

**Legislative Council—No 24A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 5 July 2022

South Australia

**Return to Work (Scheme Sustainability)  
Amendment Bill 2022**

A BILL FOR

An Act to amend the *Return to Work Act 2014*.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Return to Work (Scheme Sustainability) Amendment Act 2022*.

#### 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

## Part 2—Amendment of *Return to Work Act 2014*

### 3—Amendment of section 4—Interpretation

- (1) Section 4(1)—after the definition of *permanent impairment matter* insert:

*physical injury* means an injury other than a psychiatric injury;

### 4—Amendment of section 7—Injury must arise from employment

- Section 7(2)(a)—delete "an injury other than a psychiatric injury" and substitute:

a physical injury

### 5—Amendment of section 21—Seriously injured workers

- (1) Section 21(2)—delete subsection (2) and substitute:

- (2) For the purposes of this Act, a seriously injured worker is a worker—

- (a) in the case of psychiatric injury—whose work injury or injuries have resulted in permanent impairment and the degree of whole person impairment has been assessed under Division 5 for the purposes of this Act to be 30% or more; or
- (b) in the case of physical injury—whose work injury or injuries have resulted in a permanent impairment and the degree of whole person impairment has been assessed under Division 5 for the purposes of this Act to be 35% or more.

- (2) Section 21(3) and (4)—delete subsections (3) and (4) and substitute:

- (3) Pending an assessment of permanent impairment, the Corporation may on its own initiative, or must on application made by the worker in accordance with the regulations, make an interim decision to the effect that the worker will be taken to be a seriously injured worker under this Act if—

- (a) it is satisfied, or it appears, that the worker's injury or injuries have resulted or will result in permanent impairment; and
- (b) in the case of physical injury—it appears that the degree of whole person impairment is likely to be 35% or more; and
- (c) in the case of psychiatric injury—it appears that the degree of whole person impairment is likely to be 30% or more,

and the Corporation's decision will have effect under this Act in accordance with its terms.

- (4) An interim decision under subsection (3)—

- (a) must be made in accordance with any requirements or principles prescribed by the regulations; and
- (b) will have effect until—

(i) an assessment of whole person impairment has been made and determined under Division 5; or

(ii) it appears that, due to a material improvement in the worker's likely degree of whole person impairment, the worker's degree of whole person impairment is no longer likely to be—

(A) in the case of physical injury—35% or more; or

(B) in the case of psychiatric injury—30% or more.

(4a) Before bringing an interim decision to an end under subsection (4)(b)(ii), the Corporation must—

(a) give the worker at least 3 months written notice of its intention to bring the interim decision to an end under that subsection; and

(b) give the worker a reasonable opportunity during that 3 month period to furnish information to satisfy the Corporation that it is appropriate for the interim decision to continue.

(3) Section 21—after subsection (6) insert:

(6a) If a seriously injured worker makes an election under section 56A, subsection (6)(b) does not apply on and after the day on which the election takes effect in relation to weekly payments under section 41 to which the worker would, but for the election, be entitled.

(4) Section 21(8)—delete subsection (8) and substitute:

(8) In assessing whether the relevant threshold under subsection (2)(a) or (b) (as the case requires) has been met—

(a) impairment resulting from physical injury is to be assessed separately from impairment resulting from psychiatric injury; and

(b) in assessing impairment resulting from physical injury or psychiatric injury, no regard is to be had to impairment that results from consequential mental harm; and

(c) in assessing the degree of whole person impairment resulting from physical injury, no regard is to be had to impairment that results from a psychiatric injury or consequential mental harm; and

(d) the relevant threshold under subsection (2)(a) or (b) is not met unless—

(i) in the case of physical injury—the degree of whole person impairment resulting from the injury is at least 35%; or

- (ii) in the case of psychiatric injury—the degree of whole person impairment resulting from psychiatric injury is at least 30%.

## 6—Amendment of section 22—Assessment of permanent impairment

- 5 (1) Section 22(4)(e)—delete paragraph (e)
- (2) Section 22(6)—delete subsection (6) and substitute:
- 10 (6) An amendment or substitution in relation to the Impairment Assessment Guidelines under subsection (4)(f) will take effect from a date specified by the Minister as part of the amendment, or in the substituted guidelines, as the case may be (the *commencement date*).
  - (6a) If the Impairment Assessment Guidelines are amended or substituted, the amendment or substituted guidelines (as the case may be) will apply in relation to an injury regardless of whether the injury occurred before or on or after the commencement date.
- 15 (2a) Section 22—after subsection (8) insert:
- Note—**
- The Parliament confirms that this subsection is to be interpreted and applied in accordance with the principles enunciated in the reasons of the Full Court of the Supreme Court in *Return to Work Corporation of South Australia v Summerfield* [2021] SASFC 17.
- 20 (2b) Section 22—after subsection (9) insert:
- 25 (9a) For the purposes of this section, an assessment (or parts of an assessment) may be undertaken by more than 1 accredited medical practitioners and their assessments combined so as to create 1 assessment.
- (3) Section 22(10) and (11)—delete subsections (10) and (11) and substitute:
- (10) Subject to subsections (12) to (15) (inclusive), if—
    - (a) a worker has had a whole person impairment assessment under this section; and
    - 30 (b) another impairment from the same injury or cause develops or manifests itself after that assessment,then that other impairment—
    - (c) will be assessed separately; and
    - (d) —
      - 35 (i) will not be combined in any respect (whether under this section or sections 56 or 58) with the impairment or impairments that have already been assessed; but
      - 40 (ii) may be combined with any other impairment from the same injury or cause that has also developed or manifested itself after the earlier assessment.

**Example—**

A worker suffers impairments arising from injuries A and B which both arise from the same cause. The worker has those impairments assessed under section 22. After the assessment of the impairments arising from injuries A and B, the worker develops further impairments from injuries C and D which arise from the same cause as injuries A and B. The worker is entitled to be assessed for the impairment arising from injuries C and D and to combine the impairments from those injuries. However, the worker cannot combine the impairments arising from injuries C and D with the impairments arising from injuries A and B under this Act.

(4) Section 22—after subsection (18) insert:

(19) Sections 10 (other than subsection (1)) and 10A of the *Legislative Instruments Act 1978* apply to the publication, amendment or substitution of the Impairment Assessment Guidelines under this section (and a reference in section 10 or 10A to a regulation will be taken to be a reference to the Impairment Assessment Guidelines, the amendment or the substitution (as the case requires)).

**8—Amendment of section 40—Supplementary income support for incapacity resulting from surgery**

Section 40(1)—delete "under section 33(21)(b)"

**8A—Amendment of section 48—Reduction or discontinuance of weekly payments**

(1) Section 48(2)—after paragraph (h) insert:

(ha) the worker—

- (i) has been receiving weekly payments on the basis of an interim decision under section 21(3); and
- (ii) the interim decision is brought to an end under section 21(4)(b)(ii); or

(2) Section 48—after subsection (10) insert:

(10a) If the Corporation is acting under subsection (2)(ha)—

- (a) the notice under subsection (6) must be given as soon as practicable after the decision is made (but not necessarily before it takes effect); and
- (b) subsection (10) does not apply.

**9—Amendment of section 53—Redemptions—liabilities associated with weekly payments**

(1) Section 53(2)(b)—delete paragraph (b) and substitute:

- (b) the worker has received financial advice from a qualified financial adviser about the investment or use of money to be received on redemption; and

(2) Section 53—after subsection (5) insert:

(5a) In addition, a seriously injured worker who has made an election under section 56A cannot enter into an agreement for the redemption of a liability under this section for the injury or injuries for which the election was made.

### 9A—Amendment of section 54—Redemptions—liabilities associated with medical services

Section 54(2)—delete subsection (2)

### 10—Amendment of section 56—Lump sum payments—economic loss

(1) Section 56(1)—before "seriously" insert:

prescribed

(2) Section 56(4), definition of *PS*—after "impairment" insert:

, provided that the prescribed sum cannot exceed the prescribed sum applicable for 34% whole person impairment

(2a) Section 56(5)—delete subsection (5) and substitute:

(5) If a worker suffers 2 or more impairments arising from the same injury or cause, those impairments will be assessed together and combined to determine the degree of impairment of the worker (using any principle set out in the Impairment Assessment Guidelines).

(3a) Section 56(8) and (9)—delete subsections (8) and (9) and substitute:

(8) Only 1 claim may be made under this Division in respect of any impairments that have been combined as provided by section 22 and this section (and any impairment or impairments that are not combined under section 22 will not be combined under this section).

(4) Section 56—after subsection (11) insert:

(12) In this section—

*prescribed seriously injured worker* means a seriously injured worker who has not made an election under section 56A.

### 11—Insertion of section 56A

After section 56 insert:

#### 56A—Seriously injured worker—election to receive lump sum payment

(1) Subject to this section, a seriously injured worker may elect to receive a lump sum payment under section 56 at any time on or after the day on which the worker is assessed and determined to be a seriously injured worker as provided by Part 2 Division 4.

**Note—**

A lump sum payment will be calculated in accordance with section 56, subject to the operation of this section.

(2) An entitlement does not arise under this section in relation to—

- (a) a psychiatric injury or consequential mental harm; or
- (b) noise induced hearing loss.

(3) If a seriously injured worker elects to receive a lump sum payment under section 56, the worker is not entitled (on and after the day on which the lump sum payment is made) to—

- (a) recovery/return to work services for the work injury or injuries for which the election is made; or
- (b) weekly payments under section 41 for—

(i) the work injury or injuries for which the election is made; or

(ii) another impairment arising from the same cause as the work injury or injuries for which the election is made.

(5) An election under this section by a seriously injured worker—

(a) must be made in a manner and form approved by the Corporation; and

(b) takes effect from—

(i) in the case of an election made by a 50% or more WPI worker—the day on which the election is approved by the Tribunal under subsection (11); or

(ii) in any other case—the day on which the election is received by the Corporation,

(the *election day*).

(6) An election under this section cannot be made by a worker who is taken to be a seriously injured worker under section 21(3) pending an assessment of permanent impairment.

(7) If a worker makes an election under this section, the worker is entitled to continue to receive weekly payments under section 41 as a seriously injured worker until the day immediately preceding the day on which the lump sum payment under section 56 in respect of the election is paid.

(8) There will be a reduction of the lump sum payable under section 56 to a seriously injured worker who makes an election under this section by the amount of any weekly payments made to the worker after the end of the period of 104 weeks from the date on which the incapacity for work first occurs, other than weekly payments made in accordance with subsection (7) after—

- (a) in the case of an election made by a 50% or more WPI worker—the day on which the relevant application is referred to the Tribunal under this section; or



- (b) in any other case—the day on which the election is received by the Corporation.
- (9) An election under this section cannot be made unless—
- 5 (a) the worker has received competent professional advice about the consequences of making an election; and
- (b) the worker has received financial advice from a qualified financial adviser about the investment or use of money to be received on the election; and
- 10 (c) the worker has received advice from a recognised health practitioner about the future progression of their injury and its likely impact on their capacity to work.
- (10) An election under this section made by a 50% or more WPI worker is referred, by force of this subsection, to the Tribunal.
- 15 (11) The Tribunal may approve the making of an election by a 50% or more WPI worker for the purposes of subsection (5)(b)(i) if satisfied that the election is in the best interests of the worker.
- (12) Before approving the making of an election under subsection (11), the Tribunal may take into account a report by a recognised health practitioner relating to whether or not the election is contrary to the best interests of the worker.
- 20 (13) An election by a worker under this section cannot be withdrawn on or after the election day.
- (14) A seriously injured worker may only make 1 election under this section and after the worker receives the lump sum payment under section 56 to which the election relates, they are not entitled to a payment under section 56 for any other injury (whether suffered before or after the election).
- 25 (15) In addition, a seriously injured worker who has entered into an agreement for the redemption of a liability under section 53 cannot make an election under this section for the injury or injuries to which the redemption relates.
- 30 (16) The Corporation is liable to indemnify the worker for reasonable costs of obtaining the advice required under this section up to a limit prescribed by regulation.
- 35 (17) A 50% or more WPI worker is entitled, subject to any limit prescribed by the regulations, to an award against the relevant compensating authority (within the meaning of section 75(9)) for the worker's reasonable costs of proceedings before the Tribunal relating to an application for an approval under subsection (11).
- 40 (18) In this section—
- 50% or more WPI worker** means a seriously injured worker whose degree of whole person impairment has been assessed and determined under Part 2 Division 5 for the purposes of this Act to be 50% or more.

### 11A—Amendment of section 58—Lump sum payments—non-economic loss

(1) Section 58(6)—delete subsection (6) and substitute:

(6) If a worker suffers 2 or more impairments arising from the same injury or cause—

(a) those impairments will be assessed together and combined to determine the degree of impairment of the worker (using any principle set out in the Impairment Assessment Guidelines); and

(b) the worker is not entitled to receive compensation by way of lump sum under subsection (4) in respect of those impairments in excess of the prescribed sum.

(2) Section 58(9) and (10)—delete subsections (9) and (10) substitute:

(9) Only 1 claim may be made under this Division in respect of any impairments that have been combined as provided by section 22 and this section (and any impairment or impairments that are not combined under section 22 will not be combined under this section).

### 12—Amendment of section 72—No damages unless whole person impairment of at least 30%

(1) Section 72, heading—delete "whole person impairment of at least 30%" and substitute:

relevant whole person impairment thresholds met

(2) Section 72(1)—delete subsection (1) and substitute:

(1) No damages may be awarded against an employer except in circumstances that are consistent with the operation of this Part and unless the injury results in—

(a) in the case of physical injury—a degree of permanent impairment of the worker that is at least 35%; or

(b) in the case of psychiatric injury—a degree of permanent impairment of the worker that is at least 30%; or

(c) the death of the worker.

(3) Section 72(3)—delete subsection (3) and substitute:

(3) In assessing whether the relevant threshold referred to in subsection (1) has been met—

(a) impairment resulting from physical injury is to be assessed separately from impairment resulting from psychiatric injury; and

(b) in assessing impairment resulting from physical injury or psychiatric injury, no regard is to be had to impairment that results from consequential mental harm; and

(c) in assessing the degree of whole person impairment resulting from physical injury, no regard is to be had to impairment that results from a psychiatric injury or consequential mental harm; and

5 (d) the relevant threshold referred to in subsection (1) is not met unless—

(i) in the case of physical injury—the degree of whole person impairment resulting from the injury is at least 35%; and

10 (ii) in the case of psychiatric injury—the degree of whole person impairment resulting from psychiatric injury is at least 30%.

### **13—Amendment of section 73—Seriously injured workers—special provisions**

(1) Section 73(2)(b)(i)—delete subparagraph (i) and substitute:

15 (i) a redemption of a liability to make weekly payments under Part 4 Division 5 or a lump sum under section 56 (pursuant to an election under section 56A); and

(2) Section 73(4)—delete "enter into an agreement under Part 4 Division 5" and substitute:

20 proceed under Part 4 Division 5 or section 56A

(3) Section 73(5)—delete "enter into an agreement under Part 4 Division 5" and substitute:

proceed under Part 4 Division 5 or section 56A

### **14—Amendment of section 97—Reviewable decisions**

25 Section 97—after paragraph (b) insert:

(ba) a decision to bring an interim decision under section 21(3) to an end under section 21(4)(b)(ii);

### **14A—Amendment of section 115—Powers of Tribunal on application**

Section 115(1)—before paragraph (a) insert:

30 (aa) in the case of an application for an assessment of whole person impairment under Part 2 Division 5—give directions the Tribunal considers necessary to expedite the assessment; or

### **15—Amendment of section 134—Delegation to self-insured employers**

Section 134(1)(a)—after the entry relating to section 56 insert:

35 section 56A

### **16—Amendment of Schedule 7—Prescribed sum—economic loss**

Schedule 7, table, after row relating to 29% whole person impairment—insert:

30%	\$371 723 (indexed)
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31%	\$386 592 (indexed)
32%	\$402 056 (indexed)
33%	\$418 138 (indexed)
34% or more	\$434 863 (indexed)

**17—Amendment of Schedule 9—Repeal and transitional provisions**

- (1) Schedule 9, clause 69(1)—delete subclause (1) and substitute:
  - (1) The Governor may, by regulation, make provisions, or additional provisions, of a saving or transitional nature consequent on the amendment of this Act by another Act.
- (2) Schedule 9, clause 69(2)—delete "this Act" and substitute:  
the amendment

**Schedule 1—Transitional provisions**

**1—Interpretation**

- (1) In this Schedule—
  - Category 1 seriously injured worker* means a worker who, at any time during the period appointed by proclamation for the purposes of this definition (the *Category 1 designated period*), is (or becomes) an interim seriously injured worker;
  - Category 2 seriously injured worker* means a worker who, at any time during the period appointed by proclamation for the purposes of this definition, being a period commencing immediately after the end of the Category 1 designated period, becomes an interim seriously injured worker;
  - compensating authority* means the Corporation or a self-insured employer;
  - designated day* means a day appointed by proclamation as the designated day for the purposes of the provision in which the term is used;
  - designated worker* means a worker who, in relation to a physical injury, has been assessed to be a seriously injured worker under Part 2 Division 5 of the principal Act;
  - interim seriously injured worker* means a worker who is taken to be a seriously injured worker under section 21(3) of the principal Act pending an assessment of permanent impairment under Part 2 Division 5 of the principal Act;
  - principal Act* means the *Return to Work Act 2014*;
  - relevant day* means a day appointed by proclamation as the relevant day for the purposes of the provision in which the term is used.
- (2) Other terms used in this Schedule have meanings consistent with the meanings they have in the principal Act.

**2—Application of amendments—seriously injured workers threshold**

- (1) This clause applies in relation to work injuries other than psychiatric injuries.

5 (2) Subject to subclause (3), the amendments made to the principal Act by sections 5(1), 5(4), 12 and 16 of the Act apply in relation to any work injury where the final examination relating to the worker by an accredited medical practitioner for the purposes of an assessment under section 22 of the principal Act occurs on or after the designated day (even if the injury is attributable to trauma that occurred before the designated day and even if anything arising from the examination, or any assessment made by the accredited medical practitioner, is subsequently set aside or disregarded by the Tribunal or a court).

10 (3) Where 2 or more accredited medical practitioners are required to undertake an examination or assessment under section 22 of the principal Act to determine the degree of impairment of a worker in relation to injuries arising from the same cause, the amendments made to the principal Act by this Act will only apply if none of the injuries are the subject of a final examination by an accredited medical practitioner for the purposes of an assessment under section 22 of the principal Act before the designated day.

15 (4) For the purposes of this clause, the final examination relating to a worker by an accredited medical practitioner is the last attendance when the accredited medical practitioner needs to see the worker in order to enable the accredited medical practitioner to complete and issue the permanent impairment assessment report under section 22 of the principal Act (even if that report is subsequently substituted, supplemented or expanded).

**Example 1—**

25 If an accredited medical practitioner sees a worker, and then following that appointment determines that they do not need to see the worker again, then the final examination will be the date of that last attendance. This is even if the accredited medical practitioner determines they do not need to see the worker again but does require an x-ray or other test to be obtained.

**Example 2—**

30 If an accredited medical practitioner sees a worker, and then following that appointment determines they need further tests and will need to see the worker again following those tests, then the final examination will be the date of that further attendance (as long as the accredited medical practitioner does not need to see them again in order to complete and issue the permanent impairment assessment report under section 22 of the principal Act).

**3—General provision and thresholds—seriously injured workers**

35 Subject to this Schedule and the other provisions of this Act—

- 40 (a) a worker who has been assessed to be a seriously injured worker under Part 2 Division 5 of the principal Act immediately before the designated day will continue to be regarded as a seriously injured worker; and
- (b) a worker who is taken to be a seriously injured worker under section 21(3) of the principal Act immediately before the designated day will continue to be taken to be a seriously injured worker.

- (2) In the case of a Category 1 seriously injured worker—
- (a) in relation to an assessment of the degree of whole person impairment made before the designated day—after the assessment is made the worker will be regarded as a seriously injured worker for the purposes of the principal Act if the worker is assessed to have a degree of whole person impairment that is 30% or more under Part 2 Division 5 of the principal Act; and
  - (b) in relation to an assessment of the degree of whole person impairment made on or after the designated day—after the assessment is made the worker will be regarded as a seriously injured worker for the purposes of the principal Act if the worker is assessed to have a degree of whole person impairment that is—
    - (i) in the case of psychiatric injury—30% or more under Part 2 Division 5 of the principal Act; and
    - (ii) in the case of physical injury—35% or more under Part 2 Division 5 of the principal Act.
- (3) In the case of a Category 2 seriously injured worker, in relation to an assessment of the degree of whole person impairment made on or after the designated day, after the assessment is made the worker will be regarded as a seriously injured worker for the purposes of the principal Act if the worker is assessed to have a degree of whole person impairment that is—
- (a) in the case of psychiatric injury—30% or more under Part 2 Division 5 of the principal Act; and
  - (b) in the case of physical injury—35% or more under Part 2 Division 5 of the principal Act.

#### **4—Elections—seriously injured workers**

- (1) This clause applies in relation to the operation of section 56A of the principal Act, as enacted by this Act.
- (2) If a worker is a designated worker before the designated day, the worker may make an election under section 56A on or after the relevant day and subclause (4) will apply in relation to the worker.
- (3) If—
- (a) a worker is a Category 1 seriously injured worker; and
  - (b) the worker is assessed to have a degree of whole person impairment that is 30% or more under Part 2 Division 5 of the principal Act; and
  - (c) that assessment is made before the designated day,
- the worker may make an election under section 56A and subclause (4) will apply in relation to the worker.

- (4) If this subclause applies in relation to a worker, section 56 (as amended by this Act) and section 56A (as enacted) of the principal Act will apply subject to the following modifications and qualifications:
- (a) the age factor (AF) applying in relation to the worker will be taken to be the worker's age at the date of the election rather than the relevant date as it applies in relation to the worker under section 5 of the principal Act;
  - (b) the total payment under section 56 that the worker can receive cannot exceed the prescribed sum applicable for 29% whole person impairment;
  - (c) section 56A(8) will apply so that the only amounts to be deducted are weekly payments made to the worker under section 41 of the principal Act where—
    - (i) the payments are made on or after the designated day under this subclause and before the date of the election; and
    - (ii) the payments are made after the period of 104 weeks from the date on which the incapacity for work first occurs, other than weekly payments made in accordance with section 56A(7) after—
      - (A) in the case of an election made by a 50% or more WPI worker—the day on which the relevant application is referred to the Tribunal under section 56A; or
      - (B) in any other case—the day on which the election is received by the Corporation under section 56A.
- (5) If a worker—
- (a) is a Category 1 seriously injured worker who is assessed to be a designated worker on or after the designated day under subclause (3); or
  - (b) is a Category 2 seriously injured worker,
- the worker may only make an election under section 56A if the worker is assessed to have a degree of whole person impairment that is 35% or more under Part 2 Division 5 of the principal Act and, in the case of a Category 1 seriously injured worker, subclause (6) will apply in relation to the worker.
- (6) If this subclause applies in relation to a worker, section 56 (as amended by this Act) and section 56A (as enacted) of the principal Act will apply subject to the following modifications and qualifications:
- (a) the age factor (AF) applying in relation to the worker will be taken to be the worker's age at the date of the election rather than the relevant date as it applies in relation to the worker under section 5 of the principal Act;
  - (b) section 56A(8) will apply so that the only amounts to be deducted are weekly payments made to the worker under section 41 of the principal Act where—
    - (i) the payments are made on or after the designated day under this subclause and before the date of the election; and
    - (ii) the payments are made after the period of 104 weeks from the date on which the incapacity for work first occurs, other than weekly payments made in accordance with section 56A(7) after—

- (A) in the case of an election made by a 50% or more WPI worker—the day on which the relevant application is referred to the Tribunal under section 56A; or
- (B) in any other case—the day on which the election is received by the Corporation under section 56A.

(7) Despite any other provision, a worker who is a seriously injured worker as a result of an injury that is attributable to a trauma that occurred before 1 July 2015 is not entitled to make an election under section 56A of the principal Act.

### 5—Interim decisions under section 21(3) of Act

- (1) This clause applies in relation to the application of the amendments made by section 5(2) of this Act.
- (2) In this clause, a reference to the *relevant provision* is a reference to subsection (4)(b)(ii) of section 21 of the principal Act as enacted by section 5(2) of this Act.
- (3) The amendments made by section 5(2) of this Act apply as follows:
  - (a) in relation to a Category 1 seriously injured worker—
    - (i) the principal Act as amended by section 5(2) of this Act will apply from the designated day under this subparagraph; and
    - (ii) until the designated day under this subparagraph, the amendments will apply as if a reference to 35% in the relevant provision were a reference to 30%; and
    - (iii) on and after the designated day under this subparagraph, in relation to a worker with a physical injury, the compensating authority may also act under the relevant provision if it appears that the worker's likely degree of whole person impairment is not likely to be 35% or more;
  - (b) in relation to a Category 2 seriously injured worker—the principal Act as amended by section 5(2) of this Act will apply from the designated day under this paragraph.

### 6—Amendment or substitution of Impairment Assessment Guidelines

- (1) Subject to this clause, subsections (6) and (6a) of section 22 of the principal Act, as enacted by section 6(2) of this Act, apply in relation to any amendment or substitution of the Impairment Assessment Guidelines that takes effect on or after the designated day (including in relation to an injury that occurred before the designated day).
- (2) The WorkCover Guidelines for the evaluation of permanent impairment, published in the Gazette on 26 March 2009, will continue to apply in relation to an injury that has been the subject of an application made under regulation 5 of the *Return to Work (Transitional Arrangements) (General) Regulations 2015*.
- (3) The Impairment Assessment Guidelines, published in the Gazette on 12 March 2015, will continue to apply in relation to an injury that has been the subject of an application made under regulation 4 of the *Return to Work (Transitional Arrangements) (General) Regulations 2015*.



- 5 (4) Despite any other provision of the principal Act or this Act, in the case of a worker whose injury or injuries have stabilised, and who on or after the commencement of this subclause gives a written notice to the compensating authority selecting a particular accredited medical practitioner to undertake an assessment under section 22 of the principal Act of the degree of impairment resulting from the injury or injuries, the Return to Work Scheme Impairment Assessment Guidelines published March 2015 apply in relation to the injury or injuries rather than the version of the Impairment Assessment Guidelines applying immediately before the commencement of this subclause, unless the Return to Work Scheme Impairment Assessment Guidelines published March 2015 already applied, in which case, that version will continue to apply.

### 7—Impairment Assessment Guidelines

- 15 (1) The Impairment Assessment Guidelines, as in existence immediately before the designated day, are not subject to the operation of subsection (19) of section 22 of the principal Act, as enacted by section 6(4) of this Act, but that subsection will apply to any amendment or substitution of those guidelines that takes effect on or after the designated day.
- (2) Subclause (1) does not apply in relation to the Impairment Assessment Guidelines that apply under clause 6(4).

### 20 8—Supplementary income support

The amendment made to the principal Act by section 8 of this Act applies in relation to surgery approved by a compensating authority—

- 25 (a) before the designated day in relation to surgery that is conducted on or after the designated day; or
- (b) on or after the designated day.