

# Regulatory Impact Statement: Personal Injury Commission Regulation 2020

**Department of  
Customer Service**

March 2021

**Title of Regulation:** Personal Injury Commission Regulation 2020

**Proponent:** Department of Customer Service

**Responsible Minister:** The Hon Victor Dominello MP, Minister for Customer Service

**Relevant Act:** *Personal Injury Commission Act 2020*

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# 1. Introduction

## 1.1 Purpose of Regulatory Impact Statement

The primary purpose of this Regulatory Impact Statement (RIS) is to ensure the economic, social costs and benefits of the *Personal Injury Commission Regulation 2020* (the Regulation) are fully examined.

The Regulation is the first principal regulation under the *Personal Injury Commission Act 2020* (the PIC Act). The Regulation was published on the NSW legislation website on 18 December 2020 and commenced on 1 March 2021. Under clause 16 of Schedule 1 to the PIC Act and section 6(2) of the *Subordinate Legislation Act 1989* (SLA) a RIS was not required before the regulation was made but the Minister is required to ensure the relevant requirements of section 5 of the SLA (with any necessary adaptations) are complied with within four months after the regulation is made.

Accordingly, this RIS has been prepared to satisfy the requirements of section 5 of the SLA.

Section 5 of the SLA requires a compliant RIS to be prepared in connection with the substantive matters dealt with by the Regulation and prescribes a consultation process. In accordance with that consultation process, a notice has been placed in the Government Gazette and a relevant newspaper and key stakeholders have been notified of this process including the objects of the Regulation, advising where a copy of the RIS and the Regulation may be obtained or inspected and inviting comments and submissions. (see **Appendix 1**).

## 1.2 Key objectives of the Regulation

The objectives of the Regulation are to facilitate the establishment and operation of the Personal Injury Commission of New South Wales (PIC) and the Office of the Independent Review Officer (IRO) and to help achieve the objects of the PIC Act.

The PIC and the IRO are established under the PIC Act and started operation on 1 March 2021. The Regulation is part of the necessary legislative framework for the establishment of the PIC. The need for government to make the Regulation is clear as the PIC Act and the PIC are unable to function as intended without the Regulation.

The object of this Regulation is to provide for the following:

- the procedure and criteria for the appointment of medical assessors, merit reviewers and mediators;
- modifications to the fees and costs applicable under the *Motor Accident Injuries Act 2017* and *Motor Accidents Compensation Act 1999*, and the regulations made under those Acts, to proceedings for the determination of applications concerning certain compensation claims made to the District Court;
- extending the definition of ‘relevant Commission officer’ to include a member of staff of the PIC who exercises certain functions of the PIC at the direction of the President of the PIC; and
- savings and transitional provisions, including in relation to certain existing and pending proceedings and the review of those proceedings.

The provisions of the Regulation are unlikely to impose an appreciable burden, cost, or disadvantage to the public. They include savings and transitional provisions amending Schedule 1 to the PIC Act to provide certainty and continuity of rights for parties to pending proceedings or parties with unexercised rights to

commence proceedings. They also contain provisions dealing with necessary modifications to the legal cost regime under the motor accident legislation in respect of Federal proceedings in the District Court.

### 1.3 Matters outside the scope of this consultation

The PIC Act is not the subject of this RIS and consultation process, apart from amendments contained within Schedule 1 of the Regulation.

### 1.4 Consultation already undertaken before the Regulation was made

In developing the Regulation, a consultation process on a draft Regulation was undertaken with key stakeholders between 12 and 24 November 2020. This consultation targeted the key stakeholders in both the motor accident and workers compensation schemes including representatives from a range of industries including medical, legal, unions, insurers, and government (see **Appendix 1** for full list). Stakeholders broadly supported the draft Regulation. The Department considered the limited feedback provided in finalising the draft Regulation. Minimal changes were required to the draft Regulation following the consultation. The finalised Regulation was submitted to the NSW Governor for approval in December 2020.

### 1.5 Have your say

To comply with section 5 of the SLA, submissions are invited on any aspect of the Regulation.

During the consultation period, you may view the RIS and Regulation at [haveyoursay.nsw.gov.au](http://haveyoursay.nsw.gov.au).

The Regulation may be [viewed here](#).

**Submissions close Friday 2 April 2021.**

**Submissions should be sent by email to:** [pic-consultation@customerservice.nsw.gov.au](mailto:pic-consultation@customerservice.nsw.gov.au).

Any enquiries may be directed to Mr Calvin Galloway, Policy Officer on (02) 9372 7134 or [pic-consultation@customerservice.nsw.gov.au](mailto:pic-consultation@customerservice.nsw.gov.au).

### 1.6 Confidential notice

Submissions will be recorded and held by the NSW Government and may be published. If you do not want your personal details or part of your submission published, please say this clearly in your submission and tell us why. Automatically generated confidentiality statements are not enough. Even if you state that you do not want us to publish certain information, we may need to release that information by law. For example, to comply with the *Government Information (Public Access) Act 2009*.

The Department will also provide all submissions to the Legislation Review Committee of NSW Parliament. This is a statutory requirement.

## 2. Background

### 2.1 Overview of the Personal Injury Commission

The PIC consolidates into one Commission the jurisdiction of the former Workers Compensation Commission (WCC) and various motor accident dispute resolution services formerly the function of State Insurance Regulatory Authority (SIRA). The PIC will streamline duplicate processes and allow for CTP and workers compensation matters to be dealt with by the one tribunal in a cost-effective and efficient manner.

The PIC is separated into two divisions, maintaining subject-matter expertise from the motor accident and workers compensation schemes with common practice and procedure.

A rule committee has been established to make rules regulating the PIC's practice and procedure. The rules can be [viewed here](#).

### 2.2 Personal Injury Commission Act 2020

The PIC Act was assented to on 11 August 2020. The principal reforms introduced by the Act included:

- to establish an independent PIC that is not a court to replace the WCC Workers Compensation Commission, headed by a President who is a judge of a court of record;
- to provide for the PIC (and its members and officers) to carry out some of the motor accident dispute resolution functions currently carried out by the State Insurance Regulatory Authority to provide for the PIC (and its members and officers) to carry out some of the motor accident dispute resolution functions currently carried out by SIRA;
- to require PIC to deal with proceedings justly, quickly, cost effectively and with as little formality as possible;
- to enable PIC to provide its services in a consolidated and streamlined way (including by using a common registry);
- to create separate Divisions of the PIC to deal with its specialist workers compensation and motor accidents jurisdiction, while encouraging the use of common practice and procedure wherever appropriate;
- to create a rule committee for PIC to make rules to regulate its practice and procedure;
- to provide for medical assessors for both workers compensation legislation and motor accidents legislation and for the President of PIC to appoint them, along with merit reviewers for motor accident matters and mediators; and
- to provide a mechanism to deal with proceedings that cannot be dealt with by the PIC or its officers because they involve federal jurisdiction that can only be exercised by a court.

The objects of the PIC Act are to establish an independent Commission to provide a forum for determining certain disputes under the workers compensation and motor accidents schemes, to ensure the PIC is accessible, professional and responsive to the needs of all of its users, is open and transparent about its processes, encourages early dispute resolution and resolves the real issues in proceedings justly, quickly, cost effectively and with as little formality as possible.

The reforms did not affect the underlying substantive law concerning the entitlements of injured persons to damages or other compensation or assistance under workers compensation legislation or motor accidents legislation.

## 2.3 Personal Injury Commission Regulation 2020

The Regulation was made under the regulation-making powers of the PIC Act. The Regulation contains provisions about the following matters:

- Costs applicable to substituted proceedings for claims for statutory benefits under the *Motor Accident Injuries Act 2017* and to claims for damages under *the Motor Accident Injuries Act 2017* and *Motor Accidents Compensation Act 1999*, and the Regulations under those Acts, in relation to compensation matters for which the PIC does not have the jurisdiction because they involve the exercise of federal jurisdiction that can only be exercised by a Court.
- Amendments to Schedule 1 of the PIC Act to make additional savings and transitional provisions.
- For the completion of existing proceedings under the motor accidents and workers compensation schemes, including in relation to pending court and non-court proceedings, unexercised rights to commence court and non-court proceedings, and the review of completed pre-establishment proceedings.
- So that the IRO may complete pending matters of the former Workers Compensation Independent Review Officer (WIRO) in relation to applications for legal funding made to the WIRO, complaints about insurers made to WIRO, and inquiries by the WIRO. Together, these provisions ensure that the existing rights of those with current and pending proceedings or with unexercised rights will be preserved and the matters determined by the relevant new decision-maker.
- Certain procedure and criteria in relation to the appointment of medical assessors, merit reviewers and mediators, to reflect the existing appointment framework under the workers compensation and motor accident schemes.
- The extension of the definition of 'relevant Commission officer' to include a member of staff of the PIC who exercises certain functions of the PIC at the direction of the President of the PIC.

The PIC Act is subject to two statutory reviews after two years and seven years from assent. The Regulation will be set for automatic repeal five years from the date of commencement under the SLA.

## 3. Options to achieve objectives

The PIC Act sets out the matters that can be prescribed in the Regulation and/or other instruments (such as the PIC Rules, practice directions etc).

The objectives of the Regulation are described at section 1.2.

Options to achieve the objectives were considered before the Regulation was made:

- **Option 1: Do not make the Regulation and rely on other instruments**
- **Option 2: Exercise some regulation-making powers**
- **Option 3: Exercise all regulation-making powers**

### 3.1 Option 1: Do not make the Regulation and rely on other instruments

This option is to not make a regulation and instead make other instruments, such as rules, guidelines, and Presidential directions, to deal with matters of procedure, administration and costs where possible.

#### Costs

This option would:

- Prevent the PIC and IRO from being established on 1 March 2021 and the objects of the PIC Act from being achieved. For instance, Schedule 1 of the Regulation makes necessary savings and transitional amendments to the PIC Act and is part of the legislative framework for the PIC and the IRO's establishment.
- Create uncertainty, which could lead to additional costs for parties. For instance, without the savings and transitional provisions, parties to existing matters would not know how PIC or IRO establishment would impact their matter and how their rights would be affected.
- Result in an incomplete, uncertain and less transparent procedure, administration and costs framework as the PIC Rule Committee and President would most likely determine these matters instead (where permitted by the PIC Act).
- Create confusion for PIC administrators and its users and hamper the efficiency of the PIC.

### **Benefits**

A foreseeable benefit is the relative flexibility and adaptability afforded by using other instruments, such as rules and guidelines, to regulate matters as they arise and with less red tape. For example, the PIC Rules are made by the PIC Rule Committee and Presidential Directions are made by the President, rather than the NSW Governor in Executive Council. However, this benefit is negligible as the PIC Act limits the matters that the Rules can deal with, that is, there may be regulatory and legislative gaps as most matters covered by the Regulation can only be dealt with by regulation.

### **Conclusion**

This option was not selected as it would not be possible to regulate most of the matters contained in the Regulation under other instruments. This would prevent the full benefits and objectives of the PIC Act from being achieved.

## **3.2 Option 2: Exercise some regulation-making powers**

This option is to make a principal regulation using some of the regulation-making powers in the PIC Act. Where appropriate, this would be complemented by other instruments, such as the PIC Rules.

### **Costs**

By exercising some, but not all the regulation-making powers, the regulation can be designed so it does not impose an appreciable burden, cost, or disadvantage to any sector of the public. For instance, the provisions modifying cost provisions for substituted proceedings in relation to federal proceedings are necessary to provide certainty to parties but are not expected to have a significant cost impact on the motor accident schemes. The provisions about the appointment of decision-makers and mediators impose no significant cost burden on the community or the schemes.

### **Benefits**

This option provides certainty and transparency by ensuring critical matters for the establishment and operation of the PIC and IRO are prescribed by Regulation. The Regulation addresses necessary administrative, procedural and (in the case of Schedule 1 of the Regulation) legislative matters for the PIC and the IRO, thus ensuring the objectives of the Act are met.

For example, an object of the PIC Act is for the PIC to be open and transparent about its processes. The Regulation's provisions about the procedure and criteria for appointment of medical assessors, merit



reviewers and mediators promote this object. The Regulation also provides for costs in substituted motor accident proceedings that are considered proportionate and appropriate.

The Regulation is supplemented by the PIC Rules. This allows the PIC to manage less critical administrative and operational matters by the Rule Committee and with less regulatory burden. The ability to make Rules gives the PIC more flexibility to deal with certain matters outside of the regulation-making process and to adapt them as required over time. For instance, section 49 of the PIC Act states the Regulation, or the PIC Rules may provide for certain matters concerning the power of the PIC to require information. It was determined that it is more appropriate for the PIC to set Rules about this matter.

### **Conclusion**

This option is recommended because it strikes the right balance between exercising necessary regulation-making powers to ensure the objectives of the PIC Act are met, while providing flexibility for certain matters to be dealt with by other instruments. The benefits to stakeholders and users of the PIC are considered to substantially outweigh any costs to be borne by industry and the government.

## **3.3 Option 3: Exercise all regulation-making powers**

This option is to increase the scope of the Regulation by exercising all regulation-making powers in the PIC Act, potentially covering areas that are already the subject of Rules.

### **Costs**

Option 3 would likely incur significant costs to government as the government may be required to amend the regulations on a continual basis as circumstances and operations of the PIC change over time. Where these matters can be dealt with by other instruments, such as rules or procedural instruments, it may be preferable to do so as they can be adapted over time to address operational inefficiencies with less red tape. The risk of 'over-regulation' may be a burden on users of the PIC as operational inefficiencies may not be addressed quickly if they require regulatory amendment.

### **Benefits**

Option 3 would allow for greater oversight by the government in the day-to-day operations of the PIC through the regulation of non-substantial, procedural matters. This option could also provide greater certainty and transparency.

### **Conclusion**

This option has not been selected because it is not necessary to exercise all the regulation-making powers in the PIC Act in this principal regulation. Further, certain matters can be handled appropriately and more flexibly by making other non-regulatory instruments. This option could also result in greater costs for government and stakeholders.

## **3.4 Conclusion**

### **Recommendation: Option 2: Exercise some regulation-making powers**

Option 2 is the preferred option. The Regulation is effective and proportional as it does not impose a further burden on stakeholders and does not impose unnecessary costs. It creates greater clarity in respect of the appointment and criteria for appointment of decision makers and mediators and makes provision for costs in substituted motor accident proceedings that are considered proportionate and appropriate.

The Regulation is necessary to achieve the Act's objectives and to support the PIC and the IRO's establishment. The Regulation is the most appropriate method of regulating important operational procedures of the PIC.

The option of not progressing the Regulation has been considered (Option 1), however it is not appropriate as a non-regulatory option would prevent the PIC from commencing on the establishment day and would prevent the objects of the Act from being achieved. The other option (Option 3) that would provide for a more substantial Regulation would likely result in increased cost and administrative burden and less flexibility for the PIC to adapt to its needs. Option 3 is therefore not suitable.

There is a strong case and rationale for the Regulation to be made together with rules set by the Rule Committee (Option 2) as it is of the greatest net benefit to the community. It provides certainty for stakeholders and does not impose additional or unnecessary costs on government and the public, or unnecessary administrative and regulatory burden.

The NSW Governor and the Minister for Customer Service approved Option 2 when the Regulation was made.

## 4. Appendix 1 – List of Targeted Stakeholders

The following organisations and industry bodies were part of the consultation process in November 2020 on the draft PIC Regulation. They have been invited to comment on the Regulation and RIS as part of this present consultation process:

<b>Insurers</b>	<b>Industry</b>	<b>Medical</b>	<b>Legal</b>	<b>NSW Government</b>
Insurance Council of Australia	The NSW Business Chamber	The Australian Medical Association (AMA)	NSW Bar Association	PIC
Suncorp (provided submissions independently)	The Australian Industry Group	Royal Australian College of General Practitioners	Law Society of NSW	State Insurance Regulatory Authority
Guild Insurance	Australian Federation of Employers and Industries (AFEI)	Royal Australian College of Physicians	Australian Lawyers Alliance	Workers Compensation Independent Review Office
Hotel Employers Mutual (HEM)	Unions NSW	Royal Australian and New Zealand College of Psychiatrists		Communities and Justice
Coal Mines Insurance Pty Ltd (CMI)	NSW Teachers Federation	Royal Australasian College of Surgeons		District Court
StateCover Mutual Limited	CFMEU	Australian Psychological Society		
Racing NSW	Australian Manufacturers Workers Union	Australian Rehabilitation Providers Association		
Catholic Churches Insurance (CCI)	Motorcycle Council of NSW	Australian Physiotherapy Association		
Suncorp	Business NSW			
Allianz	NSW Taxi Council			
NRMA				
QBE				
Enstar				
Youi				
icare				

