Queensland

Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016

Act No. 44 of 2016

An Act to amend the Workers' Compensation and Rehabilitation Act 2003 and the Workers' Compensation and Rehabilitation Regulation 2014 for particular purposes

[Assented to 8 September 2016]

Queensland

Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016

Contents

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016*.

Part 2 Amendment of Workers' Compensation and Rehabilitation Act 2003

2 Act amended

This part amends the *Workers' Compensation and Rehabilitation Act 2003*.

Note—

See also the amendments in schedule 1.

3 Amendment of s 5 (Workers' compensation scheme)

Section 5(2)—

insert—

(aa) implementation of the national injury insurance scheme for serious personal injuries resulting from workplace incidents connected with Queensland;

4 Amendment of s 9 (Meaning of *compensation*)

Section 9, 'and 4'—

omit, insert—

, 4 and 4A

6 Insertion of new ch 1, pt 4, div 3, sdiv 1A

Chapter 1, part 4, division 3, before subdivision 1—

insert—

Subdivision 1A Preliminary

11A Compensation to which this division does not apply

In this division, a reference to an entitlement to compensation does not include an entitlement to compensation under chapter 4A.

7 Amendment of s 71 (Issue or renewal of licence to a single employer)

(1) Section 71(1)(e), from 'unconditional' to 'deposit'—

omit, insert—

security

(2) Section 71—

insert—

(3A) If, for a single employer, the Regulator is not satisfied of the matter mentioned in subsection (1)(a) only, the Regulator may still issue a licence to be a self-insurer to the employer if—

(a) the employer held a licence (the ***former licence***) to be a self-insurer under this section within the previous 5 years; and

(b) the former licence was not cancelled under this Act; and

(c) after the former licence ended, the employer was not at any time a related body corporate with another employer for the purpose of the grant of a licence to be a self-insurer under section 72; and

(d) the Regulator is satisfied the number of full-time workers employed in Queensland by the employer is at least the number of full-time workers that were required under subsection (1)(a) as in force when the former licence was granted.

(3B) Also, the Regulator may renew a licence to be a self-insurer issued to a single employer under subsection (4) who fails to satisfy the Regulator only of the matter mentioned in subsection (1)(a) if the Regulator is still satisfied of the matter mentioned in subsection (4)(d).

(3) Section 71(3A) to (5)—

renumber as section 71(4) to (7).

8 Amendment of s 84 (Bank guarantee or cash deposit)

(1) Section 84, heading—

omit, insert—

84 Security

(2) Section 84(1), from 'an' to 'deposit'—

omit, insert—

a security

(3) Section 84(2)—

omit, insert—

(2) The security must be—

(a) in favour of WorkCover; and

(b) 150% of the self-insurer's estimated claims liability.

(2A) Also, if the security is a bank guarantee or financial guarantee, the security—

(a) must be irrevocable and unconditional, including not being conditional on—

(i) another right or obligation contained in another document; or

(ii) WorkCover proving that a demand has been made; and

(b) must be payable immediately on demand; and

(c) must not be given by an entity that is a related body corporate to the self-insurer; and

(d) must be satisfactory to the Regulator.

(4) Section 84(4), from 'guarantee' to 'deposit'—

omit, insert—

security must remain in force or, if it is a cash deposit, the Regulator must hold the cash deposit

(5) Section 84(5), 'guarantee or deposit'—

omit, insert—

security

(6) Section 84—

insert—

(5A) If a self-insurer lodges a financial guarantee under subsection (1) and the insurance company that gave the guarantee stops being an approved security provider, the self-insurer must—

(a) notify the Regulator of the matter without delay; and

(b) lodge another security under this section within 20 business days after the date of the notice given under paragraph (a).

(7) Section 84(6)—

insert—

approved security provider means an approved security provider as defined under the *Financial and Performance Management Standard 2009*, section 36.

bank guarantee means a guarantee given by a bank or the Queensland Treasury Corporation.

financial guarantee means a security given by an insurance company that is an approved security provider.

security means—

(a) a bank guarantee; or

(b) a financial guarantee; or

(c) a cash deposit.

(8) Section 84(2A) to (6)—

renumber as section 84(3) to (8).

9 Amendment of s 92 (Powers of self-insurers)

(1) Section 92(1)(a)—

insert—

(iia) chapter 4A;

(2) Section 92(1)(a)(iia) to (iv)—

renumber as section 92(1)(a)(iii) to (v).

10 Amendment of s 92A (Powers of local government self-insurers)

Section 92A(1), 'and (iv)'—

omit, insert—

, (iii) and (v)

11 Replacement of s 107 (Meaning of *QOTE*)

Section 107—

omit, insert—

107 Meaning of *QOTE*

(1) ***QOTE***, for a financial year, is—

(a) the amount of Queensland full-time adult persons ordinary time earnings declared by the Australian Statistician in the original series of the statistician's average weekly earnings publication most recently published before the start of the financial year; or

(b) if the amount mentioned in paragraph (a) is less than QOTE for the previous financial year—the amount that is QOTE for the previous financial year.

(2) The Regulator must, before the start of a financial year, notify—

(a) QOTE for the financial year; and

(b) the percentage difference in QOTE for the financial year compared to QOTE for the previous financial year.

(3) The Regulator's notice is subordinate legislation.

12 Amendment of s 116 (Entitlement ends if compensated under corresponding laws)

(1) Section 116, heading, 'Entitlement ends'—

omit, insert—

Effect on entitlement

(2) Section 116(1), from 'a law'—

omit, insert—

another law.

(3) Section 116—

insert—

(3) However, if the person's entitlement under the other law relates only to payments corresponding to compensation under chapter 4A, subsection (2) applies only to stop the person's entitlement to compensation under chapter 4 or 4A.

Examples of payments to which subsection (3) may apply—

Payments under any of the following schemes—

(a) the scheme under the *National Disability Insurance Scheme Act 2013* (Cwlth);

(b) the scheme under the *National Injury Insurance Scheme (Queensland) Act 2016*;

(c) a scheme corresponding to the scheme mentioned in paragraph (b) under a law of a place other than Queensland.

13 Amendment of s 117 (Compensation recoverable if later paid under corresponding laws)

(1) Section 117(1)(b), from 'a law' to 'Queensland'—

omit, insert—

another law

(2) Section 117—

insert—

(3) However, if the payments made to, or on account of, the person under the other law correspond only to compensation under chapter 4A, subsection (2) applies only to the extent of compensation paid under chapter 4 or 4A.

14 Amendment of s 118 (Condition on compensation application if compensation available under this Act and corresponding law)

(1) Section 118(1)(b), from 'a law' to 'Queensland'—

omit, insert—

another law

(2) Section 118(2)(a), from 'law' to 'Queensland'—

omit, insert—

other law

(3) Section 118—

insert—

(3) However, if the person's entitlement under the other law relates only to payments corresponding to compensation under chapter 4A—

(a) subsection (2) does not apply; and

(b) an application for compensation under this Act is duly made, and is to be acted on, only if the claimant gives the insurer the claimant's statutory declaration about—

(i) whether or not the claimant has made a claim for payment for the injury under the entitlement under the other law; and

(ii) if the claimant has not made a claim for payment for the injury under the entitlement under the other

law—whether or not the claimant intends to make the claim.

15 Amendment of s 119 (Entitlement to compensation ends if damages claim is finalised)

(1) Section 119—

insert—

(2A) However, an entitlement to compensation under chapter 4A for an injury ends only if—

(a) the damages include treatment, care and support damages; and

(b) the worker accepts the treatment, care and support damages within the acceptance period.

(2B) To remove any doubt, it is declared that the ending, under subsection (3), of an entitlement to compensation under chapter 4A for an injury also stops any entitlement to compensation under chapter 4 for the injury.

(2) Section 119(3)—

insert—

accept, for treatment, care and support damages, see section 232U.

acceptance period, for treatment, care and support damages, see section 232U.

(3) Section 119(2A) to (3)—

renumber as section 119(3) to (5).

16 Amendment of s 130 (Injuries caused by misconduct)

(1) Section 130(1)—

insert—

Note—

See, however, section 232H in relation to compensation payable under chapter 4A.

(2) Section 130(4), definition *serious and wilful misconduct*—

relocate to schedule 6.

(3) Section 130(4)—

omit.

17 Amendment of s 132A (Applying for assessment of DPI if no application made for compensation)

(1) Section 132A—

insert—

(1A) However, this section does not apply to a worker who is, or may be, entitled to compensation under chapter 4A.

(2) Section 132A(7)—

insert—

(c) is, or may be, entitled to compensation under chapter 4A because—

(i) the worker has sustained a serious personal injury that meets the chapter 4A eligibility criteria; and

(ii) section 116 does not apply to the injury.

18 Amendment of s 138 (Compensation not payable during suspension)

Section 138—

insert—

Note—

See also section 232ZH in relation to suspension of compensation under chapter 4A.

19 Amendment of s 140 (Maximum entitlement)

Section 140(4), definition *compensation*, after 'part 8'—

insert—

or chapter 4A

20 Amendment of s 141 (Time from which compensation is payable)

(1) Section 141—

insert—

(2A) Also, any entitlement to payments under chapter 4A starts when the period mentioned in section 232L(3) or 232ZD(8) starts for the worker.

(2) Section 141(3), 'and (2)'—

omit, insert—

to (3)

(3) Section 141(2A) to (4)—

renumber as section 141(3) to (5).

21 Amendment of s 144A (When weekly payments of compensation stop)

(1) Section 144A—

insert—

(2A) Subsection (2) does not apply to the worker's entitlement to compensation under chapter 4A.

(2) Section 144A(2A) and (3)—

renumber as section 144A(3) and (4).

22 Amendment of s 168 (Review of compensation and associated payments)

Section 168—

insert—

Note—

See also chapter 4A, part 4 for reviews of entitlement to compensation under chapter 4A.

23 Amendment of s 173 (Redemption—worker moves abroad)

Section 173—

insert—

(4) Subsection (2) does not apply to compensation under chapter 4A.

Note—

See section 232L(4)(b) and chapter 4A, part 6 for what happens in relation to a worker's compensation under chapter 4A if the worker is absent from Australia.

24 Amendment of s 176 (No compensation after redemption payment made)

Section 176—

insert—

(2) Subsection (1) does not apply to compensation under chapter 4A.

25 Amendment of s 190 (No further compensation after fixed time)

Section 190(3)—

insert—

(c) compensation under chapter 4A.

26 Amendment of s 205 (Variation of payments for injuries)

(1) Section 205(3), 'by gazette notice'—

omit.

(2) Section 205—

insert—

(4) The Regulator's notice is subordinate legislation.

27 Amendment of s 207B (Insurer's charge on damages for compensation paid)

(1) Section 207B—

insert—

(2A) Subsection (2) applies to compensation paid under chapter 4A only if the damages include treatment, care and support damages.

(2) Section 207B(4), 'subsection (3)'—

omit, insert—

subsection (4)

(3) Section 207B(6), 'subsection (5)'—

omit, insert—

subsection (6)

(4) Section 207B(8), 'subsection (7)'—

omit, insert—

subsection (8)

(5) Section 207B(2A) to (10)—

renumber as section 207B(3) to (11).

28 Amendment of s 209 (Application of pt 2)

Section 209—

insert—

(2) However, this part, other than section 219, does not apply to medical treatment provided to, or

hospitalisation of, a worker during a period for which the worker is entitled to compensation under chapter 4A for the injury, including any period for which the entitlement is suspended under section 232ZH.

29 Insertion of new s 221A

Chapter 4, part 3, division 2—

insert—

221A Application of division

This division does not apply to rehabilitation provided to a worker during a period for which the worker is entitled to compensation under chapter 4A for the injury, including any period for which the entitlement is suspended under section 232ZH.

30 Insertion of new ch 4A

After chapter 4—

insert—

Chapter 4A Serious personal injuries

Part 1 Preliminary

232H Application and object of chapter

(1) This chapter applies if a worker sustains an injury for which compensation under chapter 3 is payable.

(2) However, this chapter does not apply if the injury—

(a) is an injury only because it is sustained in the circumstances mentioned in section 34(1)(c) or 35; or

(b) is caused by the worker's serious and wilful misconduct.

(3) The object of this chapter is to ensure that a worker who sustains a serious personal injury receives necessary and reasonable treatment, care and support.

232I Definitions for chapter

In this chapter—

approved service, for an eligible worker, means—

(a) if a support plan has not been made for the worker—treatment, care or support that is the subject of a service request relating to the worker and approved by the insurer under section 232P; or

(b) if a support plan has been made for the worker—

(i) a treatment, care and support need resulting from the worker's serious personal injury stated in the support plan to be a need the insurer considers is necessary and reasonable in the circumstances; and

(ii) any treatment, care or support resulting from another injury resulting from the same event as the serious personal injury stated in the support plan to be treatment, care or support the insurer considers is necessary and reasonable in the circumstances; and

(iii) other treatment, care or support stated in the support plan to be treatment, care

or support the insurer agrees to, wholly or partly, pay for under this chapter.

attendant care and support services means services to help a person with everyday tasks.

Examples—

domestic, home maintenance, nursing or personal assistance services

eligibility criteria see section 232M(2)(a).

eligibility period, for an eligible worker, see section 232L(3).

eligible worker means a worker who an insurer decides, under section 232M, is entitled to treatment, care and support payments for the worker's injury.

excluded treatment, care or support see section 232K.

funding agreement see section 232Q(2).

interim period, for an eligible worker, means a period of 2 years from the day the insurer decides, under section 232M, the worker is entitled to treatment, care and support payments for the worker's injury.

payment request see section 232Q(3).

service request see section 232P(1).

support plan see section 232O(1)(b).

treatment, care and support damages, in relation to a worker, means damages relating to the worker's treatment, care and support needs resulting from the worker's injury.

treatment, care and support needs, of a worker, see section 232J.

treatment, care and support payments, for a worker who has sustained an injury, means

payments under this chapter for the worker's treatment, care or support resulting from the injury.

232J Meaning of *treatment, care and support needs*

The ***treatment, care and support needs***, of a worker who has sustained an injury, are the worker's needs for, or relating to, 1 or more of the following resulting from the injury—

(a) medical treatment;

(b) hospitalisation;

(c) dental treatment;

(d) rehabilitation;

(e) ambulance transportation;

(f) respite care;

(g) attendant care and support services;

(h) aids and appliances, other than ordinary personal or household items;

Examples of ordinary personal or household items—

an air conditioner, a laptop, linen, a mobile phone, a personal computer or a washing machine

(i) prosthesis;

(j) education or vocational training;

(k) home, transport or workplace modification.

232K Meaning of *excluded treatment, care or support*

(1) Treatment, care or support is ***excluded treatment, care or support*** if it—

(a) is provided without charge; or

(b) for a child—ordinarily falls within the ordinary costs of raising a child; or

(c) must be provided by a registered provider but is provided by a person who, at the time of provision, is not a registered provider; or

(d) is provided as part of a medical trial or on another experimental basis; or

(e) is provided by State emergency services, including the Queensland Ambulance Service or the Queensland Fire and Emergency Service; or

(f) is prescribed by regulation.

(2) For subsection (1)(c), the following treatment, care or support must be provided by a registered provider—

(a) attendant care and support services that are personal assistance services or services to assist a person to participate in the community;

(b) any other treatment, care or support prescribed by regulation.

(3) However, subsection (2)(a) does not apply if the treatment, care or support is being provided to a person at a hospital (whether as an in-patient or an outpatient) as part of the services provided by the hospital.

(4) In this section—

registered provider, of a service, means an entity registered in the register of providers as a provider of the service.

register of providers means the register of providers kept by the Regulator and made available on the department's website.

Part 2 Liability for treatment, care and support payments

232L Insurer's liability for treatment, care and support payments

(1) The insurer must pay for the worker's treatment, care and support arising from the worker's injury—

(a) if the insurer decides, under section 232M, the worker is entitled to treatment, care and support payments for the injury; and

(b) as provided under this chapter.

(2) An eligible worker's entitlement to treatment, care and support payments applies to treatment, care or support resulting from the worker's injury provided to the worker during the worker's eligibility period.

(3) An eligible worker's ***eligibility period*** is the period—

(a) starting when the insurer decides, under section 232M, the worker is entitled to treatment, care and support payments for the injury; and

(b) ending when the first of the following happens—

(i) the worker dies;

(ii) the worker stops being entitled to treatment, care and support payments for the injury under a provision of this Act.

(4) However, an eligible worker is not entitled to treatment, care and support payments for treatment, care or support provided to the worker

in any period for which—

(a) the worker's entitlement to compensation under chapter 3 is suspended under this Act; or

(b) the worker's entitlement to treatment, care and support payments is suspended under section 232ZH.

232M Assessment of entitlement for treatment, care and support payments

(1) The insurer may decide, or the worker may ask the insurer, to have the worker's injury or injuries assessed to decide whether the worker is entitled to treatment, care and support payments for the injury or injuries.

(2) The insurer must decide the worker is entitled to treatment, care and support payments for an injury if the injury—

(a) is a serious personal injury that meets the criteria (the ***eligibility criteria***) for the injury prescribed by regulation; or

(b) resulted from the same event as an injury mentioned in paragraph (a).

(3) If the worker asks for an assessment under subsection (1), the insurer must ensure the assessment is carried out within 20 business days, or a longer period agreed between the insurer and the worker, after—

(a) receiving the request; or

(b) if the insurer asks the worker for further information to help the insurer carry out the assessment—the day the information is received.

(4) After carrying out an assessment under this section, the insurer must decide—

(a) that the worker is entitled to treatment, care and support payments for the worker's injury or injuries—

(i) for an interim period; or

(ii) if the insurer is satisfied the worker's serious personal injury is likely to continue to meet the eligibility criteria after the interim period ends—for the rest of the worker's life; or

(b) that the worker is not entitled to treatment, care and support payments for the worker's injury or injuries.

(5) If the worker has multiple injuries resulting from the same event, the insurer's decision under subsection (4)(a) must be made in relation to the worker's serious personal injury even though the worker may not need treatment, care or support for the other injuries for the whole period decided under the subsection.

(6) The insurer must give the worker written notice of the insurer's decision under subsection (4) within 10 business days after the decision is made.

Part 3 Assessing needs and payment options

Division 1 Assessing needs

232N Deciding necessary and reasonable treatment, care and support needs

For this chapter, an insurer must consider the following matters in deciding whether an eligible worker's treatment, care and support needs resulting from the worker's serious personal

injury are necessary and reasonable in the circumstances—

(a) whether the treatment, care or support for, or relating to, the treatment, care and support needs is excluded treatment, care or support;

(b) any other matter prescribed by regulation.

232O Assessing needs and preparing support plan

(1) An insurer must, for an eligible worker—

(a) assess—

(i) the worker's necessary and reasonable treatment, care and support needs resulting from the worker's serious personal injury; and

(ii) any necessary and reasonable treatment, care or support needed by the worker for any other injury resulting from the same event as the worker's serious personal injury; and

(iii) any other treatment, care or support needed by the worker for the worker's serious personal injury or another injury resulting from the same event as the worker's serious personal injury; and

(b) make a plan (a ***support plan***) about the worker's treatment, care and support needs, and any other treatment, care or support needed by the worker, assessed under paragraph (a); and

(c) give a copy of the support plan to the worker.

(2) An assessment under subsection (1)(a)—

(a) must be carried out in the way, and at the intervals, prescribed by regulation; and

(b) may be carried out at other times the insurer considers appropriate; and

(c) may be carried out for the treatment, care or support needed by the worker for a particular period only.

(3) A support plan made under subsection (1)(b) must comply with the requirements prescribed by regulation.

(4) An insurer may amend the worker's support plan—

(a) to reflect the outcomes of a further assessment under subsection (1)(a); and

(b) as otherwise provided under this chapter.

Note—

See sections 232P(6) and 232ZG(2) in relation to amendments of the support plan.

(5) An amendment of the worker's support plan must comply with the requirements prescribed by regulation.

232P Deciding service requests

(1) An insurer may approve a written request (a ***service request***) to pay for particular treatment, care or support (the ***requested service***) to be provided to an eligible worker in a particular period.

(2) A service request may be made for an eligible worker—

(a) before or after a support plan is made for the worker; and

(b) by the worker or the person providing the requested service.

(3) An insurer must decide whether to approve, with or without conditions, or refuse a service request within—

(a) 20 business days after the request is received; or

(b) if, within the period mentioned in paragraph (a), the insurer asks for further information to help the insurer make the decision—20 business days after the information is received.

(4) In deciding whether to approve or refuse a service request, an insurer must consider the matters prescribed by regulation.

(5) An insurer must give written notice of the insurer's decision under subsection (3) to—

(a) the person who made the request; and

(b) if the person who made the request is not the eligible worker—the worker.

(6) If an insurer makes a decision about a service request relating to an eligible worker for whom a support plan has been made, the insurer must—

(a) if the insurer approves the service request, with or without conditions—amend the worker's support plan to reflect the approval; or

(b) if the insurer refuses the service request—ensure a copy of the written notice of the decision is attached to the worker's support plan.

Division 2 Payments

232Q Payment options

(1) An insurer may make treatment, care and support payments for an eligible worker's injury—

(a) under a funding agreement between the insurer and the worker; or

(b) in response to a payment request by a person who has incurred expenses for the treatment, care or support of the worker resulting from the injury.

(2) A ***funding agreement*** is an agreement between an insurer and an eligible worker for a stated period—

(a) providing for the insurer to pay the worker an amount to cover particular expenses to be incurred by the worker or another person, in the period, for the treatment, care or support of the worker; and

(b) entered into in the circumstances, and for the treatment, care or support, prescribed by regulation; and

(c) including the terms prescribed by regulation.

(3) A ***payment request*** is a written request by a person who has incurred an expense for the treatment, care or support of an eligible worker—

(a) asking an insurer to pay all or part of the amount of the expense; and

(b) made in the circumstances prescribed by regulation.

232R Deciding payment requests

(1) An insurer must approve or refuse a payment request within—

(a) 20 business days after receiving the request; or

(b) if, within the period mentioned in paragraph (a), the insurer asks for further information to help the insurer make the decision—20 business days after the information is received.

(2) A regulation may prescribe matters about an insurer deciding a payment request.

(3) If the insurer approves a payment request, the insurer must pay the amount requested to the person who made the request within 20 business days after approving the request.

(4) However, the insurer is not liable to pay a part of the amount requested in a payment request that exceeds an amount prescribed by regulation for the treatment, care or support.

(5) If the insurer refuses the payment request, the insurer must give written notice of the decision to—

(a) the person who made the payment request; and

(b) if the person who made the payment request is not the eligible worker—the eligible worker.

Part 4 Review of worker's entitlement

232S Review if worker entitled only for interim period

(1) This section applies if an insurer decides, under section 232M, a worker is entitled to treatment, care and support payments for the worker's injury

or injuries for an interim period.

(2) The insurer—

(a) may review the worker's entitlement at any time during the interim period; and

(b) must review the worker's entitlement at least once before the end of the interim period.

(3) A review must be carried out in the way prescribed by regulation.

(4) After carrying out a review and before the interim period ends, the insurer must decide—

(a) if the insurer is satisfied that the worker's serious personal injury is likely to continue to meet the eligibility criteria for the injury after the interim period ends—that the worker is entitled to treatment, care and support payments for the worker's injury or injuries for the rest of the worker's life; or

(b) otherwise—that the worker's entitlement to treatment, care and support payments for the worker's injury or injuries ends—

(i) when the interim period ends; or

(ii) at the start of an earlier day decided by the insurer.

(5) If the worker has multiple injuries resulting from the same event, the insurer's decision under subsection (4) must be made in relation to the worker's serious personal injury even though the worker may not need treatment, care or support for the other injuries for the rest of the period decided under the subsection.

(6) Within 10 business days after making a decision under subsection (4), the insurer must give the worker written notice of the decision.

(7) If the insurer decides the worker's entitlement to treatment, care and support payments ends at a time mentioned in subsection (4)(b), the worker stops being entitled to treatment, care and support payments at that time.

Part 5 Relationship with treatment, care and support damages

Division 1 Preliminary

232T Application of part

(1) This part applies if an eligible worker may seek treatment, care and support damages for the worker's injury.

(2) Section 235 applies to the provisions of this part as if they were provisions of chapter 5.

232U Definitions for part

In this part—

accept, for awarded treatment, care and support damages, means accept by written notice given to the insurer.

acceptance period, for awarded treatment, care and support damages, means—

(a) if the damages are awarded under a judgment or settlement that must, under another Act, be sanctioned by a court or the public trustee—the period of 10 business days after the sanction is given; or

(b) if the damages are awarded under a judgment and paragraph (a) does not apply—the period of 10 business days after the period for lodging an appeal against the judgment ends; or

(c) if the damages are awarded under a settlement and paragraph (a) does not apply—the period of 10 business days after the settlement is made.

awarded, in relation to treatment, care and support damages, means awarded under a judgment or settlement for a claim for damages.

elect, in relation to a worker seeking treatment, care and support damages for the worker's injury, means elect in a notice of claim under section 275 for the injury.

person under a legal disability means—

(a) a child; or

(b) a person with impaired capacity for a matter within the meaning of the *Guardianship and Administration Act 2000*.

Division 2 Election to seek treatment, care and support damages

232V Worker must make election

(1) If the worker makes a claim for damages under chapter 5 for the worker's injury, the worker must state in the notice of claim given under section 275 whether or not the worker elects to seek treatment, care and support damages for the injury.

(2) If the worker is entitled to treatment, care and support payments for multiple injuries resulting

from the same event, the worker must make the same election under subsection (1) for all the injuries.

(3) If the worker does not elect to seek treatment, care and support damages for the worker's injury, or the election is taken not to have been made under section 232W, the worker is not entitled to seek treatment, care and support damages for the injury.

232W When election of no effect

(1) This section applies if—

(a) the worker elects to seek treatment, care and support damages for the worker's injury; and

(b) any of the following happens—

(i) a court decides, under section 232X, not to sanction the election;

(ii) a court makes an order, under section 232Y, preventing the worker from being awarded treatment, care and support damages for the injury;

(iii) a court decides, or the worker and insurer agree by way of settlement, that—

(A) the worker is guilty of contributory negligence in relation to the claim for damages; and

(B) the damages the worker would otherwise be entitled to in the absence of contributory negligence are to be reduced, because of the contributory negligence, by 50% or more.

(2) The election is taken not to have been made.

232X Court sanction for election by worker under legal disability

(1) If the worker elects to seek treatment, care and support damages for the worker's injury and the insurer considers the worker is a person under a legal disability, the insurer must apply to the court for an order sanctioning the notice.

(2) Subsections (3) to (5) apply if the court considers the worker is a person under a legal disability.

(3) The court—

(a) must decide whether or not to sanction the election; and

(b) may order that the worker, or a person acting for the worker, amend the notice of claim to remove the election; and

(c) may make any other order the court considers appropriate.

(4) In deciding whether to make an order under subsection (3), the court—

(a) must consider the worker's likely legal costs relating to the claim for damages; and

(b) may consider any other matter the court considers relevant.

(5) If the worker is an adult, the court may exercise all the powers of QCAT under the *Guardianship and Administration Act 2000*, chapter 3.

(6) If the court exercises a power mentioned in subsection (5), the *Guardianship and Administration Act 2000*, section 245(3) to (6) applies in relation to the exercise of the power as if the court were acting under section 245(2) of that Act.

(7) This section is subject to section 232Y.

(8) In this section—

court means—

(a) if a proceeding for the claim for damages has been brought in the District Court or the Supreme Court—the court hearing the proceeding; or

(b) otherwise—the District Court or the Supreme Court.

232Y Court order preventing election to seek treatment, care and support damages

(1) The insurer may apply to the court for an order preventing the worker from being awarded treatment, care and support damages for the worker's injury.

(2) An application under subsection (1) may be made whether or not the worker has made an election to seek treatment, care and support damages for the injury.

(3) The worker is the respondent to the application.

(4) In deciding whether to make the order, the court—

(a) must consider the worker's ability to manage an award of treatment, care and support damages in a way that will not compromise the worker's—

(i) prospects of improvement or rehabilitation; or

(ii) future health and wellbeing; and

(b) must consider whether the worker is a person under a legal disability; and

(c) must consider the worker's likely legal costs relating to the claim for damages; and

(d) may consider any other matter the court considers relevant.

(5) If the court makes the order—

(a) the worker may not elect to seek treatment, care and support damages for the injury; and

(b) any election to seek treatment, care and support damages for the injury made by the worker is taken not to have been made.

(6) If the worker is an adult, the court may exercise all the powers of QCAT under the *Guardianship and Administration Act 2000*, chapter 3.

(7) If the court exercises a power mentioned in subsection (6), the *Guardianship and Administration Act 2000*, section 245(3) to (6) applies in relation to the exercise of the power as if the court were acting under section 245(2) of that Act.

(8) In this section—

court means—

(a) if a proceeding for the claim for damages has been brought in the District Court or the Supreme Court—the court hearing the proceeding; or

(b) otherwise—the District Court or the Supreme Court.

Division 3 Worker's entitlement to treatment, care and support payments

232Z Worker does not elect to seek treatment, care and support damages

(1) This section applies if the worker does not elect to seek treatment, care and support damages for the worker's injury.

(2) The worker's entitlement to treatment, care and support payments for the worker's injury continues for the remaining eligibility period for the worker.

232ZA Worker entitled for interim period elects to seek treatment, care and support damages

(1) This section applies if the worker—

(a) is an eligible worker for the worker's injury only for an interim period; and

(b) elects to seek treatment, care and support damages for the injury.

(2) Judgment for damages for the injury can not be awarded, and settlement for damages for the injury can not be agreed, until the first of the following happens—

(a) the interim period ends;

(b) the insurer decides, under section 232S, the worker is entitled to treatment, care and support payments for the injury for the rest of the worker's life;

(c) the worker stops being entitled to treatment, care and support payments under section 232S(7) or another provision of this Act.

232ZB Worker entitled for life elects to seek treatment, care and support damages—damages not awarded or not accepted

(1) This section applies if the worker—

(a) is an eligible worker for the worker's injury for the rest of the worker's life; and

(b) elects to seek treatment, care and support damages for the injury; and

(c) either—

(i) is awarded damages for the injury that do not include treatment, care and support damages; or

(ii) is awarded treatment, care and support damages for the injury, but the worker does not accept the awarded treatment, care and support damages within the acceptance period.

(2) The worker's entitlement to treatment, care and support payments for the worker's injury continues for the remaining eligibility period for the worker.

(3) If subsection (1)(c)(ii) applies, despite the judgment or the terms of the settlement for the claim for damages, neither the insurer nor the employer is liable to pay the amount of the awarded treatment, care and support damages.

232ZC Worker entitled for life elects to seek treatment, care and support damages—damages awarded and accepted

(1) This section applies if the worker—

(a) is an eligible worker for the worker's injury for the rest of the worker's life; and

(b) elects to seek treatment, care and support damages for the injury; and

(c) is awarded treatment, care and support damages for the injury; and

(d) accepts the awarded treatment, care and support damages within the acceptance period.

(2) The worker's entitlement to treatment, care and support payments for the worker's injury continues until the awarded treatment, care and support damages are accepted by the worker, at which time the worker's entitlement to treatment, care and support payments for the injury stops.

Note—

See section 270 for what happens when treatment, care and support damages for an injury are awarded to a worker who has received treatment, care and support payments for the injury.

232ZD Additional payments if treatment, care and support damages insufficient

(1) This section applies if—

(a) the worker accepted treatment, care and support damages awarded for the worker's injury within the acceptance period; and

(b) the period, of at least 5 years, prescribed by regulation has passed since the worker accepted the awarded treatment, care and support damages; and

(c) the worker considers the amount of awarded treatment, care and support damages is not sufficient to meet the worker's necessary and reasonable treatment, care and support needs resulting from the injury.

(2) The worker may apply to the insurer for

treatment, care and support payments for the injury.

(3) The insurer may accept liability to make treatment, care and support payments to the worker if the insurer is satisfied the amount of awarded treatment, care and support damages is not sufficient to meet the worker's necessary and reasonable treatment, care and support needs resulting from the worker's serious personal injury.

(4) In deciding whether to accept liability to make treatment, care and support payments to the worker, the insurer must have regard to the matters prescribed by regulation.

(5) The insurer must decide to accept or not accept liability to make treatment, care and support payments to the worker within 20 business days after the application is made.

(6) The insurer must give the worker written notice of the insurer's decision.

(7) In this section, a reference to the amount of awarded treatment, care and support damages includes the amount of treatment, care and support payments paid under section 232ZC(2) until the damages were accepted by the worker.

(8) If the insurer accepts liability to make treatment, care and support payments for the worker's injury under this section—

(a) the worker is entitled to treatment, care and support payments for treatment, care or support resulting from the injury provided during the period—

(i) starting on the day the insurer decides to accept the liability; and

(ii) ending when the first of the following happens—

(A) the worker dies;

(B) the worker's entitlement to treatment, care and support payments ends under another provision of this Act; and

(b) parts 3 and 6 apply to the worker's entitlement to treatment, care and support payments, and for that purpose—

(i) the worker is an eligible worker; and

(ii) the worker's eligibility period is the period mentioned in paragraph (a).

Part 6 Recipient absent from Australia

232ZE Application of part

This part applies to an eligible worker if—

(a) the worker leaves Australia; and

(b) while the worker is absent from Australia, expenses are, or are likely to be, incurred by or for the worker for the worker's treatment, care or support; and

(c) the insurer did not, in deciding the approved services for the worker, consider the need for treatment, care or support to be provided outside Australia as a result of the worker's absence.

232ZF Worker must notify insurer of absence

(1) At least 1 month before leaving Australia, the worker must give written notice of the absence to the insurer, unless the worker has a reasonable excuse.

Maximum penalty—10 penalty units.

(2) The notice must state—

(a) the day the worker intends to leave Australia; and

(b) if the worker intends to return to Australia—the day the worker intends to return; and

(c) the worker's address while outside Australia; and

(d) any treatment, care or support to be provided outside Australia that the worker wants the insurer to pay for.

(3) However, this section does not apply if, before the worker leaves Australia, a service request is made, or a funding agreement is entered into, for the treatment, care or support to be provided to the worker outside Australia.

232ZG Reviewing support plan or service request approval

(1) This section applies if—

(a) a support plan has been made for the worker; or

(b) a support plan has not been made for the worker, but a service request relating to the worker has been approved.

(2) To the extent the support plan or approved service request relates to the period the worker is, or intends to be, absent from Australia, the insurer may—

(a) review the plan or approval; and

(b) make any amendments to the plan or approval the insurer considers appropriate.

(3) Without limiting subsection (2), the insurer may amend the approved services for the worker by—

(a) removing or rescheduling any treatment, care or support that is to be provided in Australia while the worker is absent from Australia; or

(b) including any treatment, care or support that is to be provided outside Australia while the worker is absent from Australia, if the insurer considers the treatment, care or support should be, wholly or partly, paid for under this chapter, having regard to the following matters—

(i) the length of the absence;

(ii) whether the treatment, care or support is to be, or could be, provided or funded in another way during the absence;

(iii) whether the treatment, care or support is excluded treatment, care or support;

(iv) any other matter the insurer considers relevant.

(4) However, the insurer may amend the approved services to include treatment, care or support that is to be provided outside Australia only if a service request has not been made for the treatment, care or support.

(5) If the insurer decides to amend the support plan, or the approved service request, the insurer must, within 10 business days of making the decision, give the worker a copy of the amended plan or approval.

(6) To remove any doubt, it is declared that the insurer is not required to carry out an assessment under section 232O(1)(a) before amending a support plan under this section.

232ZH Suspending entitlement

(1) The insurer may suspend the worker's entitlement to treatment, care and support payments if the insurer considers the worker's absence from Australia will, or is likely to, adversely affect—

(a) the worker's condition resulting from the worker's injury; or

(b) the worker's prospects of improvement or rehabilitation.

(2) The worker's entitlement to treatment, care and support payments may be suspended for all or part of the period the worker is absent from Australia.

(3) If the insurer decides to suspend the worker's entitlement to treatment, care and support payments, the insurer must give the worker written notice of the decision.

Note—

See section 232L(4) for the effect of a worker's entitlement to treatment, care and support payments being suspended under this section.

(4) The notice—

(a) must state the period of the suspension; and

(b) may state that the period of suspension starts on the day the worker left Australia, even if the notice is given after that day.

Part 7 Other provision

232ZI Engagement of NIIS (Qld) agency to perform functions and exercise powers

(1) An insurer may, by way of an agreement under the NIIS (Qld) Act, section 60, engage the NIIS (Qld) agency to perform the insurer's functions or exercise the insurer's powers under this chapter,

including, for example—

(a) assessing and deciding a worker's entitlement to treatment, care and support payments; and

(b) preparing support plans; and

(c) deciding service requests under section 232P; and

(d) entering into funding agreements under section 232Q; and

(e) deciding payment requests under section 232R.

(2) To remove any doubt, it is declared that an insurer who engages the NIIS (Qld) agency to perform functions or exercise powers under subsection (1) remains liable to make payments to workers under this chapter.

(3) The Regulator may impose a condition on a self-insurer's licence that the self-insurer engage the NIIS (Qld) agency under subsection (1) for all of the self-insurer's functions and powers under this chapter or for stated functions and powers.

(4) The Regulator may monitor the performance of functions or the exercise of powers by the NIIS (Qld) agency under an engagement under subsection (1).

(5) In this section—

NIIS (Qld) Act means the *National Injury Insurance Scheme (Queensland) Act 2016*.

NIIS (Qld) agency means the agency under the NIIS (Qld) Act.

31 Insertion of new s 236B

After section 236A—

insert—

236B Liability of contributors

(1) This section applies to an agreement between an employer and another person under which the employer indemnifies the other person for any legal liability of the person to pay damages for injury sustained by a worker.

(2) The agreement does not prevent the insurer from adding the other person as a contributor under section 278A in relation to the employer's liability or the insurer's liability for the worker's injury.

(3) The agreement is void to the extent it provides for the employer, or has the effect of requiring the employer, to indemnify the other person for any contribution claim made by the insurer against the other person.

(4) In this section—

damages includes damages under a legal liability existing independently of this Act, whether or not within the meaning of section 10.

32 Amendment of s 237 (General limitation on persons entitled to seek damages)

(1) Section 237(2), after 'this chapter'—

insert—

and the provisions of chapter 4A, part 5

(2) Section 237(2)—

insert—

Note—

See, for example, section 232V(3) which provides that a worker required under section 232V to elect to seek treatment, care and support damages for an injury who

does not make the election is not entitled to seek treatment, care and support damages for the injury.

33 Amendment of s 268 (Provision of rehabilitation)

Section 268—

insert—

(8) This section does not apply to a worker for any period for which the worker is entitled to compensation under chapter 4A, including any period for which the entitlement is suspended under section 232ZH.

34 Amendment of s 270 (When damages are to be reduced)

(1) Section 270—

insert—

(1A) However, subsection (1) applies to compensation paid or payable under chapter 4A only if the damages include treatment, care and support damages.

(2) Section 270(2), 'However'—

omit, insert—

Also

(3) Section 270(1A) to (3)—

renumber as section 270(2) to (4).

35 Amendment of s 275 (Notice of claim for damages)

Section 275(4)—

insert—

Note—

See also section 232V.

36 Insertion of new s 305K

After section 305J—

insert—

305K Application of contributory negligence for particular injuries

Despite any other provision of this division, treatment, care and support damages awarded to a worker who is entitled to compensation under chapter 4A for the injury can not be reduced for the worker's contributory negligence.

37 Amendment of s 306V (Indexation of particular amounts)

Section 306V—

insert—

(9) In this section—

QOTE, for a financial year, means the amount mentioned in section 107(1)(a) for the financial year.

38 Amendment of s 500 (Reference to tribunals)

Section 500(1)—

insert—

(fa) whether a worker has a serious personal injury that meets the chapter 4A eligibility criteria for the injury;

(fb) for a worker who the insurer decides is entitled to treatment, care and support payments for an interim period under section 232M, whether the worker's serious personal injury is likely to continue to meet the chapter 4A eligibility criteria for the injury after the interim period ends;

(fc) whether a particular treatment, care and support need resulting from the worker's serious personal injury is necessary and reasonable in the circumstances;

39 Insertion of new ss 506A–506C

After section 506—

insert—

506A Reference about whether serious personal injury meets chapter 4A eligibility criteria

On a reference to a tribunal under section 500(1)(fa), the tribunal must decide whether the worker's injury is a serious personal injury that meets the chapter 4A eligibility criteria for the injury.

506B Reference about whether serious personal injury will continue to meet chapter 4A eligibility criteria after interim period ends

On a reference to a tribunal under section 500(1)(fb), the tribunal must decide whether the worker's serious personal injury is likely to continue to meet the chapter 4A eligibility criteria for the injury after the interim period ends.

506C Reference about whether particular treatment, care or support need is necessary and reasonable

On a reference to a tribunal under section 500(1)(fc), the tribunal must decide whether the particular treatment, care and support need resulting from the worker's serious personal injury is necessary and reasonable in the circumstances.

40 Amendment of s 510 (Power of tribunal to examine worker)

Section 510(1)(b), 'doctor'—

omit, insert—

registered person

41 Amendment of s 536 (Duty to report fraud or false or misleading information or documents)

Section 536(3), (4) and (5), after 'must'—

insert—

, without delay,

42 Amendment of s 538 (Internal review by insurer)

Section 538(1), from 'a decision'—

omit, insert—

any of the following decisions, the insurer must undertake an internal review of the proposed decision—

(a) a decision to reject an application for compensation;

(b) a decision under section 232M that a worker is not entitled to treatment, care and support payments;

(c) a decision to refuse a service request, or approve a service request on conditions, under section 232P;

(d) a decision to refuse a payment request under section 232R;

(e) a decision under section 232S that the insurer is not satisfied that a worker's serious personal injury is likely to continue

to meet the chapter 4A eligibility criteria for the injury after the interim period ends;

(f) a decision under section 232S that a worker's entitlement to treatment, care and support payments ends before the end of the interim period;

(g) a decision to not accept liability to make treatment, care and support payments under section 232ZD;

(h) a decision to amend approved services for an eligible worker under section 232ZG;

(i) a decision to suspend, under section 232ZH, a worker's entitlement to treatment, care and support payments for all or part of a period the worker is absent from Australia;

(j) a decision to terminate compensation.

43 Amendment of s 540 (Application of pt 2)

(1) Section 540(1)(a)—

insert—

(xiia) under section 232M, that a worker is not entitled to treatment, care and support payments; or

(xiib) to refuse a service request, or approve a service request on conditions, under section 232P; or

(xiic) to refuse a payment request under section 232R; or

(xiid) that, under section 232S, WorkCover is not satisfied that a worker's serious personal injury is likely to continue to meet the chapter 4A eligibility criteria for the injury after the interim period ends; or

(xiie) that, under section 232S, a worker's entitlement to treatment, care and support payments ends before the end of the interim period; or

(xiif) to not accept liability to make treatment, care and support payments under section 232ZD; or

(xiig) to amend approved services for an eligible worker under section 232ZG; or

(xiih) to suspend, under section 232ZH, a worker's entitlement to treatment, care and support payments for all or part of a period the worker is absent from Australia; or

(2) Section 540(1)(b)—

insert—

(via) under section 232M, that a worker is not entitled to treatment, care and support payments; or

(vib) to refuse a service request, or approve a service request on conditions, under section 232P; or

(vic) to refuse a payment request under section 232R; or

(vid) that, under section 232S, the self-insurer is not satisfied that a worker's serious personal injury is likely to continue to meet the chapter 4A eligibility criteria for the injury after the interim period ends; or

(vie) that, under section 232S, a worker's entitlement to treatment, care and support payments ends before the end of the interim period; or

(vif) to not accept liability to make treatment, care and support payments under section 232ZD; or

(vig) to amend approved services for an eligible worker under section 232ZG; or

(vih) to suspend, under section 232ZH, a worker's entitlement to treatment, care and support payments for all or part of a period the worker is absent from Australia; or

(3) Section 540(1)(c)—

insert—

(ia) under section 232M(4), on request from a worker, within the time stated in section 232M(3); or

(ib) under section 232P(3) within the time stated in the section; or

(ic) on a payment request within the time stated in section 232R(1); or

(id) on a review under section 232S within the time stated in the section; or

(ie) under section 232ZD(5) within the time stated in the section; or

(4) Section 540(4), from 'must'—

omit, insert—

must—

(a) address the matters prescribed by regulation; and

(b) be accompanied by information about the rights of review under this Act for the decision.

44 Amendment of s 578 (Proceedings for offences against ch 8)

Section 578—

insert—

(1A) Subject to subsections (2) to (4), a proceeding for an offence against chapter 8 is to be taken in a summary way under the *Justices Act 1886* before an industrial magistrate on the complaint of—

(a) the Regulator; or

(b) a person authorised for the purpose by the Regulator; or

(c) the Attorney-General.

45 Amendment of s 579 (Summary proceedings for offences other than against ch 8)

(1) Section 579(1A), from 'an offence' to 'section 486B(2)'—

omit, insert—

a prescribed offence

(2) Section 579(2), 'an offence against section 486B(2)'—

omit, insert—

a prescribed offence

(3) Section 579—

insert—

(6) In this section—

prescribed offence means—

(a) an offence against section 486B(2); or

(b) an offence against chapter 12, part 2; or

(c) an offence against section 136 connected with an offence against section 533.

46 Insertion of new ch 33

After chapter 32—

insert—

Chapter 33 Transitional provisions for Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016

718 Definitions for chapter

In this chapter—

2015–2016 financial year means the financial year that started on 1 July 2015.

2016–2017 financial year means the financial year starting on 1 July 2016.

new, for a provision, means the provision as in force immediately after the commencement.

719 Application of s 71(4)

Section 71(4) applies to a single employer who stops holding a licence to be a self-insurer after the commencement.

720 Security under section 84

Section 84, as amended by the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016*, applies to an application by an employer to be licensed as a self-insurer made before the commencement that has not been decided at the

commencement.

721 QOTE for 2016–17 financial year

(1) Section 107 does not apply for the 2016–2017 financial year.

(2) QOTE for the 2016–2017 financial year is $1456.90.

(3) The percentage difference in QOTE for the 2016–2017 financial year compared to QOTE for the 2015–2016 financial year is 0%.

722 No automatic variation of compensation payable for 2016–2017 financial year

(1) For sections 205 and 206, for the 2016–2017 financial year—

(a) QOTE is taken not to have varied; and

(b) each payment or amount mentioned in section 205(1) is taken not to have varied.

(2) If, before the commencement, the Regulator notified, under section 205(3), a variation for the 2016–2017 financial year, the notice is revoked and is taken not to have been made.

723 Entitlement to compensation for 2016–2017 financial year

(1) This section applies if—

(a) before the commencement, an amount (the ***lower amount***) a person is entitled to be paid as compensation under this Act was decreased from 1 July 2016 because—

(i) QOTE for the 2016–2017 financial year was less than QOTE for the 2015–2016 financial year; or

(ii) the amount was varied under section 205; and

(b) from the commencement, because of the operation of sections 721 and 722, the amount (the ***higher amount***) the person would have been entitled to be paid from 1 July 2016 did not decrease.

(2) The person is entitled to be paid the higher amount from 1 July 2016.

(3) From the commencement, an ex gratia amount paid to the person by an insurer to compensate for the decrease in the person's entitlement mentioned in subsection (1)(b) is taken to have been paid to the person because of the person's entitlement to be paid the higher amount under subsection (2).

(4) Subsection (3) applies to an ex gratia amount to the extent the ex gratia amount is equal to or less than the difference between the higher amount and the lower amount of the person's entitlement for the relevant period.

(5) In this section—

relevant period means the period starting on 1 July 2016 and ending on the day before the commencement.

724 Serious personal injuries

This Act, as amended by the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016*, applies in relation to a serious personal injury sustained by a worker on or after 1 July 2016.

725 Existing or new claims for damages

(1) This section applies to—

(a) a claim for damages started under chapter 5 before the commencement if, at the commencement—

(i) settlement for damages has not been agreed; and

(ii) a court has not started hearing a proceeding for the claim; and

(b) a claim for damages started under chapter 5 after the commencement.

(2) New sections 10 and 236B apply to the claim.

726 Application of new ss 578 and 579 to existing offences

(1) New sections 578 and 579 apply to a proceeding for an offence committed before the commencement if a proceeding for the offence has not been finally dealt with before the commencement.

(2) If a proceeding for the offence has started, but has not been finally dealt with, before the commencement, the proceeding may be continued if it was started—

(a) by a person who may start the proceeding under new section 578 or 579; and

(b) within the period within which the person may bring a proceeding for the offence under new section 578 or 579.

47 Amendment of sch 6 (Dictionary)

(1) Schedule 6, definition *bank guarantee*—

omit.

(2) Schedule 6—

insert—

accept, for awarded treatment, care and support damages, for chapter 4A, part 5, see section 232U.

acceptance period, for awarded treatment, care and support damages, for chapter 4A, part 5, see section 232U.

approved service, for an eligible worker, for chapter 4A, see section 232I.

attendant care and support services, for chapter 4A, see section 232I.

awarded, in relation to treatment, care and support damages, for chapter 4A, part 5, see section 232U.

chapter 4A eligibility criteria, for a serious personal injury, means criteria for the injury prescribed under section 232M(2)(a).

elect, in relation to a worker seeking treatment, care and support damages for the worker's injury, for chapter 4A, part 5, see section 232U.

eligibility criteria, for chapter 4A, see section 232M(2)(a).

eligibility period, for an eligible worker, for chapter 4A, see section 232L(3).

eligible worker, for chapter 4A, see section 232I.

excluded treatment, care or support, for chapter 4A, see section 232K.

funding agreement, for chapter 4A, see section 232Q(2).

interim period, for an eligible worker, for chapter 4A, see section 232I.

payment request, for chapter 4A, see section 232Q(3).

person under a legal disability, for chapter 4A, part 5, see section 232U.

section 84 security means a security given under section 84.

serious personal injury means an injury that is—

(a) a permanent spinal cord injury resulting in a permanent neurological deficit; or

(b) a traumatic brain injury resulting in a permanent impairment of cognitive, physical or psychosocial function; or

(c) a forequarter amputation or shoulder disarticulation amputation; or

(d) the amputation of a leg through or above the femur; or

(e) the amputation of more than 1 limb or parts of different limbs; or

(f) a permanent injury to the brachial plexus resulting in an impairment equivalent to a shoulder disarticulation amputation; or

(g) a full thickness burn to all or part of the body; or

(h) an inhalation burn resulting in a permanent respiratory impairment; or

(i) permanent blindness caused by trauma.

service request, for chapter 4A, see section 232P(1).

support plan, for chapter 4A, see section 232O(1)(b).

treatment, care and support damages, in relation to a worker, see section 232I.

treatment, care and support needs, of a worker, see section 232J.

treatment, care and support payments, for a worker who has sustained an injury, see section 232I.

Part 3 Amendment of Workers' Compensation and Rehabilitation Regulation 2014

48 Regulation amended

This part amends the *Workers' Compensation and Rehabilitation Regulation 2014*.

Note—

See also the amendments in schedule 1.

49 Amendment of s 22 (Conditions of licence—Act, s 83)

Section 22, from 'following'—

omit, insert—

condition that the self-insurer must lodge with the Regulator, for each year or part of a year of the licence, a declaration in the approved form of the self-insurer's wages.

50 Insertion of new pt 5A

After section 117—

insert—

Part 5A Treatment, care and support payments

Division 1 Assessing entitlement

Subdivision 1 Preliminary

117A Definitions for division

In this division—

childrens functional independence measure instrument means the functional independence measure instrument adapted for paediatrics and described on the department's website.

functional independence measure instrument means a clinical tool used to assess the functional ability of a person by scoring motor and cognitive items against a scale and described on the department's website.

Subdivision 2 Eligibility criteria

117B Purpose of subdivision

For section 232M(2)(a) of the Act, this subdivision prescribes the eligibility criteria for particular serious personal injuries.

117C Eligibility criteria for permanent spinal cord injury

(1) The eligibility criteria for a permanent spinal cord injury resulting in a permanent neurological deficit are—

(a) the permanent neurological deficit is classified as grade A, B, C or D on the ASIA impairment scale, as assessed under the ISNCSCI; and

(b) the injury has resulted in a residual significant impact on the function of the autonomic nervous system, evidenced by a score of 0 for an item relating to bladder, bowel or sexual function, as assessed under the ISAFSCI.

(2) In this section—

ASIA impairment scale means the scale, known as the American Spinal Injury Association impairment scale, used for measuring impairment resulting from a spinal cord injury and published by the American Spinal Injury Association.

ISAFSCI means the document called 'International standards to document remaining autonomic function after spinal cord injury', published by the American Spinal Injury Association.

ISNCSCI means the document called 'International standards for neurological classification of spinal cord injury', published by the American Spinal Injury Association.

117D Eligibility criteria for traumatic brain injury

(1) The eligibility criteria for a traumatic brain injury resulting in a permanent impairment are—

(a) any or all of the following apply—

(i) the injury results in post-traumatic amnesia lasting 7 days or more as evidenced by an assessment using an approved scale;

(ii) the worker is or was in a coma, other than an induced coma, for 1 hour or more as a result of the injury;

(iii) brain imaging shows a significant brain abnormality as a result of the injury; and

(b) the worker's functional ability as a result of the injury is assessed as 5 or less for a motor or cognitive item using—

(i) for an adult—the functional independence measure instrument; or

(ii) for a child—the childrens functional independence measure instrument.

(2) In this section—

approved scale, for assessing post-traumatic amnesia, means—

(a) the Westmead PTA scale; or

(b) a clinically accepted scale similar to the Westmead PTA scale approved by the Regulator for this definition.

Westmead PTA scale means the clinical tool, known as the Westmead Post-traumatic Amnesia Scale, used to assess the period a person suffers post-traumatic amnesia.

117E Eligibility criterion for the amputation of a leg through or above the femur

(1) The eligibility criterion for the amputation of a leg through or above the femur is that the amputation involves the loss of 65% or more of the length of the femur.

(2) For subsection (1), the percentage of the length of the femur lost must be worked out by—

(a) comparing the length of the femur before and after the amputation using X-rays taken before and after the amputation; or

(b) if X-rays of the femur are not available—comparing the length of the femur of the amputated leg with the length of the contralateral femur.

(3) To remove any doubt, it is declared that the eligibility criterion in subsection (1) may be satisfied even if the worker suffers from a

personal injury that is the amputation of more than 1 limb or parts of different limbs.

117F Eligibility criteria for the amputation of more than 1 limb or parts of different limbs

(1) The eligibility criteria for the amputation of more than 1 limb or parts of different limbs are—

(a) the amputations involve the loss of 50% or more of the length of each of the worker's tibias; or

(b) both of the worker's upper limbs are amputated at or above the first metacarpophalangeal joint of the thumb and index finger of each hand; or

(c) the amputations involve—

(i) the loss of 50% or more of the length of 1 of the worker's tibias; and

(ii) 1 of the worker's upper limbs being amputated at or above the first metacarpophalangeal joint of the thumb and index finger of the same hand.

(2) For subsection (1), the percentage of the length of the tibia lost must be worked out by—

(a) comparing the length of the tibia before and after the amputation using X-rays taken before and after the amputation; or

(b) if X-rays of the tibia are not available—comparing the length of the tibia of the amputated leg with the length of the contralateral tibia; or

(c) if the length of the contralateral tibia can not be determined—using the estimated knee height based on overall height before the amputation.

117G Eligibility criteria for a full thickness burn to all or part of the body

The eligibility criteria for a full thickness burn to all or part of the body are—

(a) the full thickness burn is to—

(i) for a worker younger than 16 years—more than 30% of the total body surface area; or

(ii) for a worker 16 years or older—more than 40% of the total body surface area; or

(iii) both hands; or

(iv) the face; or

(v) the genital area; and

(b) the worker's functional ability as a result of the injury is assessed as 5 or less for a motor or cognitive item using—

(i) for an adult—the functional independence measure instrument; or

(ii) for a child—the childrens functional independence measure instrument.

117H Eligibility criterion for an inhalation burn resulting in a permanent respiratory impairment

The eligibility criterion for an inhalation burn resulting in a permanent respiratory impairment is that the worker's functional ability as a result of the injury is assessed as 5 or less for a motor or cognitive item using—

(a) for an adult—the functional independence measure instrument; or

(b) for a child—the childrens functional independence measure instrument.

117I Eligibility criterion for permanent blindness caused by trauma

(1) The eligibility criterion for permanent blindness caused by trauma is that the injured person has a visual defect, or a combination of visual defects, that result in visual loss that is, or is equivalent to—

(a) visual acuity of less than 6/60 in both eyes, assessed using the Snellen scale after correction by suitable lenses; or

(b) the constriction of the worker's field of vision to 10 degrees or less of the arc around central fixation in the worker's better eye, regardless of corrected visual acuity (equivalent to 1/100 white test object).

(2) In this section—

Snellen scale means the scale for measuring visual acuity using rows of letters printed in decreasing sizes.

Subdivision 3 Assessing eligibility criteria

117J Requirements for using functional independence measure instrument or childrens functional independence measure instrument to assess injuries

An assessment using the functional independence measure instrument or childrens functional independence measure instrument may be used for deciding whether a serious personal injury meets the eligibility criteria for the injury only if

the assessment is carried out by a person who is—

(a) accredited by the Australasian Rehabilitation Outcomes Centre to carry out the assessment; and

(b) approved by the insurer to carry out the assessment.

Division 2 Assessing worker's needs

Subdivision 1 Assessment process

117K Assessment generally

(1) For section 232O(2)(a) of the Act, this section prescribes requirements about assessing a matter mentioned in section 232O(1)(a) of the Act.

(2) In carrying out the assessment, the insurer must, to the extent practicable, consult with the worker about the following matters—

(a) the treatment, care and support needs resulting from the serious personal injury the worker considers are necessary and reasonable;

(b) the treatment, care or support needed by the worker for any other injury resulting from the same event as the serious personal injury;

(c) the worker's abilities and limitations;

(d) the worker's individual goals.

(3) The insurer may also consult with any other person the insurer considers appropriate.

117L Intervals for carrying out assessments

For section 232O(2)(a) of the Act, an assessment under section 232O(1)(a) of the Act for an eligible worker must be carried out—

(a) as soon as practicable after the insurer decides the worker is entitled to treatment, care and support payments; and

(b) if an assessment has been previously carried out for the worker—within 1 year after the last assessment was carried out.

Subdivision 2 Matters for deciding necessary and reasonable treatment, care and support needs

117M Purpose of subdivision

(1) For section 232N(b) of the Act, this subdivision prescribes matters the insurer must consider in deciding whether an eligible worker's treatment, care and support needs resulting from the worker's serious personal injury are necessary and reasonable in the circumstances.

(2) This subdivision does not limit the matters the insurer may consider in making a decision mentioned in subsection (1).

117N Benefit to worker

(1) The insurer must consider whether providing treatment, care or support for, or relating to, the worker's treatment, care and support needs—

(a) is likely to maximise the worker's independence, participation in the community and employment; and

(b) will assist the worker in managing the injury.

(2) In considering the matters mentioned in subsection (1), the insurer must also have regard to the following matters—

(a) whether the treatment, care or support relates directly to the worker's individual goals;

(b) whether the treatment, care or support will improve or maintain the worker's ability to conduct daily activities or participate in the community or employment;

(c) whether the treatment, care or support has been provided to the worker previously, resulting in an improvement to, or assistance in managing, the worker's injury;

(d) whether the treatment, care or support has a measurable outcome;

(e) whether the worker has agreed or is likely to agree that the treatment, care or support will benefit the worker in the ways mentioned in subsection (1);

(f) any associated risks of the treatment, care or support to the worker, weighed against the expected benefit of the treatment, care or support to the worker.

117O Appropriateness of service

(1) The insurer must consider whether treatment, care or support for, or relating to, the worker's treatment, care and support needs—

(a) is consistent with other treatment, care or support being received by the worker; and

(b) is consistent with current clinical practice and other industry best practice for the treatment, care or support of persons with similar injuries.

(2) In considering the matters mentioned in subsection (1), the insurer must also have regard to the following matters—

(a) whether the treatment, care or support will be consistent with the worker's future treatment, care or support needs;

(b) whether the treatment, care or support relates directly to the worker's individual goals;

(c) whether the treatment, care or support could be harmful to the worker;

(d) whether similar treatment, care or support is already being, or is to be, provided to the worker for the injury;

(e) whether there is evidence that supports the effectiveness of the treatment, care or support.

Examples of evidence—

- peer-reviewed journal articles
- inclusion of the treatment in clinical guidelines and frameworks
- successful clinical trials
- inclusion in the medical benefits schedule administered by the Commonwealth

117P Appropriateness of provider

(1) The insurer must consider whether treatment, care or support for, or relating to, the worker's treatment, care and support needs is provided by an appropriate provider.

(2) In considering the matter mentioned in subsection (1), the insurer must also have regard to the following matters—

(a) whether the provider, or the provider's staff, are appropriately qualified to provide the treatment, care or support;

(b) whether the provider is appropriate having regard to, for example, the worker's location, age, culture and ethnicity;

(c) whether the provider is acceptable to the worker;

(d) whether the provider has or may have a conflict of interest in providing the treatment, care or support to the worker;

(e) whether the provider's fee is reasonable;

(f) if, under section 232K(2) of the Act, the treatment, care or support must be provided by a registered provider—whether the provider is a registered provider.

117Q Cost-effectiveness

(1) The insurer must consider whether treatment, care or support for, or relating to, the worker's treatment, care and support needs is cost-effective.

(2) In considering the matter mentioned in subsection (1), the insurer must also have regard to the following matters—

(a) the likely benefit to the worker of receiving the treatment, care or support weighed against the cost of providing the treatment, care or support to the worker;

(b) the cost of the treatment, care or support compared with the cost of the same or

similar treatment, care or support provided by other suitable providers;

(c) whether there is a more cost-effective way to provide the treatment, care or support;

Examples—

- considering whether leasing equipment would be more cost-effective than purchasing new equipment
- considering whether the treatment, care or support can be more appropriately funded under another scheme

(d) whether the cost of the treatment, care or support is reasonable having regard to the period for which it is required;

(e) whether the cost of the treatment, care or support exceeds an amount prescribed for the treatment, care or support under section 232R(4) of the Act.

Subdivision 3 Other matters relating to assessing needs

117R Additional requirement about assessing particular treatment, care or support

(1) This section applies if the insurer is assessing a worker's needs for, or relating to—

(a) home modification; or

(b) transport modification; or

(c) workplace modification; or

(d) attendant care and support services that are personal assistance services or services to assist a person to participate in the community.

(2) In carrying out the assessment, the insurer must

obtain and consider information about the needs mentioned in subsection (1) from a person who is appropriately qualified to give advice about the needs.

Example of appropriately qualified persons—

an occupational therapist specialising in home or workplace modifications

117S Treatment, care or support that must be provided by a registered provider

For section 232K(2)(b) of the Act, the following treatment, care or support is prescribed—

(a) a home modification;

(b) workplace modification;

(c) a service for the coordination of treatment, care or support.

Example for paragraph (c)—

a case manager engaged to coordinate a worker's treatment, care and support

Subdivision 4 Support plans and service requests

117T Support plans

(1) For section 232O(3) of the Act, this section prescribes requirements about an eligible worker's support plan.

(2) The support plan must state—

(a) the name of the worker; and

(b) the outcomes of the assessment under section 232O(1)(a) of the Act; and

(c) the matters stated in section 117K(2), if known by the insurer; and

(d) any treatment, care and support needs resulting from the worker's serious personal injury the insurer considers are necessary and reasonable in the circumstances; and

(e) any treatment, care or support resulting from any other injury resulting from the same event as the serious personal injury that the insurer considers is necessary and reasonable in the circumstances; and

(f) any other treatment, care or support for the serious personal injury, or any other injury resulting from the same event as the serious personal injury, the insurer agrees to, wholly or partly, pay for under chapter 4A of the Act, having regard to the following matters—

(i) whether the treatment, care or support is needed by the worker as a result of the injury;

(ii) whether it would be fair and reasonable in the circumstances for the insurer to pay for the treatment, care or support, wholly or partly;

(iii) whether providing the treatment, care or support will, or is likely to, reduce the worker's treatment, care and support needs for the injury;

(iv) whether the insurer considers, wholly or partly, paying for the treatment, care or support is more practical or cost-effective than the insurer paying for the worker's treatment, care and support needs for the injury, without compromising the level of treatment,

care or support received by the worker under chapter 4A of the Act;

(v) whether the treatment, care or support is excluded treatment, care or support;

(vi) where the treatment, care or support is to be provided, including, for example, whether the treatment, care or support is to be provided outside Australia; and

(g) the intervals at which an assessment under section 232O(1)(a) of the Act will be carried out for the worker.

(3) The support plan must be consistent with an existing decision on a service request relating to the worker.

(4) However, subsection (3) applies only to the extent the support plan relates to the period covered by the existing decision.

117U Amending support plans

(1) For section 232O(5) of the Act, this section prescribes requirements about amending an eligible worker's support plan under section 232O(4)(a) of the Act.

(2) An amendment of the support plan must be consistent with an existing decision on a service request relating to the worker.

(3) However, subsection (2) applies only to the extent the support plan relates to the period covered by the existing decision.

117V Deciding service request

(1) For section 232P(4) of the Act, this section prescribes the matters an insurer must consider in deciding a service request relating to an eligible

worker.

(2) The insurer must consider the following matters—

(a) whether or not the requested service relates to—

(i) the worker's treatment, care and support needs resulting from the worker's serious personal injury; or

(ii) the worker's need for treatment, care or support resulting from another injury resulting from the same event as the worker's serious personal injury;

(b) if the requested service relates to the treatment, care and support needs mentioned in paragraph (a)(i)—whether or not the needs are necessary and reasonable in the circumstances;

(c) if the requested service relates to the treatment, care or support mentioned in paragraph (a)(ii)—whether or not the treatment, care or support is necessary and reasonable in the circumstances;

(d) if the requested service does not relate to treatment, care and support needs or treatment, care or support mentioned in paragraph (a), or the insurer does not consider the needs or the treatment, care or support mentioned in the paragraph are necessary and reasonable in the circumstances—whether or not the insurer considers the insurer should, wholly or partly, pay for the requested service under chapter 4A of the Act, having regard to the matters mentioned in section 117T(2)(f).

Division 3 Payment options

117W Circumstances in which payment request may be made

(1) For section 232Q(3)(b) of the Act, this section prescribes the circumstances for making a payment request for an expense for the treatment, care or support of an eligible worker.

(2) A payment request may not be made for the expense if—

(a) the person has entered into a funding agreement with the insurer for the treatment, care or support; and

(b) the expense was incurred in the period covered by the funding agreement.

(3) A payment request must be made within 6 months after the expense is incurred.

(4) However, the insurer may accept a later payment request if the insurer considers it is fair and reasonable in the circumstances to accept the request.

117X Deciding payment request

(1) For section 232R(2) of the Act, this section prescribes matters about an insurer deciding a payment request for an expense for the treatment, care or support of an eligible worker.

(2) If the insurer makes an information request and the person of whom it is made does not provide the information requested by the stated day or a later day agreed between the insurer and the person—

(a) the payment request lapses; and

(b) the insurer is not required to approve or refuse the request.

(3) The insurer must approve the payment request if—

(a) the expense is incurred in the eligibility period for the worker; and

(b) the treatment, care or support the request relates to is an approved service for the worker.

(4) To remove any doubt, it is declared that the insurer may approve the payment request even though the treatment, care or support the request relates to is not an approved service for the worker.

(5) In this section—

approved service does not include treatment, care or support that is excluded treatment, care or support, unless—

(a) if a support plan has been made for the eligible worker—the excluded treatment, care or support is specifically stated in the support plan to be—

(i) treatment, care or support for, or relating to, the worker's treatment, care and support needs resulting from the worker's serious personal injury the insurer considers is necessary and reasonable in the circumstances; or

(ii) treatment, care or support resulting from another injury resulting from the same event as the worker's serious personal injury the insurer considers is necessary and reasonable in the circumstances; or

(iii) treatment, care or support the insurer agrees to, wholly or partly, pay for under chapter 4A of the Act; or

(b) if a support plan has not been made for the eligible worker—the excluded treatment, care or support is specifically approved under an approval of a service request relating to the worker.

information request, for a payment request, means a written request made by the insurer—

(a) asking a relevant person for further information about the payment request by a stated day of at least 10 business days after the insurer makes the request; and

(b) stating that, if the requested information is not given to the insurer by the stated day, the payment request will lapse.

relevant person, for an information request, means—

(a) the person who made the payment request; or

(b) if the person who made the payment request is not the eligible worker—the eligible worker.

117Y Limit on amount payable under payment request

For section 232R(4) of the Act, the amount prescribed is—

(a) for medical treatment or rehabilitation—the amount stated in the relevant table of costs; or

(b) for hospitalisation of the worker as an in-patient at a private hospital—the amount stated in section 217(3) of the Act; or

(c) for hospitalisation of the worker as an in-patient at a public hospital—the amount stated in section 218A(3) of the Act.

Division 4 Review of entitlement

117Z Review of worker's entitlement

(1) This section prescribes matters for a review of a worker's entitlement to treatment, care and support payments under section 232S of the Act.

(2) The insurer must give the worker written notice of the review at least 20 business days before carrying out the review.

(3) In carrying out the review, the insurer may ask the worker to give the insurer information needed to make a decision about the worker's entitlement at the end of the review.

51 Amendment of s 143 (Constitution of Composite Medical Tribunal)

(1) Section 143—

insert—

(4A) For a serious personal injury matter, the chairperson is the chairperson of the General Medical Assessment Tribunal.

(2) Section 143(7), 'subsection (5)'—

omit, insert—

subsection (6)

(3) Section 143—

insert—

(8) In this section—

serious personal injury matter means a matter referred to the tribunal under—

(a) section 500(1)(fa), (fb) or (fc) of the Act; or

(b) the *National Injury Insurance Scheme (Queensland) Act 2016*, section 113.

(4) Section 143(4A) to (8)—

renumber as section 143(5) to (9).

52 Amendment of sch 13 (Dictionary)

Schedule 13—

insert—

childrens functional independence measure instrument, for part 5A, division 1, see section 117A.

functional independence measure instrument, for part 5A, division 1, see section 117A.

Part 4 Minor or consequential amendments

53 Legislation amended

Schedule 1 amends the legislation it mentions.

Schedule 1 Minor or consequential amendments

section 53

Workers' Compensation and Rehabilitation Act 2003

1 Section 72(1)(f), from 'unconditional' to 'deposit'—

omit, insert—

security

2 Section 73(1), after '71(1)(a)'—

insert—

, 71(4)(d)

3 Section 83(1)—

insert—

Note—

See also section 232ZI(3).

4 Sections 101(3) and 102(5), from 'unconditional' to 'deposit'—

omit, insert—

former self-insurer's section 84 security

5 Section 101(4), from 'unconditional' to 'deposit'—

omit, insert—

section 84 security

6 Section 102(6), 'deposit or bank guarantee'—

omit, insert—

section 84 security

7 Section 103, heading and subsection (2), section 105J, heading, and sections 567(f) and 569(2)(b), from 'bank' to 'deposit'—

omit, insert—

section 84 security

8 Section 104(3)(b), from 'bank' to 'self-insurer'—

omit, insert—

former self-insurer's section 84 security

9 Sections 105H(3), 105I(4) and 105J(2), from 'unconditional' to 'deposit'—

omit, insert—

non-scheme employer's section 84 security

10 Section 105H(3), note—

omit.

11 Section 105H(4), from 'unconditional' to 'deposit'—

omit, insert—

section 84 security

12 Section 105I(5), 'deposit or bank guarantee'—

omit, insert—

section 84 security

13 Section 208(1), after 'compensation'—

insert—

under chapter 3

14 Sections 510C(8)(a) and 511A(1)(b), 'doctor'—

omit, insert—

registered person

15 Section 546(2), 'to (xii)'—

omit, insert—

to (xiih)

16 Schedule 6, definition *QOTE*, after '107'—

insert—

(1)

Workers' Compensation and Rehabilitation Regulation 2014

1 Section 54, '84(3)(b)'

omit, insert—

84(4)(b)

2 Schedule 13, definition *appointed actuary*, '84(3)'—

omit, insert—

84(4)

3 Schedule 13, definition *estimated claims liability*, '84(6)'—

omit, insert—

84(8)