

Authorised Version

Workplace Injury Rehabilitation and Compensation Amendment (Arbitration) Act 2021 No. 15 of 2021

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Authorised Version



Victoria

Workplace Injury Rehabilitation and Compensation Amendment (Arbitration) Act 2021[†]

No. 15 of 2021

[Assented to 11 May 2021]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purpose

The main purpose of this Act is to amend the
**Workplace Injury Rehabilitation and
Compensation Act 2013**—

- (a) to provide for the arbitration of certain disputes under that Act so as to facilitate the fair and final resolution of those disputes in

an informal, inexpensive and timely manner;
and

(b) to make other miscellaneous amendments.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 January 2023, it comes into operation on that day.

3 Principal Act

In this Act, the **Workplace Injury Rehabilitation and Compensation Act 2013** is called the Principal Act.

Part 2—Amendment of Workplace Injury Rehabilitation and Compensation Act 2013

4 Definitions

In section 3 of the Principal Act—

(a) **insert** the following definition—

"Arbitration Officer means an Arbitration Officer holding office under section 531;"

(b) for the definition of *Conciliation Officer* **substitute**—

"Conciliation Officer means a Conciliation Officer holding office under section 531;"

(c) the definition of *Senior Conciliation Officer* is **repealed**.

5 Claims for compensation

In section 6(8)(a) of the Principal Act—

(a) for "a referral" **substitute** "an application";

(b) for "section 282" **substitute** "section 289A".

6 Certificates of capacity for work

After section 167(4) of the Principal Act **insert**—

"(4A) Despite subsection (4), a certificate of capacity that relates to a period of time more than 90 days before the date on which the certificate is provided is in accordance with this section if—

(a) the person giving the certificate states in the certificate the special reasons why the certificate relates to that period of time; and

(b) the Authority or self-insurer is satisfied that, for the special reasons stated, the certificate should be accepted."

7 No proceedings by worker in relation to rejection of liability without conciliation

(1) In the heading to section 202 of the Principal Act, for "**certificate of ACCS**" substitute "**conciliation**".

(2) For section 202(2) of the Principal Act substitute—

"(2) If this section applies, the worker must not commence a proceeding in relation to the claim, except as provided in section 273(1) or (2)."

8 Written statement of injuries

For section 204(4) of the Principal Act substitute—

"(4) If the worker advises the Authority or self-insurer that the worker disputes the written statement under subsection (1), the worker must not commence a proceeding in relation to the claim, except as provided in section 273(1) or (2)."

9 Variation of decision made under section 201(1)(a)

(1) In the heading to section 206 of the Principal Act, for "**by court or by agreement of decision**" substitute "**of decision made**".

(2) In section 206(1) of the Principal Act, for "a court" substitute "a court, a determination by ACCS under Subdivision 4 of Division 2 of Part 6".

10 New section 264A inserted

After section 264 of the Principal Act **insert—**

**"264A Jurisdiction under Subdivision 4 of
Division 2**

Despite section 264(1), the County Court does not have jurisdiction to inquire into, hear and determine any question or matter arising under Subdivision 4 of Division 2 of this Part, other than a question or matter that is the subject of a dispute that is dismissed under section 301N."

11 Certain evidence inadmissible in certain proceedings

- (1) In the heading to section 268 of the Principal Act **omit "given in a conciliation"**.
- (2) In section 268(1) of the Principal Act, after "a conciliation" **insert "or the arbitration"**.
- (3) After section 268(1)(a) of the Principal Act **insert—**
 - "(ab) any proceeding for the enforcement of a determination of ACCS; or
 - (ac) any proceeding in the Supreme Court to inquire into, hear and determine any question or matter relating to a determination made under Subdivision 4 of Division 2 of this Part; or"
- (4) In section 268(2) of the Principal Act, after "section 296(1)" **insert "or a determination certificate issued under section 301U"**.

12 New section 273A inserted

After section 273 of the Principal Act **insert**—

"273A Proceeding may not be commenced if dispute referred for arbitration

- (1) Despite section 273(1), a proceeding must not be commenced in the County Court in respect of a dispute between parties that is referred to ACCS for arbitration under Subdivision 4 of Division 2 of this Part.
- (2) Subsection (1) does not apply to a dispute that is dismissed from arbitration under section 301N."

13 New subdivision heading inserted

After the heading to Division 2 of Part 6 of the Principal Act **insert** the following heading—

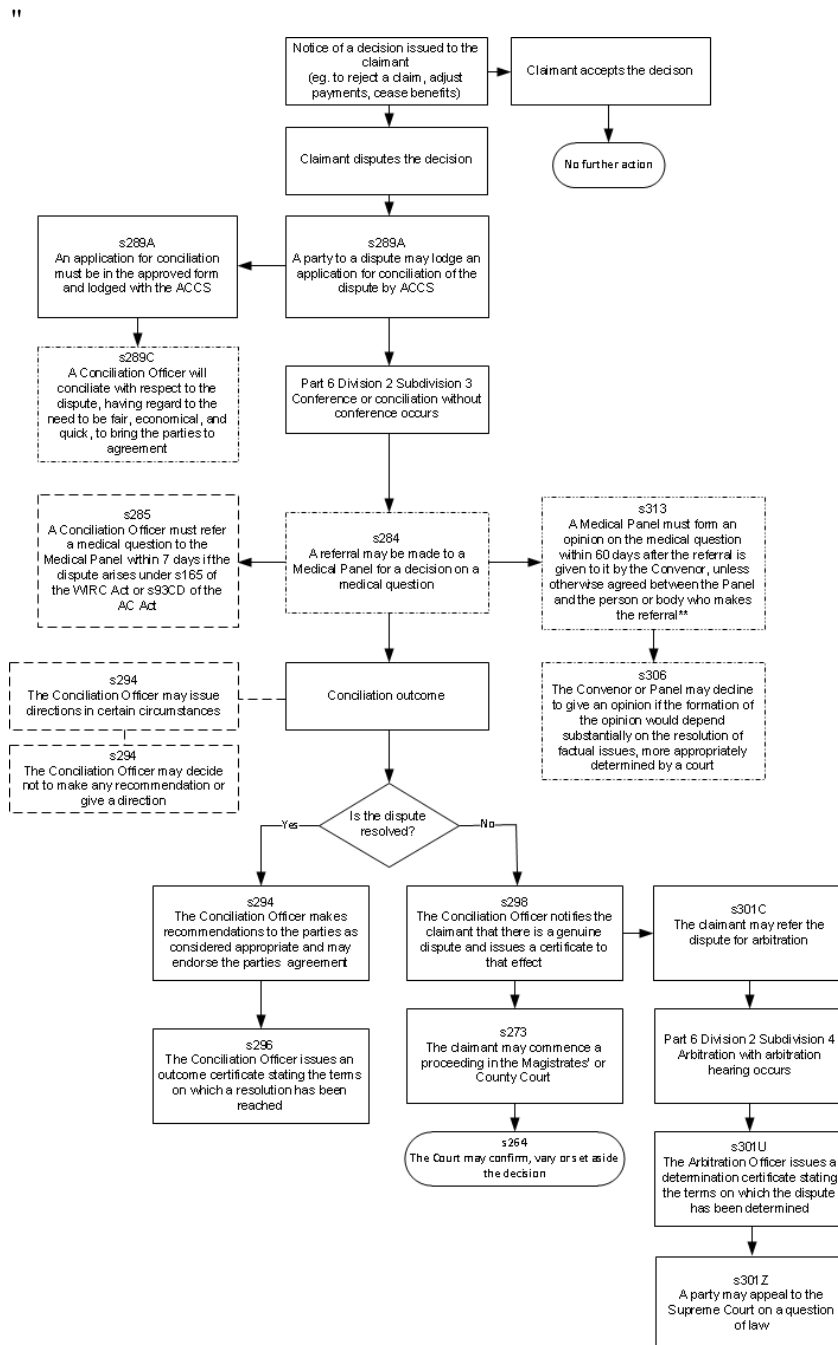
"Subdivision 1—Preliminary".

14 Flow chart 7—dispute resolution process if a claimant disagrees with a decision

For the flow chart in section 280 of the Principal Act **substitute**—

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* Disputes other than disputes relating to death related claims or discrimination must be referred to conciliation before a proceeding can commence.
** A determination of the Medical Panel on a medical question is final and binding.

"

15 Definitions

In section 281(1) of the Principal Act **insert** the following definition—

"arbitration hearing means a hearing held before ACCS for the purpose of determining a dispute by arbitration;"

16 New section 281A inserted

After section 281 of the Principal Act **insert**—

"281A Duty of ACCS

ACCS must, having regard to the need to be fair, economical, informal and quick, and having regard to the objectives of this Act, make all reasonable efforts to conciliate or arbitrate in relation to a dispute to either bring the parties to agreement or determine the dispute."

17 Sections 282 and 283 repealed

Sections 282 and 283 of the Principal Act are **repealed**.

18 New subdivision heading inserted

Before section 284 of the Principal Act **insert** the following heading—

"Subdivision 2—Medical questions".

19 ACCS may seek opinion of Medical Panel on medical question

At the end of section 284 of the Principal Act **insert**—

"(2) ACCS must seek the opinion of each party to the dispute before referring a medical question under subsection (1) to a Medical Panel for an opinion.

- (3) However, ACCS may refer a medical question to a Medical Panel for an opinion without the consent of each party to the dispute.
- (4) ACCS may refer more than one medical question arising in a dispute to be considered by a Medical Panel concurrently or consecutively."

20 New section 284A inserted

After section 284 of the Principal Act **insert**—

"284A Resolution of factual issues before referral to Medical Panel

- (1) ACCS must not refer a medical question to a Medical Panel under section 284 if it appears to ACCS that the formation of an opinion by a Medical Panel on the medical question would depend substantially on the resolution of factual issues which are more appropriately considered by ACCS in conciliation or arbitration than by a Medical Panel.
- (2) However, ACCS may refer the medical question to a Medical Panel for an opinion after the factual issue is resolved by the agreement of the parties in conciliation or by arbitration (as the case requires)."

21 Referral of medical question relating to section 165 of this Act or section 93CD of the Accident Compensation Act 1985

In section 285(1) of the Principal Act, after "**1985**" **insert** "that does not require the resolution of a factual issue".

22 Sections 286 and 287 repealed

Sections 286 and 287 of the Principal Act are **repealed**.

23 New subdivision heading and sections inserted

After section 289 of the Principal Act **insert** the following heading and sections—

"Subdivision 3—Conciliation of disputes

289A Lodging of disputes for conciliation

- (1) A party to a dispute may lodge an application for conciliation of the dispute by ACCS.
- (2) A party to a dispute that is dismissed from conciliation under section 294(1)(e) may lodge an application for further conciliation of the dispute or any part of the dispute by ACCS.
- (3) A person may lodge an application under this section on behalf of a party to the dispute.
- (4) An application for conciliation of a dispute must be lodged with ACCS by sending or delivering notice, in a form approved by ACCS, within 60 days after—
 - (a) notice of the decision to which the dispute relates was given to, or served on, the worker or claimant; or
 - (b) the dispute was dismissed from conciliation under section 294(1)(e).

Note

The **Electronic Transactions (Victoria) Act 2000** provides for lodgement by electronic communication in accordance with that Act.

289B Power of ACCS to allow late or out of time referral of dispute

If ACCS considers it appropriate in the circumstances of the particular case, ACCS may, on application, allow—

- (a) an extension of time for lodging an application for conciliation; or
- (b) an application for conciliation to be lodged out of time.

289C Conciliation by Conciliation Officer

- (1) The conciliation of a dispute under this Subdivision must be conducted by a Conciliation Officer.
- (2) The Conciliation Officer who conducts the conciliation of a dispute must not be the same person who has acted as an Arbitration Officer in respect of the arbitration (if any) of that dispute."

24 Conciliation without conference

In section 290 of the Principal Act—

- (a) for "him or her in connection with a dispute" **substitute** "ACCS in connection with a dispute that is the subject of conciliation";
- (b) for "Division" **substitute** "Subdivision".

25 New sections 290A and 290B inserted

After section 290 of the Principal Act **insert**—

"290A Representation by legal practitioner in conciliation

- (1) Except as provided in subsection (2), a person who is a party to a dispute is not entitled to be represented by a legal practitioner at a conciliation conference.
- (2) On the submission of a party to a dispute, ACCS may agree to the party being represented by a legal practitioner at a conciliation conference, having regard to—

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- (a) the fairness of allowing the party to be represented, including whether each party is able to represent themselves effectively; and
 - (b) whether it would enable the matter to be dealt with more efficiently; and
 - (c) any other matters specified in any policies and procedures of ACCS published under section 301B.
- (3) A legal practitioner appearing at a conciliation conference on behalf of a party in accordance with subsection (2) has the same protection and immunity as a legal practitioner has in appearing for a party in a proceeding in the Supreme Court.

290B Production and disclosure of information

- (1) Subject to subsection (2), a party to a dispute who participates in a conciliation must—
- (a) produce to ACCS all documents in the party's possession, custody or power that relate to the dispute and are reasonably available to the party; and
 - (b) disclose to ACCS all information that relates to the dispute.
- (2) A party may claim privilege or immunity from producing a document or disclosing information to ACCS under subsection (1).".

26 Power to request or release documents etc.

In section 291(2) of the Principal Act, for "ACCS may, at his or her discretion," **substitute** "ACCS has the discretion to".

27 Repeal of section 293

Section 293 of the Principal Act is **repealed**.

28 Powers of ACCS

- (1) In the heading to section 294 of the Principal Act, after "**ACCS**" **insert "in conciliation"**.
- (2) In section 294(1) of the Principal Act—
 - (a) after "in connection with" **insert "the conciliation of"**;
 - (b) in paragraph (c), for "Division" **substitute "Subdivision"**;
 - (c) in paragraph (d), for "direction." **substitute "direction;"**;
 - (d) after paragraph (d) **insert—**
"(e) dismiss the dispute."

29 Offence not to comply with direction

In section 295 of the Principal Act, for "this Division" **substitute "this Subdivision in relation to the conciliation of a dispute"**.

30 Outcome certificates to be issued

In section 296(1)(a) of the Principal Act, for "referred to conciliation under section 282" **substitute "lodged for conciliation under section 289A"**.

31 Genuine disputes about certain matters

- (1) In the heading to section 298 of the Principal Act, for "**liability for compensation referred to in section 297(1) and (2)**" **substitute "certain matters"**.
- (2) In section 298(1) of the Principal Act—
 - (a) before "ACCS must notify" **insert "compensation in the form of superannuation contributions or interest payable on an outstanding payment,"**;

(b) after "matter" **insert** "or, subject to section 301C, to ACCS to determine the matter by arbitration".

(3) In section 298(2) of the Principal Act, after "in support of" **insert** "the amount of compensation to which a claimant is entitled or".

32 Revocation of directions of ACCS

In section 299(1) and (2) of the Principal Act, for "Division" **substitute** "Subdivision".

33 Payments under direction etc. not admission of liability

In section 300(1)(a) of the Principal Act, for "Division" **substitute** "Subdivision".

34 New sections 301A and 301B inserted

After section 301 of the Principal Act **insert**—

"301A Ministerial guidelines for conciliations

- (1) The Minister may make guidelines in accordance with section 611 as to the procedures of ACCS for the purposes of—
 - (a) ensuring procedural fairness in the conduct of conciliations; and
 - (b) facilitating the proper administration of ACCS for conciliations.
- (2) Without limiting subsection (1), the Minister may make guidelines in relation to—
 - (a) the organisation of ACCS for the purposes of conducting conciliations; and
 - (b) records to be kept by ACCS in relation to conciliations; and

- (c) reasons for which extensions of time may be granted under section 289B; and
- (d) any other relevant matters determined by the Minister.

301B ACCS policies and procedures for conciliations

- (1) Subject to this Division, ACCS may make its own arrangements for the conduct of conciliations and any related matters but must do so in accordance with any Ministerial guidelines made under section 301A.
- (2) ACCS must ensure that any policies and procedures developed by ACCS in relation to the conduct of conciliations are published on a Government Internet website."

35 New Subdivision 4 of Division 2 of Part 6 inserted

Before Division 3 of Part 6 of the Principal Act
insert—

"Subdivision 4—Arbitration of disputes

301C Lodging of disputes for arbitration

- (1) A claimant in a dispute may refer the dispute for arbitration by ACCS if—
 - (a) ACCS has notified the claimant under section 298 that ACCS is satisfied that there is a genuine dispute with respect to liability for the payment of any of the following—
 - (i) compensation referred to in section 297(1) and (2);
 - (ii) compensation in the form of superannuation contributions;

- (iii) interest on an outstanding amount;
and
 - (b) the claimant has not applied to a court
for the determination of the dispute.
- (2) A person may refer a dispute under this
section on behalf of the claimant.
 - (3) A referral for arbitration of a dispute must be
lodged with ACCS by sending or delivering
notice, in a form approved by ACCS, within
60 days after receipt of a notice under
section 298 or 301N(3) in respect of the
dispute.

Note

The **Electronic Transactions (Victoria) Act 2000**
provides for lodgement by electronic communication
in accordance with that Act.

**301D Power of ACCS to allow late or out of
time referral of dispute**

If ACCS considers it appropriate in the
circumstances of the particular case, ACCS
may, on application, allow—

- (a) an extension of time for referring a
dispute for arbitration; or
- (b) a referral for arbitration of a dispute to
be lodged out of time.

301E Arbitration by Arbitration Officer

- (1) The arbitration of a dispute referred to ACCS
must be conducted by an Arbitration Officer.
- (2) The Arbitration Officer who conducts the
arbitration of a dispute must not be the same
person who has acted as a Conciliation
Officer in respect of the conciliation of that
dispute.

301F Conduct of arbitration hearing

- (1) The arbitration of a dispute is to be determined solely on the information and evidence presented before ACCS at an arbitration hearing.
- (2) An arbitration hearing must commence within 30 days of the date on which the dispute is referred for arbitration.
- (3) ACCS must, by notice given in writing to each party to the dispute, specify the date, time and place at which the arbitration hearing will be held.

301G Representation by legal practitioner in arbitration

- (1) Except as provided in subsection (2), a person who is a party to a dispute is not entitled to be represented by a legal practitioner at an arbitration hearing.
- (2) On the submission of a party to a dispute, ACCS may agree to the party being represented by a legal practitioner at an arbitration hearing, having regard to—
 - (a) the fairness of allowing the party to be represented, including whether each party is able to represent themselves effectively; and
 - (b) whether it would enable the matter to be dealt with more efficiently; and
 - (c) any other matters specified in any policies and procedures of ACCS published under section 301ZB.
- (3) A legal practitioner appearing at an arbitration hearing on behalf of a party in accordance with subsection (2) has the same protection and immunity as a legal

practitioner has in appearing for a party in a proceeding in the Supreme Court.

301H Production and disclosure of information

- (1) Subject to subsection (3), a party to a dispute who participates in an arbitration must—
 - (a) produce to ACCS all documents in the party's possession, custody or power that relate to the dispute and are reasonably available to the party; and
 - (b) disclose to ACCS all information that relates to the dispute.
- (2) Without limiting subsection (1)(b), a party may disclose information by providing oral evidence at an arbitration hearing.
- (3) A party may claim privilege or immunity from producing a document or disclosing information to ACCS under this section.
- (4) ACCS must make any document produced or information disclosed under this section available to each party to the dispute.

301I Power to request documents or information

- (1) If ACCS considers that it may be relevant to the arbitration of a dispute, ACCS may request a party to a dispute or any other person to—
 - (a) produce a document or a class of documents specified; or
 - (b) provide information or information of a kind specified.
- (2) For the purposes of subsection (1)(b), ACCS may request the party or other person to provide oral evidence at an arbitration hearing.

- (3) If ACCS requests a person who is not a party to the dispute to do any thing under subsection (1) or (2), ACCS must inform the person that—
- (a) the doing of that thing is voluntary; and
 - (b) any document produced or information provided will be made available to each party to the dispute.

Note

A party to the dispute has an obligation under section 301H to produce certain documents and disclose certain information.

- (4) ACCS must make any document or information provided under this section available to each party to the dispute.

301J Offence to make false or misleading statement

A person must not, in connection with a dispute referred for arbitration, make a statement that the person knows to be false or misleading in a material particular.

Penalty: In the case of a natural person,
60 penalty units or 6 months
imprisonment or both;

In the case of a body corporate,
300 penalty units.

301K Powers of ACCS

- (1) ACCS may do any one or more of the following things in connection with a dispute or any part of a dispute referred for arbitration—
- (a) make a binding determination as ACCS considers to be appropriate;

- (b) with the consent of the parties to the dispute, refer the dispute for further conciliation by ACCS;
 - (c) adjourn the dispute;
 - (d) dismiss the dispute.
- (2) Unless a court determines otherwise, ACCS may arbitrate with respect to a dispute and make a determination in respect of a dispute even though the dispute is pending determination in a proceeding for damages at common law brought under—
- (a) Part 7; or
 - (b) Part IV of the **Accident Compensation Act 1985**.

301L Dispute referred for further conciliation

- (1) Nothing in this Subdivision prevents the parties to a dispute from resolving the dispute by agreement at any time before ACCS makes a determination in respect of the dispute.
- (2) If at any time before making a determination in respect of a dispute, ACCS determines that the dispute would be more appropriately dealt with by further conciliation, ACCS may, with the consent of both parties to the dispute, refer the dispute or any part of the dispute for further conciliation.

301M Adjournment of dispute

ACCS may adjourn the arbitration of a dispute—

- (a) to allow a guardian to be appointed under the **Guardianship and Administration Act 2019** for a party to the dispute; or

(b) for any other appropriate reason.

301N Dismissal of dispute

- (1) ACCS may dismiss a dispute from arbitration without making a determination—
 - (a) if a party to the dispute is no longer able to participate in the arbitration; or
 - (b) for any other appropriate reason.
- (2) In determining whether to dismiss a dispute, ACCS must have regard to any matters specified in any policies and procedures of ACCS published under section 301ZB.
- (3) If ACCS dismisses a dispute from arbitration and is satisfied that there is a genuine dispute in connection with the claim within the meaning of section 298, ACCS must notify the parties to the dispute that—
 - (a) ACCS is satisfied that there is a genuine dispute in connection with the claim; and
 - (b) the claimant may apply—
 - (i) to a court of competent jurisdiction to have the matter determined by the court; or
 - (ii) subject to section 301C, to ACCS to have the matter determined by further arbitration.

301O Arbitration hearing procedures

- (1) Subject to this Division, for the purposes of conducting an arbitration hearing, ACCS—
 - (a) may inform itself in any manner it thinks fit; and

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- (b) is bound by the rules of natural justice;
and
 - (c) is not bound by the rules of evidence;
and
 - (d) must act as expeditiously and with as little formality as possible, without regard to technicalities and legal forms.
- (2) ACCS must act in accordance with any Ministerial guidelines made under section 301ZA.
- (3) ACCS may draw an inference adverse to a party to the dispute if that party fails or refuses to—
- (a) produce to ACCS all documents in the party's possession, custody or power that relate to the dispute and are reasonably available to the party; or
 - (b) disclose to ACCS all information that relates to the dispute.

301P Time period in which determination must be made

- (1) An arbitration hearing convened for the purposes of determining a dispute must conclude within 60 days of the date on which the arbitration hearing is commenced.
- (2) ACCS must make a determination in respect of a dispute referred for arbitration within 14 days after the conclusion of the arbitration hearing.
- (3) ACCS may, in exceptional circumstances, extend the time by which ACCS must make a determination of a dispute.

- (4) In determining whether to grant an extension of time under subsection (3), ACCS must take into account any submissions made by the parties as to whether it is appropriate to do so.

301Q Periods in which time does not accrue

A time period referred to in section 301F(2) or 301P(1) or (2) does not accrue during the period—

- (a) commencing on the day that a medical question in the dispute is referred to a Medical Panel under section 284 or 285 and concluding on the day of receipt of the written opinion and written statement of reasons from the Medical Panel in relation to that question; or
- (b) commencing on the day that any information is requested under section 301I and concluding on the day of receipt of the requested information; or
- (c) commencing on the day that the arbitration of a dispute is adjourned under section 301M and concluding on the day on which the arbitration of the dispute is resumed.

301R Determination

- (1) Subject to this Act, ACCS may make any determination in relation to a dispute or any part of a dispute as ACCS thinks fit.
- (2) A determination under subsection (1) may only be made in relation to the matters referred for arbitration.
- (3) A determination under subsection (1) may be made subject to conditions.

- (4) Subject to subsection (2), ACCS may make an ancillary determination in relation to the matters referred for arbitration if ACCS determines it to be appropriate for the purposes of achieving the arbitrated outcome.

301S ACCS may make determination about compensation

Without limiting section 301R, ACCS may do any of the following in a determination made under that section in respect of a dispute or part of a dispute—

- (a) confirm, vary or revoke a decision made by the Authority, an employer or a self-insurer in relation to any of the following—
- (i) liability for the payment of compensation to the claimant;
 - (ii) the amount of compensation to which the claimant is entitled;
- (b) order that the Authority, employer or self-insurer determine in accordance with this Act the amount of compensation to which the claimant is entitled;
- (c) order the Authority, employer or self-insurer to pay to the claimant any of the following—
- (i) weekly payments of an amount calculated in accordance with Part 5 and for a period not exceeding a total of 52 weeks;
 - (ii) any consequential superannuation payments;
 - (iii) interest payable;

- (d) order the Authority, employer or self-insurer to pay the claimant's medical and like expenses of a total amount not exceeding \$20 000.

301T When determination has effect

A determination of ACCS comes into effect immediately after it is made or at such later time as specified in the determination.

301U Determination certificates to be issued

- (1) ACCS must issue a determination certificate within 14 days of the conclusion of an arbitration hearing.
- (2) The determination certificate must—
 - (a) be in a form approved by ACCS; and
 - (b) be provided to the claimant and the employer and the Authority or self-insurer; and
 - (c) set out any terms on which the dispute is determined; and
 - (d) set out any conditions of the determination; and
 - (e) set out any ancillary determinations in relation to the dispute; and
 - (f) certify that each party to the dispute is bound by the result; and
 - (g) state that the determination certificate is evidence of—
 - (i) the determination of the dispute between the parties; and
 - (ii) the terms on which the dispute has been determined; and

- (h) state that the determination of ACCS comes into effect immediately after it is given or at such later time as specified in the determination certificate; and
 - (i) specify the appeal rights (if any) available to the parties to the dispute.
- (3) The determination certificate is admissible in any court proceeding as evidence of—
- (a) the determination of the dispute between the parties; and
 - (b) the terms on which the dispute has been determined.

301V Reasons for determination

- (1) Subject to subsection (2), ACCS is not required to provide written reasons for a determination.
- (2) ACCS must provide written reasons for a determination on the request of a party to the dispute.
- (3) A written transcript of the part of the arbitration hearing in which reasons for a determination are given orally is sufficient for compliance with the requirement under subsection (2) to provide written reasons on request.

301W Costs

- (1) If ACCS determines a dispute referred to arbitration in favour of the claimant in the dispute, ACCS must award the claimant an amount fixed by the Minister in accordance with subsection (4) and paid—
 - (a) if the other party to the dispute is the Authority or an employer—out of the WorkCover Authority Fund; or

- (b) if the other party to the dispute is a self-insurer—by the self-insurer.
- (2) Regardless of the outcome of an arbitration hearing, the Authority, an employer or self-insurer (as the case requires) is liable to bear their own costs, unless ACCS orders otherwise in accordance with subsection (3).
- (3) ACCS may order the claimant to pay costs of the other party if ACCS determines that the claim is fraudulent or vexatious.
- (4) For the purposes of subsection (1), the Minister may, by notice published in the Government Gazette, fix amounts payable in respect of the reasonable costs of a claimant.

301X Enforcement of determination

- (1) A person who is entitled to the payment of money under a determination of ACCS may enforce the determination by filing in a court of competent jurisdiction—
 - (a) a certified copy of the determination certificate; and
 - (b) an affidavit as to the amount not paid under the determination.
- (2) No charge is to be paid by the person filing a copy of the determination.

301Y Determination is binding

Except as otherwise provided by this Act, a determination of ACCS in an arbitration hearing is final and binding on the parties and is not subject to appeal or review in the County Court or the Magistrates' Court.

301Z Appeal to Supreme Court

- (1) A party to a dispute may appeal on a question of law from a determination of the dispute by ACCS to the Trial Division of the Supreme Court with leave of the Trial Division.
- (2) An application for leave to appeal to the Trial Division of the Supreme Court must be made—
 - (a) within 28 days after the day of the determination of ACCS, unless the rules of the Supreme Court otherwise provide; and
 - (b) in accordance with the rules of the Supreme Court.
- (3) On the hearing of an appeal by the Supreme Court, the Court may—
 - (a) make any order the Court thinks fit; and
 - (b) by order confirm, vary or revoke a determination of ACCS.

301ZA Ministerial guidelines for arbitrations

- (1) The Minister may make guidelines in accordance with section 611 as to the procedures of ACCS for the purposes of—
 - (a) ensuring procedural fairness in the conduct of arbitration hearings; and
 - (b) facilitating the proper administration of ACCS for arbitration hearings.
- (2) Without limiting subsection (1), the Minister may make guidelines in relation to—
 - (a) the organisation of ACCS for the purposes of conducting arbitration hearings; and

- (b) records to be kept by ACCS in relation to arbitration hearings; and
- (c) reasons for which extensions of time may be granted under section 301P; and
- (d) the assessment of costs in arbitration hearings, other than any costs fixed by the Minister under section 301W(4); and
- (e) any other relevant matters determined by the Minister.

301ZB ACCS policies and procedures for arbitrations

- (1) Subject to this Division, ACCS may make its own arrangements for the conduct of arbitrations and any related matters but must do so in accordance with any Ministerial guidelines made under section 301ZA.
- (2) ACCS must ensure that any policies and procedures developed by ACCS in relation to the conduct of arbitrations are published on a Government Internet website."

36 When opinion on medical question may not be given

In section 306(1) of the Principal Act, after "determined by a court" **insert** "or in arbitration".

37 Functions

In section 522 of the Principal Act—

- (a) in paragraph (a), after "conciliation" **insert** "and arbitration";
- (b) in paragraph (b), after "conciliations" **insert** "and arbitrations".

38 Chief Executive Officer

- (1) In the heading to section 530 of the Principal Act, for "**Senior Conciliation**" substitute "**Chief Executive**".
- (2) In section 530(1) of the Principal Act, for "Senior Conciliation" substitute "Chief Executive".
- (3) In section 530(2) of the Principal Act, for "Senior Conciliation Officer is also the chief executive officer of ACCS and" substitute "Chief Executive Officer of ACCS".
- (4) In section 530(3), (4), (5) and (6) of the Principal Act, for "Senior Conciliation" (wherever occurring) substitute "Chief Executive".
- (5) After section 530(6) of the Principal Act **insert**—
"(6A) The Chief Executive Officer may act as an Arbitration Officer."
- (6) In section 530(7) and (8) of the Principal Act, for "Senior Conciliation" (wherever occurring) substitute "Chief Executive".

39 Staff of ACCS

- (1) After section 531(1)(a) of the Principal Act **insert**—
"(ab) Arbitration Officers to conduct arbitrations;
and".
- (2) After section 531(2) of the Principal Act **insert**—
"(3) A person employed by ACCS as an Arbitration Officer must have appropriate qualifications and experience, as determined by ACCS."

40 Section 532 substituted

For section 532 of the Principal Act **substitute**—

"532 No interference in individual conciliations or arbitrations

The powers of ACCS to monitor and manage its employees, or to ensure that its employees comply with policies and procedures of ACCS and with any guidelines made by the Minister, do not include the power to direct—

- (a) a Conciliation Officer as to the outcome of a specific conciliation or conciliations; or
- (b) an Arbitration Officer as to the outcome of a specific arbitration or arbitrations."

41 Data to be collected by the Chief Executive Officer

(1) In the heading to section 533 of the Principal Act, for "**Senior Conciliation**" **substitute** "**Chief Executive**".

(2) In section 533(1) of the Principal Act—

(a) for "Senior Conciliation" **substitute** "Chief Executive";

(b) after paragraph (a) **insert**—

"(ab) the number of disputes referred for arbitration;"

(c) after paragraph (d) **insert**—

"(da) the number and nature of the outcomes of the disputes referred for arbitration;

(db) the number of extensions of time granted by ACCS under section 301P;"

(d) in paragraph (f)—

(i) for "Senior Conciliation" **substitute**
"Chief Executive";

(ii) for "section 283" **substitute**
"section 289B".

(3) In section 533(2) and (3) of the Principal Act, for
"Senior Conciliation" (wherever occurring)
substitute "Chief Executive".

42 Delegation

In section 536(1)(a) and (2) of the Principal Act,
for "Senior Conciliation" **substitute** "Chief
Executive".

43 Protection against liability

(1) In the heading to section 536A of the Principal
Act **omit** "for Conciliation Officers".

(2) In section 536A(1) and (2) of the Principal Act,
for "Senior Conciliation Officer or a Conciliation
Officer" **substitute** "Chief Executive Officer, a
Conciliation Officer or an Arbitration Officer".

44 Direction by Minister

In section 536B(2) of the Principal Act, for
"outcome of a specific conciliation or
conciliations." **substitute**—

"outcome of—

(a) a specific conciliation or conciliations; or

(b) a specific arbitration or arbitrations.".

45 Signature

(1) In section 536E(1) of the Principal Act—

(a) after paragraph (a) **insert**—

"(ab) an Arbitration Officer; or";

Workplace Injury Rehabilitation and Compensation Amendment
(Arbitration) Act 2021
No. 15 of 2021

Part 2—Amendment of Workplace Injury Rehabilitation and Compensation
Act 2013

(b) in paragraph (b), for "Senior Conciliation"
substitute "Chief Executive".

(2) In section 536E(2) of the Principal Act—

(a) after "Officer" (where first occurring) **insert**
"or Arbitration Officer (as the case
requires)";

(b) for "Senior Conciliation" **substitute**
"Chief Executive".

46 New section 623MA inserted

After section 623M of the Principal Act **insert—**

**"623MA Transitional provision—Workplace
Injury Rehabilitation and Compensation
Amendment (Arbitration) Act 2021**

(1) Subdivision 4 of Division 2 of Part 6 of this
Act does not apply to a dispute relating to a
claim in respect of—

(a) an injury that occurred before the
commencement date; or

(b) an illness, the onset of which occurred
before the commencement date.

(2) In this section—

commencement date means the date of
commencement of section 35 of the
**Workplace Injury Rehabilitation and
Compensation Amendment
(Arbitration) Act 2021**."

Part 3—Repeal of this Act

47 Repeal of this Act

This Act is **repealed** on 1 January 2024.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

† *Minister's second reading speech—*

Legislative Assembly: 18 March 2021

Legislative Council: 4 May 2021

The long title for the Bill for this Act was "A Bill for an Act to amend the **Workplace Injury Rehabilitation and Compensation Act 2013** and for other purposes."