

# Workers' Compensation and Rehabilitation (Psychiatric Assessment Tribunal) Amendment Regulation 2024

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, Grace Grace, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing provide this human rights certificate with respect to the *Workers' Compensation and Rehabilitation (Psychiatric Assessment Tribunal) Amendment Regulation 2024* (Amendment Regulation) made under the *Workers' Compensation and Rehabilitation Act 2003* (the Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

Medical Assessment Tribunals (Tribunals) are established by Chapter 11 of the Act. They provide an independent and non-adversarial system of medical review and assessment of injuries for which compensation is payable under the Act.

Section 138 of the *Workers' Compensation and Rehabilitation Regulation 2014* (the Regulation) establishes the General Medical Assessment Tribunal (GMAT) as well as seven Speciality Medical Assessment Tribunals (SMATs) covering cardiology, orthopaedics, dermatology, otolaryngology (ear, nose and throat) neurology and neurosurgery, ophthalmology, and disfigurement.

The GMAT is responsible for determining a range of general physical injuries and has a number of specialties represented in its membership, including psychiatry. The assessment of medical matters relevant to workers' compensation claims for psychiatric or psychological injury is currently undertaken by the GMAT convening as the 'GMAT-Psychiatric'.

In recent years there has been a significant and steady increase in the number of referrals to the GMAT for psychological and psychiatric injuries. This increase has been driven by an increase in the prevalence of psychological and psychiatric injuries within the workers' compensation scheme. Unlike physical injuries, which may be assessed by individual independent medical examiners in the first instance, the Act requires the assessment of permanent impairment resulting from psychological and psychiatric injuries only to be assessed by the Tribunal.

Scheme stakeholders, including Tribunal Chairs and peak medical bodies, have raised concerns regarding the classification and structure of the GMAT-Psychiatric and have advocated for psychiatry to be recognised as a specialty in the Tribunals.

The Amendment Regulation amends section 138 of the Regulation to prescribe a new SMAT for psychiatry, designated as the Psychiatric Assessment Tribunal.

## Human Rights Issues

### **Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

Section 31(1) of the HR Act provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The Amendment Regulation supports this right by ensuring that a dedicated independent and expert medical tribunal exists to review and assess psychological and psychiatric injuries.

### **Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

(a) the nature of the right

The right to a fair and public hearing protects persons charged with criminal offences or parties to civil proceedings by ensuring that decisions affecting individuals' legal rights are made in a transparent fashion and the reasons for those decisions can be relied upon by others. The Regulation potentially limits this right by continuing a practice where Tribunal examinations are not conducted in public and their decisions are not published.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The right is limited in this case to prevent the disclosure of individuals' personal information, particularly their medical information. This is consistent with the broader right to privacy recognised in section 25 of the HR Act, and the right to security of personal information that underpins the *Information Privacy Act 2009* (IP Act). It is also consistent with community expectations that personal medical information is kept confidential.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation of the right to a fair and public hearing helps to ensure that only persons with a relevant need to have access to individuals' personal information. It does so by ensuring that persons not involved with an individual's workers' compensation claim are excluded from Tribunal examinations and cannot access records or transcripts of Tribunal examinations.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There is no less restrictive way to achieve the purpose of the Tribunals while simultaneously ensuring that the Tribunals comply with existing Queensland legislation, notably the IP Act.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The right to privacy and security of personal information, particularly medical information, is critical to maintaining public confidence in the health system. Given this, I consider that the

limitation of the right to a fair and public hearing is outweighed by the right of individuals not to have their privacy interfered with.

## **Conclusion**

I consider the *Workers' Compensation and Rehabilitation (Psychiatric Assessment Tribunal) Amendment Regulation 2024* is compatible with the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**GRACE GRACE MP**

Minister for State Development and Infrastructure,  
Minister for Industrial Relations and  
Minister for Racing

© The State of Queensland 2024