



Queensland

Workplace Health and Safety and Other Legislation Amendment Act 2008

Act No. 61 of 2008



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Workplace Health and Safety and Other Legislation Amendment Act 2008

Act No. 61 of 2008

An Act to amend the Workplace Health and Safety Act 1995, the Electrical Safety Act 2002, the Workers' Compensation and Rehabilitation Act 2003 and the Workers' Compensation and Rehabilitation Regulation 2003 for particular purposes

[Assented to 25 November 2008]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Workplace Health and Safety and Other Legislation Amendment Act 2008*.

2 Commencement

- (1) Part 4 is taken to have commenced on 28 October 2008.
- (2) Part 2, other than the following provisions, commences on 1 January 2009—
 - sections 8 to 11
 - section 15
 - section 16(1)
 - section 22 so far as it inserts section 170D(c)
 - section 23
 - section 28(2) so far as it inserts the definitions *provisional improvement notice* and *qualified workplace health and safety representative*.
- (3) Part 3 commences on 1 January 2009.
- (4) The following provisions commence on a day to be fixed by proclamation—
 - sections 8 to 11
 - section 15
 - section 16(1)
 - section 22 so far as it inserts section 170D(c)
 - section 23

[s 7]

7 Amendment of s 42D (Meaning of *workplace health and safety undertaking*)

Section 42D—

insert—

- ‘(2) The chief executive of a public sector unit may give a workplace health and safety undertaking for the public sector unit.’.

8 Amendment of s 67 (Who is a workplace health and safety representative?)

Section 67(3)—

insert—

Note—

See section 81A for qualified workplace health and safety representatives.’

9 Amendment of s 81 (Entitlements of workplace health and safety representatives)

Section 81(1)—

insert—

- ‘(p) for a qualified workplace health and safety representative—to give a person in the representative’s area of representation a provisional improvement notice.’.

10 Insertion of new pt 7, div 3, sdivs 4A and 4B

After section 81—

insert—

‘Subdivision 4A Provisional improvement notices

‘81A Who is a qualified workplace health and safety representative

‘For this subdivision, a *qualified workplace health and safety representative* is a workplace health and safety representative who has completed a training course approved by the chief executive that includes training in the giving of provisional improvement notices.

‘81B Provisional improvement notices

- ‘(1) This section applies if a qualified workplace health and safety representative reasonably believes that a person within the representative’s area of representation—
- (a) is contravening a provision of this Act; or
 - (b) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated.
- ‘(2) The qualified workplace health and safety representative may give the person a written notice (a *provisional improvement notice*) requiring the person to remedy the contravention or likely contravention.

‘81C Consultation required before issue of provisional improvement notice

‘Before giving a provisional improvement notice to a person, a qualified workplace health and safety representative must consult with the person about remedying the contravention or likely contravention.

‘81D Contents of provisional improvement notice

‘A provisional improvement notice must state the following in relation to a contravention of this Act—

- (a) that the qualified workplace health and safety representative believes the person—
 - (i) is contravening a provision of this Act; or

[s 10]

- (ii) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated;
- (b) the provision the representative believes is being, or has been, contravened;
- (c) how the provision is being, or has been, contravened;
- (d) a day, at least 8 days after the day the notice is given, before which the person is required to remedy the contravention or likely contravention.

‘81E Provisional improvement notice may state measures to remedy contravention

‘A provisional improvement notice may state measures to be taken to remedy the contravention or likely contravention.

‘81F What person given provisional improvement notice must do

‘A person given a provisional improvement notice must—

- (a) if the person is a worker—bring the notice to the attention of the relevant person for the worker; or
- (b) if the person is not a worker—
 - (i) bring the notice to the attention of each other person whose work is affected by the notice; and
 - (ii) if possible, display a copy of the notice, while it is in force, in a conspicuous position in the part of the workplace covered by the qualified workplace health and safety representative’s area of representation.

Maximum penalty—20 penalty units.

‘81G Compliance with provisional improvement notice

‘A person given a provisional improvement notice must comply with the notice, unless an inspector is asked to enquire

into the circumstances relating to the giving of the notice under section 81H(1).

Maximum penalty—40 penalty units.

‘81H Request for inspector to enquire into giving of provisional improvement notice

‘(1) Within 7 days after a provisional improvement notice is given to a person—

- (a) the person given the notice; or
- (b) if the person given the notice is a worker—the relevant person for the worker;

may ask the chief executive to arrange for an inspector to attend the workplace to enquire into the circumstances relating to the giving of the notice.

‘(2) The operation of the notice is suspended until the inspector completes the inspector’s enquiry.

‘(3) A qualified workplace health and safety representative may ask the chief executive to arrange for an inspector to attend the workplace to enquire into the circumstances relating to the giving of the notice if—

- (a) the person given the notice has not complied with the notice within the time stated in the notice; and
- (b) subsection (1) does not apply.

‘81I Attendance of inspector in relation to provisional improvement notice

‘(1) As soon as practicable after the request is made, the chief executive must arrange for an inspector to—

- (a) attend the workplace; and
- (b) enquire into the circumstances relating to the giving of the provisional improvement notice.

‘(2) The inspector must—

[s 10]

- (a) enquire into the circumstances relating to the giving of the provisional improvement notice; and
 - (b) by written notice given to the qualified workplace health and safety representative who gave the notice and to the person given the notice, do 1 of the following—
 - (i) affirm the provisional improvement notice;
 - (ii) affirm the provisional improvement notice with changes;
 - (iii) cancel the provisional improvement notice.
- ‘(3) The notice given by the inspector must state—
- (a) the decision; and
 - (b) the reason for the decision; and
 - (c) that the person may apply within 14 days for the decision to be reviewed; and
 - (d) how the person may apply for the review.
- ‘(4) A person given a provisional improvement notice that is affirmed by an inspector must comply with the notice within the time stated by the inspector in the notice given by the inspector.
- Maximum penalty for subsection (4)—40 penalty units.

‘81J Service of provisional improvement notice

- ‘(1) A provisional improvement notice may be given to a person by leaving it for the person at the workplace to which the notice relates with a person who is apparently—
- (a) at least 16 years old; and
 - (b) is, or appears to be, the person in control of the workplace or the work to which the contravention relates.
- ‘(2) Subsection (1) does not limit the *Acts Interpretation Act 1954*, section 39.

‘81K Formal irregularities or defects in provisional improvement notice

‘A provisional improvement notice is not invalid merely because of—

- (a) a formal defect or irregularity in the notice, unless the defect or irregularity is misleading or causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person to which the notice is given, if the notice sufficiently identifies the person and is given to the person in accordance with section 81J or the *Acts Interpretation Act 1954*, section 39.

‘81L Qualified workplace health and safety representative may cancel provisional improvement notice at any time

‘A qualified workplace health and safety representative may at any time cancel a provisional improvement notice given to a person by written notice given to the person.

‘81M Proceeding for offence not affected by provisional improvement notice

‘The giving, variation or cancellation of a provisional improvement notice does not affect a proceeding for an offence against this Act for a matter in relation to which the notice was given.

‘Subdivision 4B Suspension or cancellation of workplace health and safety representative’s entitlement to give provisional improvement notice

[s 10]

‘81N Application to suspend or cancel

- ‘(1) This section applies if the chief executive or the relevant person in a qualified workplace health and safety representative’s area of representation reasonably believes that the representative has unreasonably given a provisional improvement notice to a person.
- ‘(2) The chief executive or the relevant person may apply to the industrial commission to suspend or cancel the representative’s entitlement to give a provisional improvement notice.

‘81O Decision on application may be given on the papers or at a hearing

‘The industrial commission may decide whether or not to take action on an application under section 81N entirely or partly from a consideration of the documents filed.

‘81P Applications decided on the papers

- ‘(1) This section applies if the industrial commission decides to decide the application after a consideration of the documents filed and without a hearing.
- ‘(2) The industrial commission must give the applicant and the representative a written notice stating—
 - (a) the industrial commission is considering whether to suspend or cancel the qualified workplace health and safety representative’s entitlement to give a provisional improvement notice (the *proposed action*); and
 - (b) the reason for the proposed action; and
 - (c) if the proposed action is suspension of the entitlement—the proposed suspension period; and
 - (d) an invitation—
 - (i) to the representative to show in writing, within a stated time of at least 14 days after the date of the

notice, why the proposed action should not be taken; and

(ii) to the applicant to comment in writing, within a stated time of at least 14 days after the date of the notice, on the appropriateness of the proposed action.

‘(3) The industrial commission may take action under subsection (4) if, after considering all documents filed in the application and all written submissions made within the time allowed under subsection (2)(d), the industrial commission—

(a) is satisfied, on the balance of probabilities, that the representative has unreasonably given a provisional improvement notice to a person; and

(b) considers the representative’s entitlement to give a provisional improvement notice should be suspended or cancelled.

‘(4) The industrial commission may—

(a) if the proposed action is to suspend the entitlement—suspend the entitlement for no longer than the proposed suspension period; or

(b) if the proposed action is to cancel the entitlement—cancel the entitlement or suspend it for a period.

‘(5) The industrial commission must give the applicant and the representative a written notice stating—

(a) the decision; and

(b) the reasons for the decision; and

(c) that the applicant or the authorised representative may appeal against the decision under part 11.

‘(6) In this section—

applicant means—

(a) if the application under section 81N is made by the chief executive—the chief executive; or

[s 10]

- (b) if the application under section 81N is made by a relevant person—the relevant person and the chief executive.

‘81Q Applications decided at a hearing

- ‘(1) This section applies if the industrial commission decides to decide the application at a hearing.
- ‘(2) The industrial commission must give the applicant and the representative at least 14 days notice of the hearing date.
- ‘(3) To the extent practicable, the hearing is to be conducted under the rules applying to hearings of the industrial commission under the *Industrial Relations Act 1999* with necessary changes or, if the rules make no provision or insufficient provision, in accordance with directions of the industrial commission.
- ‘(4) The industrial commission may take action under subsection (5) if, after considering the evidence and submissions in relation to the application, the industrial commission—
 - (a) is satisfied, on the balance of probabilities, that the representative has unreasonably given a provisional improvement notice to a person; and
 - (b) considers the representative’s entitlement to give a provisional improvement notice should be suspended or cancelled.
- ‘(5) The industrial commission may—
 - (a) suspend the entitlement for a stated period; or
 - (b) cancel the entitlement.
- ‘(6) The industrial commission must give the applicant and the representative a written notice stating—
 - (a) the decision; and
 - (b) the reasons for the decision; and
 - (c) that the applicant or the representative may appeal against the decision under part 11.

‘(7) In this section—

applicant means—

- (a) if the application under section 81N is made by the chief executive—the chief executive; or
- (b) if the application under section 81N is made by the relevant person—the relevant person and the chief executive.’.

11 Amendment of s 85 (Ceasing to be a workplace health and safety representative)

(1) Section 85, heading—

omit, insert—

‘85 Ceasing to be a workplace health and safety representative or a qualified workplace health and safety representative’.

(2) Section 85—

insert—

‘(2) A worker stops being a qualified workplace health and safety representative if the worker stops being a workplace health and safety representative.’.

12 Amendment of s 90Q (Applications decided on the papers)

Section 90Q(2)(a)—

omit, insert—

‘(a) the industrial commission is considering whether to suspend or cancel the authorised representative’s appointment or to amend the conditions of the appointment (the *proposed action*); and’

[s 13]

13 Amendment of s 97 (Employer and principal contractor to help workplace health and safety officer etc.)

Section 97(1)(a), ‘at a workplace’—

omit, insert—

‘at a relevant place’.

14 Amendment of s 104 (Entry to places)

Section 104(1)(f)—

omit, insert—

‘(f) a prescribed activity, or work to remove bonded asbestos containing material, is being performed at the place by a person who holds a certificate to perform the activity or work; or’.

15 Insertion of new pt 9, div 3A hdg and new s 118A

After section 118—

insert—

‘Division 3A Orders to secure compliance with notices given by an inspector

‘118A Definition for div 3A

‘In this division—

notice means any of the following—

- (a) a notice given by an inspector in relation to a provisional improvement notice;
- (b) an improvement notice;
- (c) a prohibition notice.’.

16 Amendment of s 119 (Order to secure compliance with notices)

- (1) Section 119(1), ‘an improvement or prohibition notice’—
omit, insert—
‘a notice’.
- (2) Section 119(2), from ‘make’ to ‘Court’—
omit, insert—
‘apply to an industrial magistrate’.
- (3) Section 119(3), ‘court’—
omit, insert—
‘magistrate’.
- (4) Section 119(3), ‘it’—
omit, insert—
‘the magistrate’.

17 Amendment of s 122 (Power to require production of certain documents)

- (1) Section 122(1)(b), ‘at a workplace’—
omit, insert—
‘at a relevant place’.
- (2) Section 122(8)—
omit.

18 Amendment of s 147A (Definitions for pt 11)

Section 147A, definition *original decision*, paragraph (d)—
insert—

- ‘(ia) an order or decision of the industrial commission under section 81P or 81Q; or’.

[s 19]

19 Amendment of s 165 (Limitation on time for starting proceedings)

Section 165—

insert—

‘(c) if the offence involves a breach of an obligation causing death and the death is investigated by a coroner under the *Coroners Act 2003*—within 2 years after the coroner makes a finding in relation to the death.’.

20 Amendment of s 166 (Responsibility for acts or omissions of representatives)

Section 166(1), definition *representative*—

insert—

‘(c) of a public sector unit—an officer or employee of the public sector unit.’.

21 Insertion of new s 168B

After section 168A—

insert—

‘168B Information during sentencing of impact of offence on person

‘(1) If a court convicts a person (*defendant*) of an offence against this Act, the prosecutor should, at the sentencing of the defendant, tell the sentencing court the appropriate details of the harm caused to a victim by the defendant’s failure to comply with this Act.

‘(2) In deciding what details are not appropriate, the prosecutor may have regard to the victim’s wishes.

‘(3) However—

(a) it is not mandatory for a victim to give the prosecutor details of the harm caused to the victim by the defendant’s failure to comply with this Act; and

- (b) the fact that details of the harm caused to a victim by the defendant's failure to comply with this Act are absent at the sentencing does not of itself give rise to an inference that the defendant's failure caused little or no harm to the victim.
- '(4) A prosecutor should ensure the sentencing court has regard to the *Penalties and Sentences Act 1992*, section (9)(2)(c), if it would help the victim to have the benefit of the principle mentioned in subsection (1).
- '(5) In this section—
- harm* means death, grievous bodily harm or bodily harm.
- victim* means a person who has suffered harm because—
- (a) a defendant has committed an offence against this Act;
or
- (b) the person is a member of the immediate family of, or is a dependant of, a victim mentioned in paragraph (a).'

22 Insertion of new pt 12 div 3

After section 169—

insert—

'Division 3 Proceedings against government bodies

'170 Definitions for div 3

'In this division—

government body means the State, another State or the Commonwealth.

responsible entity see section 170B(1).

successor in law, of a public sector unit, means—

- (a) if the functions of the public sector unit (the *former unit*) are substantially performed by another public sector unit (the *current unit*)—the current unit; or

[s 22]

- (b) if the functions of the former unit are performed by 2 or more public sector units—the unit that has the function of the former unit most closely connected with the act or omission that is alleged to constitute the offence.

‘170A Government body may be prosecuted

- ‘(1) A government body may be prosecuted for an offence against this Act.
- ‘(2) For a prosecution against the State for an offence against this Act, the proceeding must be taken against the responsible entity.

‘170B Responsible entity for a proceeding against the State

- ‘(1) For a proceeding mentioned in section 170A(2), the *responsible entity* is—
 - (a) the public sector unit whose act or omission is alleged to constitute the offence; or
 - (b) if the public sector unit has ceased to exist—the successor in law of the public sector unit; or
 - (c) if the public sector unit has ceased to exist and there is no clear successor in law—the entity declared by the court to be the responsible entity.
- ‘(2) For a proceeding mentioned in subsection (1)—
 - (a) the proceeding is to be taken against the responsible entity as if it were a separate legal entity, if it is not otherwise a separate legal entity; and
 - (b) the responsible entity is to be stated in the charge for the offence; and
 - (c) subject to any rules of court, the responsible entity has the procedural rights and obligations of the State as the defendant in the proceeding.

-
- ‘(3) The prosecutor may, during the proceeding and with the court’s leave, substitute for the responsible entity stated in the charge its successor in law.
 - ‘(4) The chief executive of the responsible entity, or a person authorised by the chief executive, may act on behalf of the responsible entity for the purposes of the proceeding.
 - ‘(5) A document may be served on a responsible entity for the purposes of the proceeding—
 - (a) by delivering it to the chief executive of the entity or to a person authorised by the chief executive at a place of business of the responsible entity; or
 - (b) by leaving it at, or sending it by post, telex, facsimile or similar facility to, the usual business address of the responsible entity.
 - ‘(6) This section applies in relation to the State despite the *Crown Proceedings Act 1980*.

‘170C Penalties in proceedings against government body

- ‘(1) The penalty that may be imposed on a government body if it is convicted of an offence against this Act is the penalty applicable to a body corporate.
- ‘(2) A government body may be served with an infringement notice under the *State Penalties Enforcement Act 1999* in relation to an offence against this Act.

‘170D Notices may be given to a government body

‘The following notices may be given to a government body—

- (a) a prohibition notice;
- (b) an improvement notice;
- (c) a provisional improvement notice.’

[s 23]

23 Amendment of s 176 (Impersonating inspectors and others)

Section 176—

insert—

‘(f) a qualified workplace health and safety representative.’.

24 Amendment of s 183 (Protection from liability—officials)

Section 183(2)—

insert—

‘Examples of an act done—

giving information or advice’

25 Amendment of s 185A (Powers of chief executive to require production of particular documents)

Section 185A(1)(b), ‘at a workplace’—

omit, insert—

‘at a relevant place’.

26 Insertion of new pt 17 div 5

After section 194—

insert—

‘Division 5 Transitional provision for Workplace Health and Safety and Other Legislation Amendment Act 2008

‘195 Applications to Supreme Court

‘Section 119, as in force immediately before the commencement of this section, continues to apply after the commencement to an application to the Supreme Court made before the commencement as if the *Workplace Health and*

Safety and Other Legislation Amendment Act 2008, section 16(2) to (4) had not been enacted.’.

27 Amendment of sch 1 (Prescribed activities)

Schedule 1, section 2—

omit, insert—

‘2 Prescribed activities—work to remove friable asbestos containing material

‘Work to remove friable asbestos containing material is a prescribed activity.’.

28 Amendment of sch 3 (Dictionary)

- (1) Schedule 3, definitions *asbestos removal work*, *relevant place* and *unbonded asbestos containing material*—

omit.

- (2) Schedule 3—

insert—

‘provisional improvement notice see section 81B(2).

qualified workplace health and safety representative see section 81A.

relevant person see section 28(1).

relevant place, in part 1, division 3 and part 3, division 2, means—

- (a) for plant, other than specified high risk plant, or substances—a workplace; or
- (b) for specified high risk plant—any place, whether or not a workplace.’.
- (3) Schedule 3, definition *friable asbestos containing material*, ‘unbonded’—

omit.

[s 29]

- (4) Schedule 3, definitions *work caused illness* and *work injury*,
'at a workplace'—
omit, insert—
'at a relevant place'.

Part 3 Amendment of Electrical Safety Act 2002

29 Act amended in pt 3

This part amends the *Electrical Safety Act 2002*.

30 Amendment of s 3 (Act binds all persons)

Section 3(2)—

omit.

31 Amendment of s 49 (Meaning of *electrical safety undertaking*)

Section 49—

insert—

- '(2) The chief executive of a public sector unit may give an
electrical safety undertaking for the public sector unit.'

32 Amendment of s 156 (Order to secure compliance with notices)

- (1) Section 156(2), from 'make' to 'Court'—

omit, insert—

'apply to an industrial magistrate'.

- (2) Section 156(3), 'court'—

omit, insert—

‘magistrate’.

- (3) Section 156(3), ‘it’—

omit, insert—

‘the magistrate’.

33 Amendment of s 187 (Limitation on time for starting proceedings)

Section 187—

insert—

- ‘(c) if the offence involves a breach of an obligation causing death and the death is investigated by a coroner under the *Coroners Act 2003*—within 2 years after the coroner makes a finding in relation to the death.’.

34 Amendment of s 188 (Responsibility for act or omission of representative)

Section 188(4), definition *representative*—

insert—

- ‘(c) of a public sector unit—an officer or employee of the public sector unit.’.

35 Insertion of new s 189A

After section 189—

insert—

‘189A Information during sentencing of impact of offence on person

- ‘(1) If a court convicts a person (*defendant*) of an offence against this Act, the prosecutor should, at the sentencing of the defendant, tell the sentencing court the appropriate details of the harm caused to a victim by the defendant’s failure to comply with this Act.

[s 36]

- ‘(2) In deciding what details are not appropriate, the prosecutor may have regard to the victim’s wishes.
- ‘(3) However—
- (a) it is not mandatory for a victim to give the prosecutor details of the harm caused to the victim by the defendant’s failure to comply with this Act; and
 - (b) the fact that details of the harm caused to a victim by the defendant’s failure to comply with this Act are absent at the sentencing does not of itself give rise to an inference that the defendant’s failure caused little or no harm to the victim.
- ‘(4) A prosecutor should ensure the sentencing court has regard to the *Penalties and Sentences Act 1992*, section (9)(2)(c), if it would help the victim to have the benefit of the principle mentioned in subsection (1).
- ‘(5) In this section—
- harm* means death, grievous bodily harm or bodily harm.
- victim* means a person who has suffered harm because—
- (a) a defendant has committed an offence against this Act; or
 - (b) the person is a member of the immediate family of, or is a dependant of, a victim mentioned in paragraph (a).’.

36 Insertion of new pt 13 div 2A

After section 192—

insert—

‘Division 2A Proceedings against government bodies

‘192A Definitions for div 2A

‘In this division—

government body means the State, another State or the Commonwealth.

responsible entity see section 192C(1).

successor in law, of a public sector unit, means—

- (a) if the functions of the public sector unit (the *former unit*) are substantially performed by another public sector unit (the *current unit*)—the current unit; or
- (b) if the functions of the former unit are performed by 2 or more public sector units—the unit that has the function of the former unit most closely connected with the act or omission that is alleged to constitute the offence.

‘192B Government body may be prosecuted

- ‘(1) A government body may be prosecuted for an offence against this Act.
- ‘(2) For a prosecution against the State for an offence against this Act, the proceeding must be taken against the responsible entity.

‘192C Responsible entity for a proceeding against the State

- ‘(1) For a proceeding mentioned in section 192B(2), the *responsible entity* is—
 - (a) the public sector unit whose act or omission is alleged to constitute the offence; or
 - (b) if the public sector unit has ceased to exist—the successor in law of the public sector unit; or
 - (c) if the public sector unit has ceased to exist and there is no clear successor in law—the entity declared by the court to be the responsible entity.
- ‘(2) For a proceeding mentioned in subsection (1)—
 - (a) the proceeding is to be taken against the responsible entity as if it were a separate legal entity, if it is not otherwise a separate legal entity; and

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- (b) the responsible entity is to be stated in the charge for the offence; and
 - (c) subject to any rules of court, the responsible entity has the procedural rights and obligations of the State as the defendant in the proceeding.
- ‘(3) The prosecutor may, during the proceeding and with the court’s leave, substitute for the responsible entity stated in the charge its successor in law.
- ‘(4) The chief executive of the responsible entity, or a person authorised by the chief executive, may act on behalf of the responsible entity for the purposes of the proceeding.
- ‘(5) A document may be served on a responsible entity for the purposes of the proceeding—
- (a) by delivering it to the chief executive of the entity or to a person authorised by the chief executive at a place of business of the responsible entity; or
 - (b) by leaving it at, or sending it by post, telex, facsimile or similar facility to, the usual business address of the responsible entity.
- ‘(6) This section applies despite the *Crown Proceedings Act 1980*.

‘192D Penalties in proceedings against government body

- ‘(1) The penalty that may be imposed on a government body if it is convicted of an offence against this Act is the penalty applicable to a body corporate.
- ‘(2) A government body may be served with an infringement notice under the *State Penalties Enforcement Act 1999* in relation to an offence against this Act.

‘192E Notices may be given to a government body

- ‘The following notices may be given to a government body—
- (a) an improvement notice;

- (b) an electrical safety protection notice;
- (c) an unsafe equipment notice.’.

37 Insertion of new pt 17

After section 242—

insert—

**‘Part 17 Transitional provision for
Workplace Health and Safety
and Other Legislation
Amendment Act 2008**

‘243 Applications to Supreme Court

‘Section 156, as in force immediately before the commencement of this section, continues to apply after the commencement to an application to the Supreme Court made before the commencement as if the *Workplace Health and Safety and Other Legislation Amendment Act 2008*, section 32 had not been enacted.’.

**Part 4 Amendment of Workers’
Compensation and
Rehabilitation Act 2003**

38 Act amended in pt 4

This part amends the *Workers’ Compensation and Rehabilitation Act 2003*.

[s 39]

39 Amendment of s 128B (Entitlements of worker with terminal condition)

Section 128B(2)(b)—

omit, insert—

‘(b) additional lump sum compensation for care of 10% of the amount payable under paragraph (a);’.

40 Insertion of new ss 128D and 128E

Chapter 3, part 3, division 5, after section 128C—

insert—

‘128D Worker’s dependants

- ‘(1) This section applies if the worker has dependants.
- ‘(2) The worker’s dependants are entitled to lump sum compensation equal to the sum of the following amounts—
 - (a) 15% of the amount payable under section 200(2)(a);
 - (b) 2% of the amount payable under section 200(2)(a) for the reasonable expenses of the worker’s funeral.
- ‘(3) An insurer may pay the compensation under this section—
 - (a) to the worker; or
 - (b) to the worker’s dependants at the same time as the insurer pays the worker lump sum compensation under section 128B.
- ‘(4) The worker’s dependants are not entitled to further compensation under chapter 3, part 11 for the death of the worker.
- ‘(5) In this section—

dependant, of a worker, means a member of the worker’s family who is completely or partly dependent on the worker’s earnings.

member of the family, of a worker, means—

 - (a) the worker’s—

-
- (i) spouse; or
 - (ii) parent, grandparent and step-parent; or
 - (iii) child, grandchild and stepchild; or
 - (iv) brother, sister, half-brother and half-sister; or
- (b) if the worker stands in the place of a parent to another person—the other person; or
- (c) if another person stands in the place of a parent to the worker—the other person.

'128E To whom payments made for death of worker

- '(1) This section applies if—
- (a) the worker dies because of the latent onset injury; and
 - (b) the worker had received a payment of lump sum compensation under section 128B for the latent onset injury; and
 - (c) if the worker left dependants—an insurer had not paid the worker or the worker's dependants the lump sum compensation under section 128D to which the worker's dependants were entitled.
- '(2) The compensation under section 128D for the worker's dependants is payable—
- (a) to the worker's legal personal representative; or
 - (b) if there is no legal personal representative—to the worker's dependants.
- '(3) The worker's legal personal representative must pay or apply the compensation to or for the benefit of the worker's dependants.'

41 Amendment of s 194 (Application and object of pt 11)

Section 194(2)(b)—

omit, insert—

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‘(b) the worker had received a payment of lump sum compensation or damages for the latent onset injury under this Act, another Act or a law of another State or the Commonwealth.’.

42 Insertion of new ch 24

Before schedule 1—

insert—

‘Chapter 24 Transitional and declaratory provisions for Workplace Health and Safety and Other Legislation Amendment Act 2008

‘657 Worker with terminal condition—application for compensation lodged on or after 28 October 2008

‘The provisions of chapter 3, part 3, division 5 and part 11, as amended by the *Workplace Health and Safety and Other Legislation Amendment Act 2008*, only apply if a worker’s application for compensation for a latent onset injury that is a terminal condition is lodged on or after 28 October 2008.

‘658 Worker with terminal condition—application for compensation lodged before 28 October 2008

‘(1) This section applies if—

- (a) a worker lodged an application for compensation for a latent onset injury that is a terminal condition before 28 October 2008; and
- (b) the worker had received a payment of lump sum compensation under section 128B for the latent onset injury; and

-
- (c) the worker dies because of the latent onset injury on or after 28 October 2008.
- ‘(2) The worker’s dependants are entitled to compensation under chapter 3, part 3, division 5 as if the worker’s application for compensation had been lodged on or after 28 October 2008.

‘659 Amendment of regulation

‘The amendment of the *Workers’ Compensation and Rehabilitation Regulation 2003* by the *Workplace Health and Safety and Other Legislation Amendment Act 2008* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’

Part 5 Amendment of Workers’ Compensation and Rehabilitation Regulation 2003

43 Regulation amended in pt 5

This part amends the *Workers’ Compensation and Rehabilitation Regulation 2003*.

44 Amendment of s 85 (Application for compensation)

Section 85—

insert—

- ‘(2) Also, if the injury is a latent onset injury that is a terminal condition and the worker has dependants, a claim for compensation in relation to the dependency must be supported by proof of the relationship to the worker of persons claiming to be the worker’s dependants.
- ‘(3) In this section—

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dependant, of a worker, means a member of the worker's family who is completely or partly dependent on the worker's earnings.

member of the family, of a worker, means—

- (a) the worker's—
 - (i) spouse; or
 - (ii) parent, grandparent and step-parent; or
 - (iii) child, grandchild and stepchild; or
 - (iv) brother, sister, half-brother and half-sister; or
- (b) if the worker stands in the place of a parent to another person—the other person; or
- (c) if another person stands in the place of a parent to the worker—the other person.'

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