medical practitioner specialising in a different injury, or a different field or different aspect of the injury, to the previous practitioner who conducted a review in the 3-month period.
- (7) If a medical practitioner conducting an independent medical review reports that any medical or surgical treatment specified by the practitioner will terminate or shorten the period of incapacity of the worker to whom the report relates, the following provisions apply:
 - (a) subject to paragraph (b), the worker must submit to that treatment;
 - (b) if the worker notifies the employer, not later than 14 days after the date on which a copy of the practitioner's report has been provided to the worker in accordance with section 90B(4), that the worker, after consulting with the worker's primary treating medical practitioner, is not satisfied with the report, the worker must submit to an examination by another medical practitioner selected by the worker who may be, but is not required to be, the worker's primary treating medical practitioner;
 - (c) the employer or the employer's insurer is to pay for the examination referred to in paragraph (b);
 - (d) if the report, provided in accordance with section 90B(2), of the medical practitioner who makes an examination in accordance with paragraph (b) is in agreement with the report provided under section 90B(1) by the medical practitioner conducting the independent medical review, the worker must as soon as practicable submit to the treatment specified in the last-mentioned report.

SECT 90B

90B. Reports in relation to reviews

- (1) After an independent medical review of a worker is conducted under section 90A by a medical practitioner, the medical practitioner –
 - (a) must prepare a report in respect of the review; and
 - (b) must provide the report to the person who required the worker to submit to the review; and
 - (c) must not provide the report to the worker.
- (2) After an examination is conducted under section 90A(7)(b) by a medical practitioner, the medical practitioner –
 - (a) must prepare a report in respect of the examination; and
 - (b) must provide the report to the person who required the worker to submit to the review as a result of which the examination was conducted; and
 - (c) must not provide the report to the worker, unless the medical practitioner is the worker's primary treating medical practitioner.
- (3) A person to whom a report of a review or examination is provided under subsection (1) or (2) must, within 7 days, serve a copy of the report on –
 - (a) the worker's primary treating medical practitioner, unless the person conducting the examination was the primary treating medical practitioner; and
 - (b) the injury management co-ordinator to whom the worker has been assigned under section 143B.

SECT 90C

90C. Disagreements, &c., about reviews

- (1) Subsections (2) and (3) apply in relation to a worker if the worker -
 - (a) refuses without reasonable excuse to submit to an independent medical review or examination when required under section 90A to do so; or
 - (b) in any way obstructs such a review or examination; or
 - (c) refuses to submit to, or undertake, any treatment required in accordance with section 90A(7).
- (2) If this subsection applies to a worker, the worker, the worker's employer or the employer's insurer may refer the matter of the worker's refusal or obstruction to the Tribunal.
- (3) If this subsection applies to a worker, the worker's right to compensation and to take any proceedings under this Act in relation to compensation is, except if the treatment to which the worker has refused to submit is surgical treatment, suspended until the matter has been determined by the Tribunal.
- (4) If -
 - (a) a copy of a report is served under this Division on a worker's primary treating medical practitioner, the worker's employer, or the employer's insurer; and
 - (b) the worker, employer or employer's insurer are unable to agree as to -
 - (i) whether, or to what extent, the worker's incapacity is due to the injury in respect of which the worker is claiming or receiving compensation; or

- (ii) the worker's condition or fitness for employment -
the worker, the employer or the employer's insurer may refer the matter to the Tribunal.
- (5) In determining whether an independent medical review, or an examination of a worker, ought to be conducted, the Tribunal must have regard to the following matters:
- (a) whether the reviewer has the appropriate expertise to properly assess the worker's injury;
 - (b) whether, in the circumstances, an excessive number of reviews or examinations have been conducted in respect of the worker;
 - (c) whether the worker has previously made a complaint, on reasonable grounds, to the worker's employer or the employer's insurer about the conduct of the medical practitioner who it is proposed will conduct the review;
 - (d) the location and timing of the review -
and may have regard to any other matter that the Tribunal thinks fit.
- (6) In determining any matter referred to it under subsection (2), the Tribunal may, if the payment of compensation has been suspended under subsection (3), specify -
- (a) whether compensation may be paid to the worker in respect of that period of suspension; and
 - (b) the period of that suspension in respect of which the worker is entitled to be paid compensation.

SECT 90D

90D. Reliance on medical reports

- (1) If a worker has submitted to an independent medical review under section 90A by a medical practitioner, a report in relation to the review, and any evidence of the medical practitioner, cannot be used as evidence in respect of a claim for compensation unless the report is served on the worker.
- (2) If a worker has been examined under section 90A(7)(b) by a medical practitioner chosen by the worker, a report in relation to the examination, and any evidence of the medical practitioner, cannot be used as evidence in respect of a claim for compensation unless the report is served on the worker's employer.
- (3) If a worker has been examined, otherwise than under section 90A(7)(b), by a medical practitioner chosen by the worker, a report in relation to the examination, and any evidence of the medical practitioner, cannot be used as evidence in respect of a claim for compensation unless the report is served on

SECT 132

PART X - Concurrent rights to compensation and damages

Division 1 - Rights to compensation and damages

132. Interpretation of Part X

In this Part, unless the contrary intention appears –

“compensation”, used in relation to an injury, means any compensation or any such expenses as are referred to in section 75 payable in respect of that injury under this Act;

“damages” means damages recoverable (whether by virtue of an enactment or otherwise) in respect of any civil liability in the employer, however arising;

“employer”, used in relation to an injury suffered by a worker, includes any person who, in respect of that injury, is liable, under section 29, to pay compensation or to indemnify any other person for any compensation paid by that other person.

SECT 133

133. Effect of compensation on worker's right to damages

- (1) Except as otherwise provided in this Part, the payment or an entitlement to the payment of compensation in respect of an injury does not affect the right to obtain damages in respect of that injury, but, where a liability has been incurred (whether by the employer or any other person) for the payment of damages to a worker in respect of an injury, the payment to or to the benefit of that worker of compensation in respect of that injury shall, so far as it extends, be regarded also as a payment in or towards the discharge of that liability, and the amount of the damages shall be reduced accordingly.
- (2) The subsistence of a right of a worker or a dependant of a deceased worker to damages in respect of an injury, or the taking of proceedings to establish any such right or for the recovery of any such damages, does not prejudice or affect his right to compensation in respect of that injury, but where a worker or a dependant of a deceased worker has obtained judgment (whether against his employer or any other person) for damages in respect of an injury or has accepted any money paid into court in satisfaction of a claim for damages, his right to any payments by way of compensation that have not been determined before the date of the judgment, or the date of his acceptance of money paid into court, is extinguished.
- (3) The settlement by a worker or a dependant of a deceased worker of a claim for damages in respect of an injury, if by that settlement he agrees that all his further claims to compensation in respect of that injury are extinguished, has, for the purposes of subsection (2), the like effect as a judgment obtained by that worker or that dependant for those damages.

SECT 138AB

138AB. Claims for damages

- (1) A settlement by agreement of a claim for damages in respect of an injury to a worker for which compensation is payable under this Act is void unless the threshold requirement is met in relation to the injury.
- (2) A person may not commence proceedings for an award of damages in respect of an injury to a worker for which compensation is payable under this Act, unless the threshold requirement is met in relation to the injury.
- (3) The threshold requirement is met in relation to an injury if -
 - (a) there has been provided to the Tribunal a statement in writing, signed by a medical practitioner, certifying that, in the opinion of the practitioner, the degree of permanent impairment of the worker resulting from the injury is not less than 20% of the whole person; and
 - (b) the Tribunal has determined that the degree of permanent impairment of the worker resulting from the injury is not less than 20% of the whole person.
- (4) The threshold requirement is met in relation to an injury suffered by a worker if -
 - (a) the injury is an injury to which section 71(3) applies; and
 - (b) there has been provided to the Tribunal a statement in writing, signed by a medical practitioner, certifying that the injury is an injury to which section 71(3) applies.
- (5) An assessment of the degree of the worker's impairment for the purposes of this section is to be carried out in accordance with section 72 or 73.
- (6) The Tribunal may refer the question of the degree of impairment to a medical panel in accordance with Part V.

SECT 138AG

138AG. What constitutes injury and employment and who is employer

For the purposes of this Division -

- (a) "injury" and "employer" include anything that is within the scope of a corresponding term in the statutory workers compensation scheme of another State; and
- (b) the determination of what constitutes employment or whether or not a person is the worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers compensation scheme of another State.

Excerpts for Psychiatrists from Tasmanian Motor Accidents (Liabilities And Compensation) Act 1973 and Motor Accidents (Liabilities And Compensation) Amendment Act 2002 (No. 20 Of 2002)SECT 2

2 Interpretation

(1) In this Act unless the contrary intention appears –

“Board “means the Motor Accidents Insurance Board;
“disability allowance” means a disability allowance referred to in the regulations;
“disability benefits” means disability benefits referred to in the regulations;
“Foundation” means the Injury Prevention and Management Foundation established under section 13A;
“medical benefits” means medical benefits referred to in the regulations;

personal injury means death or physical or mental injury and includes -

- (a) prenatal injury; and
- (b) nervous shock;

Tribunal means the Motor Accidents Compensation Tribunal established under section 12.

- (2) References in this Act to the damages payable to any person in respect of a personal injury shall be construed as including any damages payable for the benefit of that person in respect of that personal injury.
- (4) For the purposes of this Act, a person suffers personal injury from a motor accident if the injury results directly from –
 - (a) a collision, or action taken to avoid a collision, with a motor vehicle, whether the motor vehicle is stationary or moving; or
 - (b) a motor vehicle moving out of control; or
 - (c) the driving of a motor vehicle.
- (5) For the purposes of this Act, a person requires daily care if, as a result of having suffered personal injury resulting directly from a motor accident, the person requires, or is likely to require, daily care for at least 2 hours a day for an indefinite period, commencing not later than one year after the date of the accident.

SECT 12

12. The Motor Accidents Compensation Tribunal

- (1) There shall be established a tribunal to be known as the Motor Accidents Compensation Tribunal.
- (2) The members of the Tribunal shall be appointed by the Governor.
- (2A) A person is not qualified for appointment as a member of the Tribunal unless he holds the office of a judge, a magistrate, or the Associate Judge of the Supreme Court, and a member who ceases to be so qualified ceases to hold office as a member of the Tribunal.
- (3) The Governor may appoint a member of the Tribunal to be the chairman thereof.

- (4) The members of the Tribunal who are to constitute the Tribunal for the purposes of any proceedings or class or group of proceedings under this Act shall be selected by the chairman of the Tribunal.
- (5) Where 2 or more members are selected to constitute the Tribunal for the purposes of any proceedings the chairman of the Tribunal shall, if he is one of those members, be president of the Tribunal for the purposes of those proceedings, and, if he is not, such one of those members as he may select shall be president of the Tribunal for the purpose of those proceedings.

SECT 27B

27B. Board may require examination

- (1) In this section –

“consultant” means a person who is -

- (a) normally resident in a State or Territory of the Commonwealth and is entitled in accordance with the laws of that State or Territory to practise as a medical practitioner, a dentist, a neuro-psychologist, an occupational therapist, a physiotherapist or a psychologist in that State or Territory; or
- (b) trained or skilled in the rehabilitation of injured people; or
- (c) employed, engaged or retained by the Board in the capacity of care manager or rehabilitation provider;

“examination” means -

- (a) an examination of an injured person by a consultant; or
- (b) an examination of any accommodation or facilities used by or available to an injured person;

“rehabilitation program” means a program prepared by a consultant at the request of the Board to assist the rehabilitation of a person who has suffered personal injury.

- (2) This section applies where -

- (a) a person has suffered personal injury; and
- (b) the personal injury has resulted in, or may result in, the Board being required to pay scheduled benefits.

- (3) The Board may require an examination of a person to whom this section applies to be carried out if –

- (a) the Board has requested a rehabilitation program in respect of the person, or is deciding whether or not to request such a program; or
- (b) the right to, or amount of any, scheduled benefits or damages payable in respect of an injury referred to in subsection (2) depends on a determination by the Board, a decision of the Tribunal or a judgment by a court.

- (4) If the Board has required an examination to be carried out and -

- (a) the injured person unreasonably refuses or fails to be examined by a consultant in accordance with the requirement; or

- (b) a person caring for the injured person unreasonably refuses or fails to give a consultant reasonable access to the injured person to carry out an examination in accordance with the requirement; or
 - (c) access to any accommodation or facilities required to be examined in accordance with the requirement is unreasonably refused or not given - the Board is not required to pay scheduled benefits in respect of the injured person, and proceedings in any court relating to the personal injury to the injured person may be stayed on the application of the Board for so long as the refusal or failure continues.
- (5) If an injured person unreasonably refuses or fails to comply, whether wholly or partly, with a rehabilitation program prepared for, or in respect of, that person, the Board is not required to pay scheduled benefits in respect of that person and proceedings in any court relating to the personal injury to that person may be stayed on the application of the Board for so long as the refusal or failure continues.

CIVIL LIABILITY LEGISLATION IN TASMANIA-excerpts for psychiatrists

CIVIL LIABILITY ACT 2002 - SECT 3

3. Interpretation

In this Act, unless the contrary intention appears –

damages includes any form of monetary compensation;
non-economic loss means any one or more of the following:

- (a) pain or suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;
- (d) curtailment of life expectancy;
- (e) bodily or mental harm;

personal injury includes –

- (a) pre-natal injury; and
- (b) impairment of a person's physical or mental condition; and
- (c) disease.

SECT 3B

3B. Civil liability excluded from Act

- (1) This Act does not apply to or in respect of civil liability –
 - (a) in respect of an intentional act that is done with intent to cause injury or death or that is sexual assault or other sexual misconduct; or
 - (b) relating to an award of damages for personal injury or death where the injury or death concerned resulted from smoking or other use of tobacco products.
- (2) This Act, except Parts 2, 3 and 5, Divisions 1, 2, 3, 4 and 7 of Part 6 and Parts 7 and 8, does not apply to or in respect of civil liability relating to an injury to which Part III of the Motor Accidents (Liabilities and Compensation) Act 1973 applies.
- (3) This Act does not apply to civil liability relating to an injury to which Division 2 of Part X of the Workers Rehabilitation and Compensation Act 1988 applies.

- (4) This Act does not apply to liability for compensation under the Workers Rehabilitation and Compensation Act 1988, the Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011, the Criminal Injuries Compensation Act 1976 or the Anti-Discrimination Act 1998 or a scheduled benefit under the Motor Accidents (Liabilities and Compensation) Act 1973.
- (5) The regulations may exclude a specified class or classes of civil liability from the operation of all or any provisions of this Act.
- (6) Regulations referred to in subsection (5) may make transitional provision with respect to claims relating to acts or omissions which occurred before the commencement of the regulations.

SECT 7

7. Effect of apology on liability

- (1) An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the fault of the person –
 - (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter; and
 - (b) is not relevant to the determination of fault or liability in connection with that matter.
- (2) Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the fault of the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.
- (3) In this section,

apology means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, which does not contain an admission of fault in connection with the matter.

SECT 27

27. Restrictions on damages for non-economic loss (general damages)

Note Amounts A and B are varied by notice published in the Gazette. See subsection (6).

- (1) If the amount of non-economic loss is assessed to be not more than Amount A, no damages are to be awarded for non-economic loss.
- (2) If the amount of non-economic loss is assessed to be more than Amount A but not more than Amount B, damages awarded for non-economic loss are calculated as follows:

Amount awarded = 1.25 x (amount assessed minus Amount A)

- (3) If the amount of non-economic loss is assessed to be more than Amount B, damages awarded for non-economic loss are an amount equal to the amount assessed.
- (4) For the purpose of this section –
- (a) "Amount A" is –
- (i) for the financial year ending on 30 June 2004, \$4 000; and
- (ii) for the financial year commencing on 1 July 2004 and for each subsequent financial year, calculated in accordance with the following formula and rounded off in accordance with subsection (5):

$$A = A_0 \times \frac{C}{D}$$

where –

A is the value in dollars of Amount A for the relevant financial year;

A₀ is \$4 000;

C is the value of the CPI figure for Hobart for the March quarter immediately preceding the financial year in which the threshold amount is to apply;

D is the value of the CPI figure for Hobart for the March quarter 2003; and

- (b) "Amount B" is five times Amount A.
- (5) If the value of Amount A, calculated in accordance with the formula specified in subsection (4)(a), is not a multiple of \$500, the amount is to be rounded off to the nearest multiple of \$500, with an amount that is \$250 more than a multiple of \$500 being rounded off to the next highest multiple of \$500.
- (6) On or before 1 July 2004 and on or before 1 July in each subsequent year, the Minister is to publish a notice in the Gazette specifying the amounts that are Amount A and Amount B for the financial year commencing on that 1 July.
- (7) Publication under subsection (6) is for public information only and a failure to publish or a delay or error in publication does not affect what is Amount A or Amount B for the year concerned.
- (8) In this section,

CPI figure for Hobart means the Consumer Price Index: All Groups Index Number for Hobart published by the Australian Statistician under the authority of the Census and Statistics Act 1905 of the Commonwealth.

SECT 28

28. Tariffs for damages for non-economic loss (general damages)

- (1) In determining damages for non-economic loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceedings.
- (2) For that purpose, the parties to the proceedings or their counsel may bring the court's attention to awards of damages for non-economic loss in those earlier decisions.

SECT 29

PART 8 - Mental Harm 29. Interpretation

In this Part –

consequential mental harm means mental harm that is a consequence of a personal injury of any other kind;

mental harm means impairment of a person's mental condition;

pure mental harm means mental harm other than consequential mental harm.

SECT 31

31. Personal injury arising from mental or nervous shock

In any civil proceedings for damages, the plaintiff is not prevented from recovering damages merely because the personal injury arose wholly or in part from mental or nervous shock.

SECT 32

32. Limitation on recovery for pure mental harm arising from shock

- (1) This section applies to the liability of a person ("the defendant") for pure mental harm to a person ("the plaintiff") arising wholly or partly from mental or nervous shock in connection with another person ("the victim") being killed, injured or put in peril by the act or omission of the defendant.
- (2) The plaintiff is not entitled to recover damages for pure mental harm unless –
 - (a) the plaintiff witnessed, at the scene, the victim being killed, injured or put in peril or the immediate aftermath of the victim being killed or injured; or
 - (b) the plaintiff is a close member of the family of the victim.

SECT 33

33. Pure mental harm – liability only for recognised psychiatric illness

There is no liability to pay damages for pure mental harm resulting from breach of duty unless the harm consists of a recognised psychiatric illness.

SECT 34

34. Mental harm – duty of care

- (1) A person ("the defendant") does not owe a duty to another person ("the plaintiff") to take care not to cause the plaintiff mental harm unless a reasonable person in the position of the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.
- (2) For the purpose of the application of this section in respect of pure mental harm, the circumstances of the case include the following:
 - (a) whether or not the mental harm was suffered as the result of a sudden shock;
 - (b) whether or not there was a pre-existing relationship between the plaintiff and the defendant.
- (3) For the purpose of the application of this section in respect of consequential mental harm, the circumstances of the case include the nature and extent of personal injury suffered by the plaintiff.
- (4) This section does not require the court to disregard what the defendant knew or ought to have known about the fortitude of the plaintiff.

SECT 35B

35B. Protection of good samaritans

- (1) A good samaritan is an individual who provides assistance, advice or care to another person in relation to an emergency or accident in circumstances in which –
 - (a) he or she expects no money or other financial reward for providing the assistance, advice or care; and
 - (b) as a result of the emergency or accident the person to whom, or in relation to whom, the assistance, advice or care is provided is ill, is at risk of death or injury, is injured, is apparently ill, is apparently at risk of death or injury or is apparently injured.

- (2) A good samaritan is not liable in any civil proceeding for anything done, or not done, by him or her in good faith and without recklessness –
 - (a) in providing assistance, advice or care at the scene of the emergency or accident; or
 - (b) in providing advice by telephone or by another means of communication to a person at the scene of the emergency or accident.
- (3) Subsection (2) applies even if the emergency or accident was caused by an act or omission of the good samaritan.
- (4) Subsection (2) does not apply to any act or omission of a good samaritan that occurs before the assistance, advice or care is provided by the good samaritan.

SECT 43B

43B. Proportionate liability for apportionable claims

- (1) In any proceedings involving an apportionable claim –
 - (a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just, having regard to the extent of the defendant's responsibility for the damage or loss; and
 - (b) the court is not to give judgment against the defendant for more than that amount.
- (2) If the proceedings involve both an apportionable claim and a claim that is not an apportionable claim –
 - (a) liability for the apportionable claim is to be determined in accordance with the provisions of this Part; and
 - (b) liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Part) are relevant.
- (3) In apportioning responsibility between defendants in the proceedings –
 - (a) the court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and
 - (b) the court is to have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings.
- (4) This section applies in proceedings involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceedings.

- (5) A reference in this Part to a defendant in proceedings includes any person joined as a defendant or other party in the proceedings (except as a plaintiff) whether joined under this Part, under rules of court or otherwise.

VICTORIA

ACCIDENT COMPENSATION ACT 1985 – RELEVANT SECTIONS FOR PSYCHIATRISTS

SECT 5

Definitions

5. Definitions

(1) In this Act unless inconsistent with the context or subject-matter-

A.M.A Guides means the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fourth Edition) (other than Chapters 14 and 15) as modified by this Act and any regulations made under this Act;

current work capacity, in relation to a worker, means a present inability arising from an injury such that the worker is not able to return to his or her pre-injury employment but is able to return to work in suitable employment; **declared training program** means a training program in respect of which a declaration under section 5G is in force;

disease includes-

- (a) any physical or mental ailment, disorder, defect or morbid condition whether of sudden or gradual development; and
- (b) the aggravation, acceleration, exacerbation or recurrence of any pre-existing disease;

heart attack injury means an injury to the heart, or any blood vessel supplying or associated with the heart, that consists of, is caused by, results in or is associated with-

- (a) any heart attack; or
- (b) any myocardial infarction; or
- (c) any myocardial ischaemia; or
- (d) any angina, whether unstable or otherwise; or
- (e) any fibrillation, whether atrial or ventricular or otherwise; or
- (f) any arrhythmia of the heart; or
- (g) any tachycardia, whether ventricular, supra ventricular or otherwise;
or
- (h) any harm or damage to such a blood vessel or to any associated plaque;
or

- (i) any impairment, disturbance or alteration of blood, or blood circulation, within such a blood vessel; or
- (j) any occlusion of such a blood vessel, whether the occlusion is total or partial; or
- (k) any rupture of such a blood vessel, including any rupture of an aneurism of such a blood vessel; or
- (l) any haemorrhage from such a blood vessel; or
- (m) any aortic dissection; or
- (n) any consequential physical harm or damage, including harm or damage to the brain; or
- (o) any consequential mental harm or damage;

Medical Panel means a Medical Panel under this Act;

medical practitioner means-

- (a) a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student) and
- (b) in relation to anything done for the purposes of this Act-
 - (i) in a place within Australia but outside Victoria, a medical practitioner who is lawfully qualified in that place to do that thing;

and
 - (ii) in a place outside Australia, a medical practitioner who is lawfully qualified in that place to do that thing and who is approved for the purposes of this Act by the Authority or self-insurer;

medical question means-

- (a) a question as to the nature of a worker's medical condition relevant to an injury or alleged injury; or
- (ab) a question as to the existence, extent or permanency of any incapacity of a worker for work or suitable employment and the question whether a worker is partially or totally incapacitated; or
- (aba) a question as to whether a worker has a current work capacity or has no current work capacity and what employment would or would not constitute suitable employment; or

- (abaa) a question as to whether a worker, on a particular date or during a particular period, had no current work capacity and if not, what employment would or would not have constituted suitable employment on that date or during that period; or
- (abb) a question as to whether a worker has no current work capacity and is likely to continue indefinitely to have no current work capacity; or
- (abc) a question as to whether a worker has a current work capacity and, because of the injury, is, and is likely to continue indefinitely be incapable of undertaking-
 - (i) further or additional employment or work; or
 - (ii) further or additional employment or work that would increase the worker's current weekly earnings- and, if not so incapable, what further or additional employment or work the worker is capable of undertaking; or
- (ac) a question as to the medical, personal and household or occupational rehabilitation service provided, or to be provided, to a worker for an injury, including a question as to the adequacy, appropriateness or frequency of that service; or
- (b) a question whether a worker's employment was in fact, or could possibly have been, a significant contributing factor to an injury or alleged injury, or to a similar injury; or
- (ba) if paragraph (b) does not apply, a question whether a worker's employment was in fact, or could possibly have been, a contributing factor to an injury or alleged injury, or to a similar injury; or
- (c) a question as to the extent to which any physical or mental condition, including any impairment, resulted from or was materially contributed to by the injury; or
- (ca) a question as to the extent to which any physical or mental condition, including any impairment, results from or is materially contributed to by the injury; or
- (d) a question as to the level of impairment of a worker including a question of the degree of impairment of a worker assessed in accordance with section 91 and a question as to whether or not that impairment is permanent; or
- (da) a question as to the amount of the total percentage referred to in section 89(3)(b); or
- (e) a question as to whether a worker has an injury which is a total loss mentioned in the Table in Schedule 3B; or

- (f) a question whether a worker's incapacity for work resulted from or was materially contributed to by an injury or alleged injury; or
- (fa) a question whether a worker's incapacity for work results from or is materially contributed to by an injury or alleged injury; or
- (h) a question prescribed to be a medical question in respect of an application for leave under section 134AB(16)(b); or
- (i) a question determined to be a medical question by a court hearing an application for leave under section 134AB(16)(b).

no current work capacity, in relation to a worker, means a present inability arising from an injury such that the worker is not able to return to work, either in the worker's pre-injury employment or in suitable employment;

serious injury means-

- (a) permanent serious impairment or loss of a body function; or
- (b) permanent serious disfigurement; or
- (c) permanent severe mental or permanent severe behavioural disturbance or disorder; or
- (d) loss of a foetus.

(38) For the purposes of the assessment of **serious injury** in accordance with subsections (16) and (19)-

- (a) the following definitions apply-
- (b) the terms serious and severe are to be satisfied by reference to the consequences to the worker of any impairment or loss of a body function, disfigurement, or mental or behavioural disturbance or disorder, as the case may be, with respect to-
 - (i) pain and suffering; or
 - (ii) loss of earning capacity- when judged by comparison with other cases in the range of possible impairments or losses of a body function, disfigurements, or mental or behavioural disturbances or disorders, respectively;
- (c) an impairment or loss of a body function or a disfigurement shall not be held to be serious for the purposes of subsection (16) unless the pain and suffering consequence or the loss of earning capacity consequence is, when judged by comparison with other cases in the range of possible impairments or losses of a body function, or disfigurements,

- as the case may be, fairly described as being more than significant or marked, and as being at least very considerable;
- (d) a mental or behavioural disturbance or disorder shall not be held to be severe for the purposes of subsection (16) unless the pain and suffering consequence or the loss of earning capacity consequence is, when judged by comparison with other cases in the range of possible mental or behavioural disturbances or disorders, as the case may be, fairly described as being more than serious to the extent of being severe;

stroke injury means an injury to the brain, or any of the blood vessels supplying or associated with the brain, that consists of, is caused by, results in or is associated with

-

- (a) any stroke; or
- (b) any cerebral infarction; or
- (c) any cerebral ischaemia; or
- (d) any rupture of such a blood vessel, including any rupture of an aneurism of such a blood vessel; or
- (e) any subarachnoid haemorrhage; or
- (f) any haemorrhage from such a blood vessel; or
- (g) any harm or damage to such a blood vessel or to any associated plaque; or
- (h) any impairment, disturbance or alteration of blood, or blood circulation, within such a blood vessel; or
- (i) any occlusion of such a blood vessel, whether the occlusion is total or partial; or
- (j) any consequential physical harm or damage, including neurological harm or damage; or
- (k) any consequential mental harm or damage; student worker means a worker within the meaning of section 5F(1)(a) or (b);

suitable employment, in relation to a worker, means employment in work for which the worker is currently suited-

- (a) having regard to-
- (i) the nature of the worker's incapacity and the details provided in medical information including, but not limited to, the certificate of capacity supplied by the worker; and

- (ii) the nature of the worker's pre-injury employment; and
 - (iii) the worker's age, education, skills and work experience; and
 - (iv) the worker's place of residence; and
 - (v) any plan or document prepared as part of the return to work planning process; and
 - (vi) any occupational rehabilitation services that are being, or have been, provided to or for the worker; and
- (b) regardless of whether-
- (i) the work or the employment is available; and
 - (ii) the work or the employment is of a type or nature that is generally available in the employment market;

(1D) For the purposes of Part VIIB, the definition of suitable employment also includes -

- (a) employment in respect of which the number of hours each day or week that the worker performs work or the range of duties the worker performs is suitably increased in stages in accordance with return to work planning or otherwise;
- (b) employment the worker is undertaking or that is offered to the worker regardless of whether the work or the employment is of a type or nature that is generally available in the employment market;
- (c) suitable training or vocational re-education provided by the employer or under arrangements approved by the employer (whether or not the employer also provides employment involving the performance of work duties), but only if the employer pays an appropriate wage or salary to the worker in respect of the time the worker attends suitable training or vocational re-education.

worker means an individual -

- (a) who-
 - (i) performs work for an employer; or
 - (ii) agrees with an employer to perform work- at the employer's direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise; or
- (b) who is deemed to be a worker under this Act;

(1B) In determining for the purposes of this Act whether a worker's employment was a significant contributing factor to an injury-

- (a) the duration of the worker's current employment; and
- (b) the nature of the work performed; and
- (c) the particular tasks of the employment; and
- (d) the probable development of the injury occurring if that employment had not taken place; and
- (e) the existence of any hereditary risks; and
- (f) the life-style of the worker; and
- (g) the activities of the worker outside the workplace must be taken into account.

(2A) A reference in this Act to the Authority is to be construed as a reference to WorkSafe Victoria.

SECT 91

Assessment of impairment

91. Assessment of impairment

- (1) In this Part, a reference to the assessment of a degree of impairment in accordance with this section is a reference to an assessment-
- (a) made in accordance with-
 - (i) the A.M.A Guides as applicable subject to subsections (1A) and (1B);
or
 - (ia) the A.M.A Guides as applicable subject to subsections (1A) and (1B) and guidelines in accordance with subsection (6), (6A) or (6B); or
 - (ii) methods prescribed for the purposes of this section- and in accordance with operational guidelines (if any) as to the use of those Guides or methods issued by the Minister; and
 - (b) if the Minister has approved a training course in the application of those Guides or methods, made by a medical practitioner who has successfully completed such a training course.

- (1A) Despite anything to the contrary in the A.M.A Guides, an assessment under subsection (1) of the degree of impairment resulting from an injury must be made-
- (a) after the injury has stabilised; and
 - (b) subject to subsection (7), based on the worker's current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury.
- (1B) The A.M.A Guides apply in respect of an assessment under section 3.3d of Chapter 3 of the A.M.A Guides as if the following were omitted-
- (2) In assessing a degree of impairment under subsection (1), regard must not be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, a physical injury.
 - (6) For the purposes of assessing the degree of psychiatric impairment the A.M.A Guides apply, subject to any regulations made for the purposes of this section, as if for Chapter 14 there were substituted the guidelines entitled "The Guide to the Evaluation of Psychiatric Impairment for Clinicians".

SECTION 91(E) refers to a second entitlement period after the first entitlement period of 13 weeks. This is now 117 weeks, together totalling 130 weeks.

- (6C) The guidelines referred to in subsections (6), (6A) and (6B) -
- (a) must be published by the Authority in the Government Gazette;
 - (b) have effect on the day after the day on which the guidelines are published in the Government Gazette;
 - (c) may be amended, varied or substituted by a subsequent edition of the guidelines published by the Authority in the Government Gazette.
- (7) For the purposes of section 98C-
- (a) impairments other than psychiatric impairments resulting from injuries which arose out of the same incident or occurred on the same date are to be assessed together using the combination tables in the A.M.A Guides;
 - (b) if a worker presents for assessment in relation to injuries which occurred on different dates, the impairments are to be assessed chronologically by date of injury;
 - (c) impairments from unrelated injuries or causes are to be disregarded in making an assessment;
 - (d) assessments are to specify the whole person values for each chapter of the A.M.A Guides used in the assessment.

- (9) Despite anything to the contrary in the A.M.A Guides, in determining a person's degree of impairment, no number determined under the A.M.A Guides is to be rounded up or down, regardless of whether the number represents an initial, an intermediate, a combined or a final value, unless the rounding is expressly required or permitted by this Act.
- (10) A number determined under the A.M.A Guides must be rounded to the nearest whole percent.

SECT 98

Compensation for maims

98. Compensation for maims

- (1) A worker who suffers an injury which entitled the worker to compensation is, in respect of an injury mentioned in the Table in Schedule 3A, entitled to compensation equal to-
 - (a) the percentage of \$100 300 set out opposite to that injury in the Table; or
 - (b) the assessed percentage of \$100 300 within the range set out opposite that injury in the Table - calculated, subject to subsection (2), as at the date of the injury.

the injury shall be regarded as an injury for which compensation based on the Table in Schedule 3A shall be payable, and the worker may be awarded as compensation such amount as, having regard to subsection (1), appears to be just and proportionate to the degree of injury suffered.

- (5) Compensation under this section is not payable after the death of the worker concerned.
- (6) Compensation under this section is payable only in respect of an injury that arose before 12 November 1997.

SCHEDULE 3A

brain damage (being an injury which is not or is not wholly an injury otherwise compensable under this Table)

SECT 98A

Compensation for pain and suffering

98A. Compensation for pain and suffering

- (1) A worker who has suffered an injury mentioned in the Table in Schedule 3A (or 2 or more of any such injuries on the same occasion) is entitled to receive by way of compensation for pain and suffering resulting from the injury or all those injuries, in addition to any other compensation under this Act, an amount not exceeding \$53 880.
- (2) This section does not apply if the compensation paid or payable under section 98 for the injury or all those injuries is less than \$10 770.
- (3) The maximum amount of compensation under this section is payable only in a most extreme case and the amount payable in any other case shall be reasonably proportionate to that maximum amount having regard to the degree and duration of pain and suffering and the severity of the injury or injuries.
- (5) In this section -

pain and suffering means-

- (a) actual pain; or
- (c) distress or anxiety- suffered or likely to be suffered by the injured worker, whether resulting from the injury concerned or from any necessary treatment.
- (6) Compensation under this section is payable only in respect of an injury that arose before 12 November 1997.

SECT 134AB

Actions for damages

134AB. Actions for damages

- (2) A worker may recover damages in respect of an injury arising out of, or in the course of, or due to the nature of, employment if the injury is a serious injury and arose on or after 20 October 1999.
- (3) (b)(i) after a period of at least 18 months has elapsed since the event or circumstance giving rise to the injury occurred
- (4A) If a worker has made a claim for compensation under section 98C in respect of an injury, the worker must not make an application under subsection
- (4) in respect of that injury unless -
 - (a) the degree of impairment resulting from the injury has been determined in accordance with section 104B; and

- (b) the worker has accepted the determination of the degree of impairment;
and
- (c) the worker has accepted the entitlement to compensation.

serious injury means-

- (a) permanent serious impairment or loss of a body function; or
 - (b) permanent serious disfigurement; or
 - (c) permanent severe mental or permanent severe behavioural disturbance or disorder; or
 - (d) loss of a foetus.
- (38) For the purposes of the assessment of serious injury in accordance with subsections (16) and (19) -
- (a) the following definitions apply-
 - (b) the terms serious and severe are to be satisfied by reference to the consequences to the worker of any impairment or loss of a body function, disfigurement, or mental or behavioural disturbance or disorder, as the case may be, with respect to -
 - (i) pain and suffering; or
 - (ii) loss of earning capacity- when judged by comparison with other cases in the range of possible impairments or losses of a body function, disfigurements, or mental or behavioural disturbances or disorders, respectively;
 - (c) an impairment or loss of a body function or a disfigurement shall not be held to be serious for the purposes of subsection (16) unless the pain and suffering consequence or the loss of earning capacity consequence is, when judged by comparison with other cases in the range of possible impairments or losses of a body function, or disfigurements, as the case may be, fairly described as being more than significant or marked, and as being at least very considerable;
 - (d) a mental or behavioural disturbance or disorder shall not be held to be severe for the purposes of subsection (16) unless the pain and suffering consequence or the loss of earning capacity consequence is, when judged by comparison with other cases in the range of possible mental or behavioural disturbances or disorders, as the case may be, fairly described as being more than serious to the extent of being severe;

- (h) the psychological or psychiatric consequences of a physical injury are to be taken into account only for the purposes of paragraph (c) of the definition of serious injury and not otherwise;
- (i) the physical consequences of a mental or behavioural disturbance or disorder are to be taken into account only for the purposes of paragraph (c) of the definition of serious injury and not otherwise;
- (j) the assessment of serious injury shall be made at the time that the application is heard by the court.

VICTORIA
TRANSPORT ACCIDENT ACT 1986 – RELEVANT SECTIONS FOR
PSYCHIATRISTS

Definitions

- (2A) **The definition of injury** as amended by section 3(3)(b) of the Transport Accident (Amendment) Act 2000 applies to and in respect of a transport accident which occurs on or after the commencement of that section.
- (3) In this Act-
- (a) a reference to an injury or death (not being a reference to the death of a dependent partner or dependent child of a deceased person) is a reference to an injury or death, as the case may be, caused by a transport accident⁴; and
 - (b) a reference to a person who is injured or dies (not being a reference to a dependent partner or dependent child of a deceased person) is a reference to a person who sustains injuries that were, or whose death was, as the case may be, caused by a transport accident⁵; and
 - (c) a reference to an injury or death in or as a result of or resulting from a transport accident, or to a person who is injured or dies in or as a result of a transport accident, is a reference to an injury or death directly caused by the driving of a motor vehicle, a railway train or a tram or to a person who sustains injuries that were, or whose death was, directly caused by the driving of a motor vehicle, a railway train or a tram.
- (4) If an injury resulting from a transport accident does not manifest itself at the time of the accident, a reference in this Act to 18 months after the accident is a reference to 18 months after the injury first manifests itself.

SECT 134

134. Definitions

In this Division-

accident includes an incident caused by or arising out of the use, in any other State or in a Territory, of a motor car;

injury means bodily injury;

SECT 46A

Degree of impairment

46A. Degree of impairment

- (1) The Commission must determine the degree of impairment of each person who is injured as a result of a transport accident and appears to the Commission to be or to be likely to be entitled to an impairment benefit, as at-
- (a) if the person was not a minor when the accident occurred-
 - (i) when the injury stabilises; or
 - (ii) 3 years after the accident, or 3 years after any injury first manifests itself (as the case may be)- whichever occurs first; or
 - (b) if the person was a minor when the accident occurred or when the injury first manifested itself-
 - (i) when the person attains the age of 18 years, if the injury has stabilised by that time; or
 - (ii) in any other case-
- (A) when the injury stabilises; or
- (B) when the person attains the age of 21 years - whichever occurs first.
- (1AA) Despite subsection (1), the Commission must not determine the degree of impairment within 3 months after the accident.
- 1AB) If a person applies to the Commission for a determination of his or her degree of impairment as a result of a transport accident more than 2 years after the day of the accident, or the day when any injury first manifested itself, whichever is the later day, the Commission must, if it is of the opinion that the person is, or is likely to be, entitled to an impairment benefit, determine the person's degree of impairment-
- (a) if the injury had stabilised by the date that the application was made, within 12 months after that date; or
 - (b) in any other case, within -
 - (i) 12 months after the injury stabilises; or
 - (ii) 2 years after the date the application was made- whichever occurs first.

- (1AC) If the Commission is of the opinion that a person who applied to the Commission in the circumstances described in subsection (1AB) is, or is likely to be, entitled to an impairment benefit, but the person's injury has not stabilised within 12 months after the application was made, the person may ask the Commission to wait until the injury has stabilised before determining his or her degree of impairment.
- (1AD) Despite subsection (1AB)(b), the Commission must comply with any request under subsection (1AC) that is made in writing.
- (1A) If the Commission -
- (a) has not made a determination under this section of the degree of impairment of a person injured as a result of a transport accident within the period of 6 years after the later of-
 - (i) the date of the transport accident; or
 - (ii) the date on which the injury to the person resulting from the transport accident first manifests itself; and
 - (b) within that period of 6 years-
 - (i) has not advised the person that he or she appears likely to be entitled to an impairment benefit; and
 - (ii) has not received an application in writing from the person requesting the Commission to carry out an impairment assessment- the Commission is to be taken to have made a determination that the degree of impairment is 0%.
- (1B) The period of 6 years referred to in subsection (1A) applies-
- (a) in respect of a transport accident that occurred before the commencement of section 13 of the Transport Accident (Amendment) Act 2000, from the commencement of that section; and
 - (b) in respect of a transport accident that occurs on or after the commencement of section 13 of the Transport Accident (Amendment) Act 2000, from the time that the transport accident occurs; and
 - (c) in the case of an injury to a person who was a minor at the time of the transport accident, from the day on which the person attains the age of 18 years.
- (1C) If an injury of a person who was not a minor when the accident occurred has not stabilised 3 years after the accident, or 3 years after any injury first manifests itself (as the case may be), the person may ask the Commission-

- (a) to determine his or her degree of impairment; or
 - (b) to wait until the injury has stabilised before determining his or her degree of impairment.
- (1D) The Commission must comply with any request under subsection (1C) that is made in writing and, in the case of a request made under subsection (1C)(a), must do so within 12 months after receiving the request.
- (1E) If a person who is eligible to make a request under subsection (1C) does not make such a request within 90 days after the date he or she becomes eligible to make the request, the Commission must determine the degree of impairment of the person within 12 months after that date.
- (2) In this Part, a reference to the determination of a degree of impairment is a reference to a determination by the Commission-
- (a) made in accordance with:
 - (i) the A.M.A Guides as applicable subject to subsections (2A) and (2B); or
 - (ii) methods prescribed for the purposes of this section- and in accordance with operational guidelines (if any) as to the use of those Guides or methods issued by the Minister; and
 - (b) if the Minister has approved a training course in the application of those Guides or methods, made after an assessment by a medical practitioner who has successfully completed such a training course.
- (2A) Despite anything to the contrary in the A.M.A Guides, an assessment under subsection (1) of the degree of impairment resulting from an injury must be made based on the person's current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the person in respect of the injury.
- (6) For the purposes of assessing the degree of psychiatric impairment the A.M.A Guides apply, subject to any regulations made for the purposes of this section, as if for Chapter 14 there were substituted the guidelines entitled "The Guide to the Evaluation of Psychiatric Impairment for Clinicians".
- (6A) The guidelines referred to in subsection (6)-
- (a) must be published by the Commission in the Government Gazette;
 - (b) have effect on the day after the day on which the guidelines are published in the Government Gazette;

- (b) may be amended, varied or substituted by a subsequent edition of the guidelines published by the Commission in the Government Gazette.
- (8) If the Commission is required to assess the degree of impairment of a person whose injury has not stabilised, for the purposes of that assessment-
 - (a) unless the contrary intention appears in this section, the degree of impairment to be assessed is the degree of current impairment as at the date of the determination of the assessment; and
 - (b) any reference to permanent impairment in the A.M.A Guides is to be read as a reference to current impairment.

SECT 71

Medical examinations

71. Medical examinations

(1) In order to determine its liability under Part 3 or Division 1 of Part 10, the Commission may require a person who was injured as a result of a transport accident and makes a claim for, or receives compensation under this Part or that Division, to submit from time to time for examination by one or more medical service providers nominated by the Commission.

(1A) Subsection (1) also applies to a person if the Commission is required to make a determination of the person's degree of impairment as a result of a transport accident.

Note Subsection (1A) applies with respect to all transport accidents that occurred on or after the day that is 18 months before the date of commencement of section 10 of the Transport Accident (Amendment) Act 2004-see section 188.

- (2) If a person refuses or fails without reasonable excuse to comply with a request to submit for examination in accordance with this section-
 - (a) the person's right (if any) to compensation under this Act is suspended until the examination takes place; and
 - (b) the Commission is not liable to pay compensation to the person while the right is suspended.
- (3) In subsection (1), medical service provider means-
 - (a) medical practitioner;
 - (b) registered psychologist;
 - (c) registered dentist;

- (d) registered optometrist;
- (e) registered physiotherapist;
- (f) registered chiropractor;
- (g) registered osteopath;
- (h) registered podiatrist.

SECT 94

Indemnity

94. Indemnity

- (1) The Commission is liable to indemnify-
 - (a) the owner or driver of a registered motor vehicle in respect of any liability in respect of an injury or death of a person caused by or arising out of the use of the motor vehicle in Victoria or in another State or in a Territory; and
 - (b) the operator, owner or driver of a railway train or tram, and the manager of the railway or tramway on which a railway train or tram is operated, in respect of any liability in respect of an injury or death caused by or arising out of the use of the railway train or tram in Victoria-other than liability to pay compensation under the Accident Compensation Act 1985 or an Act or law referred to in section 37.

VICTORIA

WRONGS ACT 1958 RELEVANT TO PSYCHIATRISTS

SECT 28LB

Definitions

28LB. Definitions

In this Part- A.M.A. Guides means the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fourth Edition) (other than Chapter 15) as modified by or under this Part; approved medical practitioner means-

- (a) if a training course has been approved under [section 91\(1\)\(b\)](#) of the [Accident Compensation Act 1985](#), a medical practitioner who has successfully completed the course; or

claimant means a person who makes or is entitled to make a claim for damages that relate to the injury to a person caused by the fault of another person;

injury means personal or bodily injury and includes-

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease;

Medical Panel means a Medical Panel under the

[Accident Compensation Act 1985](#); medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student)

medical question in relation to a claim for damages, means a question as to whether the degree of impairment resulting from injury to the claimant alleged in the claim satisfies the threshold level;

non-economic loss means any one or more of the following-

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life; registered health practitioner means-
- (a) a medical practitioner; or

Threshold level means-

- (a) in the case of injury (other than psychiatric injury), impairment of more than 5 per cent;
- (b) in the case of psychiatric injury, impairment of more than 10 percent.

SECT 28LH

How is the degree of impairment to be assessed?

28LH. How is the degree of impairment to be assessed?

- (1) Subject to this Division, an approved medical practitioner must make an assessment of degree of impairment under this Part-
 - (a) in accordance with-
 - (i) the A.M.A. Guides; or
 - (ii) the methods prescribed for the purposes of this Part; and
 - (b) in accordance with operational guidelines (if any) as to the use of those Guides or methods issued by the Minister.
- (2) Nothing in subsection (1) prevents an assessment being made in respect of a degree of impairment of a person even if not all of the injuries to the person have stabilised.

SECT 28LI

Assessment of certain impairments

28LI. Assessment of certain impairments

- (1) For the purposes of assessing the degree of psychiatric impairment the A.M.A. Guides apply, subject to any regulations made for the purposes of this section, as if for Chapter 14 there were substituted the guidelines entitled "The Guide to the Evaluation of Psychiatric Impairment for Clinicians".

SECT 28LJ

Regard not to be had to secondary psychiatric or psychological impairment

28LJ. Regard not to be had to secondary psychiatric or psychological impairment.

In assessing a degree of impairment of a person under this Part, regard must not be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, a physical injury.

WORKER'S COMPENSATION in Western Australia

The Legislation

Workers' compensation and injury management act 1981

Workers' Compensation and Injury Management Arbitration Rules 2011

Approved medical specialists

Approved medical specialists assess the degree of [permanent whole of person impairment \(WPI\)](#) caused by workplace injuries. These assessments are required in cases where the worker and the employer do not agree about the degree of permanent impairment.

WorkCover WA may designate a person as an Approved Medical Specialist if the person is a medical practitioner who WorkCover WA considers to be sufficiently trained in the use of the *WorkCover WA Guides* and satisfies WorkCover WA's criteria.

Register of approved medical specialists

See the [register of approved medical specialists](#) operating in Western Australia.

Become an approved medical specialist

On 12 July 2011, revised criteria for designation as an Approved Medical Specialist were published in the *Government Gazette*.

The revisions to the criteria include the removal of the condition to have completed impairment assessment training within five years prior to applying for designation.

The five year condition is no longer necessary as the designation criteria already require evidence of current practice and expertise in impairment assessment. This amendment will assist in building the number of AMSs available to injured workers residing interstate and improve access to impairment assessment experts.

The revised criteria also provide clarification and flexibility on the edition of the *American Medical Association Guides to the Evaluation of Permanent Impairment* (AMA Guides) medical practitioners are to undertake training in. The revised criteria specify that the relevant edition of the AMA Guides is that upon which the current *WorkCover WA Guides for the Evaluation of Permanent Impairment* are based.

The current *Government Gazette* criteria for a person to be designated as an Approved Medical Specialist are set out below:

To be designated as an Approved Medical Specialist, under section 146F(1) of the *Workers' Compensation and Injury Management Act 1981*, a person must:

1. Be registered as a medical practitioner; and
 2. Provide evidence of current clinical practice and/or expertise in assessment; and
 3. Have undertaken training in the WorkCover WA Education Module, which includes training in the *WorkCover WA Guides*; and
- (2) (i) have undertaken training in the use of the *American Medical Association Guides to the Evaluation of Permanent Impairment* upon which the current *WorkCover WA Guides* are based; or
- (ii) Have current accreditation as a "Certified Independent Medical Examiner" with the American Board of Independent Medical Examiners (ABIME); or

- (iii) Have undertaken other training in impairment assessment approved by WorkCover WA; and
- (3) (i) have qualifications as a specialist; or
- (4) (ii) be able to demonstrate competency levels acceptable to WorkCover WA.

Other (non-specialist) medical practitioners should note that in order to demonstrate the competency required, WorkCover WA will take into consideration an applicant's relevant skills, experience and qualifications. As a guide, WorkCover WA will review the extent to which a medical practitioner has -

- Significant work in a medical practice with consistent management and assessment of injured workers;
- Experience in undertaking medical assessments of injured workers;
- Relevant qualifications, for example, ABIME exam certification or other similar qualifications related to medico-legal assessments or disability assessments
-

Applications in this category will be considered on a case-by-case basis.

The application form and further information is available in the [Approved Medical Specialist Application Pack \(PDF - 120kb\)](#).

Workers' Compensation and Injury Management Arbitration Rules 2011

REG 58

58 . Medical evidence

- (1) Except with the leave of an arbitrator, any medical evidence of a medical practitioner must be given in writing and a medical practitioner may not be called to give oral medical evidence at a hearing before an arbitrator.
- (2) An application for leave to call oral evidence from a medical practitioner must —
 - (a) be made not less than 14 days prior to the date set for the hearing; and
 - (b) state the grounds on which the leave is sought.
- (3) An arbitrator must not give leave to call oral medical evidence unless the arbitrator is satisfied that the giving of the evidence will assist in the determination of a dispute in a manner that is fair, just, economical, informal and quick.

REG 59

59 . Medical reports

- (1) Except with the leave of an arbitrator, in any proceeding —
 - (a) a medical report by a medical practitioner in a particular area of medical practice may not be lodged or admitted in evidence on behalf of a party to a proceeding if another medical report by another medical practitioner in that area of medical practice has been lodged or admitted in evidence on behalf of that party; and
 - (b) a medical report by a medical practitioner in a particular area of medical practice may not be lodged or admitted in evidence on behalf of a party to the proceeding if medical reports in 3 areas of medical practice have been lodged or admitted in evidence on behalf of that party.

- (2) For the purposes of this rule, a medical report in more than one area of medical practice is to be taken to be a medical report in each of those areas of medical practice.
- (3) This rule does not affect the filing or admission in evidence of a medical report in a proceeding if the report was filed or admitted in the proceeding before the coming into operation of the *Worker's Compensation (DRD) Rules 2005*.
- (4) This rule does not affect the lodging or admission in evidence of a medical report required to be obtained because —
 - (a) a worker's medical practitioner has ceased treating the worker by reason of retirement, change in practice or similar reason, and the medical practitioner's practice has been taken over by another medical practitioner; or
 - (b) a worker attends a general medical practice and is seen by more than one medical practitioner in that same practice from time to time.

FAQ WorkCover WA

What is a medical assessment panel?

Parties to a dispute may need to contact their medical practitioner for medical advice and potentially reports to support their case.

An injured worker may be referred to a medical assessment panel by the conciliation officer or arbitrator. This can occur when there is a conflict of medical opinion about the nature or extent of an injury or a worker's capacity for work between a doctor engaged by the worker and a doctor engaged and paid for by the employer, and one of the parties wishes the proceedings to continue.

Three medical practitioners are chosen by the Director, Conciliation from a list provided by the Australian Medical Association, Western Australia to make up the panel. At least one medical practitioner will be a specialist in the relevant field. Medical practitioners who have treated or examined the worker are not eligible to sit on the panel.

The panel may examine the worker, request documents from the worker or require the worker to answer questions. No person can be represented before the panel because only medical questions will be determined (not questions of law). A worker who does not attend a panel when required to do so, or who obstructs the panel, may have their right to further compensation suspended.

The panel must make its determination within 28 days of the examination. Within a further seven days, the panel must provide written reasons for its decision. The determination of the panel is final and binding on all parties and on any court or tribunal.

WORKERS' COMPENSATION AND INJURY MANAGEMENT ACT 1981

SECT 31B

31B . Term used: degree of permanent impairment

In this Division —

degree of permanent impairment means —

- (a) except as provided in paragraph (b), the degree of permanent impairment of a part or faculty of the body, evaluated as described in sections 146A and 146B;

Permanent impairment

In order to access certain benefits or settlements, or pursue a common law claim for damages, it may be necessary for an injured worker to obtain an assessment from an approved medical specialist of their choice, usually when the worker and employer (or the employer's insurer) don't agree on the level of the worker's impairment.

This assessment will determine the degree of permanent impairment or permanent whole of person impairment (WPI).

An AMS is trained to evaluate impairment using the WorkCover WA Guides for the Evaluation of Permanent Impairment.

An assessment of degree of permanent WPI may be necessary where you are seeking to access:

- a claim for damages at common law; or
- Specialised Retraining Programs; or
- Exceptional Circumstances Medical Payments.

An assessment of degree of permanent impairment may also be required where you are seeking to access a Schedule 2 settlement (a lump sum entitlement for permanent impairment).

SECT 146

146 . Terms used

In this Part —

degree of impairment , in relation to a worker, means —

- (a) the worker's degree of permanent impairment for the purposes of Part III Division 2A;
- (b) the worker's degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3;
- (c) the worker's degree of permanent whole of person impairment for the purposes of Part IXA;
- (d) the worker's degree of permanent whole of person impairment for the purposes of clause 18A;

secondary condition means a condition, whether psychological, psychiatric, or sexual, that, although it may result from the injury or injuries concerned, arises as a secondary, or less direct, consequence of that injury or those injuries.

SECT 146A

146A . Evaluating degree of impairment generally

- (1) Subject to sections 146B, 146C, 146D and 146E, a worker's degree of impairment is to be evaluated, as a percentage, in accordance with the WorkCover Guides.
- (2) If a worker and the employer do not agree about the evaluation of the worker's degree of impairment, it is to be assessed by an approved medical specialist or, if this Act so provides, an approved medical specialist panel.
- (3) A request for assessment by an approved medical specialist is to be made in accordance with the regulations.

- (4) For a case in which the evaluation of the degree of impairment of the worker involves taking into account a recurrence, aggravation, or acceleration of any pre-existing disease that was to any extent asymptomatic before the event from which the injury or injuries arose, the WorkCover Guides are not to provide for a deduction to reflect the pre-existing nature of that disease to the extent that it was asymptomatic before that event.

SECT 146F

146F . Approved medical specialists, designation of

- (1) WorkCover WA may, by order published in the *Gazette*, designate a person as an approved medical specialist if the person is a medical practitioner who in WorkCover WA's opinion, is sufficiently trained in the use of the WorkCover Guides and otherwise satisfies criteria for designation as an approved medical specialist that WorkCover WA for the time being applies.
- (2) WorkCover WA is required to publish in the *Gazette* the criteria that it applies for deciding whether a medical practitioner is suitable for designation as an approved medical specialist.
- (3) WorkCover WA may require an approved medical specialist to enter into a written agreement with WorkCover WA about the procedures to be followed and the fees to be charged for, and other matters relating to, the performance of functions as an approved medical specialist and other matters relevant to the implementation of this Act.
- (4) WorkCover WA may, by order published in the *Gazette*, cancel the designation of a person as an approved medical specialist.
- (5) WorkCover WA is required to monitor assessments for consistency and monitor compliance with this Act and agreements under subsection (3).
- (6) The chief executive officer is to keep a register identifying persons who have been designated as approved medical specialists showing —
 - (a) the day on which the person was designated; and
 - (b) if a person's designation as an approved medical specialist has been cancelled, the day on which it was cancelled.
- (7) The chief executive officer is to make the register available for inspection at any reasonable time by any member of the public.

SECT 146G

146G . Approved medical specialist, powers of

- (1) On being requested to assess a worker's degree of impairment, an approved medical specialist may —
 - (a) in accordance with the regulations, require the worker to attend at a place specified by the approved medical specialist;
 - (b) require the worker to answer any question about the injury;
 - (c) in accordance with the regulations, require the worker, the employer, or the employer's insurer to —
 - (i) produce to the approved medical specialist any relevant document or information; or
 - (ii) consent to another person who has any relevant document or information producing it to the approved medical specialist;
 - (d) require the worker to submit to examination by, or as requested by, the approved medical specialist.

- (2) Regulations may be made —
 - (a) requiring a worker who requests an assessment of the worker's degree of impairment to produce any information described in the regulations for use in dealing with the request, and prescribing a fine of not more than \$2 000 for a contravention of the requirement;
 - (b) about the time within which a requirement made under subsection (1) or imposed by a regulation under paragraph (a) has to be complied with if the time for complying is not specified in the requirement.
- (3) A person who contravenes a requirement under subsection (1) commits an offence and is liable to a fine of \$2 000.
- (4) If the assessment is sought for the purpose of court proceedings and a person contravenes a requirement made under subsection (1) or imposed by a regulation under subsection (2), the court may order that the proceedings be stayed, either wholly or in part, or that any pleading be struck out.

SECT 146F

146F . Approved medical specialists, designation of

- (1) WorkCover WA may, by order published in the *Gazette* , designate a person as an approved medical specialist if the person is a medical practitioner who in WorkCover WA's opinion, is sufficiently trained in the use of the WorkCover Guides and otherwise satisfies criteria for designation as an approved medical specialist that WorkCover WA for the time being applies.
- (2) WorkCover WA is required to publish in the *Gazette* the criteria that it applies for deciding whether a medical practitioner is suitable for designation as an approved medical specialist.
- (3) WorkCover WA may require an approved medical specialist to enter into a written agreement with WorkCover WA about the procedures to be followed and the fees to be charged for, and other matters relating to, the performance of functions as an approved medical specialist and other matters relevant to the implementation of this Act.
- (4) WorkCover WA may, by order published in the *Gazette* , cancel the designation of a person as an approved medical specialist.
- (5) WorkCover WA is required to monitor assessments for consistency and monitor compliance with this Act and agreements under subsection (3).
- (6) The chief executive officer is to keep a register identifying persons who have been designated as approved medical specialists showing —
 - (a) the day on which the person was designated; and
 - (b) if a person's designation as an approved medical specialist has been cancelled, the day on which it was cancelled.
- (7) The chief executive officer is to make the register available for inspection at any reasonable time by any member of the public.

SECT 146H

146H . Approved medical specialist, duties of after making assessment

- (1) An approved medical specialist making an assessment for the purposes of Part III Division 2A, Part IV Division 2 Subdivision 3, Part IXA or clause 18A is required to give to each of the worker and the employer, in writing in accordance with the regulations —
 - (a) a report of the worker's degree of impairment, including details of the assessment and reasons justifying the assessment; and

- (b) a certificate specifying the worker's degree of impairment.
- (2) An approved medical specialist giving a certificate —
 - (a) for the purposes of Part III Division 2A or Part IXA that a worker's condition has not stabilised to the extent required for an evaluation to be made in accordance with the WorkCover Guides as described in sections 146A, 146B, and 146D; or
 - (b) for the purposes of Part IV Division 2 Subdivision 3 that a worker's condition has not stabilised to the extent required for a normal evaluation to be made in accordance with the WorkCover Guides as described in sections 146A and 146C, is required to give to each of the worker and the employer, in writing in accordance with the regulations —
 - (c) a report of any relevant details provided by the worker; and
 - (d) brief reasons justifying the finding certified.

SECT 146J

146J . Decisions of approved medical specialist not reviewable

- (1) A decision of an approved medical specialist or anything done under this Act in the process of coming to a decision of an approved medical specialist is not amenable to judicial review.

SECT 146K

146K . Constituting panels

- (1) On a question being referred under section 31D(4), 158C(2)(b) or clause 18C for assessment by an approved medical specialist panel, the Registrar is to select 2 approved medical specialists to be the panel that is to assess the degree of impairment.
- (2) An approved medical specialist who has treated or examined the worker concerned in a professional capacity or in the capacity of an approved medical specialist is not eligible to be a member of the panel.
- (3) If a referral is made to an approved medical specialist panel, WorkCover WA may, with the consent of the worker, disclose to the panel any information that it has in relation to the worker that may be relevant to the assessment.

SECT 146O

146O . Duties of panel after making assessment

- (1) Subject to section 146P, the assessment is to be made as soon as is practicable after the day on which a medical examination of the worker concerned is carried out by the approved medical specialist panel.
- (2) An approved medical specialist panel is required to give to the Registrar in writing in accordance with the regulations —
 - (a) a report of the worker's degree of impairment, including details of the assessment and reasons justifying the assessment; and
 - (b) a certificate specifying the worker's degree of impairment.
- (2) The Registrar is to give copies of the report and certificate to the arbitrator who referred the question to the panel, the worker concerned, and the employer of the worker concerned, within 7 days after the day on which the Registrar receives them.

- (4) The assessment is —
 - (a) final and binding on the worker, the worker's employer, on any dispute resolution authority, court or tribunal hearing a matter in which any such determination is relevant and on any other approved medical specialist panel; and
 - (b) conclusive evidence as to the matters determined.
- (5) An assessment of an approved medical specialist panel is not —
 - (a) to be vitiated because of any informality or want of form; or
 - (b) subject to an appeal.
- (6) A decision of an approved medical specialist panel or anything done under this Act in the process of coming to a decision of an approved medical specialist panel is not amenable to judicial review.

SECT 146P

146P . No assessment without unanimous agreement

- (1) If the members of the approved medical specialist panel are not in unanimous agreement as to the degree of impairment, the panel is discharged and a new panel is to be selected to assess the worker's degree of impairment in accordance with section 146N.
- (7) A member of a panel discharged under subsection (1) is not eligible to be selected as a member of a new panel under that subsection.
- (8)

SCHEDULE 1

18C . Degree of permanent whole of person impairment, dispute as to

- (1) In the exercise of a discretion under clause 18A(1b), for the purposes of clause 18A(2aa)(b) an arbitrator may —
 - (a) determine the degree of permanent whole of person impairment; or
 - (b) refer the question as to the degree of permanent whole of person impairment for assessment by an approved medical specialist panel in accordance with sections 146A and 146E and make a determination accordingly.
- (2) If a determination is made that the worker's degree of permanent whole of person impairment is not less than 15%, the arbitrator may order the employer to pay all or any of the costs or expenses connected with the dispute, including expenses connected with the referral to an approved medical specialist panel.

SCHEDULE 2

[s. 24]

[Heading inserted by No. 42 of 2004 s. 142(1); amended by No. 19 of 2010 s. 4.]

Part 1

[Heading inserted by No. 42 of 2004 s. 142(1).]

Item	Column 1 Nature of injury or impairment	Column 2 Ratio which the sum payable herein bears to the prescribed amount.
BODY AND MENTAL		
8.	Permanent and incurable loss of mental capacity resulting in total inability to work	100
9.	Total and incurable paralysis of the limbs or of mental powers	100

(Note: other conditions for eligibility apply to each of these entitlements.)

While treatment continues to be provided by the worker's treating medical practitioner, only medical practitioners registered as approved medical specialists can undertake impairment assessments.

13. Psychiatric and psychological disorders

AMA5 Chapter 14 (pp 357-372) is excluded and replaced by this chapter.

Introduction

- 13.1 This chapter lays out the method for assessing psychiatric impairment. The evaluation of impairment requires a medical examination.
- 13.2 Under section 146G(1)(d) an Approved Medical Specialist should require the worker to submit to examination and assessment by a psychiatrist. Evaluation of psychiatric impairment is conducted by a psychiatrist who has undergone appropriate training in this assessment method.
- 13.3 In evaluating the degree of permanent impairment of the worker for the purposes of common law (section 146C(6)), clause 18A (section 146E(3)), and specialised retraining programs (section 146D(3)), any secondary psychological or psychiatric condition is to be disregarded. A secondary psychological or psychiatric condition is a condition, that, although it may result from the injury or injuries concerned, arises as a secondary, or less direct, consequence of that injury or injuries. The evaluation will not preclude psychological, psychiatric conditions where these conditions are a direct consequence of an injury, an example of which would be psychiatric condition experienced by a bank teller as a result of a hold up (refer to Chapter 3 of these WorkCover WA Guides for examples).

Background to the development of the scale

13.4 The psychiatric impairment rating scale (PIRS) used was originally developed, using AMA4, for the New South Wales Motor Accidents Authority. It was then further modified for Comcare. At this time the conversion table was added. Finally, to ensure relevance for the NSW workers' compensation context, the PIRS was extensively reviewed with reference to AMA5. Changes have been made to the method for assessing pre-injury impairment and to some of the descriptors within each of the functional areas.

Diagnosis

13.5 The impairment rating must be based upon a psychiatric diagnosis (according to a recognised diagnostic system) and the report must specify the diagnostic criteria upon which the diagnosis is based. Impairment arising from any of the somatoform disorders (DSM IV, pp 445-469) are excluded from this chapter.

13.6 If pain is present as the result of an organic impairment, it should be assessed as part of the organic condition under the relevant table. This does not constitute part of the assessment of impairment relating to the psychiatric condition. The impairment ratings in the body organ system chapters in AMA5 make allowance for any accompanying pain.

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13.7 It is expected that the psychiatrist will provide a rationale for the rating based on the worker's psychiatric symptoms. The diagnosis is among the factors to be considered in assessing the severity and possible duration of the impairment, but is not the sole criterion to be used. Clinical assessment of the worker may include information from the worker's own description of his or her functioning and limitations; from family members and others who may have knowledge of the worker. Medical reports, feedback from treating professionals, results of standardised tests, including appropriate psychometric testing performed by a qualified clinical psychologist, and work evaluations may provide useful information to assist with the assessment. Evaluation of impairment will need to take into account variations in the level of functioning over time. Percentage impairment refers to whole person impairment (WPI).

Permanent impairment

13.8 A psychiatric disorder is permanent if in the opinion of the psychiatrist, it is likely to continue indefinitely. Regard should be given to:

- the duration of impairment;
- the likelihood of improvement in the worker's condition;
- whether the worker has undertaken reasonable rehabilitative treatment; and
- any other relevant matters.

Effects of treatment

13.9 Consider the effects of medication, treatment and rehabilitation to date. Is the condition stable? Is treatment likely to change? Are symptoms likely to improve? If the worker declines treatment, this should not affect the estimate of permanent impairment. The psychiatrist may make a comment in the report about the likely effect of treatment or the reasons for refusal of treatment.

Co-morbidity

- 13.10 Consider co-morbid features (eg Alzheimer’s disease, personality disorder, substance abuse) and determine whether they are directly linked to the work-related injury or whether they were pre-existing or unrelated conditions.

Pre-existing impairment

- 13.11 To measure the impairment caused by a work-related injury or incident, the psychiatrist must measure the proportion of WPI due to any pre-existing condition. Pre-existing impairment is calculated using the same method for calculating current impairment level. The assessing psychiatrist uses all available information to rate the worker’s pre-injury level of functioning in each of the areas of function. The percentage impairment is calculated using the aggregate score and median class score using the conversion table below.

The worker’s current level of impairment is then assessed, and the pre-existing impairment level (%) is then subtracted from their current level to obtain the percentage of permanent impairment directly attributable to the work-related injury. If the percentage pre-existing impairment cannot be assessed, then no deduction is to be made.

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Psychiatric impairment rating scale (PIRS)

- 13.12 Behavioural consequences of psychiatric disorder are assessed on six scales, each of which evaluates an area of functional impairment:
1. self-care and personal hygiene (Table 13.1);
 2. social and recreational activities (Table 13.2);
 3. travel (Table 13.3);
 4. social functioning (relationships) (Table 13.4);
 5. concentration (Table 13.5); and
 6. employability (Table 13.6).
- 13.13 Impairment in each area is rated using class descriptors. Classes range from 1 to 5, in accordance with severity. The standard form must be used when scoring the PIRS.

The examples of activities are examples only. The assessing psychiatrist should take account of the worker’s cultural background. Consider activities that are usual for the worker’s age, sex and cultural norms.

Table 13.1: Psychiatric impairment rating scale — Self care and personal hygiene

Class 1 No deficit, or minor deficit attributable to the normal variation in the general population.

Class 2 Mild impairment: able to live independently; looks after self adequately, although may look unkempt occasionally; sometimes misses a meal or relies on take-away food.

Class 3 Moderate impairment: can’t live independently without regular support. Needs prompting to shower daily and wear clean clothes. Does not prepare own meals, frequently misses meals. Family member or community nurse visits (or should visit) 2–3 times per week to ensure minimum level of hygiene and nutrition.

Class 4 Severe impairment: needs supervised residential care. If unsupervised, may accidentally or purposefully hurt self.

Class 5 Totally impaired: needs assistance with basic functions, such as feeding and toileting.

Table 13.2: Psychiatric impairment rating scale — Social and recreational activities

Class 1 No deficit, or minor deficit attributable to the normal variation in the general population: regularly participates in social activities that are age, sex and culturally appropriate. May belong to clubs or associations and is actively involved with these.

Class 2 Mild impairment: occasionally goes out to such events without needing a support person, but does not become actively involved (eg dancing, cheering favourite team).

Class 3 Moderate impairment: rarely goes out to such events, and mostly when prompted by family or close friend. Will not go out without a support person. Not actively involved, remains quiet and withdrawn.

Class 4 Severe impairment: never leaves place of residence. Tolerates the company of family member or close friend, but will go to a different room or garden when others come to visit family or flat mate.

Class 5 Totally impaired: cannot tolerate living with anybody, extremely uncomfortable when visited by close family member.

Activities of daily living

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Table 13.3: Psychiatric impairment rating scale – Travel

Class 1 No deficit, or minor deficit attributable to the normal variation in the general population: can travel to new environments without supervision.

Class 2 Mild impairment: can travel without support person, but only in a familiar area such as local shops, visiting a neighbour.

Class 3 Moderate impairment: cannot travel away from own residence without support person. Problems may be due to excessive anxiety or cognitive impairment.

Class 4 Severe impairment: finds it extremely uncomfortable to leave own residence even with trusted person.

Class 5 Totally impaired: may require two or more persons to supervise when travelling.

Table 13.4: Psychiatric impairment rating scale — Social functioning

Class 1 No deficit, or minor deficit attributable to the normal variation in the general population: no difficulty in forming and sustaining relationships (eg partner, close friendships lasting years).

Class 2 Mild impairment: existing relationships strained. Tension and arguments with partner or close family member, loss of some friendships.

Class 3 Moderate impairment: previously established relationships severely strained, evidenced by periods of separation or domestic violence. Spouse, relatives or community services looking after children.

Class 4 Severe impairment: unable to form or sustain long term relationships. Pre-existing relationships ended (eg lost partner, close friends). Unable to care for dependants (eg own children, elderly parent).

Class 5 Totally impaired: unable to function within society. Living away from populated areas, actively avoiding social contact.

Table 13.5: Psychiatric impairment rating scale – Concentration, persistence and pace

Class 1 No deficit, or minor deficit attributable to the normal variation in the general population: able to pass a TAFE or university course within normal time frame.

Class 2 Mild impairment: can undertake a basic retraining course, or a standard course at a slower pace. Can focus on intellectually demanding tasks for periods of up to 30 minutes, then feels fatigued or develops headache.

Class 3 Moderate impairment: unable to read more than newspaper articles. Finds it difficult to follow complex instructions (eg operating manuals, building plans), make significant repairs to motor vehicle, type long documents, follow a pattern for making clothes, tapestry or knitting.

Class 4 Severe impairment: can only read a few lines before losing concentration. Difficulties following simple instructions. Concentration deficits obvious even during brief conversation. Unable to live alone, or needs regular assistance from relatives or community services.

Class 5 Totally impaired: needs constant supervision and assistance within institutional setting.

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Table 13.6: Psychiatric impairment rating scale — Employability

Class 1 No deficit, or minor deficit attributable to the normal variation in the general population: able to work full time. Duties and performance are consistent with the injured worker's education and training. The person is able to cope with the normal demands of the job.

Class 2 Mild impairment: able to work full time but in a different environment from that of the pre-injury job. The duties require comparable skill and intellect as those of the pre-injury job. Can work in the same position, but no more than 20 hours per week (eg no longer happy to work with specific persons, or work in a specific location due to travel required).

Class 3 Moderate impairment: cannot work at all in same position. Can perform less than 20 hours per week in a different position, which requires less skill or is qualitatively different (eg less stressful).

Class 4 Severe impairment: cannot work more than one or two days at a time, less than 20 hours per fortnight. Pace is reduced, attendance is erratic.

Class 5 Totally impaired: cannot work at all.

Using the PIRS to measure impairment

13.14 Rating psychiatric impairment using the PIRS is a two-step procedure:

1. determine the median class score; and
2. calculate the aggregate score.

Determining the median class score

13.15 Each area of function described in the PIRS is given an impairment rating which ranges from Class 1 to 5. The six scores are arranged in ascending order, using the standard form. The median is then calculated by averaging the two middle scores. Eg:

Example A: 1, 2, **3, 3**, 4, 5 Median Class = 3

Example B: 1, 2, 2, 3, 3, 4 Median Class = 2.5 = 3*

Example C: 1, 2, 3, 5, 5, 5 Median Class = 4

*If a score falls between two classes, it is rounded up to the next class. A median class score of 2.5 thus becomes 3.

13.16 The median class score method was chosen as it is not influenced by extremes.

Each area of function is assessed separately. While impairment in one area is neither equivalent nor interchangeable with impairment in other areas, the median seems the fairest way to translate different impairments onto a linear scale.

Median class score and percentage impairment

13.17 Each median class score represents a range of impairment, as shown below.

Class 1 = 0–3%

Class 2 = 4–10%

Class 3 = 11–30%

Class 4 = 31–60%

Class 5 = 61–100%

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Calculation of the aggregate score

13.18 The aggregate score is used to determine an exact percentage of impairment within a particular Median Class range. The six class scores are added to give the aggregate score.

Use of the conversion table to arrive at percentage impairment

13.19 The aggregate score is converted to a percentage score using the conversion table.

13.20 The conversion table was developed to calculate the percentage impairment based on the aggregate and median scores.

13.21 The scores within the conversion table are spread in such a way to ensure that the final percentage rating is consistent with the measurement of permanent impairment percentages for other body systems.

Table 13.7: Conversion table

Aggregate score

Conversion table — explanatory notes

A. Distribution of aggregate scores

- The lowest aggregate score that can be obtained is: $1+1+1+1+1+1=6$.
- The highest aggregate score is $5+5+5+5+5+5=30$.
- The table therefore has aggregate scores ranging from 6 to 30.
- Each Median Class score has an impairment range, and a range of possible aggregate scores (eg Class 3 = 11–30%).
- The lowest aggregate score for Class 3 is 13 ($1+1+2+3+3+3=13$).
- The highest aggregate score for Class 3 is 22. ($3+3+3+3+5+5=22$).
- The conversion table distributes the impairment percentages across aggregate scores.

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B. Same aggregate score in different classes

- The conversion table shows that the same aggregate score leads to different percentages of impairment in different median classes.
- For example, an aggregate score of 18 is equivalent to an impairment rating of
 - 10% in Class 2;
 - 22% in Class 3;
 - 34% in Class 4.
- This is due to the fact that an injured worker whose impairment is in Median Class 2 is likely to have a lower score across most areas of function. They may be significantly impaired in one aspect of their life, such as travel, yet have low impairment in Social Function, Self-care or Concentration.
- Someone whose impairment reaches Median Class 4 will experience significant impairment across most aspects of his or her life.

Examples: (Using the previous cases)

Example A

PIRS scores

PART 11 -- Medical assessment panels and specialised retraining assessment panels

Division 1 -- Medical assessment panels

64. Form for requirement to attend
65. Time, date and place of meeting
66. Notice of meeting
67. Giving documents to medical assessment panel
68. Objection to document being given to medical assessment panel

Division 2 -- Specialised retraining assessment panels

69. Form for request to attend
70. Time, date and place of meeting
71. Notification of meeting
72. Giving documents to specialised retraining assessment panel
73. Objection to document being given to specialised retraining assessment panel

REG 67

67 . Giving documents to medical assessment panel

- (1) Except when complying with a requirement under section 145D(2), a worker, employer or insurer must not give any medical certificate, medical report or other document directly to a medical assessment panel in connection with an arbitration question.
- (2) When an arbitrator refers a question for determination by a medical assessment panel, the arbitrator must —
 - (a) give to the Registrar, with the referral, any medical certificates, medical reports or other documents that the arbitrator has that are relevant to the question; and
 - (b) give to the worker concerned and the employer of the worker a list of the documents given under paragraph (a).
- (3) When an arbitrator refers a question to a medical assessment panel under clause 18A(2ab), the arbitrator must give to the Registrar, with the referral, any prescribed evidence referred to in clause 18A(2aa)(c)(ii) that has been produced to the arbitrator.
- (4) Subject to any determination under rule 68(3), the Registrar must give the documents mentioned in subrules (2)(a) and (3) to the medical assessment panel.

WORKERS' COMPENSATION AND INJURY MANAGEMENT ACT 1981 - SECT 182ZD

182ZD . Medical dispute may be referred to a medical assessment panel

- (1) If permitted by section 145A to do so, the conciliation officer may refer a question as to —
 - (a) the nature or extent of an injury; or
 - (b) whether an injury is permanent or temporary; or
 - (c) a worker's capacity for work,for determination by a **medical assessment panel**.

- (2) Without limiting subsection (1), it applies to —
 - (a) questions as to the permanent or other loss of the efficient use of any part or faculty of the body for the purposes of Part III Division 2, or to the degree of that loss; and
 - (b) questions as to the degree of disability assessed in accordance with section 93D(2); and
 - (c) questions for the purposes of section 31F as to whether a worker has contracted AIDS.
- (3) Subsection (1) does not apply to questions as to —
 - (a) the permanent or other impairment of the efficient use of any part or faculty of the body for the purposes of Part III Division 2A, or to the degree of that impairment; or
 - (b) the degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3; or
 - (c) the degree of whole of person impairment for the purposes of Part IXA; or
 - (d) the degree of permanent whole of person impairment for the purposes of clause 18A.

[Section 182ZD inserted by No. 31 of 2011 s. 6.]

WORKERS' COMPENSATION AND INJURY MANAGEMENT ACT 1981 - SECT 145A

Questions that may be referred to panels

- (1) Subject to subsection (2), a question may be referred for determination by a **medical assessment panel** under section 182ZD or 210, Schedule 1 clause 18A(2ab) or Schedule 7 clause 6 only if —
 - (a) there is a conflict of medical opinion on the question between —
 - (i) a medical practitioner engaged by the worker; and
 - (ii) a medical practitioner provided and paid by the employer, or each medical practitioner so provided and paid if there is more than one of them;
 and
 - (b) one of the parties wishes the proceedings to continue.
- (2) A question as to the degree of permanent loss of the full efficient use of the back, neck or pelvis may be referred for determination by a **medical assessment panel** under section 182ZD or 210 if —
 - (a) the employer does not agree to pay an amount claimed by the worker by way of an election made for the purposes of section 24; and
 - (c) the worker requests that the question be so referred.

[Section 145A inserted by No. 48 of 1993 s. 25; amended by No. 34 of 1999 s. 37; No. 42 of 2004 s. 105; No. 31 of 2011 s. 32.]

WORKERS' COMPENSATION REFORM ACT 2004 (NO. 42 OF 2004)

210. Referral of medical dispute for assessment

- (1) If permitted by section 145A to do so, an arbitrator may refer a question as to —
 - (a) the nature or extent of an injury;
 - (b) whether an injury is permanent or temporary; or
 - (c) a worker's capacity for work,
 for determination by a **medical assessment panel**.

- (2) Without limiting subsection (1), that subsection applies to —
 - (a) questions as to the permanent or other loss of the efficient use of any part or faculty of the body for the purposes of Part III Division 2, or to the degree of that loss;
 - (b) questions as to the degree of disability assessed in accordance with section 93D(2);
 - (d) questions for the purposes of section 31F as to whether a worker has contracted AIDS.
- (3) Subsection (1) does not apply to questions as to —
 - (a) the permanent or other impairment of the efficient use of any part or faculty of the body for the purposes of Part III Division 2A, or to the degree of that impairment;
 - (b) the degree of permanent whole of person impairment for the purposes of Part IV Division 2 Subdivision 3;
 - (c) the degree of whole of person impairment for the purposes of Part IXA; or
 - (d) the degree of permanent whole of person impairment for the purposes of clause 18A.

Rates Medical Assessment Panels

Panel fees (as at 1 November 2012)

Approved Medical Specialist Panels

Description of assessment

Maximum fee*

Examination and provision of report and certificate — straightforward assessment — other than a service mentioned in item 4, 5, 6 or 8.

\$1,531.50 (or, if an interpreter is present at the examination, \$1,811.05 excluding any fee payable to the interpreter)

Examination and provision of report and certificate — moderately complex assessment (eg. reviewing multiple questions and reports; impairment involving more complex assessments; more than one body system involved) — other than a service mentioned in item 4, 5, 6 or 8.

\$1,811.05 (or, if an interpreter is present at the examination, \$2,090.50 excluding any fee payable to the interpreter)

Examination and provision of report and certificate — complex assessment (eg. multiple injuries; severe impairment such as spinal cord injury or head injury) — other than a service mentioned in item 4, 5, 6 or 8.

\$2,090.50 (or, if an interpreter is present at the examination, \$2,370.00 excluding any fee payable to the interpreter)

Examination of any of ear, nose and throat only, including audiometric testing, and provision of report and certificate — other than a service mentioned in item 8.

\$1,531.50 (or, if an interpreter is present at the examination, \$1,811.05 excluding any fee payable to the interpreter)

Examination and provision of report and certificate — psychiatric — standard assessment — other than a service mentioned in item 8.

\$2,090.50 (or, if an interpreter is present at the examination, \$2,370.00 excluding any fee payable to the interpreter)

Examination and provision of report and certificate — psychiatric — complex assessment (eg. reviewing significant documented prior psychiatric history) — other than a service mentioned in item 8.

\$3,177.25 (or, if an interpreter is present at the examination, \$3,487.85 excluding any fee payable to the interpreter)

Medical Assessment Panel

Type of medical practitioner	Hourly rate*
Specialists	\$506.80
General Practitioners	\$380.40

MOTOR ACCIDENT CLAIMS WA

relevant to Psychiatrists

The Insurance Commission of Western Australia is the State's only Compulsory Third Party (CTP) insurer and their Motor Vehicle Personal Injury Division (MVPI Division) manages all personal and fatal injury claims resulting from motor vehicle crashes that involve Western Australian licenced vehicles.

Australia-wide, Motor Vehicle Third Party Personal Injury Insurance is compulsory and it is commonly known as Compulsory Third Party (CTP) Insurance.

A GUIDE FOR PEOPLE INJURED IN A MOTOR VEHICLE CRASH

prepared by the Insurance Commission of Western Australia

Who can make a claim?

You may be able to make a claim for compensation if:

- *You were injured in a motor vehicle crash; or*
- *A close relative was fatally injured and you were financially dependant on them.*

To make a claim, you must be able to establish that the driver or owner of a motor vehicle (other than you] was at fault, whether completely or in part.

Receiving an injury doesn't mean you can automatically claim compensation. You may not be able to claim if:

- *you were totally at fault;*
- *the person at fault was not the owner or driver of a motor vehicle (e.g. a pedestrian or push cyclist); or the person at fault was the driver or owner of a vehicle registered in another state or Territory.*

However, if the vehicle at fault is unidentified or unlicenced, you may still be able to make a claim.

If the vehicle at fault was registered in another State or Territory, you will need to contact the relevant Compulsory Third Party insurer in that particular State or Territory for information about making a claim.

When will my claim be finalised?

Your claim will be finalised once we receive a medical report confirming you have recovered from your injuries or your symptoms have stabilised. Every claimant responds differently to their particular injuries and circumstances.

Some claimants may recover within weeks or months while other claimants, with very serious injuries requiring extensive treatment, may take years before the claim can be finalised.

How is my claim assessed?

To ensure a fair result, we will consider the medical reports, previous decisions made by the Courts in similar cases and any submissions made by you or your lawyer.

Compensation for pain and suffering is assessed based on a percentage of the maximum amount that can be awarded [\$364,000 as at July 1, 2012]. The maximum amount is generally awarded to a person who has sustained a catastrophic injury e.g. quadriplegia.

All claims for pain and suffering have to exceed a minimum threshold of \$18,000 [the threshold amount as at 1 July 2012]. For example, if your claim for pain and suffering is assessed at \$30,000 your entitlement would be \$12,000 after deducting the minimum threshold amount of \$18,000.

The threshold amount gradually reduces for claims assessed for pain and suffering between \$55,000 and \$73,000 and does not apply to assessments over \$73,000 [as at 1 July 2012].

All these figures are adjusted for inflation each financial year, with effect from 1 July, The threshold amount only affects your entitlement to compensation for pain and suffering and does not apply to claims for loss of earning capacity or medical treatment.

Claims for loss of earning capacity will be assessed subject to the medical reports supporting your unfitness to work and documentation from your employer supporting your lost earnings. The maximum rate that may be awarded for loss of earning capacity is three times the average weekly earnings.

We will also make an allowance towards any future treatment costs that directly result from your crash related injuries, if the treatment is supported by a medical practitioner or other recognised health provider.

How is my claim finalised?

Once we receive a medical report confirming you have recovered, or your injuries have stabilised, we will assess all the medical reports and other relevant documentation to determine your entitlement to compensation.

If the assessment for compensation for pain and suffering exceeds the minimum allowable award (threshold) we will make you an offer of settlement (compensation). Any offer made will include a break down of everything we have included. If you don't agree with the offer you can discuss it with your case manager and/or make a counter offer.

Once settlement of your claim has been agreed and the appropriate settlement documents have been completed by you and returned to our office, we will process settlement of your claim.

If you have received any benefits from Centrelink, or claimed any medical expenses through Medicare or your Private Health Insurer, we may have to reimburse those expenses, directly from your settlement, before we can release any settlement funds to you.

Where our assessment of compensation for pain and suffering does not exceed the minimum allowable award (threshold) we will advise you in writing. We will let you know any of the treatment costs we have paid on your behalf and reimburse any proven claim for loss of earning capacity.

Your claim will not be formally finalised if our assessment does not exceed the threshold or there is no entitlement to an allowance for future medical costs. It will remain on our system, but will be inactive.

If you suffer a relapse of your injuries and wish to seek further medical treatment you can, but we will need to establish that such treatment is still the result of the injuries you sustained in your crash.

MOTOR VEHICLE (THIRD PARTY INSURANCE) ACT 1943 - SECT 30

- 30 . Medical examination of injured person
- (1) Where, in accordance with section 29, an insured person or the Commission has received notice of a claim for damages in relation to the bodily injury of a person who has suffered bodily injury, the insured person or the Commission may, subject to the regulations, require the injured person aforesaid from time to time to submit himself for medical examination by a legally qualified medical practitioner nominated and paid for such examination by the insured person or by the Commission, as the case may be. The medical adviser of the injured person shall be entitled to attend upon any such examination but no legal advisers shall be entitled to do so.
 - (2) If the injured person, without reasonable excuse, refuses to submit himself to any such medical examination, no action for damages shall be commenced, or any action commenced shall not be proceeded with, unless and until the injured person aforesaid shall have submitted himself to the medical examination aforesaid.
 - (3) The costs (if any) allowed by a court to an insured person or to the Commission as the successful defendant, in any action for damages brought against him or it, may, in the discretion of and upon the certificate of the court, include any expenses incurred by such insured person or the Commission in the payment of professional fees to a legally qualified medical practitioner who has made a medical examination of an injured person as provided for by this section.

SECT 3C

3C . Restrictions on damages for non-pecuniary loss

- (1) In this section —
 - Amount A 2 means —
 - (a) for the financial year ending on 30 June 1994, \$200 000; and
 - (b) for any subsequent financial year, the amount recalculated as Amount A under subsections (8) and (9);
 - Amount B 2 means —
 - (a) for the financial year ending on 30 June 1994, \$10 000; and
 - (b) for any subsequent financial year, the amount recalculated as Amount B under subsections (8) and (10);
 - Amount C 2 means —
 - (a) for the financial year ending on 30 June 1994, \$30 000; and

- (b) for any subsequent financial year, the amount recalculated as Amount C under subsections (8) and (10);
- non-pecuniary loss means —
- (a) pain and suffering;
 - (b) loss of amenities of life;
 - (c) loss of enjoyment of life;
 - (d) curtailment of expectation of life; and
 - (e) bodily or mental harm.
- (2) The amount of damages to be awarded for non-pecuniary loss is to be a proportion, determined according to the severity of the non-pecuniary loss, of the maximum amount that may be awarded.

WESTERN AUSTRALIA-CIVIL LIABILITY LEGISLATION Excerpts relevant to Psychiatrists

Changes to the assessment of damages for personal injuries

The Civil Liability Act 2002 (WA) (the Act) applies to all claims in respect of personal injury arising from incidents occurring after 1 January 2003. It introduced a sliding scale applicable to general damages in claims for personal injury and death, as well as caps on damages for loss of earning capacity and loss of gratuitous services. For example, the Act imposes a \$12,000 minimum threshold for general damages.

Proportionate liability

As part of the tort law reform process in Australia, most Australian jurisdictions have introduced legislation intended to apply proportionate liability to claims other than personal injury claims.

Legislation applying proportionate liability principles are in Commonwealth, NSW, The Australian Capital Territory, Queensland, South Australian, Tasmanian, Victorian and WA legislation.

The NSW proportionate liability provisions are set out in Part 4 of the *Civil Liability Act 2002* (NSW). Under the NSW provisions, proportionate liability applies to claims for economic loss or damage to property in an action for damages arising from:

- a failure to take reasonable care (whether the claim is made in contract, tort or otherwise); or
- a contravention of section 42 of the *Fair Trading Act 1987* (NSW).

Any claim arising out of personal injury is expressly excluded from the scope of the proportionate liability provisions.

Under the proportionate liability provisions, the liability of a defendant who is a concurrent wrongdoer in respect of a claim will be limited to an amount that reflects the proportion of the damage or loss claimed that the court considers just having regard to the extent of that defendant's responsibility for the damage or loss. A 'concurrent wrongdoer' is defined as a person 'who is one of two or more persons whose acts or omissions... caused, independently of each other or jointly, the damage or loss that is the subject of the claim'

CIVIL LIABILITY ACT 2002 - SECT 3

3 . Terms used

In this Act, unless the contrary intention appears —

harm means harm of any kind, including the following —

- (a) personal injury;

- (b) damage to property;
- (c) economic loss;

personal injury includes —

- (a) death;
- (b) pre-natal injury;
- (c) impairment of a person's physical or mental condition; and
- (d) disease;

personal injury damages means damages that relate to personal injury to a person caused by the fault of another person, but does not include a sum payable under a superannuation scheme or any life or other insurance policy.

SECT 5PB

5PB . Standard of care for health professionals

- (1) An act or omission of a health professional is not a negligent act or omission if it is in accordance with a practice that, at the time of the act or omission, is widely accepted by the health professional's peers as competent professional practice.
- (2) Subsection (1) does not apply to an act or omission of a health professional in relation to informing a person of a risk of injury or death associated with —
 - (a) the treatment proposed for a patient or a foetus being carried by a pregnant patient; or
 - (b) a procedure proposed to be conducted for the purpose of diagnosing a condition of a patient or a foetus being carried by a pregnant patient.
- (3) Subsection (1) applies even if another practice that is widely accepted by the health professional's peers as competent professional practice differs from or conflicts with the practice in accordance with which the health professional acted or omitted to do something.
- (4) Nothing in subsection (1) prevents a health professional from being liable for negligence if the practice in accordance with which the health professional acted or omitted to do something is, in the circumstances of the particular case, so unreasonable that no reasonable health professional in the health professional's position could have acted or omitted to do something in accordance with that practice.
- (5) A practice does not have to be universally accepted as competent professional practice to be considered widely accepted as competent professional practice.

- (6) In determining liability for damages for harm caused by the fault of a health professional, the plaintiff always bears the onus of proving, on the balance of probabilities, that the applicable standard of care (whether under this section or any other law) was breached by the defendant.

PART 1B -- Mental harm

- 5Q. Terms used
5R. Application of Part
5S. Mental harm: duty of care
5T. Liability for pecuniary loss for consequential mental harm

SECT 5Q

5Q . Terms used

In this Part —

consequential mental harm means mental harm that is a consequence of a personal injury of any kind;

mental harm means impairment of a person's mental condition;

pure mental harm means mental harm other than consequential mental harm.

SECT 5S

5S . Mental harm: duty of care

- (1) A person (the *defendant*) does not owe a duty of care to another person (the *plaintiff*) to take care not to cause the plaintiff mental harm unless the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.
- (2) For the purpose of the application of this section in respect of pure mental harm, the circumstances of the case include the following —
- (a) whether or not the mental harm was suffered as the result of a sudden shock;
 - (b) whether the plaintiff witnessed, at the scene, a person being killed, injured or put in peril;
 - (c) the nature of the relationship between the plaintiff and any person killed, injured or put in peril;

- (d) whether or not there was a pre-existing relationship between the plaintiff and the defendant.
- (3) For the purpose of the application of this section in respect of consequential mental harm, the circumstances of the case include the personal injury suffered by the plaintiff.
- (4) This section does not require the court to disregard what the defendant knew or ought to have known about the fortitude of the plaintiff.

SECT 5T

5T . Liability for pecuniary loss for consequential mental harm

A court cannot make an award of personal injury damages for pecuniary loss for consequential mental harm unless the harm consists of a recognised psychiatric illness.

SECT 5AH

5AH . Effect of apology on liability

- (1) An apology made by or on behalf of a person in connection with any incident giving rise to a claim for damages —
 - (a) does not constitute an express or implied admission of fault or liability by the person in connection with that incident; and
 - (b) is not relevant to the determination of fault or liability in connection with that incident.
- (2) Evidence of an apology made by or on behalf of a person in connection with any incident alleged to have been caused by the person is not admissible in any civil proceeding as evidence of the fault or liability of the person in connection with that incident.

SECT 9

9 . Restrictions on damages for non-pecuniary loss (general damages)

- (1) If the amount of non-pecuniary loss is assessed to be not more than Amount A for the year in which the amount is assessed, no damages are to be awarded for non-pecuniary loss.
- (2) If the amount of non-pecuniary loss is assessed to be more than Amount A but not more than Amount C for the year in which the amount is assessed, damages for non-pecuniary loss are not to be awarded in an amount that is more than the excess of the amount assessed over Amount A.

(3) If the amount of non-pecuniary loss is assessed to be more than Amount C but less than the sum of Amount A and Amount C for the year in which the amount is assessed, damages for non-pecuniary loss are not to be awarded in an amount that is more than the excess of the amount assessed over the amount calculated as follows —

(4) In this section —

Amount A has the meaning given by section 10;

Amount C has the meaning given by section 10;

non-pecuniary loss means —

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;
- (d) curtailment of expectation of life; and
- (e) bodily or mental harm.

SECT 10

10 . Amount A and Amount C

(1) For the financial year ending on 30 June 2003 —

- (a) Amount A is \$12 000; and
- (b) Amount C is \$36 500.

(2) For any other financial year —

- (a) Amount A is obtained by varying Amount A for the preceding financial year according to section 4; and
- (b) Amount C is obtained by varying Amount C for the preceding financial year according to section 4.

(3) On or before each 1 July after this section commences, the Minister is to publish a notice in the *Gazette* specifying the amounts that are Amount A and Amount C for the financial year commencing on that 1 July.

(4) Publication under subsection (3) is for public information only and a failure to publish or a delay or error in publication does not affect what is Amount A or Amount C for the year concerned.

SECT 10A

10A . Tariffs for damages for non-pecuniary loss

(1) In determining damages for non-pecuniary loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceedings.

(2) For that purpose, the parties to the proceedings or their counsel may bring the court's attention to awards of damages for non-pecuniary loss in those earlier decisions.

(3) This section does not alter the rules for the determination of other damages.