



Queensland

Electrical Safety and Other Legislation Amendment Act 2011

Act No. 4 of 2011



Queensland

Electrical Safety and Other Legislation Amendment Act 2011

Contents

		Page
Part 1	Preliminary	
1	Short title	12
2	Commencement	12
Part 2	Amendment of Electrical Safety Act 2002	
3	Act amended	12
4	Amendment of s 26 (Obligations for electrical safety)	13
5	Amendment of s 32 (Obligation of manufacturer of electrical equipment)	13
6	Amendment of s 33 (Obligation of importer of electrical equipment)	13
7	Insertion of new s 40AA	13
	40AA Obligation of person who conducts recognised external certification scheme	13
8	Insertion of new pt 2A.	14
	Part 2A In-scope electrical equipment safety system	
	Division 1 Preliminary	
	48A Definitions for pt 2A	14
	48B Meaning of in-scope electrical equipment	15
	48C Extraterritorial operation	15
	Division 2 National register	
	48D Chief executive to establish and maintain national register	16
	48E Electronic registration procedure	16
	48F Effect of registration etc. in national register	17
	48G Effect of cancellation of registration etc.	17
	48H Chief executive may note cancellation under corresponding law in national register	17

Contents

	48I	Registration fees	18
	Division 3	Recognised external certification schemes	
	48J	Recognised external certification schemes	19
	Division 4	Rules	
	48K	Chief executive may make rules	19
9		Insertion of new s 181A	20
	181A	Statement in complaint that thing is in-scope electrical equipment	20
10		Insertion of new pt 14, div 1A	20
	Division 1A	In-scope electrical equipment (registration fees) fund	
	204A	Establishment of fund	21
	204B	Purpose and administration of fund	21
	204C	Payments from fund	21
	204D	State may enter into agreement	21
11		Amendment of s 210 (Regulation-making power)	22
12		Insertion of new pt 19	23
	Part 19	Transitional provision for Electrical Safety and Other Legislation Amendment Act 2011	
	247	Effect of regulation amendment	23
13		Amendment of sch 2 (Dictionary)	23
	Part 3	Amendment of Electrical Safety Regulation 2002	
14		Regulation amended	24
15		Replacement of pt 6 and insertion of new pt 6A	25
	Part 6	In-scope electrical equipment	
	Division 1	Preliminary	
	95	This part applies for pt 2A of the Act	25
	96	Definitions for pt 6	25
	97	Registration for particular purposes	27
	97A	Component is not a separate item	28
	97B	Meanings of levels 1, 2 and 3 in-scope electrical equipment	28
	97C	Meaning of relevant standard for level 1 in-scope electrical equipment	28
	97D	Meaning of relevant standard for level 2 or 3 in-scope electrical equipment	29
	Division 2	Registration of responsible suppliers and levels 2 and 3 in-scope electrical equipment	

Subdivision 1	Registration of responsible suppliers	
98	Responsible supplier may register	30
99	Term of registration.	31
100	Renewal of registration.	31
100A	Responsible supplier must ensure details in national register are current	31
Subdivision 2	Registration of level 2 in-scope electrical equipment	
101	Registration	31
102	Term of registration.	32
103	Renewal of registration.	33
Subdivision 3	Registration of level 3 in-scope electrical equipment	
103A	Registration	33
103B	Term of registration.	34
103C	Renewal of registration.	34
Subdivision 4	Relevant persons not to be twice punished for same acts or omissions	
103D	Relevant person may be punished only once.	34
Subdivision 5	Cancellation of registration	
103E	Grounds for cancelling registration of responsible supplier or level 2 or 3 in-scope electrical equipment.	35
103F	Procedure before cancellation	36
103G	Cancellation	36
103H	Cancellation at responsible supplier's request	37
Division 3	Sales of in-scope electrical equipment	
104	Sale of level 1 in-scope electrical equipment by responsible supplier	38
105	Sale of level 2 or 3 in-scope electrical equipment by responsible supplier	39
106	Sale of in-scope electrical equipment—general.	40
106A	Sale of plug etc. with level 1 or 2 in-scope electrical equipment.	41
Division 4	Evidence of compliance with relevant standards	
Subdivision 1	Level 1 in-scope electrical equipment	
107	Responsible supplier to keep evidence	42
Subdivision 2	Level 2 in-scope electrical equipment	

Contents

108	Registered responsible supplier must keep compliance folder	43
Subdivision 3	Level 3 in-scope electrical equipment	
109	Registered responsible supplier must keep certificate of conformity	44
Division 5	Effect of reclassification of in-scope electrical equipment	
110	Effect of reclassification	45
Division 6	Marking of in-scope electrical equipment	
111	Responsible supplier must not sell unmarked item of in-scope electrical equipment.	45
112	Person must not mark in-scope electrical equipment that does not meet relevant standard.	46
113	Mark for use in exceptional circumstances.	46
Division 7	Certificates of conformity issued by chief executive	
Subdivision 1	Applications and terms	
114	Application for certificate of conformity.	47
115	Chief executive may issue certificate of conformity	48
116	Term of certificate.	48
Subdivision 2	Modifications, renewals and transfers	
116A	Modification of certificate of conformity—change of name or model	48
116B	Modification of certificate of conformity—other than a change of name or model	49
116C	Renewal of certificate of conformity	50
116D	Transfer of certificate	51
Subdivision 3	Cancellation	
116E	Grounds for cancelling certificate of conformity	52
116F	Procedure before cancellation	52
116G	Cancellation at certificate holder’s request.	53
116H	Certificate of conformity holder to return certificate if cancelled	53
Subdivision 4	Information to be recorded in the national register	
116I	Information to be recorded in national register.	54
Division 8	Recognised external certification schemes—Act, section 48J	
Subdivision 1	Preliminary	

117	Definitions for div 8	54
Subdivision 2 Applications and terms		
118	Application for chief executive's declaration of scheme	54
119	Intention to make declaration must be advertised . . .	55
119A	Decision about application	56
119B	Term of declared scheme	57
Subdivision 3 Conditions		
119C	Chief executive may impose conditions on declared scheme	57
119D	Condition imposed by regulation	57
119E	Amendment of conditions imposed by chief executive	58
119F	Acting on chief executive's own initiative—general . . .	58
119G	Acting on chief executive's own initiative—electrical risk	59
Subdivision 4 Cancellation		
119H	Grounds for cancelling declaration	59
119I	Procedure before cancellation	59
119J	Cancellation at declaration holder's request.	60
Subdivision 5 Other provisions		
119K	Reporting requirements for declaration holder	60
119L	Declaration holder must comply with equipment safety rules	61
Division 9	Chief executive may require testing of item of level 1, 2 or 3 in-scope electrical equipment	
120	Chief executive may require item of in-scope electrical equipment to be submitted	61
121	Procedure for obtaining item of in-scope electrical equipment for testing	62
122	Identification of item of in-scope electrical equipment to be tested.	63
123	Cost of testing and examining and liability for damage	63
Division 10	Return of in-scope electrical equipment given to chief executive	
124	Return of item of level 2 or 3 in-scope electrical equipment provided to chief executive	64
Division 11	Second-hand in-scope electrical equipment	

Contents

	125	Limitation on offering second-hand in-scope electrical equipment for sale	65
	Division 12	Program for certification of level 1 or 2 in-scope electrical equipment	
	125A	Chief executive may establish program for certification	66
	Part 6A	Electrical equipment—general	
	Division 1	Requirement for warning sign for sale of particular electrical equipment	
	126	Definition for div 1	66
	126A	Application of div 1	67
	126B	Requirement to display DIY warning sign.	67
	Division 2	Prohibition on sale of electrical equipment	
	126C	Sale of electrical equipment prohibited	68
	126D	Chief executive may prohibit the sale or use of electrical equipment on safety grounds	69
	Division 3	Labelling and inspection of electrical equipment	
	126E	Labelling faulty portable electrical equipment	69
	Division 4	Hire electrical equipment	
	126F	Purpose of div 4	70
	126G	Hiring electrical equipment	70
16		Insertion of new pt 14, div 4	72
	Division 4	Transitional provisions for Electrical Safety and Other Legislation Amendment Act 2011	
	Subdivision 1	Definitions for division 4	
	223	Definitions for div 4	72
	Subdivision 2	Queensland approvals, external approvals and other approvals	
	224	Queensland approvals	73
	225	External approvals	73
	225A	Approvals under declared scheme	74
	Subdivision 3	Application of certain provisions	
	226	Application of s 104 during transition period	74
	227	Application of s 105 during transition period	75
	228	Application of s 106(1) during transition period	75
	229	Application of s 107 during the transition period	75
	230	Application of s 111(1) during the transition period	76

	Subdivision 4	Marking of in-scope electrical equipment	
	231	Marking of in-scope electrical equipment with type approval number.	76
17		Replacement of sch 3.	77
	Schedule 3	Information to be included in declarations by responsible suppliers	
18		Amendment of sch 7 (Fees)	79
19		Amendment of sch 9 (Dictionary)	80
Part 4	Amendment of Industrial Relations Act 1999		
20		Act amended	82
21		Amendment of s 73 (When is a dismissal unfair)	82
22		Amendment of s 105 (Prohibited conduct for employers and principals)	82
23		Amendment of s 137 (Order setting minimum wages and conditions)	82
24		Amendment of ch 6, hdg (Agreements)	82
25		Omission of ch 6, pt 1, hdg (Certified agreements)	83
26		Amendment of s 165 (Certified agreement's effect on awards, agreements or orders)	83
27		Amendment of s 167 (Successor employers bound)	83
28		Amendment of s 169 (Amending a certified agreement)	83
29		Amendment of s 184 (Secret ballot on valid majority)	83
30		Amendment of s 185 (Coercion of persons to make, amend or terminate certified agreements etc.)	83
31		Omission of ch 6, pt 2 (Queensland workplace agreements).	84
32		Amendment of s 252 (President's annual report)	84
33		Amendment of s 273 (Commission's functions)	84
34		Amendment of s 280 (Procedures for reopening)	84
35		Amendment of s 284 (Interpretation of industrial instruments)	84
36		Amendment of s 339B (Purpose of ch 8A)	85
37		Replacement of s 339C (Ombudsman)	85
	339C	Ombudsman	85
38		Amendment of s 339D (Functions of ombudsman)	85
39		Amendment of s 339H (Appointment of ombudsman)	85
40		Replacement of s 339L (Acting ombudsman)	86
	339L	Acting ombudsman	86
41		Amendment of s 339S (Queensland Workplace Rights Office)	86
42		Amendment of s 346 (Time limited for appeal)	86

Contents

43	Amendment of s 347 (Stay of decision appealed against)	87
44	Amendment of s 373 (Right to inspect and request information—authorised industrial officer)	87
45	Amendment of s 392 (Paying apprentices or trainees for supervised training)	87
46	Amendment of s 662 (False or misleading statements)	88
47	Amendment of s 663 (False or misleading documents)	88
48	Amendment of s 680 (Evidentiary value of official records)	88
49	Amendment of s 692D (New State instrument taken to exist for declared employers in other circumstances)	88
50	Amendment of s 697 (Copy of award and certified agreement to be displayed)	88
51	Amendment of s 709 (Regulation-making power)	89
52	Insertion of new ch 20, pt 12	89
	Part 12 Transitional provisions for Electrical Safety and Other Legislation Amendment Act 2011	
	Division 1 Provisions for local governments and employees	
	Subdivision 1 Provisions for local governments and employees covered by federal instrument	
766	Application of sdiv 1	89
767	Definitions for sdiv 1	90
768	Award binding particular local governments and their employees	91
768A	Award binding other local governments and their employees	92
769	Provision for division 3 pre-reform certified agreements	92
770	Interpretation	93
771	Preservation of existing entitlements	94
772	Provision for minimum entitlements	95
	Subdivision 2 Provision for local governments and employees covered by industrial instrument	
773	Application of industrial instrument for local governments and employees	96
	Division 2 Particular QWAs continued	
774	Definitions.	96
775	Continuation of new State instruments taken to be QWAs	97
776	Termination of QWAs	97

	777	Continuation of particular provisions for QWAs	98
	Division 3	Other transitional provisions	
	778	President's annual report—s 252	98
	779	Amendment of regulation and rules under the Electrical Safety and Other Legislation Amendment Act 2011	98
53		Amendment of sch 5 (Dictionary)	98
Part 5		Amendment of Industrial Relations Regulation 2000	
54		Regulation amended	101
55		Amendment of s 9 (Agreement for certification to be accompanied by affidavit—Act, s 156)	101
56		Omission of pt 5 (Queensland workplace agreements)	101
57		Omission of schs 1 and 2	101
Part 6		Amendment of Industrial Relations (Tribunals) Rules 2000	
58		Rules amended	101
59		Amendment of r 9 (Form of applications)	102
60		Amendment of r 14 (Ways of filing)	102
61		Amendment of r 87 (Publishing decisions etc.)	102
62		Omission of pt 11 (Queensland workplace agreements)	102
63		Amendment of sch 2 (Dictionary)	102
Part 7		Amendment of Workers' Compensation and Rehabilitation Act 2003	
64		Act amended	103
65		Amendment of s 107E (Authority's board may approve amount payable under industrial instrument)	103
66		Amendment of s 561 (Appeal to industrial court)	103
67		Insertion of new ch 28	103
	Chapter 28	Transitional provisions for Electrical Safety and Other Legislation Amendment Act 2011	
	672	Provision for QWAs	104
	673	Appeal of decision under s 561	104
68		Amendment of sch 6 (Dictionary)	104
Part 8		Minor and consequential amendments	
69		Legislation amended	105
Schedule		Minor and consequential amendments	106
Part 1		Amendments commencing on assent	
		Child Employment Act 2006	106
		Coal Mining Safety and Health Act 1999	106

Contents

	Industrial Relations Act 1999	106
	Industrial Relations Regulation 2000	107
	Mining and Quarrying Safety and Health Act 1999	108
	Pastoral Workers' Accommodation Act 1980	108
	South East Queensland Water (Restructuring) Act 2007	109
Part 2	Amendments commencing by proclamation	
	Electrical Safety Act 2002	109
	Electrical Safety Regulation 2002	110
	State Penalties Enforcement Regulation 2000	111



Queensland

Electrical Safety and Other Legislation Amendment Act 2011

Act No. 4 of 2011

An Act to amend the Electrical Safety Act 2002, Electrical Safety Regulation 2002, Industrial Relations Act 1999, Industrial Relations Regulation 2000, Industrial Relations (Tribunals) Rules 2000 and the Workers' Compensation and Rehabilitation Act 2003, and to make minor and consequential amendments of legislation as stated in the schedule, for particular purposes

[Assented to 4 April 2011]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Electrical Safety and Other Legislation Amendment Act 2011*.

2 Commencement

- (1) The following provisions commence on a day to be fixed by proclamation—
 - (a) part 2;
 - (b) part 3;
 - (c) schedule, part 2.
- (2) Section 52, to the extent it inserts chapter 20, part 12, division 1, commences, or is taken to have commenced, on 27 March 2011.

Part 2 Amendment of Electrical Safety Act 2002

3 Act amended

This part amends the *Electrical Safety Act 2002*.

Note—

See also the schedule.

4 Amendment of s 26 (Obligations for electrical safety)

Section 26, after the last dot point—

insert—

- ‘• persons who conduct recognised external certification schemes.’

5 Amendment of s 32 (Obligation of manufacturer of electrical equipment)

Section 32, after subsection (2)—

insert—

Note—

The circumstances in which this section applies could include circumstances in which the manufacturer is a responsible supplier and the electrical equipment is in-scope electrical equipment.’

6 Amendment of s 33 (Obligation of importer of electrical equipment)

Section 33, after subsection (2)—

insert—

Note—

The circumstances in which this section applies could include circumstances in which the importer is a responsible supplier and the electrical equipment is in-scope electrical equipment.’

7 Insertion of new s 40AA

Part 2, division 2, after section 40—

insert—

‘40AA Obligation of person who conducts recognised external certification scheme

- ‘(1) This section applies to a person who conducts a recognised external certification scheme and who certifies in-scope electrical equipment under the scheme.

[s 8]

- ‘(2) The person has an obligation to ensure, as far as is practicable, that the in-scope electrical equipment to which the certification relates is electrically safe.’.

8 Insertion of new pt 2A

After section 48—

insert—

‘Part 2A In-scope electrical equipment safety system

‘Division 1 Preliminary

‘48A Definitions for pt 2A

‘In this part—

another State includes New Zealand.

certificate of conformity has the meaning given by a regulation made for this part.

corresponding law means a law of another State that provides for the same, or substantially the same, matter as—

- (a) this part or a regulation made for this part; or
- (b) a provision of this part or a regulation made for this part.

in-scope electrical equipment see section 48B.

level 2 in-scope electrical equipment has the meaning given by a regulation made for this part.

level 3 in-scope electrical equipment has the meaning given by a regulation made for this part.

national register see section 48D.

participating jurisdiction means another State that has enacted or made a corresponding law.

recognised external certification scheme means a scheme declared to be a recognised external certification scheme under section 48J.

register means to register in the national register.

responsible supplier, of in-scope electrical equipment, means—

- (a) a person who manufactures the electrical equipment in, or imports the electrical equipment into, Australia; or
- (b) if New Zealand is a participating jurisdiction, a person who manufactures the electrical equipment in, or imports the electrical equipment into, New Zealand.

‘48B Meaning of *in-scope electrical equipment*

- ‘(1) *In-scope electrical equipment* is low voltage electrical equipment that is designed, or marketed as suitable, for household, personal or similar use.
- ‘(2) It is immaterial whether the low voltage electrical equipment is also designed or marketed to be used for commercial or industrial purposes.

‘48C Extraterritorial operation

‘It is the intention of the Parliament that the operation of this part and a regulation made for this part are to, as far as possible, include operation in relation to the following—

- (a) things situated in or outside the territorial limits of Queensland;
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of Queensland;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this part and a regulation made for this part, be governed or otherwise affected by the law of another jurisdiction.

[s 8]

‘Division 2 National register

‘48D Chief executive to establish and maintain national register

- ‘(1) The chief executive must establish and maintain an in-scope electrical equipment safety system register (the *national register*).
- ‘(2) The national register must be available for the purposes of this Act and each corresponding law—
 - (a) to register responsible suppliers and level 2 or 3 in-scope electrical equipment; and
 - (b) to record information about certificates of conformity and other matters; and
 - (c) to access information in the register.
- ‘(3) The registration matters mentioned in subsection (2)(a) and the information matters mentioned in subsection (2)(b) are to be kept separately.
- ‘(4) The national register must be in electronic form available, on the internet, for use by any person for the purposes mentioned in subsection (2).
- ‘(5) The chief executive may comply with subsections (1) to (4) by entering into an agreement with an entity under which the entity establishes and maintains the national register for the chief executive.
- ‘(6) It is immaterial where the national register is located.

‘48E Electronic registration procedure

- ‘(1) A person may register any matter, or record any information about a matter in the national register, by accessing the national register on the internet—
 - (a) inputting the information; and
 - (b) making the declaration (if any); and

- (c) paying the fee (if any);
as indicated by prompts or fields in the register.
- ‘(2) A person who responds to the prompts or fills in the fields is taken to have given the information or made the declaration concerned.

‘48F Effect of registration etc. in national register

‘A matter registered in the national register, or information recorded in the national register, is taken to be registered or recorded under this Act whether the registration or inclusion was done for the purposes of this Act or a corresponding law.

‘48G Effect of cancellation of registration etc.

- ‘(1) This section applies if—
 - (a) the registration of a matter is cancelled under a corresponding law; or
 - (b) information recorded in the national register is omitted under a corresponding law.
- ‘(2) The registration is cancelled or the information is omitted for the purpose of this Act.
- ‘(3) However, the cancellation or omission does not entitle a person to apply for a review of the decision resulting in the cancellation or omission, or to appeal against that decision, under part 12.

Note—

For any review of the decision, see the corresponding law.

‘48H Chief executive may note cancellation under corresponding law in national register

- ‘(1) This section applies if—

[s 8]

- (a) the registration of a responsible supplier or of level 2 or 3 in-scope electrical equipment is cancelled under a corresponding law; and
 - (b) the chief executive is notified of the cancellation under arrangements agreed to by the chief executive.
- ‘(2) The chief executive must record notice of the cancellation in the national register.

‘48I Registration fees

- ‘(1) This section applies for prescribing fees under a regulation for the registration of responsible suppliers or level 2 or 3 in-scope electrical equipment.
- ‘(2) The fees prescribed may be prescribed at a premium level having regard to the following—
- (a) under this Act and corresponding laws matters registered in the national register will be taken to be registered under this Act and each corresponding law; and
 - (b) under an agreement between the State and the participating jurisdictions—
 - (i) the only fees payable for registration, whether under this Act or a corresponding law, will be the fees prescribed under the regulation; and
 - (ii) the fees will—
 - (A) in the first instance, be paid to the chief executive through the national register; and
 - (B) be paid by the chief executive into the fund; and
 - (C) be paid from the fund as mentioned in section 204C(1).
- ‘(3) Subsection (2) does not limit the matters that may be taken into account when prescribing the fees but may extend the matters.

-
- ‘(4) Subsections (1) and (2) do not limit the fees that may be prescribed under section 210(4) for this part or the national register.
 - ‘(5) A fee payable under subsection (2) must be paid under section 48E(1) or the equipment safety rules.

‘Division 3 Recognised external certification schemes

‘48J Recognised external certification schemes

- ‘(1) The chief executive may, by gazette notice, declare a scheme for the certification of types of in-scope electrical equipment to be a recognised external certification scheme.
- ‘(2) A regulation may make provision about the declaration of a scheme under subsection (1).

‘Division 4 Rules

‘48K Chief executive may make rules

- ‘(1) The chief executive may make rules under this part (the *equipment safety rules*).
- ‘(2) Without limiting subsection (1), a rule may—
 - (a) be about—
 - (i) the registration of matters including the declarations to be made by responsible suppliers relating to their registration and to their registration of level 2 or 3 in-scope electrical equipment; or
 - (ii) the recording of any information in the national register;
 - (iii) the correction, change or withdrawal of information recorded in the national register in

[s 9]

relation to the registration of a matter or otherwise;
or

- (iv) process for issuing certificates of conformity; or
 - (b) approve an entity as an approved testing entity.
- ‘(3) A rule may contain other information relating to this part or a regulation.
- ‘(4) A rule must not be inconsistent with this Act.
- ‘(5) The chief executive must notify the making of a rule in the gazette.
- ‘(6) A rule takes effect—
- (a) on the day the making of the rule is notified in the gazette; or
 - (b) if a later day is stated in the notice or the rule—on that day.
- ‘(7) The chief executive must make a copy of the equipment safety rules available for public inspection on the department’s website on the internet.

Editor’s note—

The address of the department’s website is <www.justice.qld.gov.au>.’.

9 Insertion of new s 181A

After section 181—

insert—

‘181A Statement in complaint that thing is in-scope electrical equipment

‘In a complaint starting a proceeding, a statement that a thing is level 1, 2 or 3 in-scope electrical equipment under a regulation is sufficient evidence of that element unless the contrary is proved.’.

10 Insertion of new pt 14, div 1A

After section 204—

insert—

**‘Division 1A In-scope electrical equipment
 (registration fees) fund**

‘204A Establishment of fund

‘The in-scope electrical equipment (registration fees) fund (the *fund*) is established.

‘204B Purpose and administration of fund

- ‘(1) The purpose of the fund is to record amounts received for, and paid from, the fund as mentioned in this division.
- ‘(2) Accounts for the fund must be kept as part of the departmental accounts of the department.
- ‘(3) Amounts payable to the fund are the fees received by the chief executive for the registration of responsible suppliers and level 2 or 3 in-scope electrical equipment in the national register.

‘204C Payments from fund

- ‘(1) Amounts are payable from the fund only for providing, in Queensland and participating jurisdictions, electrical safety services relating to in-scope electrical equipment and if payable under the terms of an agreement between the State and participating jurisdictions.
- ‘(2) The amounts may be paid without further appropriation.

‘204D State may enter into agreement

‘The State is authorised to enter into an agreement with participating jurisdictions in relation to the fund including for making payments to and from the fund.’.

[s 11]

11 Amendment of s 210 (Regulation-making power)

- (1) Section 210(2)(e), ‘approval requirements’—
omit, insert—
‘certification requirements’.
- (2) Section 210(2)(e), ‘hiring,’
omit.
- (3) Section 210(2)(g), ‘approvals’—
omit, insert—
‘certificates’.
- (4) Section 210(2)(ha), ‘hiring or’—
omit.
- (5) Section 210(2)—
insert—
 - ‘(la) all matters relating to the registration of responsible suppliers and in-scope electrical equipment in the national register, including the renewal and cancellation of the registration; and
 - (lb) all matters relating to the classification of in-scope electrical equipment; and
 - (lc) all matters relating to the sale of in-scope electrical equipment including requirements about the keeping of evidence and certificates that show that items of types of in-scope electrical equipment meet relevant standards; and
 - (ld) all matters relating to the recording of information about certificates of conformity in the national register including what information is to be recorded, how it is to be recorded and by whom it is to be recorded; and
 - (le) all matters relating to the recording of other information in the national register including what information is to be recorded, how it is to be recorded and by whom it is to be recorded; and

- (lf) all matters relating to the declaration of a scheme as a recognised external certification scheme under section 48J including the imposition of conditions on, and the cancellation of, the declaration; and’.
- (6) Section 210(2)(ha) to (n)—
renumber as section 210(2)(i) to (u).

12 Insertion of new pt 19

After section 246—

insert—

‘Part 19 Transitional provision for Electrical Safety and Other Legislation Amendment Act 2011

‘247 Effect of regulation amendment

‘The amendment of the *Electrical Safety Regulation 2002* by the *Electrical Safety and Other Legislation Amendment Act 2011* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

13 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

‘*another State*, for part 2A, see section 48A.

certificate of conformity see section 48A.

corresponding law see section 48A.

equipment safety rules see section 48K.

fund see section 204A.

in-scope electrical equipment see section 48B.

15 Replacement of pt 6 and insertion of new pt 6A

Part 6—

omit, insert—

‘Part 6 In-scope electrical equipment

‘Division 1 Preliminary

‘95 This part applies for pt 2A of the Act

‘This part applies for the purposes of part 2A of the Act.

‘96 Definitions for pt 6

‘In this part—

certificate of conformity means a certificate—

- (a) stating that a type of level 3 in-scope electrical equipment complies with the relevant standard for that type; and
- (b) issued—
 - (i) under division 7 or under a recognised external certification scheme; or
 - (ii) under a corresponding law or a scheme provided for under that law.

date of registration, in relation to—

- (a) the registration of a responsible supplier; or
- (b) the registration of equipment as a type of level 2 or 3 in-scope electrical equipment;

means the date shown in the national register as the date of registration of the responsible supplier or type.

defining standard means AS/NZS 4417 (Marking of electrical products to indicate compliance with regulations).

[s 15]

false declaration includes an incorrect or misleading declaration.

false information includes incorrect or misleading information.

family, of a type of level 1, 2 or 3 in-scope electrical equipment, means items of the type that—

- (a) have the same basic electrical characteristics and material composition but may differ in dimension, colour or other aspects; and
- (b) are, having regard to the relevant standard for the type, able to be covered by a single test report.

level 1 in-scope electrical equipment see section 97B(1).

level 2 in-scope electrical equipment see section 97B(2).

level 3 in-scope electrical equipment see section 97B(3).

meets, in relation to a relevant standard, means complies with the safety requirements, electrical or otherwise, of the standard.

RCM means the regulatory compliance mark under the defining standard.

registered see section 97.

registered responsible supplier means a responsible supplier of in-scope electrical equipment who is registered.

relevant person means—

- (a) an individual who resides in Queensland; or
- (b) a corporation whose—
 - (i) registered office under the Corporations Law is in Queensland; or
 - (ii) principal place of business is in Queensland.

relevant responsible supplier means—

- (a) if the responsible supplier is an individual—an individual who resides in Queensland; or

-
- (b) if the responsible supplier is a corporation—a corporation whose—
 - (i) registered office under the Corporations Law is in Queensland; or
 - (ii) principal place of business is in Queensland.

relevant standard—

- (a) for a type of level 1 in-scope electrical equipment, see section 97C; or
- (b) for a type of level 2 or 3 in-scope electrical equipment, see section 97D.

second-hand, in relation to an item of a type of in-scope electrical equipment means an item of the type that has previously been sold, other than by wholesale.

test report means a document that presents test results and other information relevant to the test.

‘97 Registration for particular purposes

- ‘(1) A responsible supplier is ***registered*** if the supplier is recorded in the part of the national register that records registered responsible suppliers.
- ‘(2) Electrical equipment is ***registered*** as a type of level 2 or 3 in-scope electrical equipment if the equipment is recorded, in relation to a registered responsible supplier, as equipment of that type in the part of the national register that records registered in-scope electrical equipment of that type.

Note—

Level 1 in-scope electrical equipment is not required to be registered under this part.

- ‘(3) In-scope electrical equipment of a particular type is registered in relation to a particular registered responsible supplier if it is registered as mentioned in subsection (2) in relation to the responsible supplier.

[s 15]

‘97A Component is not a separate item

- ‘(1) This section applies if an item of a type of in-scope electrical equipment includes 2 or more components of types of in-scope electrical equipment that are permanently attached to the item.
- ‘(2) The components are not separate items of types of in-scope electrical equipment.

Example—

A type of in-scope electrical equipment, being a refrigerator, includes a number of components each of which, taken separately, is itself an item of a type of in-scope electrical equipment. If a refrigerator of the type is sold, the item sold is the refrigerator. There is not a separate sale of each of the components.

‘97B Meanings of levels 1, 2 and 3 in-scope electrical equipment

- ‘(1) Electrical equipment is level 1 in-scope electrical equipment if it is a type of in-scope electrical equipment that is not classified under the defining standard as level 2 or level 3.
- ‘(2) Electrical equipment is level 2 in-scope electrical equipment if it is a type of in-scope electrical equipment classified as level 2 under the defining standard.
- ‘(3) Electrical equipment is level 3 in-scope electrical equipment if it is a type of in-scope electrical equipment classified as level 3 under the defining standard.
- ‘(4) Also, if a type of in-scope electrical equipment is level 1, 2 or 3 in-scope electrical equipment, each item of the family of the type is also level 1, 2 or 3 in-scope electrical equipment.

‘97C Meaning of relevant standard for level 1 in-scope electrical equipment

- ‘(1) The *relevant standard* for a type of level 1 in-scope electrical equipment is—
 - (a) if there is a Standards Australia or joint Standards Australia and Standards New Zealand standard that

applies specifically to the type—that standard together with AS/NZS3820 (Essential safety requirements for electrical equipment); or

- (b) if there is not a Standards Australia or joint Standards Australia and Standards New Zealand standard that applies specifically to the type and there is an IEC standard that applies specifically to the type—the IEC standard together with AS/NZS3820; or
- (c) if neither paragraph (a) nor (b) applies—AS/NZS3820.

‘(2) In this section—

IEC standard means an International Electrotechnical Commission standard.

‘97D Meaning of relevant standard for level 2 or 3 in-scope electrical equipment

‘(1) A standard is a ***relevant standard*** for a type of level 2 or 3 in-scope electrical equipment if it is a standard—

- (a) shown in the defining standard as the relevant standard for the type, and the standard can be readily applied to the type; or
- (b) accepted by the chief executive as a standard that can be readily applied to the type; or
- (c) accepted under a corresponding law as a standard that can be readily applied to the type.

‘(2) The acceptance of a standard under subsection (1)(b) or (c) has effect subject to compliance with any requirements stated—

- (a) for subsection (1)(b)—by the chief executive as part of the chief executive’s acceptance of the standard; or
- (b) for subsection (1)(c)—as part of the acceptance of the standard under the corresponding law.

[s 15]

‘Division 2 Registration of responsible suppliers and levels 2 and 3 in-scope electrical equipment

‘Subdivision 1 Registration of responsible suppliers

‘98 Responsible supplier may register

- ‘(1) A responsible supplier of in-scope electrical equipment may register as a responsible supplier.
- ‘(2) However, the responsible supplier is not eligible to register—
- (a) unless the responsible supplier has an ABN or an IRD; or
 - (b) if the responsible supplier is ineligible to register under section 103G(2).
- ‘(3) As part of the registration process, the responsible supplier must—
- (a) make the responsible supplier’s declaration as required by the equipment safety rules; and
 - (b) pay the registration fee.
- ‘(4) The declaration required by the equipment safety rules must include the information mentioned in schedule 3, part 1.
- ‘(5) A relevant person must not, in registering or purporting to register as a responsible supplier, give false information or make a false declaration.

Maximum penalty—40 penalty units.

- ‘(6) In this section—

ABN (short for ‘Australian Business Number’) has the meaning given by the *A New Tax System (Australian Business Number) Act 1999* (Cwlth), section 41.

IRD means a tax file number within the meaning of the *Income Tax Act 2007* (New Zealand), section YA1.

‘99 Term of registration

‘Registration of a responsible supplier is for the term of 1 year starting on the date of registration unless sooner cancelled.

‘100 Renewal of registration

‘A responsible supplier may renew the supplier’s registration from time to time by again registering under section 98.

‘100A Responsible supplier must ensure details in national register are current

‘(1) This section applies if the details of any matter entered by a relevant responsible supplier in the national register relating to the registration of any matter change during the term of registration.

‘(2) Within 30 days the relevant responsible supplier must correct the details in the national register.

Maximum penalty—40 penalty units.

‘Subdivision 2 Registration of level 2 in-scope electrical equipment

‘101 Registration

‘(1) A registered responsible supplier of a type of level 2 in-scope electrical equipment may register the type as level 2 in-scope electrical equipment.

‘(2) However, the registered responsible supplier is not eligible to carry out the registration if the responsible supplier is ineligible to do so under section 103G(3).

[s 15]

- ‘(3) Each registration must relate only to a single type of level 2 in-scope electrical equipment.
- ‘(4) As part of the registration process the registered responsible supplier must—
 - (a) make the responsible supplier’s level 2 in-scope electrical equipment declaration under the equipment safety rules; and
 - (b) if the compliance folder required to be kept in relation to the type of level 2 in-scope electrical equipment under section 108 is not available in the national register, state the address where it is kept; and
 - (c) pay the registration fee.
- ‘(5) The declaration under the equipment safety rules must include the information mentioned in schedule 3, part 2.
- ‘(6) A relevant person must not, in registering or purporting to register a type of level 2 in-scope electrical equipment, give false information or make a false declaration.

Maximum penalty for subsection (6)—40 penalty units.

‘102 Term of registration

- ‘(1) Registration of a type of level 2 in-scope electrical equipment is for the term of 1, 2 or 5 years starting on the date of registration.
- ‘(2) Subsection (1) is subject to the registration being earlier cancelled.
- ‘(3) Subsection (4) applies if the responsible supplier’s registration lapses for a period during the term of the electrical equipment’s registration.
- ‘(4) The electrical equipment’s registration is suspended during that period.

‘103 Renewal of registration

‘A registered responsible supplier may renew the registration of a type of level 2 in-scope electrical equipment from time to time by again registering it under section 101.

‘Subdivision 3 Registration of level 3 in-scope electrical equipment

‘103A Registration

- ‘(1) A registered responsible supplier of a type of level 3 in-scope electrical equipment may register the type as level 3 in-scope electrical equipment.
- ‘(2) However, the registered responsible supplier is not eligible to carry out the registration if the responsible supplier is ineligible to do so under section 103G(3).
- ‘(3) Each registration must relate only to a single type of level 3 in-scope electrical equipment.
- ‘(4) As part of the registration process the registered responsible supplier must—
 - (a) identify a certificate of conformity applicable to the type of level 3 in-scope electrical equipment; and
 - (b) make the responsible supplier’s level 3 in-scope electrical equipment declaration under the equipment safety rules; and
 - (c) pay the registration fee.
- ‘(5) The declaration under the equipment safety rules must include the information mentioned in schedule 3, part 3.
- ‘(6) A relevant person must not, in registering or purporting to register a type of level 3 in-scope electrical equipment, give false information or make a false declaration.

Maximum penalty for subsection (6)—40 penalty units.

[s 15]

‘103B Term of registration

- ‘(1) Registration of a type of level 3 in-scope electrical equipment is for the term of 1, 2 or 5 years starting on the date of registration.
- ‘(2) However, the term of registration must not be longer than the term for which the certificate of conformity applying to the type and identified under section 103A(4)(a) is current at the time of registration.
- ‘(3) Subsection (1) is subject to the registration being earlier cancelled.
- ‘(4) Also, if the certificate of conformity is cancelled the term of registration ends.
- ‘(5) Subsection (6) applies if the responsible supplier’s registration lapses for a period during the term of the electrical equipment’s registration.
- ‘(6) The electrical equipment’s registration is suspended during that period.

‘103C Renewal of registration

‘A registered responsible supplier may renew the registration of a type of level 3 in-scope electrical equipment from time to time by again registering it under section 103A.

‘Subdivision 4 Relevant persons not to be twice punished for same acts or omissions

‘103D Relevant person may be punished only once

- ‘(1) This section applies if—
 - (a) an act or omission of a relevant person is an offence against section 98(5), 100A(2), 101(6) or 103A(6) and also under a corresponding law; and

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- (b) the relevant person is punished for the offence under the corresponding law.
- ‘(2) The relevant person must not be punished for the same offence under this regulation.

‘Subdivision 5 Cancellation of registration

‘103E Grounds for cancelling registration of responsible supplier or level 2 or 3 in-scope electrical equipment

- ‘(1) The following are grounds for cancelling a responsible supplier’s registration—
- (a) the responsible supplier commits an offence against the Act or this regulation;
 - (b) the responsible supplier contravenes a requirement of a recall order;
 - (c) the responsible supplier is a relevant responsible supplier and the registration was obtained by giving false information or making a false declaration;
 - (d) the registration of a type of level 2 or 3 in-scope electrical equipment registered in relation to the responsible supplier is cancelled under section 103G.
- ‘(2) The following are grounds for cancelling the registration in relation to a registered responsible supplier of a type of level 2 or 3 in-scope electrical equipment—
- (a) the responsible supplier commits an offence against the Act or this regulation in relation to the type;
 - (b) the responsible supplier contravenes a requirement of a recall order relating to the type;
 - (c) the responsible supplier is a relevant responsible supplier and—
 - (i) electrical equipment of the type does not meet the relevant standard that was the relevant standard for the type at the time the type was registered; or

[s 15]

- (ii) the relevant standard for the type changed after the type was registered because of safety concerns relating to the type and the type does not meet the current relevant standard for the type; or
- (iii) an item of electrical equipment of the type is, or is likely to be or to become, dangerous in normal use; or
- (iv) the registration was obtained by giving false information or making a false declaration.

‘103F Procedure before cancellation

- ‘(1) This section applies if the chief executive considers a ground exists under section 103E to cancel the registration of a matter.
- ‘(2) The chief executive must, before taking the action, give the responsible supplier written notice—
 - (a) stating that the chief executive is considering cancelling the registration; and
 - (b) stating each ground for the proposed cancellation; and
 - (c) outlining the facts and circumstances forming the basis for each ground; and
 - (d) inviting the responsible supplier to show, within a stated time of at least 28 days, why the registration should not be cancelled.

‘103G Cancellation

- ‘(1) If, after considering all written representations, if any, made by the responsible supplier within the stated time, the chief executive still considers a ground exists to cancel the registration, the chief executive may cancel the registration.
- ‘(2) If a responsible supplier’s registration is cancelled under this section, the responsible supplier is not eligible to again register for the period of 12 months starting on the date of cancellation.

- ‘(3) If the registration of a type of level 2 or 3 in-scope electrical equipment registered in relation to a registered responsible supplier is cancelled under this section, the responsible supplier is not eligible to again register the type for the period of 12 months starting on the date of cancellation.
- ‘(4) If the chief executive cancels a registration under this section, the chief executive must—
 - (a) notify the cancellation—
 - (i) by publishing notice of the cancellation in a newspaper circulating throughout Australia and, if New Zealand is a participating jurisdiction, in a newspaper circulating throughout New Zealand; and
 - (ii) by recording notice of the cancellation in the national register; and
 - (b) give the responsible supplier an information notice for the decision to cancel the registration.
- ‘(5) The information notice must state the period for which the responsible supplier is not eligible to again—
 - (a) register; or
 - (b) register the type of level 2 or 3 in-scope electrical equipment.

‘103H Cancellation at responsible supplier’s request

‘The chief executive must, by notice recorded in the national register, cancel the registration of a responsible supplier or the registration in relation to a responsible supplier of a type of level 2 or 3 in-scope electrical equipment if asked to do so by the responsible supplier.

[s 15]

‘Division 3 Sales of in-scope electrical equipment

‘104 Sale of level 1 in-scope electrical equipment by responsible supplier

- ‘(1) A responsible supplier of a type of level 1 in-scope electrical equipment must not sell an item of the type unless—
- (a) the responsible supplier is a registered responsible supplier; and
 - (b) the item meets the relevant standard for the type as in force—
 - (i) if the responsible supplier is a manufacturer of the type—at the time the item was manufactured by the responsible supplier; or
 - (ii) if the responsible supplier is an importer of the type—at the time the item was imported by the responsible supplier; and
 - (c) the item is electrically safe.

Maximum penalty—40 penalty units.

- ‘(2) It is a defence for the responsible supplier to prove that the responsible supplier obtained the item from a registered responsible supplier.

Example for subsection (2)—

This example assumes New Zealand is a participating jurisdiction.

A New Zealand responsible supplier (company A) is a registered responsible supplier. Company A imports level 1 in-scope electrical equipment into New Zealand from the United Kingdom. Company B is an Australian company that purchases the level 1 in-scope electrical equipment from company A and imports it into Australia. Company B, although a responsible supplier, is not a registered responsible supplier.

If company B were charged with an offence against subsection (1) in relation to its sale of an item of the equipment, it would be a defence for company B to prove that it obtained the item from company A who is a registered responsible supplier.

‘105 Sale of level 2 or 3 in-scope electrical equipment by responsible supplier

- ‘(1) A responsible supplier of a type of level 2 or 3 in-scope electrical equipment must not sell an item of the type unless—
- (a) the responsible supplier is a registered responsible supplier; and
 - (b) the type is registered in relation to the responsible supplier; and
 - (c) the item meets the relevant standard for the type as at the time the type became registered as mentioned in paragraph (b); and
 - (d) the item is electrically safe.

Maximum penalty—40 penalty units.

- ‘(2) It is a defence for the responsible supplier to prove—
- (a) that—
 - (i) the responsible supplier obtained the item from a registered responsible supplier; and
 - (ii) the type of in-scope electrical equipment to which the item belongs was, at the time of the alleged offence, registered in relation to the registered responsible supplier; or
 - (b) that, at the time of the alleged offence—
 - (i) the responsible supplier was, under the Corporations Act, a related body corporate of a New Zealand registered responsible supplier; and
 - (ii) the type of in-scope electrical equipment to which the item belongs was registered in relation to the New Zealand registered responsible supplier.

- ‘(3) In this section—

New Zealand registered responsible supplier means a registered responsible supplier that is, under the *Companies Act 1993* (New Zealand)—

- (a) a company; or

[s 15]

- (b) an overseas company carrying on business in New Zealand.

Example for subsection (2)(a)—

This example assumes New Zealand is a participating jurisdiction.

A New Zealand responsible supplier (company A) is a registered responsible supplier and a type of level 2 in-scope electrical equipment is registered in the national register in relation to company A. Company A imports level 2 in-scope electrical equipment of that type into New Zealand from the United Kingdom. Company B is an Australian company that purchases the level 2 in-scope electrical equipment from company A and imports it into Australia. Company B, although a responsible supplier, is not a registered responsible supplier.

If company B were charged with an offence against subsection (1) in relation to its sale of an item of the equipment, it would be a defence for company B to prove that it obtained the item from company A who is a registered responsible supplier and that the type of in-scope electrical equipment to which the item belonged was, at the time of the alleged offence, registered in the national register in relation to company A.

‘106 Sale of in-scope electrical equipment—general

- ‘(1) A person must not sell an item of a type of level 1, 2 or 3 in-scope electrical equipment unless the item is marked with the RCM in compliance with the defining standard.

Maximum penalty—20 penalty units.

- ‘(2) A person must not sell an item of a relevant type if—
- (a) the item was purchased by the person for the purpose of resale; and
- (b) when the person purchased the item, the relevant type was not registered in relation to a registered responsible supplier.

Maximum penalty—20 penalty units.

- ‘(3) Subsection (4) applies in relation to a prosecution of an offence against subsection (2) in which the issue is raised that the person had an honest and reasonable but mistaken belief that the type was registered in relation to a registered

responsible supplier based on reasonable monitoring by the person of the national register.

- ‘(4) In deciding whether the monitoring of the national register was reasonable, regard may be had to the nature of the item and the nature of the person’s business in relation to the item.
- ‘(5) For subsection (1) it is sufficient if the mark is on the item’s labelling or packaging in compliance with the defining standard.
- ‘(6) Subsection (1) or (2) does not apply if—
 - (a) the person is a responsible supplier of the type of in-scope electrical equipment; or
 - (b) the item is a second-hand item.

- ‘(7) In this section—

relevant type means a type of level 2 or 3 in-scope electrical equipment that, after the commencement of subsection (2), is manufactured in, or imported into, Australia or, if New Zealand is a participating jurisdiction, New Zealand.

‘106A Sale of plug etc. with level 1 or 2 in-scope electrical equipment

- ‘(1) This section applies if—
 - (a) a relevant item of a type of level 3 in-scope electrical equipment is sold for use with an item of a type of level 1 or 2 in-scope electrical equipment; and
 - (b) at the time of sale, there is a current certificate of conformity that applies to the relevant item recorded in the national register.
- ‘(2) For the purpose of the sale, the type of level 3 in-scope electrical equipment is not required to be registered.
- ‘(3) Subsection (2) applies despite any other provision of this part.
- ‘(4) In this section—

relevant item means a plug, flexible supply cord or appliance connector, as defined in the defining standard.

[s 15]

‘Division 4 Evidence of compliance with relevant standards

‘Subdivision 1 Level 1 in-scope electrical equipment

‘107 Responsible supplier to keep evidence

- ‘(1) This section applies to a responsible supplier of a type of level 1 in-scope electrical equipment who sells an item of the type.
- ‘(2) The responsible supplier must, for the prescribed period, keep documentary evidence, in English, proving that items of the type meet the relevant standard for the type as in force—
 - (a) if the responsible supplier is a manufacturer of the type—at the time the item was manufactured by the responsible supplier; or
 - (b) if the responsible supplier is an importer of the type—at the time the item was imported by the responsible supplier.

Maximum penalty—40 penalty units.

Note—

It is the responsibility of the responsible supplier to ascertain the relevant standard applying to the type under section 97C.

- ‘(3) It is a defence for the responsible supplier to prove that the responsible supplier obtained the item from a registered responsible supplier.

Example for subsection (3)—

This example assumes New Zealand is a participating jurisdiction.

A New Zealand responsible supplier (company A) is a registered responsible supplier. Company A imports level 1 in-scope electrical equipment into New Zealand from the United Kingdom. Company B is an Australian company that purchases the level 1 in-scope electrical equipment from company A and imports it into Australia. Company B, although a responsible supplier, is not a registered responsible supplier.

Also, company B does not keep the evidence mentioned in subsection (2) in relation to items of the type.

If company B were charged with an offence against subsection (1) in relation to its sale of an item of the equipment, it would be a defence for company B to prove that it obtained the item from company A who is a registered responsible supplier.

‘(4) In this section—

keep, documentary evidence, means hold the evidence or be able to access it within 10 business days.

prescribed period means 5 years starting on the day the type is last manufactured or imported by the responsible supplier.

‘Subdivision 2 Level 2 in-scope electrical equipment

‘108 Registered responsible supplier must keep compliance folder

‘(1) This section applies to a registered responsible supplier who sells items of a type of level 2 in-scope electrical equipment registered in relation to the responsible supplier.

‘(2) The registered responsible supplier must, for the prescribed period, keep a compliance folder proving that the type meets the relevant standard as in force when the type was registered.

Maximum penalty—40 penalty units.

‘(3) A compliance folder is a document recording evidence in English, that must include test reports completed by an approved testing entity or a suitably qualified person, confirming that the type meets the relevant standard mentioned in subsection (2).

‘(4) A compliance folder may be kept in electronic form.

‘(5) In this section—

keep, a compliance folder, means—

(a) have the folder available in the national register; or

[s 15]

- (b) hold the folder or be able to access it within 10 business days.

prescribed period means the term of the registration of the type of level 2 in-scope electrical equipment plus 5 years.

suitably qualified person means an individual who has—

- (a) a degree qualification in electrical engineering and at least 2 years experience in the use of electrical equipment safety standards for regulatory purposes; or
- (b) an advanced diploma or equivalent qualification in an electrical discipline and at least 3 years experience in the use of electrical equipment safety standards for regulatory purposes; or
- (c) a trade qualification in an electrical discipline and at least 4 years experience in the use of electrical equipment safety standards for regulatory purposes.

‘Subdivision 3 Level 3 in-scope electrical equipment

‘109 Registered responsible supplier must keep certificate of conformity

‘(1) This section applies to a registered responsible supplier who sells a type of level 3 in-scope electrical equipment that is registered in relation to the responsible supplier.

‘(2) The responsible supplier must keep a current certificate of conformity for the type.

Maximum penalty—40 penalty units.

‘(3) In this section—

keep, a current certificate of conformity, means hold the certificate or be able to access it within 10 business days.

‘Division 5 Effect of reclassification of in-scope electrical equipment

‘110 Effect of reclassification

- ‘(1) This section applies if—
- (a) a type of level 1 or 2 in-scope electrical equipment is reclassified to a higher level; and
 - (b) immediately before the reclassification happens, a responsible supplier of that type was selling items of the type.
- ‘(2) For the period of 12 months starting on the day the reclassification has effect, divisions 3 and 4 apply to the sale by the responsible supplier of items of that type as if the reclassification had not happened.
- ‘(3) In this section—
- reclassified to a higher level—*
- (a) in relation a type of level 1 in-scope electrical equipment, means that type is classified by the defining standard as level 2 or 3; or
 - (b) in relation to a type of level 2 in-scope electrical equipment, means that type is reclassified by the defining standard from level 2 to level 3.

‘Division 6 Marking of in-scope electrical equipment

‘111 Responsible supplier must not sell unmarked item of in-scope electrical equipment

- ‘(1) A responsible supplier of a type of level 1, 2 or 3 in-scope electrical equipment must not sell an item of the type unless the item is marked with the RCM in compliance with the defining standard.

[s 15]

Maximum penalty—40 penalty units.

- ‘(2) For subsection (1) it is sufficient if the mark is on the item’s labelling or packaging in compliance with the defining standard.

‘112 Person must not mark in-scope electrical equipment that does not meet relevant standard

- ‘(1) A person must not mark an item of a type of level 1, 2 or 3 in-scope electrical equipment with the RCM unless the item meets the relevant standard for the type.

Maximum penalty—40 penalty units.

- ‘(2) In this section—

mark, an item of a type of level 1, 2 or 3 in-scope electrical equipment, includes mark the item’s labelling or packaging.

‘113 Mark for use in exceptional circumstances

- ‘(1) The chief executive may approve a mark other than the RCM for use in exceptional circumstances.

- ‘(2) A person does not commit an offence under section 106(1) or 111 in relation to the sale of an item of a type of in-scope electrical equipment if the item is marked as required by the approval given under subsection (1).

- ‘(3) Also, a person does not commit an offence under section 106(1) or 111 in relation to the sale of an item of a type of in-scope electrical equipment if—

- (a) the item is marked with a mark, other than the RCM, approved under a corresponding law for use in exceptional circumstances; and
(b) the item is marked as required by that approval.

[s 15]

‘115 Chief executive may issue certificate of conformity

- ‘(1) If the chief executive approves the application, the chief executive may issue a certificate of conformity for the type of level 3 in-scope electrical equipment.
- ‘(2) If the chief executive refuses to approve the application, the chief executive must give the applicant an information notice for the decision to refuse.

‘116 Term of certificate

‘Unless it is cancelled earlier, a certificate of conformity issued under this division remains in force for the period stated in the certificate, which must not be more than 5 years.

‘Subdivision 2 Modifications, renewals and transfers

‘116A Modification of certificate of conformity—change of name or model

- ‘(1) This section applies if the holder of a certificate of conformity for a type of level 3 in-scope electrical equipment issued under this division proposes to vary the brand name or model designation that is specified on the certificate in relation to the type.
- ‘(2) The holder may apply to the chief executive for modification of the certificate.
- ‘(3) The application must be—
 - (a) in the approved form; and
 - (b) accompanied by the fee for the application.
- ‘(4) The chief executive may require the applicant to provide—
 - (a) an item of the type or colour images showing the internal and external construction of an item of the type; or

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- (b) documentation that adequately describes the proposed variation.
 - ‘(5) The chief executive may modify a certificate of conformity and issue a modified certificate if satisfied that the variation does not affect the compliance of the type with the relevant standard to which the type was tested.
 - ‘(6) If the chief executive refuses to modify the certificate, the chief executive must give the applicant an information notice for the decision to refuse.

‘116B Modification of certificate of conformity—other than a change of name or model

- ‘(1) This section applies if the holder of a certificate of conformity for a type of level 3 in-scope electrical equipment issued under this division proposes to make any modification to the equipment (other than a modification described in section 116A) that would not result in the creation of a new type of equipment.
- ‘(2) The holder may apply to the chief executive for the modification of the certificate.
- ‘(3) The application must be—
 - (a) in the approved form; and
 - (b) accompanied by—
 - (i) a test report relating to the modified in-scope electrical equipment from an approved testing entity; and
 - (ii) an item of the type or colour images showing the internal and external construction of an item of the type; and
 - (iii) technical documentation which adequately describes the modified in-scope electrical equipment; and
 - (c) accompanied by the fee for the application.
- ‘(4) The chief executive may require the applicant to provide—

[s 15]

- (a) an item of the type if colour images provided are not adequate; or
 - (b) additional information about the modified electrical equipment.
- ‘(5) The chief executive may exempt the applicant from the requirement to provide a test report under subsection (3)(b)(i) if the chief executive is satisfied that the modification will not affect the safety of the type.
- ‘(6) The chief executive may waive or rebate the payment of the fee for the modification of the certificate if the chief executive, under subsection (5), exempts the applicant from the requirement to provide a test report.
- ‘(7) The chief executive may modify a certificate of conformity and issue a modified certificate if satisfied that the modification to the type would not result in the creation of a new type of in-scope electrical equipment.
- ‘(8) If the chief executive refuses to modify the certificate, the chief executive must give the applicant an information notice for the decision to refuse.

‘116C Renewal of certificate of conformity

- ‘(1) A person who holds a certificate of conformity issued under this division may apply to the chief executive for renewal of the certificate and the issue of a new certificate.
- ‘(2) The application must be—
- (a) in the approved form; and
 - (b) accompanied by a declaration by the applicant or a person authorised by the applicant stating whether or not—
 - (i) the type of level 3 in-scope electrical equipment to which the current certificate relates has been modified since the certificate was issued or modified; and

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- (ii) the relevant standard to which the type was tested has changed since the current certificate was issued or modified; and
 - (c) accompanied by the fee for the application.
 - ‘(3) The chief executive may renew the certificate and issue a new certificate of conformity if satisfied that—
 - (a) the type of level 3 in-scope electrical equipment has not been modified; and
 - (b) the relevant standard to which that type was tested has not changed since the current certificate was issued or the certificate relating to that type was modified.
 - ‘(4) If the chief executive refuses to renew the certificate, the chief executive must give the applicant an information notice for the decision to refuse.

‘116D Transfer of certificate

- ‘(1) The holder of a certificate of conformity issued under this division who proposes to transfer the certificate to another person may apply to the chief executive to have the certificate amended to refer to the name of the person to whom the certificate is to be transferred (the *transferee*).
- ‘(2) The application must be—
 - (a) in the approved form; and
 - (b) accompanied by—
 - (i) the certificate to be transferred; and
 - (ii) a statement, signed by the transferee, that the transferee consents to the transfer; and
 - (iii) the fee for the application.
- ‘(3) The chief executive may issue a certificate of conformity to the transferee as mentioned in subsection (1) if the requirements of subsection (2) are complied with.

[s 15]

- ‘(4) If the chief executive refuses to grant the application, the chief executive must give the applicant an information notice for the decision to refuse.

‘Subdivision 3 Cancellation

‘116E Grounds for cancelling certificate of conformity

‘The following are grounds for cancelling a certificate of conformity for a type of level 3 in-scope electrical equipment issued under this division—

- (a) an item of the type does not meet the relevant standard for the type;
- (b) an item of the type is, or is likely to be or to become, dangerous in normal use;
- (c) the certificate was obtained by misleading information;
- (d) an item of the type, or purportedly of the type, is found, on examination by the chief executive, to be substantially different from the type as described in—
 - (i) the certificate; or
 - (ii) a test report forming the basis for the issuing of the certificate;
- (e) the holder of the certificate contravenes the Act or this regulation.

‘116F Procedure before cancellation

- ‘(1) If the chief executive considers a ground exists to cancel the certificate of conformity for a type of level 3 in-scope electrical equipment under section 116E, the chief executive must, before taking the action, give the holder of the certificate written notice—
- (a) stating that the chief executive is considering cancelling the certificate; and

- (b) stating each ground for the proposed cancellation; and
 - (c) outlining the facts and circumstances forming the basis for each ground; and
 - (d) inviting the holder to show, within a stated time of at least 28 days, why the certificate should not be cancelled.
- ‘(2) If, after considering all written representations made by the holder of the certificate within the stated time, the chief executive still considers a ground exists to cancel the certificate, the chief executive may cancel the certificate.
- ‘(3) If the chief executive cancels the certificate, the chief executive must—
- (a) give the holder of the certificate an information notice for the decision to cancel; and
 - (b) notify the cancellation by gazette notice stating the day of cancellation.

‘116G Cancellation at certificate holder’s request

‘The chief executive must cancel a certificate of conformity for a type of level 3 in-scope electrical equipment issued under this division if the holder of the certificate asks for the cancellation.

‘116H Certificate of conformity holder to return certificate if cancelled

‘Within 14 days of receiving notice of cancellation of a certificate of conformity, the holder of the certificate must give the chief executive the certificate of conformity unless the holder has a reasonable excuse.

Maximum penalty—10 penalty units.

[s 15]

‘Subdivision 4 Information to be recorded in the national register

‘116I Information to be recorded in national register

- ‘(1) The chief executive must ensure that, for each certificate of conformity issued under this division, or for each modification, renewal or transfer of a certificate of conformity under this division, the information required by the equipment safety rules is recorded in the national register.
- ‘(2) The chief executive must also ensure particulars of the cancellation of a certificate of conformity under this division are recorded in the national register.

‘Division 8 Recognised external certification schemes—Act, section 48J

‘Subdivision 1 Preliminary

‘117 Definitions for div 8

‘In this division—

declaration holder means the person who conducts a declared scheme under a declaration made by the chief executive under section 48J of the Act.

declared scheme means a scheme declared to be a recognised external certification scheme under section 48J of the Act.

‘Subdivision 2 Applications and terms

‘118 Application for chief executive’s declaration of scheme

- ‘(1) A person who conducts a scheme for the certification of types

of in-scope electrical equipment may apply to the chief executive for the scheme to be declared to be a recognised external certification scheme under section 48J of the Act.

- ‘(2) The application must be—
- (a) in the approved form; and
 - (b) accompanied by—
 - (i) the fee for the application; and
 - (ii) evidence that the applicant is—
 - (A) accredited by the Joint Accreditation System of Australia and New Zealand as competent to certify that types of in-scope electrical equipment meet relevant standards; or
 - (B) appropriately designated, under a mutual recognition arrangement or a free trade agreement to which Australia is a party, as competent to certify that types of in-scope electrical equipment meet relevant standards; and
 - (iii) the applicant’s written agreement that when certifying types of level 3 in-scope electrical equipment the applicant will do so under the equipment safety rules; and
 - (iv) the other documents and information required by the chief executive.

‘119 Intention to make declaration must be advertised

- ‘(1) This section applies if the chief executive is intending to grant the application.
- ‘(2) Before finally deciding the application, the chief executive must publish a notice indicating the chief executive’s intention to declare the scheme to be a recognised external certification scheme.

[s 15]

- ‘(3) The notice must state a period of at least 14 days during which written submissions may be made to the chief executive about the proposed declaration (the *submission period*).
- ‘(4) The notice must be published in—
 - (a) a newspaper circulating generally in the State; or
 - (b) if the types of in-scope electrical equipment concerned would typically be sold only to a particular section of the public—a newspaper or other publication circulating generally to that section of the public; or
 - (c) if the types of in-scope electrical equipment concerned would typically be sold only in a particular part of the State—a newspaper or other publication circulating generally in that part.
- ‘(5) During the submission period, a person may make a written submission to the chief executive about the proposed declaration.
- ‘(6) Before finally deciding the application, the chief executive must consider all submissions received under subsection (5).

‘119A Decision about application

- ‘(1) The chief executive may decide to grant or refuse to grant the application.

Note—

If the chief executive grants the application, the chief executive may, under section 48J of the Act, declare the scheme to be a recognised external certification scheme.

- ‘(2) If the chief executive refuses to grant the application, or grants the application and imposes conditions on the declared scheme, the chief executive must give the applicant an information notice for the decision to refuse or to impose conditions.

‘119B Term of declared scheme

‘The term of a declared scheme is the period of not more than 5 years stated in the chief executive’s declaration of the scheme.

‘Subdivision 3 Conditions

‘119C Chief executive may impose conditions on declared scheme

- ‘(1) The chief executive may impose conditions on a declared scheme.
- ‘(2) Without limiting subsection (1), a condition may restrict the types of in-scope electrical equipment that may be certified under the scheme.
- ‘(3) Conditions applying to a declared scheme under this section when the scheme is declared under section 48J of the Act must be stated in the declaration.

‘119D Condition imposed by regulation

‘It is a condition of each declared scheme that the declaration holder must—

- (a) pay the annual fee for the declaration by each anniversary of the scheme’s declaration; and
- (b) for each certificate of conformity issued by the declaration holder, or for each modification, renewal or transfer of a certificate of conformity approved by the declaration holder, record the information required by the equipment safety rules in the national register within 3 business days of issuing the certificate or granting the approval; and
- (c) for each certificate of conformity cancelled by the declaration holder, record information about the cancellation in the national register within 3 business days of cancelling the certificate.

[s 15]

‘119E Amendment of conditions imposed by chief executive

- ‘(1) The chief executive may amend the conditions imposed on a declared scheme by the chief executive by revoking or varying the conditions or imposing new conditions.
- ‘(2) The chief executive may act under subsection (1) on the chief executive’s own initiative or at the request of the declaration holder.
- ‘(3) The revocation of conditions, or the amendment of conditions at the request of the declaration holder, has effect when written notice of the amendment is given to the declaration holder.
- ‘(4) If the chief executive refuses to amend the conditions as requested by the declaration holder, the chief executive must give the declaration holder an information notice for the decision to refuse.

‘119F Acting on chief executive’s own initiative—general

- ‘(1) Subject to section 119G, the chief executive must not act, to amend the conditions by varying them or imposing new conditions, on the chief executive’s own initiative without first giving the declaration holder a notice—
 - (a) stating details of the proposed amendment; and
 - (b) inviting the declaration holder to make written submissions about the proposal within a stated time of at least 7 days.
- ‘(2) The chief executive must consider all submissions received from the declaration holder under subsection (1)(b).
- ‘(3) If, after considering the submissions, if any, the chief executive is of the opinion that the conditions of the declared scheme should be amended as mentioned in subsection (1)(a), the chief executive may amend the conditions by written notice given to the declaration holder.
- ‘(4) The amendment has effect when the notice is given to the declaration holder.

- ‘(5) If the chief executive amends the conditions, the chief executive must give the declaration holder an information notice for the decision to amend.

‘119G Acting on chief executive’s own initiative—electrical risk

- ‘(1) This section applies if the chief executive considers that a type of level 1, 2 or 3 in-scope electrical equipment certified by a declaration holder is placing, or will place, persons or property at electrical risk.
- ‘(2) The chief executive may amend the conditions applying to the declared scheme, other than the condition imposed under section 119D, by written notice given to the declaration holder.
- ‘(3) The amendment has effect when the notice is given to the declaration holder.
- ‘(4) If the chief executive amends the conditions, the chief executive must give the declaration holder an information notice for the decision to amend.

‘Subdivision 4 Cancellation

‘119H Grounds for cancelling declaration

‘The following are grounds for cancelling the declaration of a declared scheme—

- (a) the declaration holder contravened a condition of the declared scheme;
- (b) the declaration of the scheme was obtained by giving false information.

‘119I Procedure before cancellation

- ‘(1) If the chief executive considers a ground exists to cancel the declaration of a declared scheme under section 119H, the

[s 15]

chief executive must, before taking the action, give the declaration holder written notice—

- (a) stating that the chief executive is considering cancelling the declaration; and
 - (b) stating each ground for the proposed cancellation; and
 - (c) outlining the facts and circumstances forming the basis for each ground; and
 - (d) inviting the declaration holder to make written submissions, within a stated time of at least 7 days, as to why the declaration should not be cancelled.
- ‘(2) The chief executive must consider all submissions received from the declaration holder under subsection (1)(d).
- ‘(3) If, after considering the submissions, if any, the chief executive still considers a ground exists to cancel the declaration, the chief executive may cancel the declaration by written notice given to the declaration holder.
- ‘(4) The cancellation takes effect on the day the notice is given to the declaration holder.
- ‘(5) If the chief executive cancels the declaration, the chief executive must give the declaration holder an information notice for the decision to cancel.

‘119J Cancellation at declaration holder’s request

‘The chief executive must cancel the declaration of a declared scheme if the declaration holder asks for the cancellation.

‘Subdivision 5 Other provisions

‘119K Reporting requirements for declaration holder

- ‘(1) The chief executive may, by written notice given to a declaration holder, require the person to provide the chief executive with any of the following—

- (a) reports or particulars, about the number and nature of certificates given under the declared scheme, as are stated in the notice and at the times stated in the notice;
 - (b) reports, particulars or other information, about the level of compliance with the conditions imposed on the declared scheme under this division, as are stated in the notice and at the times stated in the notice.
- ‘(2) The declaration holder must comply with the notice.
Maximum penalty for subsection (2)—40 penalty units.

‘119L Declaration holder must comply with equipment safety rules

‘A declaration holder, in certifying a type of level 3 in-scope electrical equipment under a declared scheme, must comply with the equipment safety rules.

Maximum penalty—40 penalty units.

‘Division 9 Chief executive may require testing of item of level 1, 2 or 3 in-scope electrical equipment

‘120 Chief executive may require item of in-scope electrical equipment to be submitted

‘If the chief executive considers it necessary or appropriate for the maintenance of electrical safety, the chief executive may decide to have an item of a type of level 1, 2 or 3 in-scope electrical equipment tested and examined to see whether it meets the relevant standard for the type.

[s 15]

‘121 Procedure for obtaining item of in-scope electrical equipment for testing

- ‘(1) If the chief executive decides to have an item of a type of level 1, 2 or 3 in-scope electrical equipment tested and examined, the chief executive may—
- (a) for an item of a type of level 2 or 3 in-scope electrical equipment—
 - (i) by written notice, require a registered responsible supplier in relation to whom the type is registered to give the chief executive items of the type for testing and examining within a stated reasonable time; or
 - (ii) require an inspector to select, for testing and examining, items of the type from a place where a registered responsible supplier in relation to whom the type is registered has them stored and give them to the chief executive within a stated reasonable time; or
 - (b) in any case—buy, for testing and examining, items of the type at any place where they are offered for sale.
- ‘(2) If the chief executive makes a requirement under subsection (1)(a)(i), the registered responsible supplier must take all steps that are reasonable in the circumstances to ensure that the requirement is complied with.
- Maximum penalty—40 penalty units.
- ‘(3) If the chief executive makes a requirement under subsection (1)(a)(ii), the registered responsible supplier must take all steps that are reasonable in the circumstances to ensure the inspector is able to comply with the requirement.
- Maximum penalty for subsection (3)—40 penalty units.

‘122 Identification of item of in-scope electrical equipment to be tested

‘Before the chief executive gives an item of a type of level 2 or 3 in-scope electrical equipment to an approved testing entity for testing and examining, the chief executive must—

- (a) give the registered responsible supplier from whom the item was obtained under section 121(1)(a) an opportunity to place an identifying mark on the item; and
- (b) advise the approved testing entity of the mark.

‘123 Cost of testing and examining and liability for damage

‘(1) If an item of a type of level 1, 2 or 3 in-scope electrical equipment is tested and examined under this division and is found to substantially meet the relevant standard for the type, the chief executive must—

- (a) bear the cost of the testing and examination; and
- (b) if the item was obtained under section 121(1)(a), compensate the registered responsible supplier for any damage done to the item.

‘(2) An amount for which a registered responsible supplier is entitled to be compensated under subsection (1)(b) may be recovered from the chief executive as a debt owing by the State to the person.

‘(3) If an item of a type of level 2 or 3 in-scope electrical equipment is tested and examined under this division and is found not to substantially meet the relevant standard for the type, the registered responsible supplier from whom the item was obtained under section 121(1)(a)—

- (a) must reimburse the chief executive for all costs incurred in obtaining and having the item of electrical equipment tested and examined; and

[s 15]

- (b) is not entitled to compensation for damage necessarily caused to the item to enable it to be properly tested and examined.
- ‘(4) An amount the chief executive is entitled to be reimbursed under subsection (3)(a) may be recovered by the chief executive as a debt owing to the State.

‘Division 10 Return of in-scope electrical equipment given to chief executive

‘124 Return of item of level 2 or 3 in-scope electrical equipment provided to chief executive

- ‘(1) This section applies if a person provides the chief executive with—
 - (a) an item of a type of level 3 in-scope electrical equipment under division 7; or
 - (b) an item of a type of level 2 or 3 in-scope electrical equipment for testing and examination because of a requirement made by the chief executive under division 9.
- ‘(2) The chief executive must notify the person the item of in-scope electrical equipment is available for collection by the person at a stated place as soon as practicable after—
 - (a) if the item was provided under division 7—the chief executive decides the application to which the item relates; or
 - (b) if the item was provided for testing and examination—
 - (i) if the chief executive believes, on reasonable grounds, that the item is required as evidence in a prosecution for an offence—the prosecution and any appeal from the prosecution; or
 - (ii) if subparagraph (i) does not apply—the testing and examination.

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- ‘(3) Despite subsection (2)(b)(i), the chief executive must notify the person immediately after the earlier of the following—
- (a) the chief executive decides the item of in-scope electrical equipment is not required as evidence;
 - (b) a prosecution for an offence involving the item of in-scope electrical equipment is not started within 6 months from when the notice would have been given if subsection (2)(b)(i) had not applied.
- ‘(4) If, at the end of 6 months after the giving of notice, the item of in-scope electrical equipment has not been collected, the chief executive may dispose of the item as the chief executive considers appropriate and the person is not entitled to claim for the item or any loss or damage to it.
- ‘(5) Subsection (2) does not apply if the item of in-scope electrical equipment was necessarily destroyed by testing.

‘Division 11 **Second-hand in-scope electrical equipment**

‘125 **Limitation on offering second-hand in-scope electrical equipment for sale**

- ‘(1) A person (the *seller*) who offers for sale to another person (the *purchaser*) a second-hand item of a type of in-scope electrical equipment must give the purchaser information to the effect that the item has not been tested for electrical safety unless—
- (a) subsection (2) applies; and
 - (b) the seller complies with the subsection.
- Maximum penalty—40 penalty units.
- ‘(2) If—
- (a) the item has been tested by a licensed electrical worker who is qualified to test the item; and
 - (b) has been found to be electrically safe;

[s 15]

the seller may instead give the information about the test.

- ‘(3) A person is not required to comply with subsection (1) if the purchaser conducts a business or undertaking that includes dealing in, repairing or reconditioning second-hand items of in-scope electrical equipment.

‘Division 12 Program for certification of level 1 or 2 in-scope electrical equipment

‘125A Chief executive may establish program for certification

- ‘(1) The chief executive may establish a program for the issuing of certificates relating to the suitability of types of level 1 or 2 in-scope electrical equipment for connection to electricity supply.
- ‘(2) The program may include the charging of fees for the certificates.
- ‘(3) The program can not require a person to take part in the program.

‘Part 6A Electrical equipment—general

‘Division 1 Requirement for warning sign for sale of particular electrical equipment

‘126 Definition for div 1

‘In this division—

particular electrical equipment means electrical equipment the installation, testing, maintenance, repair, alteration,

removal, or replacement of which is electrical work required under the Act to be performed by a licensed electrical contractor or licensed electrical worker.

Examples—

- fixed-wired electrical equipment, including, for example, air conditioners, stoves, ovens, electric hot water systems, ceiling fans, light fittings
- electrical accessories, including, for example, socket outlets, light switches, electrical cable, wall switches, plugs and cord extension sockets
- electrical parts, including, for example, electrical motors, switches, solenoids, elements

‘126A Application of div 1

‘This division applies to a person who conducts a business or undertaking that involves the sale of particular electrical equipment to the public.

‘126B Requirement to display DIY warning sign

‘(1) The person must not sell an item of particular electrical equipment unless a DIY warning sign is displayed for the item.

Maximum penalty—40 penalty units.

‘(2) For subsection (1), a DIY warning sign is displayed for an item of particular electrical equipment if the sign is displayed—

- (a) in close proximity to the point of display of the item; or
- (b) as part of the price tag of the item; or
- (c) on a label attached to the packaging of the item; or
- (d) as part of the packaging of the item; or
- (e) on a label attached to the item.

‘(3) In this section—

DIY warning sign means a sign that—

[s 15]

- (a) contains a symbol in the form of a red circle and a red diagonal line over the letters ‘DIY’ in black letters; and
- (b) for a sign displayed in the way mentioned in subsection (2)(a)—contains the words ‘ALL ELECTRICAL WORK MUST BE PERFORMED BY A LICENSED ELECTRICIAN’ in uppercase black letters; and
- (c) for a sign displayed in the way mentioned in subsection (2)(b), (c), (d) or (e)—contains the words ‘MUST BE INSTALLED BY A LICENSED ELECTRICIAN’ in uppercase black letters; and
- (d) has a white background; and
- (e) is unambiguous and clearly legible.

point of display, of an item, means—

- (a) for an item displayed in a shop, warehouse or other physical space—the place where the item is displayed in the shop, warehouse or other physical space; or
- (b) for an item displayed in an online shop—the place where the item is displayed on the online shop’s website.

‘Division 2 Prohibition on sale of electrical equipment

‘126C Sale of electrical equipment prohibited

‘A person must not sell an item of electrical equipment to which the safety criteria in AS/NZS 3820 (Essential safety requirements for electrical equipment) apply unless the item of electrical equipment complies with the safety criteria as in force at the later of the following—

- (a) on 5 October 1998;
- (b) when the item was manufactured or imported.

Maximum penalty—40 penalty units.

‘126D Chief executive may prohibit the sale or use of electrical equipment on safety grounds

- ‘(1) The chief executive may, by gazette notice, prohibit the sale or use by any person of an item of electrical equipment, or items of electrical equipment of a particular type, if the chief executive believes on reasonable grounds that the item or type does not comply with the safety criteria in AS/NZS 3820 (Essential safety requirements for electrical equipment).
- ‘(2) The prohibition remains in force for the time stated in the gazette notice or, if no time is stated, without limit of time.
- ‘(3) As well as notifying the prohibition in the gazette, the chief executive must give an information notice for the decision to prohibit the sale or use of the item or type of electrical equipment to each person the chief executive knows to be, or to be likely to be, a seller of the item or type.
- ‘(4) A person must not contravene the prohibition, unless the person has a reasonable excuse.
Maximum penalty—40 penalty units.
- ‘(5) Unless a court otherwise decides in the circumstances of a particular case, it is not a reasonable excuse for a contravention of the prohibition that the person did not receive an information notice under subsection (3).

‘Division 3 Labelling and inspection of electrical equipment

‘126E Labelling faulty portable electrical equipment

- ‘(1) This section applies if a person acting under the authority of a distribution entity finds, at a place occupied by a consumer, an item of portable electrical equipment that has a serious defect.
- ‘(2) The distribution entity must ensure that a label is attached to the item of electrical equipment stating that the item is electrically unsafe.
Maximum penalty—40 penalty units.

[s 15]

- ‘(3) A person must not take the label off the item of electrical equipment or connect a source of electricity to the item unless the item—
- (a) has been repaired by a licensed electrical worker qualified to repair it; or
 - (b) has been repaired by a person who, because of the operation of section 18(2)(d) of the Act, was not performing electrical work in repairing the equipment.

Maximum penalty for subsection (3)—40 penalty units.

‘Division 4 Hire electrical equipment

‘126F Purpose of div 4

‘This division prescribes a way of discharging the electrical safety obligation of an employer or self-employed person to ensure that the person’s business or undertaking is conducted in a way that is electrically safe.

‘126G Hiring electrical equipment

- ‘(1) This section applies if an employer or self-employed person (the *hirer*) conducts a business or undertaking of hiring out electrical equipment to other persons.
- ‘(2) The hirer must ensure each item of electrical equipment hired out by the hirer to another person—
- (a) either—
 - (i) is inspected and tested by a competent person before each hiring; or
 - (ii) has a safety switch that can not be disconnected, deactivated or removed during the item’s operation; and
 - (b) is inspected, tested and tagged by a competent person at least once every 6 months; and

-
- (c) if the item has a safety switch under paragraph (a)(ii), the safety switch—
- (i) is inspected, tested and tagged by a competent person at least once every 6 months; and
 - (ii) complies with AS/NZS 3760 (In-service safety inspection and testing of electrical equipment) when tested.
- ‘(3) However, subsection (2)(b) does not apply if the item is domestic electrical equipment that is hired for use in a domestic situation.
- Example of domestic electrical equipment hired for use in a domestic situation—*
- refrigerator, television or computer hired for use in a dwelling house or flat
- Example of domestic electrical equipment not hired for use in a domestic situation—*
- refrigerator hired for use in a mechanic’s workshop
- ‘(4) For subsection (2)(a)(i), if, because of the way in which the item of electrical equipment is designed, the item can not be tested without dismantling it, it is sufficient if the hirer ensures the item is tested to the extent that it can be tested without dismantling it.
- ‘(5) If, after inspecting and testing an item of electrical equipment under subsection (2)(b)—
- (a) the competent person decides the item is safe to use, the hirer must ensure the competent person immediately attaches a durable tag to the item that shows the day by which the item must be reinspected and retested; or
 - (b) the competent person decides the item is not safe to use, the hirer must ensure that—
 - (i) the competent person immediately attaches a durable tag to the item warning people not to use the item; and
 - (ii) the item is immediately withdrawn from use.

[s 16]

- ‘(6) The hirer must keep records of the tests performed under subsection (2)(b) or (c)(i) for at least 5 years.
- ‘(7) A person who contravenes subsection (2), (5) or (6) commits an offence.
Maximum penalty—40 penalty units.
- ‘(8) In this section—
domestic electrical equipment means computer equipment, browngoods or whitegoods.’.

16 Insertion of new pt 14, div 4

After section 222—

insert—

‘Division 4 Transitional provisions for Electrical Safety and Other Legislation Amendment Act 2011

‘Subdivision 1 Definitions for division 4

‘223 Definitions for div 4

‘In this division—

commencement means the commencement of the provision in which the term is used.

external approval means an external approval under part 6 of this regulation as in force before the commencement.

external approvals entity means an external approvals entity under this regulation as in force before the commencement.

Queensland approval means a Queensland approval under part 6 of this regulation as in force before the commencement.

type approval number, for a Queensland approval, means the type approval number given, for the type of electrical equipment to which the approval relates, under section

102(2)(b) of this regulation as in force before the commencement.

‘Subdivision 2 Queensland approvals, external approvals and other approvals

‘224 Queensland approvals

- ‘(1) Subsection (2) applies to a Queensland approval in force immediately before the commencement for a type of electrical equipment.
- ‘(2) The Queensland approval is taken to be a certificate of conformity issued by the chief executive under part 6, division 7 for the type.
- ‘(3) Subject to this regulation, the Queensland approval, as a certificate of conformity, continues in force for the balance of the period stated in the approval.
- ‘(4) The Queensland approval, as a certificate of conformity, may be modified, renewed or transferred under part 6, division 7.

‘225 External approvals

- ‘(1) This section applies to an external approval, given by an external approvals entity that is—
 - (a) in force for a type of electrical equipment immediately before the commencement; or
 - (b) issued for a type of electrical equipment within 12 months starting on the commencement.
- ‘(2) The external approval is taken, for this regulation, to be a certificate of conformity issued under a corresponding law.
- ‘(3) The external approval, as a certificate of conformity, continues in force until it expires or otherwise comes to an end.

[s 16]

‘225A Approvals under declared scheme

- ‘(1) This section applies to an approval given under a declared scheme that is—
 - (a) in force for a type of electrical equipment immediately before the commencement; or
 - (b) issued for a type of electrical equipment within 12 months starting on the commencement.
- ‘(2) The approval is taken, for this regulation, to be a certificate of conformity issued under a scheme recognised under a corresponding law.
- ‘(3) The approval, as a certificate of conformity, continues in force until it expires or otherwise comes to an end.
- ‘(4) In this section—
declared scheme means a scheme declared to be a recognised external approval scheme under the *Electricity (Consumer Safety) Act 2004* (NSW), section 15.

‘Subdivision 3 Application of certain provisions

‘226 Application of s 104 during transition period

- ‘(1) Subsection (2) applies in relation to items of a type of level 1 in-scope electrical equipment manufactured or imported by the responsible supplier concerned before the commencement.
- ‘(2) During the transition period section 104 applies as if—
 - (a) paragraph (a) of subsection (1) were omitted; and
 - (b) subsection (2) were omitted.
- ‘(3) In this section—
transition period means 6 months starting on the commencement.

‘227 Application of s 105 during transition period

- ‘(1) Subsection (2) applies in relation to items of a type of level 2 or 3 in-scope electrical equipment manufactured or imported by the responsible supplier concerned before the commencement.
- ‘(2) During the transition period section 105 applies as if—
- (a) paragraphs (a), (b) and (c) of subsection (1) were omitted; and
 - (b) subsections (2) and (3) were omitted.
- ‘(3) In this section—
- transition period* means 6 months starting on the commencement.

‘228 Application of s 106(1) during transition period

- ‘(1) During the transition period it is sufficient compliance with section 106(1) if the item is marked—
- (a) as mentioned in section 100(1)(b) of this regulation as in force before the commencement and the marking happened before the commencement; or
 - (b) after the commencement under section 231; or
 - (c) after the commencement under the law of another State or New Zealand relating to electrical safety.
- ‘(2) In this section—
- transition period* means 5 years starting on the commencement.

‘229 Application of s 107 during the transition period

- ‘(1) During the transition period section 107 applies only to items of a type of level 1 in-scope electrical equipment manufactured or imported by the responsible supplier concerned on or after the commencement.

[s 16]

‘(2) In this section—

transition period means 6 months starting on the commencement.

‘230 Application of s 111(1) during the transition period

‘(1) During the transition period it is sufficient compliance with section 111(1) if the item is marked—

- (a) as mentioned in section 100(1)(b) of this regulation as in force before the commencement and the marking happened before the commencement; or
- (b) after the commencement under section 231; or
- (c) after the commencement, under the law of another State or New Zealand relating to electrical safety.

‘(2) In this section—

transition period means 3 years starting on the commencement.

‘Subdivision 4 Marking of in-scope electrical equipment

‘231 Marking of in-scope electrical equipment with type approval number

‘(1) This section applies, in relation to a Queensland approval that is taken to be a certificate of conformity under section 224, for the shorter of the following periods—

- (a) the period the approval, as that certificate, continues in force;
- (b) 3 years from the commencement.

‘(2) Despite the omission of part 6 of this regulation as in force immediately before the commencement by the *Electrical Safety and Other Legislation Amendment Act 2011*, an item of in-scope electrical equipment that is of a type of electrical

equipment to which the Queensland approval applied may be marked under that part with the type approval number for the Queensland approval or another mark approved by the chief executive.

Note—

See sections 112 and 113 of part 6 of this regulation as in force before the commencement.’.

17 Replacement of sch 3

Schedule 3—

omit, insert—

‘Schedule 3 Information to be included in declarations by responsible suppliers

sections 98(4), 101(5) and 103A(5)

‘Part 1 Responsible supplier’s declaration

‘Information to be included in declaration

That—

- (a) each item of a type of in-scope electrical equipment when sold by the responsible supplier will—
 - (i) meet the relevant standard for the type as in force—
 - (A) if the responsible supplier is a manufacturer of the type—at the time the item was manufactured by the responsible supplier; or

[s 17]

- (B) if the responsible supplier is an importer of the type—at the time the item was imported by the responsible supplier; and
- (ii) be electrically safe; and
- (b) there is a current certificate of conformity for each plug, flexible supply cord or appliance connector, as defined in AS/NZS 4417 (Marking of electrical products to indicate compliance with regulations) sold for use with the item.

‘Part 2 Responsible supplier’s level 2 in-scope electrical equipment declaration

‘Information to be included in declaration

That—

- (a) each item of the type of level 2 in-scope electrical equipment mentioned below when sold by the responsible supplier will—
 - (i) meet the relevant standard for the type as at the time the type was registered in the national register; and
 - (ii) be electrically safe; and
- (b) the responsible supplier keeps a compliance folder for that type of equipment.

Details of the type of level 2 in-scope electrical equipment to which this declaration relates—

(insert details).

[s 19]

11	Application for certificate of conformity (s 114), or renewal of certificate of conformity (s 116C)	449.20
12	Application for modification of certificate of conformity—	
	(a) relating to change of name or model (s 116A)	135.00
	(b) otherwise than in relation to a change of name or model (s 116B)	340.00
13	Application relating to transfer of certificate of conformity (s 116D)	68.00
14	Application for declaration of scheme as recognised external certification scheme (s 118)	3500.00
15	Annual fee for declaration of scheme as recognised external certification scheme (s 119D)	2000.00’.

19 Amendment of sch 9 (Dictionary)

- (1) Schedule 9, definitions *approved testing entity, existing type, external approval, external approvals entity, externally approved, jurisdiction, new type, nonprescribed electrical equipment, prescribed class, Queensland approval, Queensland approved, relevant standard, type, type approval certificate, type approval holder* and *type approval number*—
omit.
- (2) Schedule 9—
insert—
‘approved testing entity means—
 - (a) a body accredited by NATA to perform the relevant test or examination; or
 - (b) a body accredited by another body, operating under a reciprocal agreement with NATA, to perform the relevant test or examination; or
 - (c) an entity approved by the chief executive or the equipment safety rules to perform the relevant test or examination; or

(d) a body approved to perform the relevant test or examination under a corresponding law.

certificate of conformity, for part 6, see section 96.

date of registration, for part 6, see section 96.

declaration holder, for part 6, division 8, see section 117.

declared scheme, for part 6, division 8, see section 117.

defining standard, for part 6, see section 96.

false declaration, for part 6, see section 96.

false information, for part 6, see section 96.

family, of a type of level 1, 2 or 3 in-scope electrical equipment, for part 6, see section 96.

level 1 in-scope electrical equipment, see section 97B(1).

level 2 in-scope electrical equipment, see section 97B(2).

level 3 in-scope electrical equipment, see section 97B(3).

meets, for part 6, see section 96.

particular electrical equipment, for part 6A, division 1, see section 126.

RCM, for part 6, see section 96.

registered, for part 6, see section 97.

registered responsible supplier, for part 6, see section 96.

relevant person, for part 6, see section 96.

relevant responsible supplier, for part 6, see section 96.

relevant standard, for part 6, see section 96.

second-hand, for part 6, see section 96.

test report, for part 6, see section 96.

-
- 25 Omission of ch 6, pt 1, hdg (Certified agreements)**
Chapter 6, part 1, heading—
omit.
- 26 Amendment of s 165 (Certified agreement's effect on awards, agreements or orders)**
Section 165(2), 'or QWA'—
omit.
- 27 Amendment of s 167 (Successor employers bound)**
Section 167(2)(c), 'this part'—
omit, insert—
'this chapter'.
- 28 Amendment of s 169 (Amending a certified agreement)**
Section 169(3)(b), 'this part'—
omit, insert—
'this chapter'.
- 29 Amendment of s 184 (Secret ballot on valid majority)**
Section 184(1)(a), 'this part'—
omit, insert—
'this chapter'.
- 30 Amendment of s 185 (Coercion of persons to make, amend or terminate certified agreements etc.)**
Section 185(1)(a), 'this part'—
omit, insert—
'this chapter'.

[s 31]

- 31 Omission of ch 6, pt 2 (Queensland workplace agreements)**
Chapter 6, part 2—
omit.
- 32 Amendment of s 252 (President’s annual report)**
Section 252(2), from ‘, industrial’—
omit, insert—
‘and industrial agreements.’.
- 33 Amendment of s 273 (Commission’s functions)**
(1) Section 273(1)(d)—
omit.
(2) Section 273(1)(e) to (ha)—
renumber as section 273(1)(d) to (h).
- 34 Amendment of s 280 (Procedures for reopening)**
Section 280(2)(c), ‘or QWA’—
omit.
- 35 Amendment of s 284 (Interpretation of industrial instruments)**
(1) Section 284(1), ‘or QWA’—
omit.
(2) Section 284(3)—
omit.
(3) Section 284(4)—
renumber as section 284(3).

36 Amendment of s 339B (Purpose of ch 8A)

Section 339B, after ‘ombudsman’—

insert—

‘from time to time’.

37 Replacement of s 339C (Ombudsman)

Section 339C—

omit, insert—

‘339C Ombudsman

‘A Queensland workplace rights ombudsman may be appointed from time to time.’.

38 Amendment of s 339D (Functions of ombudsman)

(1) Section 339D(2), ‘The’—

omit, insert—

‘Subject to subsection (3), the’.

(2) Section 339D(3)—

renumber as section 339D(4).

(3) Section 339D—

insert—

‘(3) However, the ombudsman may conduct an investigation into a particular industry or sector, including an investigation into a specific area or part of the industry or sector, only if requested by the Minister.’.

39 Amendment of s 339H (Appointment of ombudsman)

Section 339H(1)—

omit, insert—

‘(1) The Governor in Council may appoint a person as ombudsman.’.

[s 40]

40 Replacement of s 339L (Acting ombudsman)

Section 339L—

omit, insert—

‘339L Acting ombudsman

- ‘(1) This section applies if an ombudsman is appointed and, during the ombudsman’s term of appointment, the ombudsman is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.
- ‘(2) The Governor in Council may appoint a person eligible for appointment as ombudsman to act as ombudsman.’.

41 Amendment of s 339S (Queensland Workplace Rights Office)

Section 339S(2), before ‘QWRO consists’—

insert—

‘If an ombudsman is appointed,’.

42 Amendment of s 346 (Time limited for appeal)

- (1) Section 346(1), from ‘21’—

omit, insert—

‘the appeal period.’.

- (2) Section 346(2), ‘21 days’—

omit, insert—

‘appeal period’.

- (3) Section 346—

insert—

- ‘(3) In this section—

appeal period, for an appeal against a decision, means the period within 21 days after—

-
- (a) if the decision is given at a hearing—the announcement of the decision at the hearing; or
 - (b) if the decision is given through the registrar—the release of the decision; or
 - (c) if, under another Act, the decision is given in another way—the decision is given in the other way.’.

43 Amendment of s 347 (Stay of decision appealed against)

- (1) Section 347(1)—
omit.
- (2) Section 347(2), ‘The’—
omit, insert—
‘On an appeal, the’.

44 Amendment of s 373 (Right to inspect and request information—authorised industrial officer)

- (1) Section 373(2)(c)—
omit.
- (2) Section 373(3)(b)—
omit, insert—
‘(b) must not allow the officer to inspect the record for an employee who has made a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer; and’.

45 Amendment of s 392 (Paying apprentices or trainees for supervised training)

- Section 392(3)(b), ‘or 211’—
omit.

[s 46]

46 Amendment of s 662 (False or misleading statements)

Section 662(3), ‘223 or’—

omit.

47 Amendment of s 663 (False or misleading documents)

Section 663(5), ‘201 or’—

omit.

48 Amendment of s 680 (Evidentiary value of official records)

(1) Section 680(2)(c)—

omit.

(2) Section 680(2)(d) to (g)—

renumber as section 680(2)(c) to (f).

49 Amendment of s 692D (New State instrument taken to exist for declared employers in other circumstances)

(1) Section 692D(3)(a) and (b)—

omit, insert—

‘(a) the instrument is taken to be a certified agreement; and

(b) the instrument will be taken to be on the relevant day certified under this Act; and’.

(2) Section 692D(7)—

omit.

50 Amendment of s 697 (Copy of award and certified agreement to be displayed)

Section 697(1), ‘, other than a QWA,’—

omit.

51 Amendment of s 709 (Regulation-making power)

- (1) Section 709(2)(a), ‘or QWA’—
omit.
- (2) Section 709(2)(b), (c), (d) and (e)—
omit.
- (3) Section 709(2)(f) to (i)—
renumber as section 709(2)(b) to (e).

52 Insertion of new ch 20, pt 12

Chapter 20—

insert—

**‘Part 12 Transitional provisions for
Electrical Safety and Other
Legislation Amendment Act
2011**

**‘Division 1 Provisions for local governments
and employees**

**‘Subdivision 1 Provisions for local governments
and employees covered by federal
instrument**

‘766 Application of sdiv 1

- ‘(1) This subdivision applies in relation to—
 - (a) a local government, other than a local government mentioned in section 744(1)(a); and
 - (b) an employee of a local government mentioned in paragraph (a).

[s 52]

‘(2) In this section—

local government does not include the Brisbane City Council.

‘767 Definitions for sdiv 1

‘In this subdivision—

commencement means the commencement of this section.

division 3 pre-reform certified agreement means a division 3 pre-reform certified agreement under the Workplace Relations Act continued in existence under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth).

pre-reform Act means the Workplace Relations Act as in force immediately before the commencement of the Work Choices Amendment Act, schedule 1.

remuneration, in relation to an employee—

- (a) includes the wage or salary payable to the employee; and
- (b) does not include amounts payable or other benefits made available to the employee under a contract of service.

substitute State agreement see section 769(2).

substitute State award, other than for section 768 or 768A, means a substitute State award under section 768(5) or 768A(2)(a).

substitute State instrument means the following—

- (a) a substitute State award;
- (b) a substitute State agreement.

transitional award means a transitional award under the Workplace Relations Act continued in existence as a continuing schedule 6 instrument under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth).

Work Choices Amendment Act means the *Workplace Relations Amendment (Work Choices) Act 2005* (Cwlth).

Workplace Relations Act means the *Workplace Relations Act 1996* (Cwlth).

‘768 Award binding particular local governments and their employees

- ‘(1) Subsection (2) applies if—
- (a) immediately before the commencement, a local government was a respondent to a transitional award; and
 - (b) the respondents named or listed in the transitional award are the same or substantially the same as the respondents named or listed in a substitute State award as in force immediately before the commencement.
- ‘(2) On the commencement, the substitute State award mentioned in subsection (1)(b) applies to the local government and any employee of the local government.
- ‘(3) However, in relation to employees to whom a transitional award applied immediately before the commencement, the substitute State award is amended so that the remuneration under the transitional award continues to apply.
- ‘(4) Subject to subsection (3), the substitute State award has effect according to its terms.
- ‘(5) This section does not affect the operation of section 165.
- ‘(6) In this section—
- substitute State award*** means an award taken to be made by the commission, and amended, as provided for in section 747.

[s 52]

‘768A Award binding other local governments and their employees

- ‘(1) This section makes provision in relation to an award as defined in the pre-reform Act, section 4(1) that was continued as a transitional award, if—
- (a) a local government, other than a local government to which section 768(2) applies, was a respondent to the award; and
 - (b) immediately before the commencement, the transitional award continued in force.
- ‘(2) On the commencement, the award—
- (a) is taken to be an award made by the commission under section 125 (also a *substitute State award*); and
 - (b) applies to the local government and any employee of the local government.
- ‘(3) The substitute State award is taken to be amended so that the remuneration applying to employees under the transitional award immediately before the commencement applies to the employees to whom the substitute State award applies.
- ‘(4) Subject to subsection (3) and section 770, the substitute State award has effect according to its terms and, despite section 133, an action to enforce the substitute State award may be commenced at any time.
- ‘(5) This section does not affect the operation of section 165.

‘769 Provision for division 3 pre-reform certified agreements

- ‘(1) This section makes provision in relation to each division 3 pre-reform certified agreement in force immediately before the commencement.
- ‘(2) On the commencement, the division 3 pre-reform certified agreement is taken to be a certified agreement certified by the commission under section 156 (a *substitute State agreement*).

-
- ‘(3) The substitute State agreement is taken to be amended by omitting any dispute settlement procedure (however described) provided for in the agreement and inserting instead—
- (a) clause 3.2 of the Sample Award - State 2004 attached to Practice Note PN 9 issued by the commission on 30 June 2004; or
 - (b) if the commission has replaced clause 3.2 with another grievance and dispute settling procedure—the replacement procedure.

Editor’s note—

Clause 3.2 of the Sample Award provides for a grievance and dispute settling procedure. A copy of the practice note can be found on the commission’s website at <www.qirc.qld.gov.au>.

- ‘(4) Subject to subsection (3) and section 770, and despite section 169(7), the substitute State agreement has effect according to its terms.

‘770 Interpretation

- ‘(1) This section has effect for sections 768A and 769.
- ‘(2) A reference to the Australian Industrial Relations Commission or Fair Work Australia (however described) in a substitute State instrument is taken to be a reference to the commission.
- ‘(3) A reference to a provision of the Workplace Relations Act, the Work Choices Amendment Act or the Commonwealth Act in a substitute State instrument is taken to be a reference to a corresponding provision of this Act.
- ‘(4) Sections 746(4) and 754 apply to a substitute State instrument as if a reference to a substitute State instrument in those sections were a reference to a substitute State instrument under this subdivision.
- ‘(5) In this section—

[s 52]

corresponding provision of this Act, to a provision of the Workplace Relations Act, the Work Choices Amendment Act or the Commonwealth Act, means—

- (a) if paragraph (b) does not apply, a provision of this Act that is of similar effect to the provision of the Workplace Relations Act, the Work Choices Amendment Act or the Commonwealth Act; or
- (b) a provision of this Act declared under a regulation to be a corresponding provision.

‘771 Preservation of existing entitlements

- ‘(1) This section applies to an employee to whom a substitute State instrument applies after the commencement.
- ‘(2) The employee is entitled to receive not less than the remuneration the employee received immediately before the commencement.
- ‘(3) Subsection (2) has effect until—
 - (a) for a substitute State agreement, the earlier of the following—
 - (i) the day a certified agreement, certified by the commission after the commencement, applies to the employee;
 - (ii) the remuneration provisions of the substitute State agreement are amended;
 - (iii) the substitute State agreement is terminated;
 - (iv) the commission makes a decision in relation to the remuneration the employee is entitled to receive under the substitute State agreement; or
 - (b) for a substitute State award, the earlier of the following—
 - (i) the day a certified agreement, certified by the commission after the commencement, applies to the employee;

- (ii) the remuneration provisions of the substitute State award are amended;
- (iii) the commission makes a new award that replaces the substitute State award for the employee.

‘(4) In this section—

remuneration, in relation to an employee, includes amounts payable or other benefits made available to the employee under a contract of service.

‘772 Provision for minimum entitlements

‘(1) Sections 8A, 9, 9A, 10, 11 and 15 do not apply in relation to an employee to whom a substitute State agreement applies until the earlier of the following—

- (a) 27 March 2012;
- (b) the day a certified agreement, certified by the commission after the commencement, applies to the employee.

‘(2) Sections 8A, 9, 9A, 10, 11 and 15 do not apply in relation to an employee to whom a substitute State award applies until the earlier of the following—

- (a) 27 March 2012;
- (b) the day a certified agreement, certified by the commission after the commencement, applies to the employee;
- (c) the substitute State award is repealed;
- (d) the commission makes a new award that replaces the substitute State award for the employee.

‘(3) Despite subsection (2), sections 8A, 9, 9A, 10, 11 and 15 continue to apply in relation to an employee to whom an industrial instrument applied immediately before the commencement.

‘(4) Subsections (1) and (2) do not limit section 771.

[s 52]

‘Subdivision 2 Provision for local governments and employees covered by industrial instrument

‘773 Application of industrial instrument for local governments and employees

- ‘(1) This section applies if, immediately before the commencement of this section, an industrial instrument applied to a local government or an employee of the local government.
- ‘(2) On the commencement of this section, subdivision 1 does not affect—
- (a) the application of the industrial instrument to the local government or the employee; or
 - (b) the remuneration payable to the employee.
- ‘(3) In this section—
- local government* does not include the Brisbane City Council.
- remuneration*, in relation to an employee, includes—
- (a) the wage or salary payable to the employee; and
 - (b) amounts payable or other benefits made available to the employee under a contract of service or an industrial instrument.

‘Division 2 Particular QWAs continued

‘774 Definitions

‘In this division—

amending Act means the *Electrical Safety and Other Legislation Amendment Act 2011*.

previous, in relation to a stated provision that includes a number, means the provision of the Act with that number immediately before the commencement of this section.

‘775 Continuation of new State instruments taken to be QWAs

- ‘(1) This section applies if, immediately before the amendment of this Act by the amending Act, a new State instrument was taken to be a QWA under previous section 692D.
- ‘(2) The QWA continues in force subject to this division and previous section 692D(3), (4) and (5).
- ‘(3) The QWA expires on the earlier of the following—
 - (a) the specified nominal expiry date the instrument is taken to have under previous section 692D(6);
 - (b) a day that is 4 months after the commencement of this section.

‘776 Termination of QWAs

- ‘(1) The QWA may be terminated before the day it expires under section 775(3) by written agreement (*termination agreement*) between the employer and employee.
- ‘(2) The termination agreement takes effect on—
 - (a) if a day is stated in the termination agreement as the date it takes effect—the day stated in the termination agreement; or
 - (b) otherwise—the day the QWA expires under section 775(3).
- ‘(3) The termination agreement must be filed with the registrar or chief inspector.
- ‘(4) If the registrar or chief inspector is satisfied that the filing requirements for the termination agreement under previous section 200(6) have been met, the registrar or chief inspector must issue a filing receipt to the person who filed it.

[s 53]

‘(5) Previous chapter 6, part 2, division 5 does not apply to the QWA or termination agreement.

‘777 Continuation of particular provisions for QWAs

‘Subject to this division, this Act as in force immediately before its amendment by the amending Act, continues to apply to a QWA continued under this division.

‘Division 3 Other transitional provisions

‘778 President’s annual report—s 252

‘Despite the amendment of section 252 by the *Electrical Safety and Other Legislation Amendment Act 2011*, section 32, the president’s report under section 252 for the financial years ending 30 June 2011 and 30 June 2012 must contain summaries of significant decisions and interpretations about QWAs and ancillary documents.

‘779 Amendment of regulation and rules under the Electrical Safety and Other Legislation Amendment Act 2011

‘The amendment of the *Industrial Relations Regulation 2000* and the *Industrial Relations (Tribunals) Rules 2000* by the *Electrical Safety and Other Legislation Amendment Act 2011* does not affect the power of the Governor in Council to further amend the regulation or rules or to repeal them.’.

53 Amendment of sch 5 (Dictionary)

(1) Schedule 5, definitions *additional approval requirements, amendment agreement, ancillary document, approval notice, bargaining agent, certified copy, employee, existing employee, extension agreement, file, filing receipt, filing requirements, initial day, new employee, nominal expiry date, party, penalty provision, period of operation, QWA, QWA date, refusal*

notice, relevant or designated award, termination agreement and termination notice—

omit.

(2) Schedule 5—

insert—

‘declared employee, for chapter 16, part 2, see section 692A.

declared employer, for chapter 16, part 2, see section 692A.

employee see section 5.

federal industrial authority, for chapter 16, part 2, see section 692A.

federal industrial authority manager, for chapter 16, part 2, see section 692A.

file, for chapter 12, see section 409.

initial day, for a certified agreement, means the day on which it was certified.

national fair work legislation, for chapter 16, part 2, see section 692A.

new State instrument see section 692A.

nominal expiry date, of a certified agreement, see section 156.

old federal instrument, for chapter 16, part 2, see section 692A.

party, for an industrial instrument or permit, includes a person bound by the instrument or permit.

penalty provision, for chapter 6, division 7, see section 182.

relevant day, for chapter 16, part 2, see section 692A.

terms, for chapter 16, part 2, see section 692A.’.

(3) Schedule 5, definitions *approved apprenticeship* and *approved traineeship*, ‘sections 162 and 211’—

omit, insert—

[s 53]

‘section 162’.

- (4) Schedule 5, definition *award*, paragraph (b)—
omit, insert—
‘(b) for chapter 6, division 3—includes a federal award.’.
- (5) Schedule 5, definitions *certified agreement, new business and project*, ‘, part 1’—
omit.
- (6) Schedule 5, definition *designated award*, ‘or QWA’—
omit.
- (7) Schedule 5, definition *designated award*, ‘, or the commission under section 212,’—
omit.
- (8) Schedule 5, definition *employer*, paragraph (b), ‘, part 1’—
omit.
- (9) Schedule 5, definition *employer*, paragraph (c)—
omit.
- (10) Schedule 5, definition *employer*, paragraph (d)—
renumber as paragraph (c).
- (11) Schedule 5, definition *industrial instrument*, ‘QWA,’—
omit.
- (12) Schedule 5, definition *relevant award*, ‘or QWA’—
omit.
- (13) Schedule 5, definition *wages*, paragraph (d)—
omit.

[s 59]

59 Amendment of r 9 (Form of applications)

Rule 9(3), definition *excluded application*, paragraph (d), ‘, 212’—

omit.

60 Amendment of r 14 (Ways of filing)

Rule 14(d), ‘or 147(1)’—

omit.

61 Amendment of r 87 (Publishing decisions etc.)

(1) Rule 87(2)—

omit.

(2) Rule 87(3) and (4)—

renumber as rule 87(2) and (3).

62 Omission of pt 11 (Queensland workplace agreements)

Part 11—

omit.

63 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definition *filed*, paragraph (a)—

omit.

(2) Schedule 2, definition *filed*, paragraphs (b) and (c)—

renumber as paragraphs (a) and (b).

Part 7 **Amendment of Workers' Compensation and Rehabilitation Act 2003**

64 **Act amended**

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

65 **Amendment of s 107E (Authority's board may approve amount payable under industrial instrument)**

Section 107E(7), definition *workplace agreement*—

omit, insert—

'workplace agreement means—

- (a) an Australian workplace agreement or preserved individual State agreement under the *Workplace Relations Act 1996* (Cwlth) given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth), schedule 3, part 2; or
- (b) an individual division 2B state employment agreement under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth).'

66 **Amendment of s 561 (Appeal to industrial court)**

Section 561(2)—

omit, insert—

'(2) The *Industrial Relations Act 1999* applies to the appeal.'

67 **Insertion of new ch 28**

After section 671—

insert—

[s 68]

'Chapter 28 Transitional provisions for Electrical Safety and Other Legislation Amendment Act 2011

'672 Provision for QWAs

'(1) The pre-amended Act continues to apply to a QWA under the *Industrial Relations Act 1999* as if a reference in the pre-amended Act to a QWA were a reference to a QWA continued in force under the *Industrial Relations Act 1999*, section 775.

'(2) In this section—

pre-amended Act means this Act as in force immediately before its amendment by the *Electrical Safety and Other Legislation Amendment Act 2011*.

'673 Appeal of decision under s 561

'Section 561, as in force immediately before the commencement of this section, continues to apply to a decision mentioned in section 560A made before the commencement as if the *Electrical Safety and Other Legislation Amendment Act 2011* had not been enacted.'

68 Amendment of sch 6 (Dictionary)

(1) Schedule 6, definition *industrial instrument*, paragraph (a)(v)—

omit.

(2) Schedule 6, definition *industrial instrument*, paragraph (a)(vi)—

renumber as paragraph (a)(v).

Part 8

Minor and consequential amendments

69 Legislation amended

The schedule amends the legislation it mentions.

Schedule **Minor and consequential amendments**

section 69

Part 1 **Amendments commencing on assent**

Child Employment Act 2006

- 1** **Section 15C(2) and note, ‘part 1,’—**
omit.

Coal Mining Safety and Health Act 1999

- 1** **Section 255(4), ‘Workplace Relations Act 1997’—**
omit, insert—
‘Industrial Relations Act 1999’.

Industrial Relations Act 1999

- 1** **Section 46(12), definition *usual rate*, before ‘the rate’—**
insert—
‘means’.

-
- 2 Section 49(1), after ‘casual’—**
insert—
‘employee’.
- 3 Sections 238(6) and 294(1), ‘Editor’s note’—**
omit, insert—
‘Note’.
- 4 Section 339I(2)(c), ‘a auditor’—**
omit, insert—
‘an auditor’.
- 5 Section 669(1), ‘the *Private Employment Agents Act 1983* and’—**
omit.
- 6 Section 692A, definition *federal industrial authority manager*, paragraph (a), after ‘1996’—**
insert—
‘(Cwlth)’.

Industrial Relations Regulation 2000

- 1 Section 40(1), examples—**
omit, insert—
‘Examples of information a voter may ask for—
- whether ballot papers were posted on the same day
 - if all material required to be given to voters for a ballot was given’.

2 Sections 82(2)(b) and 141(b), ‘*Example of*—
omit, insert—
‘Example for’.

3 Schedule 3, sections 2(2), 6(2), 12(1) and 13(1) and
schedule 4, section 42, ‘*Editor’s note*—
omit, insert—
‘Note’.

Mining and Quarrying Safety and Health Act 1999

1 Section 234(4), ‘*Workplace Relations Act 1997*—
omit, insert—
‘Industrial Relations Act 1999’.

Pastoral Workers’ Accommodation Act 1980

1 Section 5, definition *award*, ‘, certified agreement or
QWA’—
omit, insert—
‘or certified agreement’.

South East Queensland Water (Restructuring) Act 2007

- 1 **Section 90(7), definition *prescribed industrial instrument*, paragraph (c)—**
omit.
- 2 **Section 90(7), definition *prescribed industrial instrument*, paragraphs (d) to (j)—**
renumber as paragraphs (c) to (i).

Part 2 Amendments commencing by proclamation

Electrical Safety Act 2002

- 1 **Section 5(e), ‘commissioner of electrical safety’—**
omit, insert—
‘commissioner for electrical safety’.
- 2 **Section 35(1), ‘Editor’s note—’—**
omit, insert—
‘Note—’.
- 3 **Section 109(1)(ba)(ii) and (bb)(ii), ‘; or’—**
omit, insert—
‘;’.

- 4 Section 154(2)(a), example, ‘hiring,’—**
omit.
- 5 Section 181(2), ‘Electricity Supply Association of Australia’—**
omit, insert—
‘Energy Supply Association of Australia’.

Electrical Safety Regulation 2002

- 1 Section 4(d)(ii)—**
omit, insert—
‘(ii) requirements relating to the registration and certification of particular electrical equipment; and’.
- 2 Section 4(d)(iv)—**
omit, insert—
‘(iv) requiring particular electrical equipment to be marked for compliance with relevant standards; and’.

State Penalties Enforcement Regulation 2000

1 Schedule 5, entry for Electrical Safety Regulation 2002, columns 1 and 2 entries for sections from section 100(1) to section 126(5)—

omit, insert—

's 100A(2)	4	8
s 104(1)(a)	4	8
s 105(1)(a)	4	8
s 105(1)(b)	4	8
s 106(1)	2	4
s 106(2)	2	4
s 109(2)	4	8
s 111(1)	4	8
s 126B(1)	4	20
s 126C	4	8
s 126G(7)	4	8

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