



Queensland

# Workers' Compensation and Rehabilitation Amendment Regulation (No. ..) 2015

Subordinate Legislation 2015 No. ...

made under the

*Workers' Compensation and Rehabilitation Act 2003*

## Contents

	Page
1 Short title . . . . .	3
2 Commencement . . . . .	3
3 Regulation amended . . . . .	3
4 Amendment of s 103 (If dentist, doctor or nurse practitioner not available) . . . . .	3
5 Amendment of s 104 (Certificate given by dentist, doctor or nurse practitioner) . . . . .	4
6 Insertion of new s 105A . . . . .	4
105A Application for certificate of dependency—Act, s 132B(3)(c)(ii) . . . . .	4
7 Amendment of pt 4, div 3 hdg (Entitlement to compensation for permanent impairment) . . . . .	5
8 Amendment of s 109 hdg (Additional lump sum compensation for certain workers—Act, s 192(2)) . . . . .	5
9 Insertion of new pt 4, div 3A . . . . .	5
Division 3A Entitlement to additional compensation for permanent impairment—Act, s 193A	
Subdivision 1 Preliminary	
112A Definitions for div 3A . . . . .	5
112B Operation of div 3A . . . . .	6

Contents

	Subdivision 2	Amount and condition of entitlement	
	112C	Amount of compensation—Act, s 193A(2)(a) . . . . .	6
	112D	Qualifying condition—Act, s 193A(2)(b) . . . . .	7
	Subdivision 3	Process for deciding qualifying condition	
	112E	Application of sdiv 3 . . . . .	7
	112F	Insurer to consider qualifying condition . . . . .	8
	112G	Notification . . . . .	8
	112H	Worker may request reasons . . . . .	9
	112I	Giving information . . . . .	10
	112J	Decision based on worker's information . . . . .	10
	112K	Meeting before decision made . . . . .	11
	Subdivision 4	Review of insurer's decision	
	112L	Definition for sdiv 4 . . . . .	12
	112M	Application of sdiv 4 . . . . .	12
	112N	Application for review . . . . .	12
	112O	Insurer to give information to panel . . . . .	13
	112P	Review by panel . . . . .	13
	112Q	Insurer must notify amount of entitlement . . . . .	14
	Subdivision 5	Establishment of panel	
	112R	Panel—Act, s 193A(3) . . . . .	14
	112S	Appointment to panel . . . . .	15
	112T	Administrative matters . . . . .	15
	Subdivision 6	Miscellaneous	
	112U	Liability not affected . . . . .	15
10		Insertion of new pt 11 . . . . .	15
	Part 11	Savings and transitional provision for Workers' Compensation and Rehabilitation Amendment Regulation (No. ...) 2015	
11		Amendment of sch 3, hdg (Graduated scale of additional compensation for certain workers) . . . . .	16
12		Insertion of new sch 4A . . . . .	16
	Schedule 4A	Section 193A compensation for specified workers	
13		Amendment of sch 13 (Dictionary) . . . . .	20

TABLING DRAFT

**1 Short title**

This regulation may be cited as the *Workers' Compensation and Rehabilitation Amendment Regulation (No. ...) 2015*.

**2 Commencement**

This regulation commences on the day on which section 193A of the Act commences.

Note—Date will be included when proclamation for section 193A made.

**3 Regulation amended**

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

**4 Amendment of s 103 (If dentist, doctor or nurse practitioner not available)**

(1) Section 103(1)—

*omit, insert—*

(1) This section applies if—

(a) a person does not lodge a certificate in the approved form with an application made under section 132, 132A or 132B of the Act in relation to a worker; and

(b) the certificate can not be provided because the dentist, doctor or nurse practitioner required to give the certificate under the section was not available to attend the worker.

(2) Section 103(2), 'claimant'—

*omit, insert—*

person

(3) Section 103(3), 'a claimant'—

*omit, insert—*

the worker

(4) Section 103(4), '132(3)'—

*omit, insert—*

132(3)(a), 132A(3)(c)(i) or 132B(3)(c)(i)

## 5 **Amendment of s 104 (Certificate given by dentist, doctor or nurse practitioner)**

(1) Section 104(1)—

*omit, insert—*

(1) This section applies if—

(a) a certificate in the approved form is not lodged with an application made under section 132, 132A or 132B of the Act in relation to a worker who sustains an injury; and

(b) the worker sustained the injury in another State or country.

(2) Section 104(3), from 'sections 132(3)(a)'—

*omit, insert—*

section 132(3)(a), 132A(3)(c)(i) or 132B(3)(c)(i) of the Act.

## 6 **Insertion of new s 105A**

After section 105—

*insert—*

### **105A Application for certificate of dependency—Act, s 132B(3)(c)(ii)**

For section 132B(3)(c)(ii) of the Act, the following evidence is prescribed—

(a) proof of the injury and its cause;

(b) proof of the identity of the worker;

- (c) proof of the worker's death;
- (d) proof of the relationship to the worker, and dependency, of the person claiming to be the worker's dependant.

**7 Amendment of pt 4, div 3 hdg (Entitlement to compensation for permanent impairment)**

Part 4, division 3, heading, after 'impairment'—

*insert—*

**—generally**

**8 Amendment of s 109 hdg (Additional lump sum compensation for certain workers—Act, s 192(2))**

Section 109, heading, 'certain workers'—

*omit, insert—*

**workers with DPI of 30% or more**

**9 Insertion of new pt 4, div 3A**

Part 4—

*insert—*

<b>Division 3A</b>	<b>Entitlement to additional compensation for permanent impairment—Act, s 193A</b>
--------------------	--

**Subdivision 1 Preliminary**

**112A Definitions for div 3A**

In this division—

*injury* means an injury mentioned in section 193A(1) of the Act.

*panel* means the panel established under section 112R.

*qualifying condition* means the condition prescribed by section 112D.

*section 193A compensation*, for an injury, means the additional lump sum compensation mentioned in section 193A(2) of the Act for the injury.

*section 193A notice* see section 112G(1).

*specified worker* means a worker to whom section 193A of the Act applies.

## **112B Operation of div 3A**

For section 193A of the Act, this division prescribes the following—

- (a) the amount of section 193A compensation for an injury;
- (b) the condition to which an entitlement to section 193A compensation is subject;
- (c) the process for deciding whether the condition mentioned in paragraph (b) is satisfied for a specified worker;
- (d) the establishment of a panel to review decisions made by insurers about section 193A compensation.

## **Subdivision 2 Amount and condition of entitlement**

### **112C Amount of compensation—Act, s 193A(2)(a)**

For section 193A(2)(a) of the Act, the amount of section 193A compensation for an injury sustained by a specified worker in relation to whom the qualifying

condition is satisfied is the amount provided for under schedule 4A.

### **112D Qualifying condition—Act, s 193A(2)(b)**

- (1) For section 193A(2)(b) of the Act, this section prescribes the condition applying to an entitlement to section 193A compensation for an injury sustained by a specified worker.
- (2) The worker is entitled to section 193A compensation only if—
  - (a) the insurer is satisfied, on the balance of probabilities, the worker's employer is, or would have been, liable to pay damages to the worker; but
  - (b) the worker can not seek damages because of the application of former section 237(1)(a)(i).
- (3) In this section—  
*former section 237(1)(a)(i)* means section 237(1)(a)(i) of the Act, as in force from 15 October 2013 until 31 January 2015.

## **Subdivision 3 Process for deciding qualifying condition**

### **112E Application of sdiv 3**

This subdivision applies if—

- (a) a worker's DPI has been decided; and
- (b) the worker is a specified worker.

*Notes—*

- 1 Section 193A of the Act applies only if a worker's DPI has been decided—see section 191 of the Act.

2 Also, see chapter 3, part 10 of the Act for provisions about—

- assessing a worker's injury to decide if the injury has resulted in a DPI; and
- giving the worker a notice of assessment stating the DPI for the injury; and
- an insurer making an offer of compensation to the worker.

### **112F Insurer to consider qualifying condition**

An insurer must decide—

- (a) whether the insurer has enough information to decide whether the qualifying condition is satisfied for the worker; and
- (b) if the insurer decides it has enough information—whether the qualifying condition is satisfied for the worker.

### **112G Notification**

- (1) After deciding the matters mentioned in section 112F, the insurer must give the worker a notice (a *section 193A notice*) in the approved form.
- (2) If the insurer decides the qualifying condition is satisfied for the worker, the section 193A notice must state the amount of section 193A compensation to which the worker is entitled for the worker's injury.
- (3) If the insurer decides the qualifying condition is not satisfied for the worker, the section 193A notice must state—
  - (a) the insurer's decision; and
  - (b) that the worker may ask the insurer for written reasons for the decision; and
  - (c) that the worker may apply to the panel for a review of the decision only if the worker has



asked the insurer for the reasons for the decision.

- (4) If the insurer decides it does not have enough information to decide whether the qualifying condition is satisfied for the worker, the section 193A notice must state—
  - (a) the insurer's decision; and
  - (b) that the worker may, within 60 business days after receiving the notice, give the insurer information to enable the insurer to decide whether the qualifying condition is satisfied for the worker; and
  - (c) that, if the worker does not give the insurer the information within the period mentioned in paragraph (b)—
    - (i) the qualifying condition will be taken not to be satisfied for the worker; and
    - (ii) the worker will not be entitled to section 193A compensation; and
    - (iii) the worker will not have a right to apply to the panel for a review of the matters mentioned in subparagraphs (i) and (ii).

#### **112H Worker may request reasons**

- (1) This section applies if an insurer has given the worker a section 193A notice stating the insurer has decided the qualifying condition is not satisfied for the worker.
- (2) The worker may, within 10 business days after receiving the notice, ask the insurer for written reasons for the decision.
- (3) The insurer must give the worker the reasons for the decision within 10 business days after receiving the worker's request.

### **112I Giving information**

- (1) This section applies if the insurer has given the worker a section 193A notice stating the insurer does not have enough information to decide whether the qualifying condition is satisfied for the worker.
- (2) The worker—
  - (a) may give the insurer information relevant to the decision within 60 business days after receiving the section 193A notice; and
  - (b) if the worker gives information to the insurer under paragraph (a)—must advise the insurer whether the worker has engaged a lawyer and incurred legal costs in giving the information.
- (3) Despite subsection (2)(a), the insurer may, at the worker's request, decide to allow the worker to give the insurer information after the period mentioned in the subsection has ended if the worker has a reasonable excuse for not giving the information during the period.
- (4) The qualifying condition is taken not to be satisfied for the worker if the worker does not give the insurer information relevant to the decision during the period—
  - (a) mentioned in subsection (2)(a); or
  - (b) decided by the insurer under subsection (3).

### **112J Decision based on worker's information**

- (1) This section applies if the worker has given the insurer information under section 112I.
- (2) The insurer must consider the information and decide whether the qualifying condition is satisfied for the worker.

- (3) The insurer must make the decision within the later of the following periods to end—
  - (a) 60 business days after receiving the information from the worker;
  - (b) if the insurer meets with the worker under section 112K—10 business days after the day of the meeting.
- (4) If the insurer decides the qualifying condition is satisfied for the worker, the insurer must give the worker a written notice in the approved form stating the amount of section 193A compensation to which the worker is entitled for the worker's injury.
- (5) If the insurer decides the qualifying condition is not satisfied for the worker, the insurer must give the worker written reasons for the decision.
- (6) If the insurer does not make a decision within the period mentioned in subsection (3), the insurer is taken to have decided the qualifying condition is not satisfied for the worker.

#### **112K Meeting before decision made**

- (1) This section applies if—
  - (a) the worker has given the insurer information under section 112I; and
  - (b) the insurer proposes to decide the qualifying condition is not satisfied for the worker.
- (2) Before making the decision, the insurer must—
  - (a) give the worker an opportunity to meet with the insurer to discuss the proposed decision; and
  - (b) if the worker agrees to meet with the insurer—give the worker any relevant information the insurer holds at least 10 business days before the meeting.

- (3) The insurer is not required to give the worker more than 1 opportunity to meet with the insurer.
- (4) In this section—  
*relevant information*, in relation to a worker, means information, other than information given to the insurer by the worker, that the insurer intends to consider for making the proposed decision.

## **Subdivision 4 Review of insurer's decision**

### **112L Definition for sdiv 4**

In this subdivision—

*decision*, of an insurer, includes a decision taken to have been made by the insurer under section 112J(6).

### **112M Application of sdiv 4**

This subdivision applies to a worker—

- (a) who, under subdivision 3, has received written reasons for an insurer's decision that the qualifying condition is not satisfied for the worker; or
- (b) in relation to whom an insurer is taken to have decided that the qualifying condition is not satisfied under section 112J(6).

### **112N Application for review**

- (1) The worker may apply to the panel for a review of the decision within 20 business days after—
  - (a) the worker receives written reasons for the decision; or

- (b) the day on which the worker becomes aware the insurer has failed to decide whether the qualifying condition is satisfied for the worker within the period mentioned in section 112J(3).
- (2) The application must include the following—
  - (a) the worker's reasons for asking for a review of the decision;
  - (b) if the worker has received written reasons for the decision—the reasons;
  - (c) if the worker has not already had an opportunity to give the insurer information about whether the qualifying condition is satisfied for the worker—any information the worker wants the panel to consider in support of the worker's application;
  - (d) if the worker has engaged a lawyer and incurred legal costs in relation to the application—a statutory declaration verifying the worker has engaged the lawyer and incurred legal costs.
- (3) The worker must give the insurer a copy of the application.

#### **112O Insurer to give information to panel**

As soon as practicable after receiving a copy of the worker's application under section 112N, the insurer must give the panel and the worker any information the insurer has considered in deciding whether the qualifying condition is satisfied for the worker.

#### **112P Review by panel**

- (1) After considering the application and reviewing the insurer's decision, the panel must decide to—
  - (a) confirm the decision; or

- (b) cancel the decision and substitute a new decision.
- (2) The panel must give the worker and the insurer written notice of its decision and the reasons for its decision.
- (3) The panel's decision—
  - (a) is final; and
  - (b) if the decision is to substitute a new decision—is taken to be the insurer's decision that the qualifying condition is satisfied for the worker.
- (4) To remove any doubt, it is declared that the panel may review the insurer's decision without receiving oral submissions.

#### **112Q Insurer must notify amount of entitlement**

- (1) This section applies if the insurer is notified by the panel that the insurer's decision is substituted with a new decision that the qualifying condition is satisfied for the worker.
- (2) The insurer must give the worker a written notice in the approved form stating the amount of section 193A compensation to which the worker is entitled for the worker's injury.

### **Subdivision 5 Establishment of panel**

#### **112R Panel—Act, s 193A(3)**

- (1) For section 193A(3) of the Act, there is to be a panel made up of 1 chairperson and 2 other members.
- (2) The function of the panel is to meet, as required, to review decisions under subdivision 4.

### **112S Appointment to panel**

- (1) The Minister must appoint a chairperson and 2 other members to the panel, on terms decided by the Minister.
- (2) The Minister must ensure that each person appointed to the panel—
  - (a) is qualified, or eligible to qualify, as a lawyer; and
  - (b) has demonstrated significant experience relevant to the laws of personal injury and negligence.

### **112T Administrative matters**

The Regulator may decide administrative matters about the panel that are not provided for under this subdivision, including, for example, the way in which the panel members must meet.

## **Subdivision 6 Miscellaneous**

### **112U Liability not affected**

To remove any doubt, it is declared that a decision made by an insurer or the panel under this division does not impose liability on, or otherwise affect the liability of, the insurer or an employer for any other purpose or proceeding.

## **10 Insertion of new pt 11**

After part 10—

*insert—*

## **Part 11** **Savings and transitional provision for Workers' Compensation and Rehabilitation Amendment Regulation (No. ..) 2015**

### **149 Decision about qualifying condition if DPI decided before commencement**

- (1) This section applies if—
  - (a) before the commencement—a worker's DPI was decided; and
  - (b) on the commencement—the worker is a specified worker.
- (2) The insurer must, as soon as practicable after the commencement, decide the matters mentioned in section 112F for the worker.

### **11 Amendment of sch 3, hdg (Graduated scale of additional compensation for certain workers)**

Schedule 3, heading, 'certain workers'—

*omit, insert—*

**workers with DPI of 30% or more**

### **12 Insertion of new sch 4A**

After schedule 4—

*insert—*



## **Schedule 4A      Section 193A compensation for specified workers**

section 112C

### **1      Amount of section 193A compensation**

Section 193A compensation consists of the following amounts for an injury sustained by a specified worker in relation to whom the qualifying condition is satisfied—

- (a) an amount of compensation (the ***DPI amount***)—
  - (i) payable under the graduated scale in section 2 of this schedule; and
  - (ii) applied to multiple injuries in the way provided for under section 3 of this schedule;
- (b) an amount of compensation (the ***legal cost amount***) payable towards legal costs if the worker engages a lawyer and incurs legal costs for particular things done under part 4, division 3A.

### **2      DPI amount generally**

A worker who sustains a DPI shown in column 1 is entitled to the amount shown in column 2 opposite the DPI.

TABLING DRAFT

### Graduated scale

Column 1 DPI	Column 2 DPI amount
%	\$
1	6298
2	12,596
3	18,894
4	25,192
5	31,490

### 3 DPI amount for multiple injuries

- (1) This section prescribes the DPI amount if the worker—
  - (a) has sustained multiple injuries from 1 event; and
  - (b) receives a notice of assessment for the worker's physical injury and another notice of assessment for the worker's psychological injury.
- (2) The worker is only entitled to 1 payment for the DPI amount, being the amount shown in section 2, column 2 opposite the DPI—
  - (a) shown in section 2, column 1; and
  - (b) that is the higher of the DPI percentages stated in the notices.
- (3) However, subsection (4) applies if—
  - (a) a worker is paid the DPI amount based on a notice of assessment for an injury; and
  - (b) the worker later receives a second notice of assessment for a different type of injury; and
  - (c) the second notice of assessment states a DPI that is higher than the DPI stated in the first

notice of assessment but is not more than 5%.

- (4) The worker is entitled to another payment for the DPI amount, being the amount shown in section 2, column 2 opposite the DPI—
  - (a) shown in section 2, column 1; and
  - (b) that is equal to the difference between the DPI percentages stated in the notices.

*Example of DPI amount if subsection (4) applies—*

A worker with a DPI of 3% is paid a DPI amount of \$18,894 for a physical injury. The worker later receives a notice of assessment stating a DPI of 5% for a psychological injury. The worker is entitled to be paid an additional DPI amount of \$12,596 for the difference of 2% between the DPI percentages.

#### 4 Legal cost amount

- (1) This section applies if a worker has engaged a lawyer and incurs legal costs for doing 1 or more things mentioned in column 1.
- (2) The worker is entitled to the amount shown in column 2 opposite each thing for which legal costs were incurred.

Column 1 Circumstance	Column 2 Legal cost amount \$
Giving information to an insurer under section 112I within the period mentioned in the section	1700
The worker and the worker's lawyer attending a meeting mentioned in section 112K	2000
The worker, under section 112N, applying to the panel to review an insurer's decision	1000
The worker giving information to the panel under section 112N(2)(c)	1700

[s 13]

*Example of when a legal cost amount is included in section 193A compensation—*

A worker with a DPI of 5% who has engaged a lawyer to give information to an insurer, attended a meeting with the lawyer and the insurer, and had the insurer's decision reviewed successfully, is entitled to section 193A compensation totalling \$36,190, being \$31,490 for the DPI amount and \$4700 for the legal cost amount.

### 13 Amendment of sch 13 (Dictionary)

Schedule 13—

*insert—*

***decision***, of an insurer, for part 4, division 3A, subdivision 4, see section 112L.

***DPI amount***, for schedule 4A, see schedule 4A, section 1(a).

***injury***, for part 4, division 3A and schedule 4A, see section 112A.

***legal cost amount***, for schedule 4A, see schedule 4A, section 1(b).

***panel*** see section 112A.

***qualifying condition*** see section 112A.

***section 193A compensation***, for an injury, see section 112A.

***section 193A notice***, for part 4, division 3A, see section 112G(1).

***specified worker*** see section 112A.

#### ENDNOTES

- 1 Made by the Governor in Council on . . .
- 2 Notified on the Queensland legislation website on . . .
- 3 The administering agency is Queensland Treasury.