

Queensland



**WORKCOVER
QUEENSLAND AND OTHER
ACTS AMENDMENT ACT
2000**

Act No. 61 of 2000

Queensland



WORKCOVER QUEENSLAND AND OTHER ACTS AMENDMENT ACT 2000

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Queensland



**WorkCover Queensland and Other Acts
Amendment Act 2000**

Act No. 61 of 2000

An Act to amend the *WorkCover Queensland Act 1996*, the *Building and Construction Industry (Portable Long Service Leave) Act 1991* and the *Industrial Relations Act 1999*

[Assented to 24 November 2000]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *WorkCover Queensland and Other Acts Amendment Act 2000*.

Commencement

2.(1) Part 3 and schedule 2 commence on 1 January 2001.

(2) Section 5 commences on 1 July 2001.

(3) The following provisions are taken to have commenced on 17 October 2000—

- section 6
- section 28 (to the extent it inserts chapter 13, part 2, division 2 into the *WorkCover Queensland Act 1996*).

(4) The following provisions commence on a day to be fixed by proclamation—

- section 7(2)
- section 15
- section 20 (to the extent it inserts sections 431 to 433 into the *WorkCover Queensland Act 1996*)
- sections 21(2), 22 and 23
- section 28 (to the extent it inserts sections 585 and 586 into the *WorkCover Queensland Act 1996*)
- schedule 1, item 4.

PART 2—AMENDMENT OF WORKCOVER QUEENSLAND ACT 1996

Act amended in pt 2 and sch 1

3. This part and schedule 1 amend the *WorkCover Queensland Act 1996*.

Amendment of s 5 (Workers' compensation scheme)

4.(1) Section 5(6)—

renumber as section 5(7).

(2) Section 5—

insert—

‘(6) The reserves established under section 415¹ are not to be taken into account in determining solvency under subsection (5).’.

Replacement of s 111 (Annual levy payable)

5. Section 111—

omit, insert—

‘Annual levy payable

‘111.(1) A self-insurer must pay a levy for each financial year or part of a financial year of a licence.

‘(2) The levy may include an amount that relates to the amount paid by WorkCover under section 237(2)² for transportation of self-insurers’ workers by ambulance vehicle provided by the Queensland Ambulance Service.

‘(3) A regulation must prescribe the way the levy is calculated.

‘(4) The levy is to be set at the rate specified by WorkCover and

¹ Section 415 (Reserves)

² Section 237 (Extent of liability for travelling expenses)

approved by the Minister for each financial year.

‘(5) WorkCover must recommend the rate for each financial year to the Minister.

‘(6) WorkCover must consult with the Minister before giving the recommendation.

‘(7) WorkCover must publish the rate approved by the Minister in the industrial gazette.

‘(8) WorkCover must give a self-insurer written notice of the amount of the levy.

‘(9) The self-insurer must pay the levy on or before the due date shown in the notice.

‘(10) If a self-insurer is aggrieved by WorkCover’s decision about the amount of levy payable, the self-insurer may apply to have the decision reviewed under chapter 9.’

Insertion of new ch 2, pt 5, div 2A

6. Section 118—

omit, insert—

‘Division 2A—Change to membership of self-insurer

‘Change in self-insurer’s membership

‘**118.(1)** If a self-insurer that is a group employer intends to change the membership of the group, the self-insurer must, before the change, apply to WorkCover in writing for the change in the group membership on the licence.

‘(2) WorkCover must approve the application if it is satisfied that—

- (a) the self-insurer, after the change, meets the requirements for a licence for a group employer; and
- (b) satisfactory arrangements have been made in relation to the total of the residual liability and outstanding liability (“**total liability**”) of the member or members leaving.

‘(3) However, subsection (4) applies if—

- (a) the application is made by a self-insurer that is a related bodies corporate group employer; and
- (b) within 2 months after the application, members of the self-insurer that are a group employer apply, under section 99 (the “**section 99 application**”), to be a self-insurer as a related bodies corporate group employer.

‘(4) WorkCover must approve the application if it is satisfied that the self-insurer, after the change, meets the requirements for a licence for a group employer and—

- (a) WorkCover has decided to approve the section 99 application; or
- (b) if WorkCover has decided not to approve the section 99 application, it is satisfied that satisfactory arrangements have been made in relation to the total liability of the applicants for the section 99 application.

‘**Consequences of change in self-insurer’s membership**

‘**118A.(1)** If a member leaves a self-insurer that is a group employer and becomes part of another self-insurer (the “**other self-insurer**”), the self-insurer must pay the other self-insurer an amount for the member’s total liability.

‘(2) For subsection (1), the other self-insurer is liable for compensation and damages for the member’s total liability from the day WorkCover approves the application from the other self-insurer for a change in its group membership.

‘(3) If members leave a self-insurer that is a related bodies corporate group employer and become a self-insurer that is a related bodies corporate group employer (the “**new self-insurer**”), the self-insurer must pay the new self-insurer an amount for the members’ total liability.

‘(4) For subsection (3), the new self-insurer is liable for compensation and damages for its total liability from the day WorkCover approves the new self-insurer’s application to be a self-insurer.

‘(5) If a member leaves a self-insurer that is a group employer and does

not become part of another self-insurer, the self-insurer must pay WorkCover an amount for the member's total liability.

'(6) For subsection (5), WorkCover is liable for compensation and damages for the member's total liability from the day WorkCover approves the application for a change in the group membership.

'(7) If an employer becomes part of a self-insurer, other than under subsection (1), WorkCover must pay the self-insurer an amount for the employer's total liability.

'(8) For subsection (7), the self-insurer is liable for compensation and damages for the employer's total liability from the day WorkCover approves the application for a change in the group membership.

'(9) The total liability mentioned in subsection (1), (3), (5) or (7) must be—

- (a) calculated in the way prescribed under a regulation by an actuary approved by WorkCover; and
- (b) paid within the time allowed under a regulation.

'Continuation of membership in particular circumstances

'118B. If there is a change in the membership of a self-insurer that is a group employer, it is declared that each member of the group immediately before the change is taken to continue as a member of the group for the purposes of the Act until WorkCover approves an application for a change in the group membership on the licence under section 118.'

Amendment of s 119 (Powers of self-insurers)

7.(1) Section 119(1)(a)(ii), after '235(3)(a)'—

insert—

' , 237(2) '.

(2) Section 119(1)(a)(iv), ' , and section 450'—

omit.

Amendment of s 147 (Entitlements of seafarers)

8.(1) Section 147(1)(b)(i), ‘interstate or’—
omit.

(2) Section 147(2), from ‘interstate’ to ‘Australia’—
omit.

(3) Section 147(2), ‘, section 20A’—
omit.

Amendment of s 152 (Entitlements for industrial deafness)

9. Section 152(1), ‘section 229(1)(a)’—
omit, insert—
‘sections 229(1)(a) and 237(1)³’.

Amendment of s 167 (Maximum entitlement)

10. Section 167—
insert—

‘**(4)** In subsection (1)—
“**compensation**” does not include compensation provided for under
part 7A.’.

Amendment of s 168 (Time from which compensation payable)

11. Section 168(3)—
omit, insert—

‘**(3)** Subsections (1) and (2) are not intended to limit any availability for

³ Section 229 (Extent of liability for medical treatment)
Section 237 (Extent of liability for travelling expenses)

compensation for the day of injury provided for under part 7A.

‘(4) Subsection (2) is subject to section 158(2).⁴’.

Insertion of new ch 3, pt 7A

12. After section 168—

insert—

‘PART 7A—COMPENSATION FOR DAY OF INJURY

‘Application of pt 7A

‘168A. This part applies only if, under an industrial instrument, a worker is not entitled to be paid for the whole of the day on which the worker stops work because of an injury.

‘Definition for pt 7A

‘168B. In this part—

“**compensation under this part**” means an amount equal to the amount the worker would have received from the worker’s employment for the day on which the worker stops work because of an injury if the worker were at work and the injury had not been sustained.

‘When employer must pay worker for day of injury

‘168C.(1) For the day the worker stops work because of the injury, the worker is entitled to compensation under this part for the injury.

‘(2) Despite section 135A,⁵ the employer must pay the compensation.

‘(3) The amount of compensation under this part that is payable is in addition to any other compensation payable to the worker under this Act.

⁴ Section 158 (Time for applying)

⁵ Section 135A (Who must pay compensation)

‘(4) The day for which compensation under this part is payable is not to be included in the excess period under section 70.⁶’.

Amendment of s 237 (Extent of liability for travelling expenses)

13.(1) Section 237(3) to (5)—

renumber as section 237(5) to (7).

(2) Section 237(2)—

omit, insert—

‘(2) WorkCover must pay the cost of the worker’s transportation by ambulance vehicle provided by the Queensland Ambulance Service, irrespective of distance, if the transportation—

- (a) for transportation first provided immediately after the injury is sustained—is from the place where the injury is sustained to a place where appropriate medical treatment is available to seek the treatment; or
- (b) for transportation subsequently provided—is certified in writing by a doctor as necessary because of the worker’s physical condition resulting from the injury.

‘(3) WorkCover must also pay the cost of the worker’s transportation by ambulance vehicle not provided by the Queensland Ambulance Service, irrespective of distance, if the transportation—

- (a) for transportation first provided immediately after the injury is sustained—is from the place where the injury is sustained to a place where appropriate medical treatment is available to seek the treatment; or
- (b) for transportation subsequently provided—is certified in writing by a doctor as necessary because of the worker’s physical condition resulting from the injury.

‘(4) The cost of transportation by ambulance vehicle that WorkCover must pay is—

⁶ Section 70 (Employer’s liability for excess period)

- (a) the cost WorkCover accepts as reasonable, having regard to the relevant table of costs; or
- (b) if there is no relevant table of costs—the cost WorkCover approves.’.

(3) Section 237(6), as renumbered, ‘subsection (2), (3) and (5)’—

omit, insert—

‘subsections (2), (3), (4), (5) and (7)’.

(4) Section 237(7), as renumbered, ‘(4)(a)’—

omit, insert—

‘(6)(a)’.

Amendment of s 243 (Employer’s obligation to appoint rehabilitation coordinator)

14. Section 243—

insert—

‘(5) A rehabilitation coordinator is not civilly liable for an act done, or an omission made, in giving effect to the workplace rehabilitation policy and procedures of an employer.

‘(6) If subsection (5) prevents a civil liability attaching to a rehabilitation coordinator, the liability attaches instead to the employer.’.

Amendment of s 425 (Assessment tribunals to be maintained)

15. Section 425—

insert—

‘(g) Disfigurement Assessment Tribunal.’.

Amendment of s 426 (General Medical Assessment Tribunal)

16.(1) Section 426(2), ‘16 doctors as members of’—

omit, insert—

‘doctors who may be designated to’.

(2) Section 426(4)—

omit, insert—

‘(4) The panel must consist of—

- (a) at least 3 physicians; and
- (b) at least 1 of each of the following specialists—
 - (i) vascular surgeon;
 - (ii) general surgeon;
 - (iii) urologist;
 - (iv) psychiatrist;
 - (v) gynaecologist;
 - (vi) thoracic physician;
 - (vii) rheumatologist.’.

Omission of ss 427 and 428

17. Sections 427 and 428—

omit.

Amendment of s 429 (Chairperson and deputy chairperson of General Medical Assessment Tribunal)

18. Section 429(1), ‘another 2’—

omit, insert—

‘2 or more other’.

Amendment of s 430 (Constitution of General Medical Assessment Tribunal for reference)

19.(1) Section 430(3) and (4)—

omit.

(2) Section 430(5)—
renumber as section 430(3).

Replacement of ss 431–434

20. Sections 431 to 434—
omit, insert—

‘Panel for specialty medical assessment tribunal

‘431.(1) For each specialty medical assessment tribunal the Governor in Council, by gazette notice, may appoint, for a stated period of not more than 3 years, a panel of doctors for designation to the tribunal.

‘(2) Each appointee to the panel for the Disfigurement Assessment Tribunal must be a specialist in plastic and reconstructive surgery.

‘(3) Each appointee to the panel for any other specialty medical assessment tribunal must be a specialist in the specialty with which the tribunal is concerned.

‘Chairperson and deputy chairperson of specialty medical assessment tribunal

‘432.(1) The Governor in Council, by gazette notice, may appoint—

- (a) 1 of the specialists appointed to the panel for a specialty medical assessment tribunal as chairperson of the tribunal; and
- (b) at least 1 other specialist appointed to the panel as a deputy chairperson of the tribunal.

‘(2) If the chairperson is not available to attend to the business of the tribunal—

- (a) if there is only 1 deputy chairperson of the tribunal—the deputy chairperson must act as its chairperson; or
- (b) if there is more than 1 deputy chairperson of the tribunal—a deputy chairperson designated by the chairperson must act as its chairperson.

‘(3) It is to be presumed that a deputy chairperson has acted with proper

authority each time the deputy chairperson has acted as chairperson of the tribunal, unless the contrary is proved.

‘Specialty medical assessment tribunal

‘433.(1) For deciding a matter referred to it, a specialty medical assessment tribunal is formed by—

- (a) its chairperson; and
- (b) 2 appointees to the panel for the tribunal, including persons appointed to the panel as deputy chairpersons, designated by the chairperson.

‘(2) The chairperson must preside over meetings of a specialty medical assessment tribunal.

‘Conditions of appointment to tribunal

‘434.(1) An appointee to a panel for a tribunal is to be paid the remuneration and allowances decided by the Governor in Council.

‘(2) The appointee holds office for the period stated in the gazette notice on the conditions, not otherwise provided for by this Act, decided by the Governor in Council.

‘(3) The office of an appointee to a panel becomes vacant if the appointee—

- (a) resigns by signed notice given to the Minister; or
- (b) becomes incapable of discharging the appointee’s duties; or
- (c) is removed from office by signed notice from the Minister given in accordance with the conditions of the appointee’s appointment; or
- (d) becomes an employee of either WorkCover or a self-insurer.

‘(4) In this section—

“tribunal ” means—

- (a) the General Medical Assessment Tribunal; or
- (b) a specialty medical assessment tribunal.’.

Amendment of s 437 (Reference to tribunals)

21.(1) Section 437(e)—

omit, insert—

‘(e) a worker’s permanent impairment under section 197;⁷

(ea) a worker’s permanent impairment under section 265(3)(c);⁸.’

(2) Section 437—

insert—

‘(i) a worker’s disfigurement as a result of injury.’.

Insertion of new s 445A

22. After section 445—

insert—

‘Assessment of additional compensation for prescribed disfigurement

‘445A.(1) This section applies on a reference to the Disfigurement Assessment Tribunal under section 437(i).

‘(2) The tribunal must assess, by personal examination of the worker—

(a) whether the disfigurement is prescribed disfigurement; and

(b) if it assesses the disfigurement to be prescribed disfigurement, the degree of permanent impairment resulting from the disfigurement.

‘(3) The tribunal must assess the degree of the permanent impairment in the way prescribed under a regulation.’.

Omission of ch 7, pt 4 (Prescribed disfigurement assessment tribunal)

23. Chapter 7, part 4—

omit.

⁷ Section 197 (Assessment of permanent impairment)

⁸ Section 265 (Access to damages if no previous application for compensation)

Replacement of s 467 (Entry to workplaces)

24. Section 467—

omit, insert—

‘Entry to workplaces

‘467. An authorised person may, at any reasonable time, enter a workplace to monitor or enforce compliance with this Act.’

Insertion of new s 472A

25. After section 472—

insert—

‘General powers after entering places

‘472A.(1) This section applies to an authorised person who enters a place under this Act.

‘(2) If the authorised person enters a place under a warrant, this section applies subject to the warrant.

‘(3) For monitoring or enforcing compliance with this Act, the authorised person may—

- (a) search any part of the place; or
- (b) examine, inspect, photograph or film anything in or on the place; or
- (c) take extracts from, or copy, a document in or on the place; or
- (d) take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power under this Act; or
- (e) require the occupier of the place, or a person at the place, to give the authorised person reasonable help to exercise the authorised person’s powers under paragraphs (a) to (d).

‘(4) When making a requirement mentioned in subsection (3)(e), the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

‘(5) A person required to give reasonable help under subsection (3)(e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(6) If the help required to be given is answering a question or producing a document, it is a reasonable excuse for the person to fail to comply with the requirement if complying with it might tend to incriminate the person.’.

Amendment of s 484 (Particular acts taken to be fraud)

26. Section 484(1)(b)—

omit, insert—

- ‘(b) engages in a calling; and
- (c) without reasonable excuse, does not inform WorkCover or the self-insurer, in the way stated under section 163⁹, of the person’s engagement in the calling.’.

Replacement of s 485 (Duty to report fraud)

27. Section 485—

omit, insert—

‘Duty to report fraud or false or misleading information or documents

‘**485.(1)** This section applies if—

- (a) an employer who is not a self-insurer believes on reasonable grounds that a person is defrauding, or attempting to defraud, WorkCover; or
- (b) an employer who is a self-insurer believes on reasonable grounds that a person is defrauding, or attempting to defraud, the self-insurer.

‘(2) Without limiting subsection (1), this section also applies if—

⁹ Section 163 (Worker must notify return to work or engagement in a calling)

- (a) an employer who is not a self-insurer believes on reasonable grounds that a person has stated anything, or given a document containing information, to WorkCover or a registered person that the person knows is false or misleading in a material particular; or
- (b) an employer who is a self-insurer believes on reasonable grounds that a person has stated anything, or given a document containing information, to the self-insurer or a registered person that the person knows is false or misleading in a material particular.

‘(3) The employer must give WorkCover the information the employer has in relation to the defrauding, attempting to defraud, stating of the thing or giving of the document.

Maximum penalty—50 penalty units.’.

Insertion of new ch 13

28. After section 579—

insert—

‘CHAPTER 13—TRANSITIONAL PROVISIONS FOR WORKCOVER QUEENSLAND AND OTHER ACTS AMENDMENT ACT 2000

‘PART 1—INJURIES

‘Injury before commencement of amending Act

‘**580.** Section 119(1)(a)(ii) and chapter 3, as in force immediately before the commencement of this section, continue to apply in relation to an injury sustained by a worker before the commencement of this section as if the *WorkCover Queensland and Other Acts Amendment Act 2000*, sections 7(1) and 8 to 13 had not been enacted.

‘PART 2—SELF-INSURANCE***‘Division 1—Bank guarantee*****‘Self-insurer’s bank guarantee**

‘581.(1) This section applies if a self-insurer makes an election under the *WorkCover Queensland Regulation 1997*, section 93¹⁰ to accept an interim payment of an amount on account of the self-insurer’s outstanding liability.

‘(2) This section applies only until the end of 5 years after the self-insurer becomes liable for compensation and damages for the outstanding liability.

‘(3) On and from the commencement of this section, the unconditional bank guarantee or cash deposit required to be lodged by the self-insurer under section 113(2)¹¹ before the renewal of the self-insurer’s licence is the greater of—

- (a) \$5m; or
- (b) the total of—
 - (i) 100% of the part of the self-insurer’s estimated claims liability, as defined under section 113(6), that is outstanding liability; and
 - (ii) 150% of the part of the self-insurer’s estimated claims liability, as defined under section 113(6), that is residual liability.

‘(4) This division expires on 1 July 2006.

¹⁰ Section 93 (Election by current self-insurer or current applicant about payment for outstanding liability)

¹¹ Section 113 (Bank guarantee or cash deposit)

‘Division 2—Application by related bodies corporate group employer**‘Application of div 2**

‘582.(1) This division applies if—

- (a) a self-insurer that is a related bodies corporate group employer—
 - (i) was licensed as a self-insurer immediately before 3 March 1999; or
 - (ii) lodged an application to be licensed as a self-insurer on or before 3 March 1999 and has subsequently been licensed as a self-insurer; and
- (b) the self-insurer applies to WorkCover under section 118(1) for a change in the group membership on the self-insurer’s licence; and
- (c) members of the self-insurer that are a group employer apply before 3 March 2002, under section 99, to be a self-insurer as a related bodies corporate group employer (**“section 99 application”**).

‘(2) In subsection (1)—

“members”, of the self-insurer, means members that have continuously been part of the self-insurer since 3 March 1999 or, if the self-insurer was licensed on or after 3 March 1999, since the day the self-insurer was licensed.

‘Variation of s 102 for particular purposes

‘583.(1) WorkCover must apply section 102(b)¹², as in force immediately before 3 March 1999—

- (a) to decide a section 99 application; and
- (b) if WorkCover approves the application and issues a licence, to decide each renewal of the licence.

¹² Section 102 (Issue or renewal of licence to a group employer)

‘(2) Also, section 102(1)(d) does not apply for the purposes of deciding the section 99 application.

‘(3) However, if the licence is issued, the licence is subject to a condition that the requirements of section 102(1)(d) must be met within 6 months after the licence is issued.

‘PART 3—MEDICAL ASSESSMENT TRIBUNALS

‘General Medical Assessment Tribunal

‘584.(1) Subsection (2) applies if a person held an appointment to the panel or alternative panel of the General Medical Assessment Tribunal immediately before the commencement of this section.

‘(2) On the commencement of this section, the person becomes an appointee to the panel of the tribunal for the remainder of the person’s term of appointment and on the conditions of the person’s appointment.

‘(3) Subsection (4) applies if, immediately before the commencement of this section—

- (a) the General Medical Assessment Tribunal has started to consider a matter referred to it under section 437;¹³ and
- (b) the tribunal has not made a decision in relation to the matter.

‘(4) Chapter 7,¹⁴ as in force immediately before the commencement of this section, continues to apply to the matter as if the *WorkCover Queensland and Other Acts Amendment Act 2000*, sections 15 to 23 had not been enacted.

‘Specialty medical assessment tribunals

‘585.(1) This section applies if, immediately before the commencement

¹³ Section 437 (Reference to tribunals)

¹⁴ Chapter 7 (Medical Assessment Tribunals)

of this section—

- (a) a specialty medical assessment tribunal has started to consider a matter referred to it under section 437¹⁵; and
- (b) the tribunal has not made a decision in relation to the matter.

‘(2) Chapter 7,¹⁶ as in force immediately before the commencement of this section, continues to apply to the matter as if the *WorkCover Queensland and Other Acts Amendment Act 2000*, sections 15 to 23 had not been enacted.

‘Prescribed disfigurement assessment tribunal

‘**586.(1)** This section applies if, immediately before the commencement of this section—

- (a) a prescribed disfigurement assessment tribunal has started to consider a matter referred to it under section 450¹⁷; and
- (b) the tribunal has not made a decision in relation to the matter.

‘(2) Chapter 7,¹⁸ as in force immediately before the commencement of this section, continues to apply to the matter as if the *WorkCover Queensland and Other Acts Amendment Act 2000*, sections 15 to 23 had not been enacted.’.

Amendment of sch 3 (Definitions)

29.(1) Schedule 3, definition “**Insurance and Superannuation Commission**”—

omit.

(2) Schedule 3, definition “**table of costs**”, after ‘relevant’—

¹⁵ Section 437 (Reference to tribunals)

¹⁶ Chapter 7 (Medical Assessment Tribunals)

¹⁷ Section 450 (Assessment of additional compensation for prescribed disfigurement)

¹⁸ Chapter 7 (Medical Assessment Tribunals)

insert—

‘ ambulance transportation,’.

PART 3—AMENDMENT OF BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) ACT 1991

Act amended in pt 3 and sch 2

30. This part and schedule 2 amend the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Amendment of title

31.(1) Title, ‘**industry, and**’—

omit, insert—

‘**industry,**’.

(2) Title, after ‘**industry**’, second mention—

insert—

‘, **and for other purposes**’.

Amendment of s 3 (Definitions)

32.(1) Section 3, ‘In this Act—’—

omit, insert—

‘The dictionary in the schedule defines particular words used in this Act.’.

(2) Section 3, definitions “**building and construction industry**” and “**State**”—

omit.

(3) Section 3—

insert—

‘ **“building and construction industry”** see section 3AA.

‘ **“cost”**, of building and construction work, see section 73.’.

(4) Section 3, definitions (as amended)—

relocate to the schedule, as inserted by this Act.

Insertion of new s 3AA

33. After section 3—

insert—

‘Meaning of “building and construction industry”

3AA.(1) The **“building and construction industry”** is the industry of constructing, deconstructing, reconstructing, renovating, altering, demolishing, relocating, maintaining or repairing any of the following—

- (a) buildings;
- (b) spa pools and swimming pools;
- (c) roads, railways, airfields or other works for the passage of anything;
- (d) breakwaters, docks, jetties, piers or wharves;
- (e) works for solid waste disposal;
- (f) works for subdividing or developing land;
- (g) works for the improvement or alteration of a harbour, river or watercourse for navigation purposes;
- (h) works for the storage or supply of water or for flood mitigation;
- (i) works for the irrigation of land;
- (j) works for the conveyance, treatment or disposal of sewage or of the effluent from any premises;
- (k) works for extracting, refining, processing or treating materials or for producing or extracting products and by-products from

materials;

- (l) works for conveying products, by-products or materials;
- (m) works for the drainage of land;
- (n) works for the storage of liquids, other than water, or gases;
- (o) works for the generation, supply or transmission of electric power;
- (p) works for telecommunication or for the transmission of radio or television;
- (q) bridges, viaducts, aqueducts or tunnels;
- (r) chimney stacks, cooling towers, drilling rigs, gas holders or silos;
- (s) pipe lines;
- (t) navigational lights, beacons or markers;
- (u) pile driving works;
- (v) sporting or recreational facilities;
- (w) earthworks, other than for farming;
- (x) fences, other than fences on farms;
- (y) structures, fixtures or other works not included in paragraphs (a) to (x), but not including earthworks for farming or fences on farms.

‘(2) The “**building and construction industry**” also includes landclearing and site preparation, other than for farming.

‘(3) The “**building and construction industry**” also includes the industry of, whether on or off site—

- (a) constructing a thing, other than ordinary stock for sale, in accordance with working drawings; or
- (b) deconstructing, reconstructing, renovating, altering, demolishing, relocating, maintaining or repairing a thing, other than ordinary stock for sale, constructed in accordance with working drawings.

‘(4) The “**building and construction industry**” does not include the industry of performing maintenance or repairs of a minor nature to anything

mentioned in subsection (1) or (3) for a person not substantially engaged in activity mentioned in subsection (1), (2) or (3).’.

Amendment of s 3A (Meaning of “eligible worker”)

34.(1) Section 3A(1)(b), after ‘only’—

insert—

‘, or substantially for labour only,’.

(2) After section 3A(1)(b)—

insert—

‘Examples for paragraph (b)—

A carpenter who supplies his or her own tools and nails could be an eligible worker.

A carpenter who supplies all the timber for a job would probably not be an eligible worker.

A tiler who supplies his or her own tools, glues, solvents and grout could be an eligible worker.

A painter who supplies paint would probably not be an eligible worker.’.

(3) Section 3A(1)(c), from ‘directly’ to ‘(b)’—

omit.

(4) Section 3A(2)—

renumber as section 3A(3).

(5) Section 3A—

insert—

‘**(2)** If a person is appointed as a safety officer to discharge workplace health and safety obligations under the *Workplace Health and Safety Act 1995* in relation to building and construction work, the person is an **“eligible worker”**, whether or not the person performs or usually performs building and construction work.’.

(6) Section 3A(3)(b), as renumbered—

omit, insert—

‘(b) the person is engaged under a contract of employment with a non-Queensland government entity; or’.

(7) Section 3A—

insert—

‘(4) Also, a person who would otherwise be an eligible worker under subsection (1) or (2) is not an eligible worker if the person is engaged to perform building and construction work by a person who is not substantially engaged in the building and construction industry.

‘(5) Subsection 4 does not apply if the person is party to a contract with a labour hire agency that arranges for the person to perform building and construction work for some one else under an arrangement between the agency and the other person.

‘(6) In subsection (5)—

“**arrangement**” includes agreement, promise, scheme, transaction, understanding and undertaking, whether express or implied.’.

Amendment of s 9 (Authority’s functions)

35. Section 9(1)—

insert—

‘(c) to act as an agent in collecting fees and charges payable under other Acts.’.

Amendment of s 37 (Authority to keep register of workers)

36. Section 37(2)(a), ‘section 39; and’ —

omit, insert—

‘section 39, and the names of each other person—

- (i) in relation to whom the authority has received a certificate of service from an employer under section 47, or other information; and
- (ii) who the authority is satisfied is an eligible worker; and’.

Replacement of s 40 (Date of registration)

37. Section 40—

omit, insert—

‘When person becomes a registered worker

‘40.(1) For section 37(2)(b), the date a person becomes a registered worker is—

- (a) if the person becomes a registered worker on an application under section 38—the date the application is lodged with the authority; or
- (b) otherwise—the date the certificate of service or other information about the person is received by the authority.

‘(2) However, if the authority is satisfied that a person has been an eligible worker for a period before the date that would otherwise apply under subsection (1) for becoming a registered worker, the authority may fix an earlier date as the date the person became a registered worker.

‘(3) In fixing a date under subsection (2), the authority must not fix a date earlier than the start of the financial year that is the second last full financial year before the date that would otherwise apply under subsection (1) for becoming a registered worker unless it is satisfied that special circumstances exist.

Examples for applying subsection (3)—

A person applies to become a registered worker on 1 February 2001. The authority may fix a date that is no earlier than 1 July 1998.

The authority receives a certificate of service from an employer in relation to a worker on 1 July 2001. The authority may fix a date that is no earlier than 1 July 1999.

‘(4) Despite subsections (2) and (3), the authority must not fix a date earlier than—

- (a) if the person is a person mentioned in section 3A(1)(a)—1 July 1992; or
- (b) if the person is a person mentioned in section 3A(1)(b) or (c)—1 January 1999.’.

Amendment of s 43 (Application for registration)

38. Section 43(1) and (6), penalty, ‘16’—

omit, insert—

‘40’.

Amendment of s 45 (Employer to notify authority of any change in circumstance)

39. Section 45, penalty, ‘16’—

omit, insert—

‘40’.

Insertion of new s 46A

40. Part 6, division 2, after section 46—

insert—

‘Authority may require information or documents from person believed to be employer

‘46A.(1) This section applies if the authority believes, on reasonable grounds, that a person is an employer in the building and construction industry, but is not registered as an employer under this division.

‘(2) The authority may, by written notice given to the person, require the person to give the authority the information or documents asked for in the notice that are necessary to enable the authority to decide whether or not the person is an employer in the building and construction industry.

‘(3) The notice may state a time, that must be reasonable in the circumstances, within which the information or documents must be given.

‘(4) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(5) If a court finds that a person has contravened subsection (4), the court may, in addition to any order the court may make imposing a penalty,

make any other order the court considers appropriate.’.

Amendment of s 47 (Certificate of service to be supplied by employers)

41. Section 47(1), penalty, ‘16’—

omit, insert—

‘40’.

Insertion of new s 51A

42. After section 51—

insert—

‘Service credits for injured workers

‘51A.(1) This section applies if—

- (a) a registered worker sustains an injury, within the meaning of the *WorkCover Queensland Act 1996*, section 34,¹⁹ while performing work for an employer; and
- (b) the worker can not perform building and construction work because of the injury.

‘(2) The worker must be credited in the register of workers with service as if the person had been engaged in the performance of building and construction work from the day of injury until the earlier of the following—

- (a) the end of 6 months after the day of injury;
- (b) the worker engages in any employment on a full-time basis.’.

Amendment of s 52 (Limitations on service credits)

43.(1) Section 52(1), ‘, shown in the register under section 40(1)(a) or (b),’—

omit.

¹⁹ Section 34 (Meaning of “injury”)

(2) Section 52(6) and (7)—
omit.

Replacement of s 56 (Application for entitlement to long service leave)

44. Section 56—
omit, insert—

‘Application for entitlement to long service leave or payment instead of long service leave

‘56.(1) A registered worker who has service credits in the register of workers may apply to the authority in the approved form for—

- (a) long service leave; or
- (b) payment for the long service leave to which the registered worker is entitled under section 57(1).

‘(2) If the building and construction industry award or agreement applying to the worker provides for the payment of all or part of an entitlement to long service leave instead of taking the leave or part of the leave, the worker and the authority may agree, by signed agreement, that the worker be paid for all or part of the entitlement in accordance with the award or agreement.

‘(3) The personal representative of a person who died having service credits in the register of workers may apply to the authority in the approved form for payment for the credits to which the person was entitled under section 57(1) immediately before his or her death.’.

Amendment of s 57 (Entitlement to long service leave)

45.(1) Section 57(2)—
renumber as section 57(4).

(2) Section 57—
insert—

‘(2) Subsection (3) applies if a worker—

- (a) either—
 - (i) has accrued at least 1540 days service; or
 - (ii) has—
 - (A) accrued at least 1155 days service; and
 - (B) been a registered worker for at least 7 years in the register of workers kept under this Act, or in a similar register or record kept under a corresponding law; and
- (b) has not been credited with retrospective service credits under section 54; and
- (c) either—
 - (i) intends to permanently stop work in the building and construction industry; or
 - (ii) dies.

‘(3) The entitlement to long service leave is a period that bears to 8.67 weeks the proportion that the worker’s accrued service bears to 10 years service.’.

Omission of s 58 (Workers not to carry out certain building and construction work during leave)

46. Section 58—

omit.

Amendment of s 59 (Amount of long service leave payment)

47.(1) Section 59(4) to (9)—

renumber as section 59(5) to (10).

(2) Section 59—

insert—

‘(4) The authority must pay a registered worker for any public holiday that happens during long service leave taken by the worker.’.

(3) Section 59(8), as renumbered, ‘subsection (8)’—
omit, insert—
‘subsection (9)’.

Amendment of s 62 (Payments to employers)

48.(1) Section 62(3)(b), ‘1 year’—
omit, insert—
‘2 years’.

(2) Section 62(6) to (8)—
renumber as section 62(7) to (9).

(3) Section 62—
insert—

‘(6) An employer is entitled to be paid for any public holiday that happens during long service leave taken by a worker.’.

(4) Section 62(8) and (9), as renumbered, ‘subsection (6)’—
omit, insert—
‘subsection (7)’.

Insertion of new s 62A

49. After section 62—
insert—

‘Payment to worker or personal representative instead of employer in particular circumstances

‘62A.(1) This section applies if—

- (a) the employer of a registered worker is or becomes an insolvent under administration or an externally-administered body corporate; and
- (b) a worker of the employer is eligible for long service leave or

payment for the long service leave.

‘(2) The authority may pay to the worker or the worker’s personal representative the difference between—

- (a) the amount that represents the value of the worker’s long service leave under this Act; and
- (b) any amount that the worker or personal representative has received from or on behalf of the employer for the worker’s long service leave under this Act.

‘(3) This section applies despite anything in section 61.²⁰

‘(4) In this section—

“**externally-administered body corporate**” see the Corporations Law, section 9.²¹

“**insolvent under administration**” means a person—

- (a) who is an undischarged bankrupt; or
- (b) for whom a debt agreement has been made under the *Bankruptcy Act 1966* (Cwlth), part X or the corresponding provisions of the law of another jurisdiction, if the debt agreement has not ended or has not been terminated; or
- (c) who has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part X or the corresponding provisions of the

²⁰ Section 61 (Election to take benefits under this Act or Industrial Relations Act)

²¹ Corporations Law, section 9—

“**externally-administered body corporate**” means a body corporate—

- (a) that is being wound up;
- (b) in respect of property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting;
- (c) that is under administration;
- (ca) that has executed a deed of company arrangement that has not yet terminated; or
- (d) that has entered into a compromise or arrangement with another person the administration of which has not been concluded.

law of another jurisdiction, if the terms of the deed have not been fully complied with; or

- (d) whose creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part X or the corresponding provisions of the law of another jurisdiction, if a final payment has not been made under the composition.’

Amendment of s 67 (Notification of building and construction work)

50. Section 67(1), penalty, ‘16’—

omit, insert—

‘40’.

Amendment of s 68 (Offence for failure to pay levy)

51. Section 68, penalty, ‘16’—

omit, insert—

‘40’.

Insertion of new s 68A

52. After section 68—

insert—

‘Deciding who is person for whom work is to be done or was to be done

‘**68A.(1)** This section applies for deciding who is the person for whom work is to be done or was to be done.

‘(2) Regard may be had to any document or anything else reasonably likely to help to establish the identity of the person for whom the work is to be done or was to be done.

‘(3) The authority may, by written notice given to a person, require the person to give the authority within a reasonable time a document or information or any thing else that may help to establish the identity of the

person for whom the work is to be done or was to be done.

‘(4) The person given a notice under subsection (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(5) If a court finds that a person has contravened subsection (4), the court may, in addition to any order the court may make imposing a penalty, make any other order the court considers appropriate.’.

Replacement of ss 73–75

53. Sections 73 to 75—

omit, insert—

‘Meaning of “cost” of building and construction work

‘73.(1) The “cost” of building and construction work is the total of all costs that relate to the work directly or indirectly.

Examples of costs—

Costs of labour, materials, plant, equipment, design, project management, consultancy, prefabricated goods, commissioning, installation.

‘(2) Without limiting subsection (1), the total of all costs may be ascertained having regard to—

- (a) the contract price for the work; or
- (b) if the work is being done for someone other than the Commonwealth and involves more than 1 contract, the total of the contract prices.

‘(3) Despite subsections (1) and (2), if there is no contract price or the authority is satisfied that the contract price, or the total of the contract prices, for carrying out the building and construction work does not accurately establish the total of all costs that relate to the work, the cost may be decided by the authority.

‘Liability for levy

‘74. Levy for building and construction work must be paid by—

- (a) if the work is being done for the Commonwealth—the contractor engaged by the Commonwealth to carry out the work; or
- (b) if the work is being done for a local government, government entity or non-Queensland government entity—the local government or entity; or
- (c) if neither paragraph (a) nor (b) applies and under the *Integrated Planning Act 1997* an application is made to the assessment manager in relation to the work for a development permit for building work, plumbing or drainage work or operational work as defined under that Act—the applicant under that Act; or
- (d) otherwise—the person for whom the work is to be done.

‘When levy is payable

‘75. Levy for building and construction work to be carried out by a person must be paid—

- (a) before a development permit is given under the *Integrated Planning Act 1997* in relation to the work that authorises building work, plumbing or drainage work or operational work as defined under that Act; or
- (b) if a development permit of the type mentioned in paragraph (a) is not given—before the work is started or, if the authority allows a later time for payment, the later time.’.

Amendment of s 76 (Government entity to notify of building and construction work)

54.(1) Section 76, heading, after ‘**notify**’—

insert—

‘**authority**’.

(2) Section 76(2) and (3)—

renumber as section 76(3) and (4).

(3) Section 76(1)—

omit, insert—

76.(1) A government entity must notify the authority of building and construction work to be carried out by the entity.

(2) The notice must be given in the approved form before the levy is payable.’.

Amendment of s 77 (Duty of assessment manager to sight approved form)

55.(1) Section 77(1), from ‘accept’ to ‘building work’—

omit, insert—

‘give a development permit that authorises building work, plumbing or drainage work or operational work as defined’.

(2) Section 77(3), ‘receives a development application’—

omit, insert—

‘gives a development permit’.

(3) Section 77(3), penalty, ‘16’—

omit, insert—

‘40’.

Omission of s 78 (Building and construction work for public authority)

56. Section 78—

omit.

Replacement of s 80 (Additional provisions about levy)

57. Section 80—

omit, insert—

‘Additional provisions about levy

‘80.(1) Subsection (2) applies if the authority believes, on reasonable grounds, that levy for building and construction work has not been paid to the full extent required under this Act.

‘(2) The authority may, by written notice, require any one the authority reasonably believes has information or documents about the work, to give the authority the information and documents about the work, including the actual cost of carrying out the work, asked for in the notice within the reasonable time stated in the notice.

‘(3) A person to whom a notice under subsection (2) is given must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(4) If a court finds that a person has contravened subsection (3), the court may, in addition to any order the court may make imposing a penalty, make any other order the court considers appropriate.

‘(5) If—

- (a) the levy payable for the actual cost of carrying out the work is more than the levy that has been paid for the work; and
- (b) the difference between the cost of the work for which levy has been paid and the cost of the work for which levy is payable is more than the amount prescribed under the regulations;

then, despite anything in section 74, each person for whom any of the work was or is to be done must, on receiving written notice from the authority, pay to the authority without delay the amount of additional levy decided by the authority as fairly attributable to the work done or to be done for the person.

Maximum penalty—40 penalty units.

‘(6) Payment of additional levy may be claimed and ordered in a proceeding for—

- (a) recovery of the additional levy brought in a court of competent jurisdiction; or
- (b) an offence against subsection (5) brought against the person liable

to pay the additional levy.

‘(7) The additional levy must be worked out under the regulations.’.

Amendment of s 82 (Payment of levy by instalments)

58.(1) Section 82(1), after ‘may’—

insert—

‘apply in writing to the authority for approval to’.

(2) Section 82(2) to (8)—

renumber as section 82(3) to (9).

(3) Section 82—

insert—

‘(2) The authority may approve or refuse the person’s application to pay the levy by instalments.’.

(4) Section 82(3), as renumbered, ‘The’—

omit, insert—

‘If the authority approves the person’s application to pay the levy by instalments, the’.

(5) Section 82(9), as renumbered, ‘subsection (7)’—

omit, insert—

‘subsection (8)’.

Amendment of s 84 (Interest on, and extension of time for payment of, levy)

59. Section 84(1), ‘interest at the prescribed rate’—

omit, insert—

‘compound interest at the rate prescribed under a regulation’.

Amendment of s 92 (Keeping, and inspection, of books and records)

60.(1) Section 92(1)—

insert, as a penalty—

‘Maximum penalty—40 penalty units.’.

(2) Section 92(3), penalty, ‘16’—

omit, insert—

‘40’.

Amendment of s 95 (Authorised officers)

61. Section 95(4), penalty, ‘16’—

omit, insert—

‘40’.

Amendment of s 97 (Entry and search—monitoring compliance)

62.(1) Section 97(2)—

insert—

‘(d) the place is a place where the authorised officer reasonably believes a person has information or documents about workers or building and construction work.’.

(2) Section 97—

insert—

‘**(3)** For subsection (2)(a) or (d), the place does not include part of the place where a person resides.

‘**(4)** For subsection (2)(d), the entry may only be made when the place is ordinarily open for the conduct of business or otherwise open for entry.’.

Amendment of s 99 (General powers of authorised officer in relation to places)

63. Section 99(2), penalty, ‘16’—

omit, insert—
'40'.

Amendment of s 102 (Obstruction etc. of authorised officers)

64. Section 102, penalty, '16'—
omit, insert—
'40'.

Amendment of s 103 (False or misleading statements)

65. Section 103, penalty, '16'—
omit, insert—
'40'.

Amendment of s 106 (Certain persons liable for offences by unincorporated bodies)

66. Section 106(2), penalty, '16'—
omit, insert—
'40'.

Amendment of s 111 (Protection of worker from dismissal)

67. Section 111, penalty, '16'—
omit, insert—
'40'.

Insertion of new s 111A

68. After section 111—
insert—

‘Penalties to be paid to authority

‘111A. All penalties recovered as a result of proceedings for offences against this Act brought by the authority must be ordered to be paid to the authority.’.

Insertion of new pt 11, div 3

69. After section 118—

insert—

‘Division 3—Transitional provision for WorkCover Queensland and Other Acts Amendment Act 2000

‘Government apprentices and trainees

‘119.(1) Subsection (2) applies if—

- (a) immediately before 1 January 2001, a person is engaged under an apprenticeship or traineeship in the building and construction industry with—
 - (i) a local government; or
 - (ii) a government entity; and
- (b) on or after 1 January 2001, the person stops being engaged by the local government or government entity; and
- (c) at any time after the person stops being engaged by the local government or government entity, the person becomes a registered worker.

‘(2) Despite the fact that the person was not an eligible worker during the period of apprenticeship or traineeship, the person must be credited with service under section 50 as if the person had been a registered worker during the period of apprenticeship or traineeship, but only in relation to the period of apprenticeship or traineeship happening on or after 1 January 2001.

‘(3) Subsection (4) applies if—

- (a) on or after 1 January 2001, a person starts being engaged under

an apprenticeship or traineeship in the building and construction industry with—

- (i) a local government; or
- (ii) a government entity; and
- (b) after 1 January 2001, the person stops being engaged by the local government or government entity; and
- (c) at any time after the person stops being engaged by the local government or government entity, the person becomes a registered worker.

‘(4) Despite the fact that the person was not an eligible worker during the period of apprenticeship or traineeship, the person must be credited with service under section 50 as if the person had been a registered worker during the period of apprenticeship or traineeship.’.

PART 4—AMENDMENT OF INDUSTRIAL RELATIONS ACT 1999

Act amended in pt 4

70. This part amends the *Industrial Relations Act 1999*.

Amendment of s 725 (Orders and determinations under the *Vocational Education, Training and Employment Act 1991*)

71.(1) Section 725(1)—

omit, insert—

‘**725.(1)** A continuing order continues to have effect after the commencement of this subsection as if it had been made by the commission under—

- (a) for a continuing order made under section 83 of the repealed Act that relates to a person employed under a labour market program

approved by the Minister under section 140—section 140; or

(b) for any other continuing order—section 137.’.

(2) Section 725—

insert—

‘(4) In this section—

“continuing order” means an order made by the commission under section 83, 86(2) or 87(5) of the repealed Act and continued in effect under subsection (1) as in force immediately before the commencement of this subsection.

“repealed Act” means the *Vocational Education, Training and Employment Act 1991*.’.

SCHEDULE 1**CONSEQUENTIAL AND MINOR AMENDMENTS OF
WORKCOVER QUEENSLAND ACT 1996**

section 3

1. Section 115(6), ‘Insurance and Superannuation Commissioner’—*omit, insert—*

‘Australian Prudential Regulation Authority’.

2. Section 280(2)(a), before ‘a notice’—*insert—*

‘.’.

3. Section 442(1), after ‘437(e)’—*insert—*

‘or (ea)’.

4. Section 452, definition “tribunal”, paragraph (c)—*omit.***5. Section 486(1)(b), from ‘427’ to ‘489’—***omit, insert—*

‘408C, 430, 488’.

SCHEDULE 1 (continued)

6. Section 489(1)(a)(vi), ‘annual levy’—*omit, insert—*

‘levy payable’.

7. Schedule 3, heading—*omit, insert—***‘DICTIONARY’.****8. Schedule 3, definition “industrial instrument”, paragraph (a)(vi),
‘parts 5 and 6’—***omit, insert—*

‘part 5, 6 or 7’.

SCHEDULE 2**CONSEQUENTIAL AND MINOR AMENDMENTS OF
BUILDING AND CONSTRUCTION INDUSTRY
(PORTABLE LONG SERVICE LEAVE) ACT 1991**

section 30

1. Section 41(3A), after ‘57(1B)’—*insert—*

‘or (3)’.

2. Part 11, heading—*omit, insert—***‘PART 11—TRANSITIONAL PROVISIONS’.****3. After part 11—***insert—***‘SCHEDULE****‘DICTIONARY**

section 3’.