



Queensland

Workers' Compensation and Rehabilitation Amendment Bill 2006



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2006

A Bill

for

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

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The Parliament of Queensland enacts—

1

Clause 1 Short title

2

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

3

4

Clause 2 Act amended

5

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

6

7

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

8

(1) Section 490, after 'independent'—

9

insert—

10

'and non-adversarial'.

11

(2) Section 490(a), after 'Act'—

12

insert—

13

'or a former Act'.

14

Clause 4 Insertion of new s 490A

15

After section 490—

16

insert—

17

'490A Application of ch 11

18

'(1) This chapter applies in relation to—

19

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

20

21

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

22

23

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- '(2) Subsection (1) does not affect section 36A.¹ 1
- '(3) For subsection (1)(b), this section also applies, for some 2
- purposes, particular provisions of a former Act.' 3

Clause 5 Amendment of s 491 (Meaning of worker for ch 11) 4

- (1) Section 491, heading— 5
- omit, insert— 6*

'491 Interpretation'. 7

- (2) Section 491(a), after 'Act'— 8
- insert— 9*
- 'or a former Act'. 10

- (3) Section 491, after note— 11
- insert— 12*

- '(2) For the application of this chapter or a regulation made for 13
- this chapter in relation to an injury mentioned in section 14
- 490A(1)(b), ***compensation, disfigurement, impairment*** and 15
- injury***, and any term used in an applicable provision of a 16
- former Act, have the same meaning as they have under the 17
- former Act.' 18

Clause 6 Insertion of new s 499 19

- Chapter 11, part 3, before section 500— 20
- insert— 21*

'499 Definitions for pt 3 22

- 'In this part— 23

former tribunal means any of the following established under 24

a former Act— 25

- a General Medical Board 26
- a General Medical Assessment Tribunal 27

1 Section 36A (Date of injury)

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- a specialty medical board 1
 - a specialty medical assessment tribunal. 2
- relevant document** means a document relevant to a reference 3
of a matter to a tribunal and, in particular, includes the 4
following documents— 5
- (a) an application for compensation; 6
 - (b) an application for a damages certificate under the 7
WorkCover Queensland Act 1996, section 270;² 8
 - (c) a notice of claim; 9
 - (d) medical reports; 10
 - (e) investigative or expert reports; 11
 - (f) information about medical treatment or investigations; 12
 - (g) statements made by a worker, the worker's employer or 13
a witness; 14
 - (h) reasons for a decision made by the insurer under the Act 15
or former Act relevant to the reference.' 16

- Clause 7 Amendment of s 500 (Reference to tribunals)** 17
- (1) Section 500, after 'following matters'— 18
insert— 19
'in relation to an injury under this Act'. 20
 - (2) Section 500— 21
insert— 22
 - '(2) An insurer may also, in relation to an injury mentioned in 23
section 490A(1)(b), refer to the appropriate tribunal, for 24
decision on the medical matters involved, a matter that could 25
have been referred to a former tribunal under a former Act.' 26

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

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Clause 8	Insertion of new s 500A	1
	After section 500—	2
	<i>insert—</i>	3
	'500A How to make a reference	4
	‘(1) An insurer refers a matter to a tribunal by—	5
	(a) making a reference in the approved form; and	6
	(b) giving the tribunal a copy of all relevant documents.	7
	‘(2) The insurer must give the tribunal relevant documents even	8
	though otherwise protected by legal professional privilege.	9
	‘(3) However, the insurer is not required to give the tribunal	10
	correspondence between the insurer and the insurer’s lawyer	11
	that is protected by legal professional privilege.’.	12
Clause 9	Insertion of new s 508A	13
	After section 508—	14
	<i>insert—</i>	15
	'508A Reference for former Act	16
	‘(1) This section applies on a reference to a tribunal under section	17
	500(2).	18
	‘(2) A provision of a former Act that authorised or regulated the	19
	matters that could be referred to a former tribunal, or a	20
	decision on those matters, applies to the reference.	21
	‘(3) In the event of doubt, a regulation may declare a provision of	22
	a former Act to be a provision to which subsection (2)	23
	applies.’.	24
Clause 10	Amendment of s 510 (Power of tribunal to examine worker)	25
	Section 510—	26
	<i>insert—</i>	27
	‘(1A) It is entirely in the tribunal’s discretion who may be present at	28
	a personal examination of the worker, but in any	29
	circumstances the only representative who may be present is a	30
		31

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

Clause 11	Replacement of ss 511 and 511A	3
	Sections 511 and 511A—	4
	<i>omit, insert—</i>	5
'510A	Definitions for pt 4	6
	'In this part—	7
	relevant document see section 499.	8
	representative means a person nominated by a worker to be	9
	the worker's representative in relation to a reference of a	10
	matter to a tribunal.	11
'510B	Tribunal may require insurer to give further	12
	information	13
	'(1) The tribunal may, by written notice, require the insurer to give	14
	the tribunal, within the period stated in the notice, any further	15
	information the tribunal needs to decide the matter referred to	16
	the tribunal.	17
	'(2) The insurer must comply with the notice.	18
'510C	Exchange of relevant documents before tribunal	19
	'(1) After an insurer refers a matter to a tribunal, relevant	20
	documents can only be exchanged between an insurer, the	21
	worker and the tribunal.	22
	'(2) To remove any doubt, it is declared that an employer who is	23
	not an insurer or any other person not mentioned in subsection	24
	(1) whose interests may be affected by a decision made by a	25
	tribunal can not be given copies of relevant documents after a	26
	matter is referred to a tribunal.	27
	'(3) The tribunal must give the worker a copy of a relevant	28
	document given by the insurer to the tribunal—	29
	(a) if the document is given under section 500A—within 10	30
	business days after a matter is referred to the tribunal; or	31

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(b) otherwise—within 5 business days after the tribunal receives the document.	1 2
‘(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.	3 4 5 6
‘(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).	7 8 9 10 11
‘(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.	12 13 14
‘(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.	15 16 17
‘(8) However, subsection (7) does not prevent the tribunal from relying on either of the following—	18 19
(a) a report resulting from an examination of a worker by a doctor nominated by the tribunal under section 510(1)(b);	20 21 22
(b) a medical image given to the tribunal by the worker.	23
<i>Examples of medical images—</i>	24
CT, MRI, ultrasound scan, X-ray	25
‘511 Right to appear and be heard before tribunal	26
‘(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).	27 28 29 30
‘(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.	31 32
‘(3) Only the worker and any representative of the worker may be present or heard before the tribunal.	33 34

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- ‘(4) To remove any doubt, it is declared that an insurer, employer, 1
or any other person (not being the worker) whose interests 2
may be affected by a decision made by a tribunal can not be 3
present, represented or heard before a tribunal. 4

‘511A New medical information 5

- ‘(1) This section applies if— 6
- (a) new information about a medical matter, other than 7
information in a relevant document, comes to the 8
tribunal’s knowledge when a worker attends before the 9
tribunal; or 10
 - (b) the tribunal receives a report resulting from an 11
examination of a worker by a doctor nominated by the 12
tribunal under section 510(1)(b). 13
- ‘(2) The tribunal is not required to give the information or report to 14
an insurer or the worker’s employer or to anyone else for any 15
purpose, either before or after the tribunal makes its decision. 16

‘511B Record keeping by tribunal 17

- ‘(1) The tribunal must keep a record of— 18
- (a) relevant documents exchanged in relation to a matter 19
referred to the tribunal; and 20
 - (b) the reasons for its decision on the reference. 21
- ‘(2) However, the tribunal is not required to make a transcript or 22
recording of the worker’s attendance before the tribunal. 23
- ‘(3) A transcript or recording, if made, can only be disclosed to the 24
worker and any representative of the worker. 25
- ‘(4) This section does not limit section 516.’. 26

- Clause 12 Amendment of s 512 (Further reference on fresh 27
evidence) 28**
- Section 512— 29
- insert— 30*

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‘(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.’.

Clause 13 Amendment of s 516 (Decisions of tribunal)
 Section 516(2)(b), ‘or agent’—
 omit.

Clause 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 500.³
 ‘(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)

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from the commencement and despite section 603, taken to have been made under section 500(2).	1 2
'640 Reference to tribunal before commencement—worker scheduled to attend after commencement	3 4 5
'(1) This section applies if—	6
(a) a reference is made before the commencement; and	7
(b) the worker to whom the reference relates has been scheduled to attend before the tribunal after the commencement.	8 9 10
'(2) The amended chapter 11, other than sections 500A and 510C, ⁴ apply to the reference.	11 12
'(3) This section applies regardless of the date of a worker's injury and despite section 603.	13 14
'641 Reference to tribunal before commencement—worker not yet scheduled to attend after commencement	15 16 17
'(1) This section applies if—	18
(a) a reference is made before the commencement; and	19
(b) on the commencement, the worker to whom the reference relates has not been scheduled to attend before the tribunal after the commencement.	20 21 22
'(2) The amended chapter 11, other than section 500A, ⁵ applies to the reference.	23 24
'(3) This section applies regardless of the date of a worker's injury and despite section 603.	25 26

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

5 Section 500A (How to make a reference)

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'642	Reference to tribunal after commencement	1
'(1)	This section applies if a reference is made after the commencement.	2 3
'(2)	The amended chapter 11 applies to the reference regardless of the date of a worker's injury and despite section 603.	4 5
'643	Existing decisions of tribunals	6
'(1)	Subsections (2) and (3) apply if, before the commencement—	7
(a)	a tribunal made, or purported to make, a decision on a reference; and	8 9
(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.	10 11 12
'(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.	13 14 15 16
'(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).	17 18 19 20
'(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.	21 22 23 24 25
'(5)	It is declared that the tribunal had, and is taken always to have had, that jurisdiction.'	26 27

Schedule	Minor amendments	1
	section 2	2
1	Chapter 11, part 1, heading—	3
	<i>omit, insert—</i>	4
‘Part 1	Preliminary’.	5
2	After section 491—	6
	<i>insert—</i>	7
‘Part 2	Tribunals’.	8
3	Section 501(1), ‘section 500(a)’—	9
	<i>omit, insert—</i>	10
	‘section 500(1)(a)’.	11
4	Section 502(1) and (2), ‘section 500(b)’—	12
	<i>omit, insert—</i>	13
	‘section 500(1)(b)’.	14
5	Section 503(1), ‘section 500(c)’—	15
	<i>omit, insert—</i>	16
	‘section 500(1)(c)’.	17
6	Section 504(1), ‘section 500(d)’—	18
	<i>omit, insert—</i>	19
	‘section 500(1)(d)’.	20

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Schedule (continued)

7	Section 505(1), 'section 500(e)'—	1
	<i>omit, insert—</i>	2
	'section 500(1)(e)'.	3
8	Section 506(1), 'section 500(f)'—	4
	<i>omit, insert—</i>	5
	'section 500(1)(f)'.	6
9	Section 507(1), 'section 500(g)'—	7
	<i>omit, insert—</i>	8
	'section 500(1)(g)'.	9
10	Section 508(1), 'section 500(h)'—	10
	<i>omit, insert—</i>	11
	'section 500(1)(h)'.	12
11	Section 512(1), 'section 500'—	13
	<i>omit, insert—</i>	14
	'section 500(1)'.	15
12	Schedule 6—	16
	<i>insert—</i>	17
	<i>'former tribunal</i> , for chapter 11, part 3, see section 499.	18
	<i>relevant document</i> , for chapter 11, parts 3 and 4, see section 499.	19 20
	<i>representative</i> , for chapter 11, part 4, see section 510A.'.	21

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