



Queensland

# **Workers' Compensation and Rehabilitation Amendment Act 2006**

**Act No. 13 of 2006**





Queensland

# Workers' Compensation and Rehabilitation Amendment Act 2006

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# **Workers' Compensation and Rehabilitation Amendment Act 2006**

## **Act No. 13 of 2006**

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**An Act to amend the *Workers' Compensation and  
Rehabilitation Act 2003***

**[Assented to 4 April 2006]**

**The Parliament of Queensland enacts—**

**1 Short title**

This Act may be cited as the *Workers' Compensation and Rehabilitation Amendment Act 2006*.

**2 Act amended**

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

**3 Amendment of s 490 (Object of ch 11)**

(1) Section 490, after 'independent'—

*insert—*

'and non-adversarial'.

(2) Section 490(a), after 'Act'—

*insert—*

'or a former Act'.

**4 Insertion of new s 490A**

After section 490—

*insert—*

**'490A Application of ch 11**

'(1) This chapter applies in relation to—

(a) an injury as defined under this Act sustained after the commencement of this Act on 1 July 2003; and

(b) despite section 603, an injury as defined under a former Act as in force when the injury was sustained.

'(2) Subsection (1) does not affect section 36A.<sup>1</sup>

'(3) For subsection (1)(b), this section also applies, for some purposes, particular provisions of a former Act.'

## 5 Amendment of s 491 (Meaning of worker for ch 11)

(1) Section 491, heading—

*omit, insert—*

### '491 Interpretation'.

(2) Section 491(a), after 'Act'—

*insert—*

'or a former Act'.

(3) Section 491, after note—

*insert—*

'(2) For the application of this chapter or a regulation made for this chapter in relation to an injury mentioned in section 490A(1)(b), **compensation, disfigurement, impairment and injury**, and any term used in an applicable provision of a former Act, have the same meaning as they have under the former Act.'

## 6 Insertion of new s 499

Chapter 11, part 3, before section 500—

*insert—*

### '499 Definitions for pt 3

'In this part—

**former tribunal** means any of the following established under a former Act—

- a General Medical Board
- a General Medical Assessment Tribunal

1 Section 36A (Date of injury)

- a specialty medical board
- a specialty medical assessment tribunal.

**relevant document** means a document relevant to a reference of a matter to a tribunal and, in particular, includes the following documents—

- (a) an application for compensation;
- (b) an application for a damages certificate under the *WorkCover Queensland Act 1996*, section 270;<sup>2</sup>
- (c) a notice of claim;
- (d) medical reports;
- (e) investigative or expert reports;
- (f) information about medical treatment or investigations;
- (g) statements made by a worker, the worker's employer or a witness;
- (h) reasons for a decision made by the insurer under the Act or former Act relevant to the reference.'

## 7 Amendment of s 500 (Reference to tribunals)

- (1) Section 500, after 'following matters'—

*insert—*

'in relation to an injury under this Act'.

- (2) Section 500—

*insert—*

- '(2) An insurer may also, in relation to an injury mentioned in section 490A(1)(b), refer to the appropriate tribunal, for decision on the medical matters involved, a matter that could have been referred to a former tribunal under a former Act.'

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<sup>2</sup> The *WorkCover Queensland Act 1996*, section 270 (Application for damages certificate) was repealed on 1 July 2001.



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**8 Insertion of new s 500A**

After section 500—

*insert—*

**'500A How to make a reference**

- '(1) An insurer refers a matter to a tribunal by—
  - (a) making a reference in the approved form; and
  - (b) giving the tribunal a copy of all relevant documents.
- '(2) The insurer must give the tribunal relevant documents even though otherwise protected by legal professional privilege.
- '(3) However, the insurer is not required to give the tribunal correspondence between the insurer and the insurer's lawyer that is protected by legal professional privilege.'

**9 Insertion of new s 508A**

After section 508—

*insert—*

**'508A Reference for former Act**

- '(1) This section applies on a reference to a tribunal under section 500(2).
- '(2) A provision of a former Act that authorised or regulated the matters that could be referred to a former tribunal, or a decision on those matters, applies to the reference.
- '(3) In the event of doubt, a regulation may declare a provision of a former Act to be a provision to which subsection (2) applies.'

**10 Amendment of s 510 (Power of tribunal to examine worker)**

Section 510—

*insert—*

- '(1A) It is entirely in the tribunal's discretion who may be present at a personal examination of the worker, but in any circumstances the only representative who may be present is a

---

person nominated by the worker to be the worker's representative.'

## **11 Replacement of ss 511 and 511A**

Sections 511 and 511A—

*omit, insert—*

### **'510A Definitions for pt 4**

'In this part—

***relevant document*** see section 499.

***representative*** means a person nominated by a worker to be the worker's representative in relation to a reference of a matter to a tribunal.

### **'510B Tribunal may require insurer to give further information**

- '(1) The tribunal may, by written notice, require the insurer to give the tribunal, within the period stated in the notice, any further information the tribunal needs to decide the matter referred to the tribunal.
- '(2) The insurer must comply with the notice.

### **'510C Exchange of relevant documents before tribunal**

- '(1) After an insurer refers a matter to a tribunal, relevant documents can only be exchanged between an insurer, the worker and the tribunal.
- '(2) To remove any doubt, it is declared that an employer who is not an insurer or any other person not mentioned in subsection (1) whose interests may be affected by a decision made by a tribunal can not be given copies of relevant documents after a matter is referred to a tribunal.
- '(3) The tribunal must give the worker a copy of a relevant document given by the insurer to the tribunal—
  - (a) if the document is given under section 500A—within 10 business days after a matter is referred to the tribunal; or

- (b) otherwise—within 5 business days after the tribunal receives the document.
- ‘(4) At least 10 business days before the worker is scheduled to attend before the tribunal, the worker must give the tribunal and the insurer a copy of any relevant document the worker wants considered by the tribunal.
- ‘(5) At least 3 business days before the worker is scheduled to attend before the tribunal, the insurer may give the tribunal and the worker a written submission on the factual matters referred to in the relevant documents given by the worker under subsection (4).
- ‘(6) A tribunal may proceed to decide a matter even though an insurer has not given a written submission to the tribunal and the worker.
- ‘(7) A tribunal can not consider or rely on any relevant document given by the insurer or worker that has not been exchanged under this part.
- ‘(8) However, subsection (7) does not prevent the tribunal from relying on either of the following—
- (a) a report resulting from an examination of a worker by a doctor nominated by the tribunal under section 510(1)(b);
- (b) a medical image given to the tribunal by the worker.

*Examples of medical images—*

CT, MRI, ultrasound scan, X-ray

## **‘511 Right to appear and be heard before tribunal**

- ‘(1) Despite any Act or law, this section is the only provision of law under which a person may be heard in relation to a matter referred to a tribunal, whether in relation to an injury mentioned in section 490A(1)(a) or (b).
- ‘(2) On a reference to a tribunal, the worker is entitled to be heard before the tribunal in person or by the worker’s representative.
- ‘(3) Only the worker and any representative of the worker may be present or heard before the tribunal.

- ‘(4) To remove any doubt, it is declared that an insurer, employer, or any other person (not being the worker) whose interests may be affected by a decision made by a tribunal can not be present, represented or heard before a tribunal.

**‘511A New medical information**

- ‘(1) This section applies if—
- (a) new information about a medical matter, other than information in a relevant document, comes to the tribunal’s knowledge when a worker attends before the tribunal; or
  - (b) the tribunal receives a report resulting from an examination of a worker by a doctor nominated by the tribunal under section 510(1)(b).
- ‘(2) The tribunal is not required to give the information or report to an insurer or the worker’s employer or to anyone else for any purpose, either before or after the tribunal makes its decision.

**‘511B Record keeping by tribunal**

- ‘(1) The tribunal must keep a record of—
- (a) relevant documents exchanged in relation to a matter referred to the tribunal; and
  - (b) the reasons for its decision on the reference.
- ‘(2) However, the tribunal is not required to make a transcript or recording of the worker’s attendance before the tribunal.
- ‘(3) A transcript or recording, if made, can only be disclosed to the worker and any representative of the worker.
- ‘(4) This section does not limit section 516.’.

**12 Amendment of s 512 (Further reference on fresh evidence)**

Section 512—

*insert—*

‘(8A) In relation to a reference to a tribunal under section 500(2), a provision of a former Act dealing with a further reference on fresh evidence applies and subsections (1) to (8) do not apply.’.

### 13 **Amendment of s 516 (Decisions of tribunal)**

Section 516(2)(b), ‘or agent’—  
*omit.*

### 14 **Insertion of new ch 19**

After section 637—  
*insert—*

## **‘Chapter 19            Transitional provisions for Workers’ Compensation and Rehabilitation Amendment Act 2006**

### **‘638    Definitions for ch 19**

‘In this chapter—

*amended chapter 11* means chapter 11 as amended by the *Workers’ Compensation and Rehabilitation Amendment Act 2006*.

*commencement* means the commencement of this section.

*reference* see section 639.

### **‘639    Meaning of *reference***

‘(1) A *reference* means a reference of a matter to a tribunal under section 500.<sup>3</sup>

‘(2) For subsection (1), a reference made before the commencement in relation to an injury under a former Act is,

3    Section 500 (Reference to tribunals)

from the commencement and despite section 603, taken to have been made under section 500(2).

**'640 Reference to tribunal before commencement—worker scheduled to attend after commencement**

- '(1) This section applies if—
- (a) a reference is made before the commencement; and
  - (b) the worker to whom the reference relates has been scheduled to attend before the tribunal after the commencement.
- '(2) The amended chapter 11, other than sections 500A and 510C,<sup>4</sup> apply to the reference.
- '(3) This section applies regardless of the date of a worker's injury and despite section 603.

**'641 Reference to tribunal before commencement—worker not yet scheduled to attend after commencement**

- '(1) This section applies if—
- (a) a reference is made before the commencement; and
  - (b) on the commencement, the worker to whom the reference relates has not been scheduled to attend before the tribunal after the commencement.
- '(2) The amended chapter 11, other than section 500A,<sup>5</sup> applies to the reference.
- '(3) This section applies regardless of the date of a worker's injury and despite section 603.

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4 Sections 500A (How to make a reference) and 510C (Exchange of relevant documents before tribunal)

5 Section 500A (How to make a reference)

**'642 Reference to tribunal after commencement**

- '(1) This section applies if a reference is made after the commencement.
- '(2) The amended chapter 11 applies to the reference regardless of the date of a worker's injury and despite section 603.

**'643 Existing decisions of tribunals**

- '(1) Subsections (2) and (3) apply if, before the commencement—
  - (a) a tribunal made, or purported to make, a decision on a reference; and
  - (b) an insurer, employer, or any other person whose interests may have been affected by the decision was not present or heard before the tribunal.
- '(2) It is declared that a decision of a tribunal is taken to be, and to always have been, valid to the extent that the decision may not have been valid because a person mentioned in subsection (1)(b) was not present or heard before the tribunal.
- '(3) However, this section does not make valid a decision of a tribunal that has been set aside by the Court of Appeal before the commencement for the reason mentioned in subsection (2).
- '(4) Subsection (5) applies to a tribunal that, before the commencement, exercised or purported to exercise jurisdiction under chapter 11, as in force from time to time before the commencement, on a reference of any description in relation to an injury under a former Act.
- '(5) It is declared that the tribunal had, and is taken always to have had, that jurisdiction.'

**Schedule                      Minor amendments**

section 2

**1            Chapter 11, part 1, heading—***omit, insert—***'Part 1                      Preliminary'.****2            After section 491—***insert—***'Part 2                      Tribunals'.****3            Section 501(1), 'section 500(a)'—***omit, insert—*

'section 500(1)(a)'.

**4            Section 502(1) and (2), 'section 500(b)'—***omit, insert—*

'section 500(1)(b)'.

**5            Section 503(1), 'section 500(c)'—***omit, insert—*

'section 500(1)(c)'.

**6            Section 504(1), 'section 500(d)'—***omit, insert—*

'section 500(1)(d)'.



## Schedule (continued)

- 7 Section 505(1), 'section 500(e)'—**  
*omit, insert—*  
'section 500(1)(e)'.
- 8 Section 506(1), 'section 500(f)'—**  
*omit, insert—*  
'section 500(1)(f)'.
- 9 Section 507(1), 'section 500(g)'—**  
*omit, insert—*  
'section 500(1)(g)'.
- 10 Section 508(1), 'section 500(h)'—**  
*omit, insert—*  
'section 500(1)(h)'.
- 11 Section 512(1), 'section 500'—**  
*omit, insert—*  
'section 500(1)'.
- 12 Schedule 6—**  
*insert—*  
*'former tribunal*, for chapter 11, part 3, see section 499.  
*relevant document*, for chapter 11, parts 3 and 4, see section 499.  
*representative*, for chapter 11, part 4, see section 510A.'

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