WORKCOVER QUEENSLAND AMENDMENT BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objectives of this Bill are aimed at ensuring that the Queensland workers' compensation system is fair and balances the rights of injured workers against the need for competitive and affordable premiums for employers, while maintaining a secure and viable workers' compensation system.

An evaluation of the impact of past legislative changes and proposed legislative reforms was undertaken by the WorkCover Queensland Board of Directors and the Department of Employment, Training and Industrial Relations. This evaluation took the form of actuarial, statistical and policy analyses and an extensive case file review.

The Bill amends the *WorkCover Queensland Act 1996.* Key elements of the Bill are designed to—

- amend the definition of worker to include all workers under a 'contract of service' and remove the PAYE restriction;
- remove the restrictions to the definition of injury to ensure coverage for Queensland workers where employment is *"a significant contributing factor"* to the injury;
- strengthen self-insurance licence conditions and criteria. For example, introducing occupational health and safety performance standards; increasing the number of workers required from 500 to 2000; requiring self-insurers to assume liability for tail of claims;
- provide a more independent and transparent review process with emphasis on direct contact with applicants including establishment of a WorkCover Review Council to oversight these

processes and advise the WorkCover Queensland Board on their performance and outcomes of the processes;

- remove the option of self-rating for employers.

Reasons for the Bill

The definition of injury and definition of worker introduced under the *WorkCover Queensland Act 1996* placed increased restrictions on workers' access to the workers' compensation system. These restrictions are proving to be detrimental to the livelihood of many workers and their families, because they do not belong to the diminishing group of PAYE tax payers or their work is not considered "*the major significant factor*" causing the injury.

The current requirement for a worker to be a PAYE taxpayer is inequitable as it provides compensation for only one category of tax paying worker. There have been several examples of persons excluded from the scheme on the basis of this tax paying provision, even though a clear "contract of service" existed.

Employers are also exposed to common law damages for negligence for those workers who have been excluded from coverage.

The current Queensland definition of injury as "*the major significant factor"* is the most restrictive in Australia. Returning the definition of injury to *"a significant contributing factor"* will continue to ensure that workers are covered for work related injuries where there is a strong link between employment and injury

The introduction of self-insurance from 1 July 1997, has resulted in a larger than expected number of employers proceeding to self-insurance, which could negatively impact on the smaller employers left in the general premium pool. There are also insufficient safeguards within the current system to ensure workers and employers operating within self-insurance schemes are securely protected.

Under the *WorkCover Queensland Act 1996* there are two premium calculation options for employers. These are:

1. self-rating—an employer's premium is calculated according to their estimated future liability. The employer operates with its own premium pool and pays an annual premium to fully cover claims costs incurred in that year; and

2. experience based rating (EBR)—an employer's premium is calculated according to its individual performance and that of its industry sector. It is calculated on past experience taking into account the claims costs of the employer over the past five years.

There has been minimal interest shown in self-rating with only one employer being registered as a "self-rater" and one further application being received since it commenced on 1 July 1997. Under self-rating it is not compulsory for employers to undertake the management of their claims. The self-rating premium formula is inequitable as it allows employers to reduce their premium at the expense of others in the scheme. In order to restore equity for employers, in terms of premium rating systems, self-rating will no longer be available.

Prior to 1 July 1997 there was no formal review process for workers and employers other than the court process.

Following the introduction of the *WorkCover Queensland Act 1996*, the Statutory Review Branch was established within WorkCover Queensland to review all WorkCover and self-insurer decisions before an appellant proceeded to court.

There is concern that the current review process still lacks independence and transparency and is based largely on a paper file review with little or no opportunity for a worker or employer to be heard.

The amendments place WorkCover at arm's length from the review process. They will provide a more independent, yet cost-effective review process.

Achieving the Objective

The Bill will improve access for injured workers to compensation, will not increase employers' premiums and will continue the Fund's growth to full funding.

Alternatives to the Bill

The Bill is aimed at ensuring that workers have access to a fair and equitable system of workers' compensation in Queensland while also ensuring that the financial viability of the workers' compensation scheme is not adversely impacted.

If the provisions of the Bill are not implemented, a significant number of workers will continue to be excluded from workers' compensation coverage.

In addition, there will continue to be insufficient safeguards within the current system to ensure workers and employers operating within self-insurance schemes are securely protected.

Administrative cost and savings to Government

The estimated cost, based on actuarial advice, of implementing the amendments is in the range of $17.35M to $20.25M per annum for the workers' compensation scheme. This will be offset by a range of measures including a one off offset from self-insurance initiatives of $22M. An additional saving of $60M will be achieved, comprising of $10M from compliance initiatives to be introduced directly by the WorkCover Board and $50M projected savings from the introduction of an activity based premium system for the Building and Construction Industry.

Consistency with Fundamental Legislative Principles

The Bill provides for the commencement of certain provisions relating to self-insurance following the Government's announcement, ie. from 3 March 1999.

This approach was required in view of the likely impact of an announcement by the Government in this regard. Any announcement by the Government that it intended to legislate at some time in the future to impose additional criteria on self-insurance licencing application could otherwise lead to a flood of applications which would seek to circumvent the deadline for the commencement of these criteria.

For existing self-insurers or existing applicants before 3 March 1999, the new criteria will only apply at the date of renewal of the licence. The increase in the number of workers criteria will not apply to these self-insurers.

The Bill also abolishes self-rating from the date of the Government announcement, however transitional provisions allow for the existing self-rater and applicant for self-rating to continue as a self-rater until the expiration of the current period of insurance, ie. 30 June 1999. However, this will be extended to 31 December 1999 where the self-rater or applicant

for self-rating lodges an application for self-insurance on or before 30 June 1999.

These arrangements are of a practical necessity given the commercial nature of the legislation.

The proposed amendment to s520 of the Act, ie. Clause 45, allows WorkCover or a self-insurer to disclose information about a worker to another self-insurer. To ensure there is no infringement of an individual's privacy, the proposed amendment restricts the release of information to those matters relating to a current claim for workers' compensation.

Consultation

Advice of the WorkCover Board was sought in relation to a number of legislative issues and possible policy options to progress them.

The WorkCover Queensland Board forwarded an analysis of the impact of the various legislative amendments, in particular, the definition of injury, definition of worker and self-insurance. The Board made a number of additional recommendations which are included in the Bill.

A Government position paper was prepared to inform stakeholders of the Government's proposals to deliver a fair and equitable workers' compensation system.

In addition, consultation on the Government's policy position contained in the Bill has occurred with key stakeholders including representatives of employers, self-insurers and workers.

In excess of 1900 inquiries were recorded on the Internet site since the position paper and related documentation were made available.

NOTES ON CLAUSES

Short Title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 states the commencement dates for the provisions in this Bill. Those provisions that amend reference to self-rating are to commence on 3 March 1999, as are all provisions relating to self-insurance. Transitional arrangements for existing and applicant self-raters and self-insurers are outlined in clause 49.

The amendments in relation to the definitions of "worker" and "employer" will apply for injuries sustained by workers from 1 July 2000 and for the calculation of premium from 1 July 2000.

The amendments to the definition of "injury" will apply for injuries sustained from 1 July 1999.

Act amended

Clause 3 states that this Bill amends the *WorkCover Queensland Act 1996*. In addition, clause 52 amends the *Workplace Health and Safety Act 1995* in relation to occupational health and safety criteria for self-insurance.

Amendment of s 5 (Workers' compensation scheme)

Clause 4 amends the objects of the Act to insert occupational health and safety (OHS) performance by employers. The objects have been broadened to highlight the need for the workers' compensation system to encourage improved OHS performance by employers to minimise workplace injuries.

An additional object has also been included to ensure that injured workers or their dependants are treated fairly by WorkCover and self-insurers.

Replacement of ss 12 and 13

Clause 5 amends s 12 to remove the requirement for a worker to be a Pay As You Earn (PAYE) taxpayer. This requirement has been removed from the definition of "worker" as the PAYE tax payer provision provided compensation for only one category of worker. In particular, the PAYE provision excluded labour only contractors working under Prescribed Payments System (PPS) arrangements.

The clause now defines "worker" as an individual who works under a contract of service.

To assist in clarifying whether persons are "workers" or are not "workers", Schedule 2 Parts 1 and 2 specify certain persons in each of these categories.

Comprehensive administrative guidelines will be developed on the basis of well established principles under case law of a contract of service. These guidelines will further clarify the intent of the provision and assist with improving the quality and timeliness of decision making by WorkCover and self-insurers.

Amendment of s 23 (Persons performing community service or unpaid duties)

Clause 6 amends s 23 to include persons who are performing community service under any Act, not only under the *Penalties and Sentences Act 1992* or the *Juvenile Justice Act 1992*. This could include persons such as police officers who are performing community service under the *Police Service (Discipline) Regulation*. This provision will ensure statutory workers' compensation coverage can be provided by WorkCover when requested by the relevant authority.

Amendment of s 32 (Meaning of "employer")

Clause 7 amends the title of the section for consistency according to current drafting practice.

To assist in clarifying whether persons are "employers", schedule 2A specifies certain persons as employers.

Amendment of s 34 (Meaning of "injury")

Clause 8 replaces *"the major significant factor"* causing injury with *"a significant contributing factor"* to the injury. A strong link between employment and the injury will need to be established before any injury is compensable.

The clause also makes specific provision for work related aggravations of pre-existing injuries and diseases irrespective of whether the original injury or disease is work or non-work related. The provision specifies that these injuries are compensable but only to the extent of the work related aggravation. This provision is included to clarify the extent to which an aggravation is compensable for the purposes of compensation.

Additionally, the tests for a "reasonable person" and "ordinary susceptibility" in subsections 34(4)(d) and 34(5) have been removed, as these were difficult to interpret and apply. These tests related to psychological and psychiatric injury (stress claims).

Comprehensive administrative guidelines will be established to further clarify the intent of the provision. This will assist with improving the quality and timeliness of decision making by WorkCover and self-insurers.

Amendment of s 36 (Injury while at place of employment or another place of employment)

Clause 9 replaces *"the major significant factor"* causing injury with *"a significant contributing factor"* to the injury. The clause also amends the heading to be consistent with current drafting practice.

Amendment of s 37 (Other circumstances)

Clause 10 removes the requirement for a journey to or from work to be by the shortest convenient route, as there was concern regarding the strict interpretation and application of the provision. The provisions in relation to substantial deviation, delay and interruption will allow for contemporary working arrangements such as reasonable journeys for working parents taking children to school or child care on the way to or from work. The provisions still provide protection for employers against claims that are incurred beyond those that could be reasonably expected in a journey to and from work.

Amendment of s 38 (Injury that happens during particular journeys)

Clause 11 removes the exclusion for compensation to a person who is judged to have either partly or wholly voluntarily placed him/herself at risk of injury during the journey. This provision effectively disqualified a person from compensation if they contributed in any way, even by way of inattention, to the injury.

The clause also provides guidelines for determining whether there has been substantial delay, deviation or interruption in the journey. These guidelines are based on case law, for example the reason of the delay, interruption or deviation; and the length of the journey in relation to the

deviation. These guidelines will provide clarity in interpreting substantial delay, deviation or interruption.

Amendment of s 52 (Employer's obligation to insure)

Clause 12 amends s 52 to provide that only one policy of insurance is issued to an employer. This ensures that the impact of experience based rating is applied equally to all employers in the scheme. This provides a level playing field for all employers as it will limit the opportunity to minimise the impact of experience based rating by artificially "moving" workers and wages into the policy that has the lowest premium rate.

The clause also allows WorkCover to issue a policy to each Government department where the employer is the State.

Amendment of s 58 (Setting of premium)

Clause 13 inserts a provision that specifies that if an administrator is appointed to conduct the affairs of a corporation, the administrator must pay the premium during the period of the administration. It is the intention of this provision that liability for claims incurred and the claims experience remain with the employer, i.e. the corporation.

Omission of ch 2 pt 4

Clause 14 deletes self-rating as this option will no longer be available. The premium calculation for self-rating was inequitable in relation to the current experience based rating system and had limited uptake by employers. Transitional arrangements were detailed in clause 49 for existing and applicant self-raters.

Amendment of s 98 (What is self-insurance)

Clause 15 amends s 98 to be consistent with clause 22 and include the self-insurer's liability for outstanding claims incurred before the issue of the self-insurance licence. On becoming a self-insurer the employer becomes an insurer in the same way WorkCover is an insurer, but continues to maintain the same liability as an employer.

Transitional arrangements are detailed in clause 49 for self-insurers who were licenced or who had applied for a licence before 3 March 1999.

Amendment of s 99 (Who may apply to be a self-insurer)

Clause 16 amends s 99 to ensure that an applicant for self-insurance must include all its related bodies corporate, which employ workers in Queensland, in the application. At present the Act may be interpreted to require all related bodies corporate, irrespective of whether they are employed in Queensland, in the application. This clause clarifies the original intent of the legislation.

Amendment of s 101 (Issue or renewal of licence to a single employer)

Clause 17 amends the licence criteria for self-insurance. The clause increases the number of workers required for eligibility from 500 to 2000. The requirement for 2000 workers as part of the self-insurance licencing and renewal criteria has been included to ensure that companies are of a sufficient size, infrastructure and resource base to implement the systems and processes necessary for self-insurance.

The clause also requires an applicant for a self-insurance licence or renewal of a licence to hold a current occupational health and safety (OHS) certificate from the Division of Workplace Health and Safety in the Department of Employment, Training and Industrial Relations, verifying that there are no outstanding compliance issues and that appropriate OHS management systems have been implemented by the applicant.

As the self-insurer is both the insurer and employer there is an expectation that they should be able to demonstrate established OHS systems that will minimise their claims liability exposure and risk of injury to workers. A requirement for self-insurers to meet predetermined performance standards and to be audited annually against these standards will maximise the potential for these companies to focus on both claims management and prevention. The Department of Employment, Training and Industrial Relations will publish performance criteria and guidelines.

Amendment of s 102 (Issue or renewal of licence to a group employer)

Clause 18 amends the criteria for group employers to be consistent with clause 17.

Amendment of s 106 (Audit of self-insurer)

Clause 19 amends s 106 to specify that WorkCover has the power to audit a self-insurer against the licencing criteria except for the criteria in relation to OHS. Assessment against this criteria will be administered by DETIR, Division of Workplace Health and Safety, who have the necessary expertise in this area.

Amendment of s 111 (Annual levy and surcharge payable)

Clause 20 amends s 111 to remove the current surcharge which applies to self-insurers from 1 July 1999. A transitional surcharge has been introduced in clause 49 for self-insurers until such time as each self-insurer assumes liability for outstanding claims.

Amendment of s 113 (Bank guarantee or cash deposit)

Clause 21 amends subsection 6 to ensure the original intent of the legislation as detailed in the explanatory notes, that is:

- the future costs of new claims that are likely to be incurred during the year, plus
- the remaining cost of previous years' claims incurred since the commencement of the licence, less
- the cost of claims the self-insurer is likely to pay during the year.

The clause also includes in the calculation the "tail of claims" for claims incurred before the issue of the licence.

Amendment of s 116 (Self-insurer replaces WorkCover in liability for injury)

Clause 22 amends a self-insurer's liability to include:

- **Residual liability—**liability for injuries incurred by the self-insurer, to workers employed by the self-insurer, that start or happen in the period of the self-insurance licence; and
- **Outstanding liability—**liability for injuries, incurred by the self-insurer, to workers employed by the self-insurer before the issue of a self-insurance licence.

This requires self-insurers to be liable for their "tail of claims", i.e. claims incurred by the employer before the issue of the self-insurance licence, with an actuarially determined payment for this liability from WorkCover based on the self-insurer's outstanding liability. The formula for actuarial assessment of the payment will be calculated under regulation.

The regulation will reference the Australian standard and include the principles on which the actuarial assessment will be undertaken. The formula for the calculation of outstanding liability will take into consideration the self-insurer's claims history and premium paid over a specified period and incorporate claims which are incurred but not reported. The regulation will ensure the amount calculated for the payment to self-insurers for outstanding liability will be fair to both the self-insurer and WorkCover.

Amendment of s118 (Change in self-insurer's membership)

Clause 23 is a new provision which specifies the transfer of liability where there has been a change in the membership of a self-insurer's licence. For example, the sale of a related body corporate or member of the group classification licence to another company.

If the change in membership is to another self-insurer, the self-insurer to whom the member is transferred is liable for all injuries to the member's workers that started or happened before the member joined the second self-insurer. A payment is to be made by the first self-insurer to the second self-insurer to cover this liability. The liability will be calculated under a regulation in the same manner as liability under clause 22. This ensures that workers in this instance will be covered by the relevant insurer.

Amendment of s 119 (Powers of self-insurers)

Clause 24 inserts new subsections in s 119 to include a provision that ensures the self-insurer has the power to manage their outstanding claims.

The clause also includes a requirement that the self-insurer, or a person employed under a contract of service with the self-insurer, undertake the powers and functions of the self-insurer for their claims management. This limits the ability of a self-insurer to transfer this responsibility to a third party, unless:

- the self-insurer is a classification group employer; or

- special circumstances exist subject to the approval of the WorkCover Board of Directors. Special circumstance may include the commencement of a licence where the self-insurer is in the process of recruiting appropriate staff.

Amendment of s 128 (Recovery of ongoing costs from former self-insurer)

Clause 25 amends s 128 to reflect that self-insurers now be liable for all claims for compensation and damages incurred by the self-insurer, not just those incurred during the licence period.

Amendment of s129 (Assessing residual liability after cancellation)

Clause 26 amends s 129 to make it consistent with s 116 and incorporates liability for the "tail of claims". The clause also removes the definition of "residual liability" which is now incorporated in s116.

Replacement of s 135 (Compensation entitlement and source of payments)

Clause 27 amends s 135 in accordance with current drafting practice and also includes a provision which specifies the extent of compensation payable for work-related aggravations of injury, disease or a medical condition, irrespective of whether the original injury or disease is work or non-work related. Compensation for these injuries is limited to the extent of the effects of the aggravation. This will involve a medical assessment of the extent of the injury, disease or condition attributable to the aggravation as compared to the underlying injury, disease or condition.

Amendment of s 147 (Entitlements of seafarers)

Clause 28 amends s 147 to afford coverage to employers of a Queensland ship and its workers, if it is voyaging into interstate or overseas waters, given that the principal place of employment of the workers is Queensland and, if a prescribed ship under the *Navigation Act 1912*, an exemption has been granted under Section 20A of the *Seafarers' Rehabilitation and Compensation Act 1992*.

Amendment of s 152 (Entitlements for industrial deafness)

Clause 29 replaces "*the major significant factor*" causing the injury with "*a significant contributing factor*" to the injury.

Amendment of s 153 (Further application for compensation for industrial deafness)

Clause 30 amends s 153 to reduce the requirement for further diminution of hearing loss for subsequent claims to more than 1%. This removes the excessively high barrier where a worker had already demonstrated that they had sustained a hearing loss due to employment. The requirement for the more than 1% of further loss was retained to allow for variations in testing. As already exists, the further diminution of more than 1% will be included in the assessment of impairment.

Amendment of s 158 (Time for applying)

Clause 31 amends the commencement of entitlement to compensation where an application is lodged more than 28 days after the entitlement to compensation arises. The amendment will enable the worker to be entitled to compensation for a period that is no earlier than 28 days before the day of lodgement of the application for compensation.

This amendment ensures that workers who are unaware of the requirement or are unable to lodge an application for compensation within the time specified will be entitled to compensation which may be back-dated for a period of up to 28 days from date of lodgement of application.

The clause also provides WorkCover with the power to waive the limitations on time for applying if it is satisfied that the claimant's failure to lodge the application was due to a mistake, absence from the State or a reasonable cause. WorkCover's decision in respect to the waiving of this provision is subject to review by the Review Unit under chapter 9.

Amendment to s 161 (Decision about application for compensation)

Clause 32 amends s 161 to require WorkCover to make a decision on an application for compensation within 3 months. It also requires WorkCover to notify a claimant of a decision to allow or reject their claim.

WorkCover must provide adequate written reasons for the decision to the claimant if the application for compensation is rejected. A regulation will be introduced to specify the standards for the reasons for decision. These standards will ensure sufficient information is supplied to the claimant and there is adequate information for internal review of decisions.

If WorkCover is unable to make a decision on an application within 3 months, the clause provides that the claimant be notified of this and their appeal rights under chapter 9, in writing, within 7 days after the end of the 3 month period.

Insertion of new ch 3 pt 8 div 4 sdiv 3A

Clause 33 is a new provision that specifies the weekly entitlement of eligible persons. The applicant for eligible persons insurance will now be required to specify the level of wages on which the premium and benefit levels are calculated.

The clause sets out the weekly benefit structure for eligible persons and is consistent with the structure which applies to workers under the Act. However, the calculations will be based on the insured benefit level, rather than normal weekly earnings.

The structure allows an eligible person to be paid the lesser of 85% of the amount stated in their contract of insurance, ie. the insured benefit level, or the actual earnings of the person when the injury was sustained. The actual earnings will need to be substantiated by the appropriate documentation, eg. taxation returns. Alternatively the person may be paid the reasonable cost of labour to replace the injured eligible person.

Insertion of new ch 3 pt 8 div 5 sdiv 1 heading and new s 182A

Clause 34 inserts subdivision 1 to ensure the existing provisions do not apply to eligible persons. The clause is a consequential amendment in relation to the weekly entitlements of eligible persons.

Insertion of new ch 3 pt 8 div 5, sdiv 2, and sdiv 3 heading

Clause 35 includes a new subdivision specifying the calculation of entitlement for partial incapacity for eligible persons, which is now based on insured benefit levels. This calculation for partial incapacity entitlement is in

line with that which applies to all other persons, including workers, other than the rate on which the calculation is based, ie. insured benefit levels rather than normal weekly earnings.

Amendment of s 228 (WorkCover's liability for medical treatment and hospitalisation)

Clause 36 amends s 228 to clarify that WorkCover may impose conditions in relation to the provision of treatment provided by medical and allied health professionals under the Table of Costs. It provides guidelines for the amount of treatment and the conditions under which the treatment can be provided for which WorkCover is liable. This clause will not specify the type or nature of individual treatments for workers.

Amendment of s 239 (Liability for rehabilitation fees and costs)

Clause 37 amends s 239 to ensure consistency with clause 36 in relation to the provision of rehabilitation.

Amendment of s 288 (Non-disclosure of certain material)

Clause 38 amends s 288 to include non-disclosure of common law claims estimates for the purposes of determining an employer's premium under Experience Based Rating (EBR).

Common law estimates are supplied to employers for premium purposes and are used in the calculation of premium under EBR. In this circumstance there is concern they would not be subject to legal professional privilege.

Amendment of s 317 (Future economic loss)

Clause 39 is a technical amendment to remove reference to Work Related Impairment. This will remove any confusion regarding the evidence to be considered by the Courts in determining the likelihood of future economic loss. That is, it is not purely restricted to medical evidence.

Amendment of s 361 (Quarterly reports)

Clause 40 amends s 361 to include a report from the WorkCover Review Council in the WorkCover Board's quarterly report to the Minister on the performance and outcomes of the review process and the Medical Assessment Tribunals. The Review Council does not have any power to intervene in the individual decisions of the review unit and MATs.

Insertion of new ch 6, pt 6A

Clause 41 inserts a new provision which requires WorkCover to establish a Review Unit which is separate from WorkCover's commercial insurance operations for the review of decisions on premiums and entitlement to compensation.

This will ensure that the commercial insurance business of WorkCover is at arm's length from the review process. These changes will provide a more independent, yet cost-effective review process, which encourages better initial decisions, limits the number of claims that actually reach dispute, and provides for the timely resolution of disputes.

It specifies the functions of the Review Unit as those set out in chapter 9 part 2, ie. review of decisions in relation to employers' premiums and workers' entitlement to compensation.

Amendment of s 416 (Amounts payable by WorkCover on Minister's instruction)

Clause 42 amends s 416 to allow the Minister to direct WorkCover to provide a grant of money to assist in making workers and employers aware of their rights under the Act through the provision of advisory services.

Insertion of new ch 6A

Clause 43 inserts a new chapter which establishes a WorkCover Review Council. The Review Council will monitor the performance and outcomes of the review process and Medical Assessment Tribunals. The Review Council will not have any powers to direct or alter any decision of either the Review Unit or MATs.

The Review Council will report directly to the WorkCover Board and will be comprised of the Chairman (or another Director appointed by the Chairman) of the WorkCover Board as Chair of the Review Council and two representatives of workers and two representatives of employers appointed by the Governor in Council.

The terms and conditions of appointment are specified.

The Review Council is to provide quarterly reports to the WorkCover Board on the performance of the review process.

Amendment and renumbering of s 470 (Audit of wages and contracts)

Clause 44 amends s 470 and relocates it to chapter 10 of the Act. This provision currently allows WorkCover to utilise an authorised auditor in the auditing of wages and contracts. The amendment provides for authorised auditor to access the necessary documents and property relevant to the audit. The documents the authorised auditor has access to are detailed in the regulation s 15 and includes time and wages books, and profit and loss statements.

This clause is an essential element in WorkCover's compliance strategies which are central to the package of reforms encapsulated in this Bill

Replacement of ch 9

Clause 45 reorganises Chapter 9 for convenience of reading. It locates all common parts in relation to review and appeals in a common area of the legislation. It also amalgamates common provisions in relation to employer premiums and entitlement to compensation. Appeals that are not directed through the Review Unit, such as decisions in relation to the issue or renewal of a self-insurance licence, are located separately within the chapter.

The clause inserts a new provision which requires WorkCover and self-insurers to have a more senior officer or person undertake an internal review of decisions prior to a decision to reject or terminate compensation entitlements.

The clause specifies the object of Part 2, ie. to provide a review process that is separate from WorkCover's commercial insurance business and to provide a non-adversarial system of dispute resolution.

The clause provides that a decision to waive the limitations on time for lodging an application for compensation is reviewable. In addition, WorkCover's or a self-insurer's failure to make a decision on an application for compensation within 3 months is also reviewable.

Decisions can only be reviewed by the Review Unit.

It also requires WorkCover and self-insurers to provide written reasons for the original decision to the person applying for review. A regulation will be made that specifies the standard for the reasons for decision will be defined in the *WorkCover Queensland Regulation 1997*. This standard will ensure sufficient information is supplied to the aggrieved person.

It also amends the time for lodgment of an application for review from 28 days for claims and 35 days for premiums to within 3 months after the person applying for review has received the notice of the decision and the reasons for decision. Three months is considered to provide sufficient time for an application to be lodged and allows the Review Unit to undertake a review to achieve timely resolution of disputes. The clause allows a person applying for review to ask the WorkCover Board, within the 3 months, to allow further time to apply. The Board may grant further time if it is satisfied that special circumstances exist.

The clause also provides a further 28 days for the person applying for the review to request the reasons for the decision if they were not received with the notice of the decision. WorkCover or a self-insurer has 7 days in which to supply the reasons for the decision when asked by the person applying for review.

The clause includes a new provision that ensures an aggrieved party has the right to be heard by requiring personal contact, eg. face-to-face, telephone with a view to achieving a timely resolution of the dispute. This may also involve the Review Unit undertaking conciliation in difficult or complex cases. The aggrieved person may be represented by another person at their own expense.

The clause allows the Review Unit to require information from the insurer, either WorkCover or a self-insurer, in order to make a decision. It also allows the Review Unit to require the insurer to provide further information, such as medical reports, at the insurers' expense, if the Review Unit considers there is insufficient evidence or information on which to make a decision. Time frames for the provision of information are provided to ensure that the insurer does not delay the decision making process.

The clause includes a new provision that requires WorkCover or a self-insurer to reimburse the costs borne by a worker for an examination and report by a doctor if the Review Unit overturns the original decision to reject the claim and the report was significant in overturning the decision.

Amendment of s 520 (Disclosure of information)

Clause 46 amends s 520 to enable WorkCover or a self-insurer to disclose information that is relevant to a claim against another self-insurer or WorkCover. The information that can be disclosed is limited to information relevant to the specific claim of a worker.

Amendment of s 523 (WorkCover's information not actionable)

Clause 47 amends s 523 to ensure that information relating to a particular claim provided to a self-insurer by another self-insurer or WorkCover under s 520 is not actionable. Where a self-insurer or WorkCover has released information to a self-insurer relevant to the claim of a worker, a person is not able to bring an action against WorkCover or the self-insurer in relation to this disclosure

Amendment of s 551 (Injury under repealed or other former Act)

Clause 48 amends s 551 to align benefits paid to dependants of deceased workers injured before 1 January 1996 to QOTE. Benefits to dependants of deceased workers where the injury occurred before 1 January 1996 were previously aligned to the prescribed base rate. There is little or no movement in this rate.

Insertion of new ch 12

Clause 49 is a new provision which specifies the transitional arrangements to apply in relation to the legislation.

Workers and employers

The amendments in relation to the definitions of "worker" and "employer" will apply for injuries sustained by workers from 1 July 2000 and for the calculation of premium from 1 July 2000.

Injuries

The amendments to the definition of "injury" will apply for injuries sustained from 1 July 1999.

Self-rating

Existing self-raters and applicants

The transitional provisions for self-rating allow the current self-rater to continue to be registered until the expiry of the current period of insurance on 30 June 1999.

They also provide that the premium payable when the self-rater re-enters the general scheme on 1 July 1999 will be the premium rate that would have applied if the self-rater had never been registered to self-rate.

This clause ensures that the former self-rater will not be required to repay to WorkCover any savings in premium that they made as a self-rater as compared to EBR. This ensures that the self-rater is treated fairly and consistent with all employers in the general scheme.

A provision is also included to require WorkCover to return the bank guarantee or cash deposit of the self-rater no later than 3 months after the self-rater's registration stops.

Self-rater applying to become self-insurer

The provision allows for a registered self-rater or an applicant for self-rating who has applied before 3 March 1999, to apply for a self-insurance licence. Should the self-rater apply for self-insurance licence on or before 30 June 1999, the self-rating provisions continue to apply until 31 December 1999. If the self-rater does not apply for self-insurance before 30 June 1999, the registration of the self-rater ceases on 30 June 1999.

If a self-insurance licence is not issued, the transitional provisions for self-rating apply.

If a self-insurance licence is issued, the self-rater or applicant is treated as an applicant for self-insurance who had applied before 3 March 1999. That is, the transitional provisions for self-insurance apply. The bank guarantee or cash deposit of the self-rater is treated as if the self-rating registration was cancelled. This allows WorkCover to ensure that adequate premium has been paid for injuries incurred during the self-rating registration period, as

the self-rater leaves the general insurance scheme on becoming a self-insurer.

Self-insurance

Number of workers

Self-insurers who were licenced or who had applied for a licence before 3 March 1999 will be excluded from the requirement to have a minimum of 2000 workers. The loss of a self-insurance licence solely on this criteria for existing self-insurers and applicants would have been unfair given the expenditure an employer would have had to make to establish the necessary infrastructure to undertake self-insurance.

OHS certificate

A self-insurer or applicant whose licence was issued or application was lodged on or before 3 March 1999 must have a current OHS certificate when applying to renew their licence. In addition, where the application for renewal is due to be lodged on or before 3 March 2000, WorkCover may only renew a licence for self-insurance subject to the self-insurer obtaining an OHS certificate within 12 months of the renewal application being lodged. This enables continuity for self-insurance licences while providing sufficient time for OHS management systems to be implemented.

Outstanding liability on or before licence renewal

A self-insurer or applicant whose licence was issued or application was lodged on or before 3 March 1999, must assume liability for their outstanding claims before the renewal is granted. The self-insurer may assume outstanding liability before lodging an application for renewal. WorkCover must pay the self-insurer an amount that is calculated under a regulation for this outstanding liability.

Change in self-insurer's membership

This provision sets out the requirements where there is a change in the membership of a group, where the self-insurer's licence was issued before 3 March 1999, or an applicant for a licence was lodged before that date, and the self-insurer or applicant has not yet assumed outstanding liability under s 116.

Surcharge

A surcharge was introduced on 1 January 1996 to assist in returning the scheme to full funding. Although this surcharge will be removed for employers in the general scheme from 1 July 1999, these employers will still be contributing to achieving full funding through the calculation of their premium rates. Therefore as a matter of fairness, a surcharge will be applied to self-insurers. Once a self-insurer assumes liability for claims incurred prior to the self-insurance licence being issued, this surcharge will no longer apply.

The calculation of this surcharge will be specified in a regulation.

Recovery of ongoing costs from former self-insurer

If a self-insurer's licence is cancelled before the self-insurer becomes liable for their outstanding claims, the provisions existing before the 3 March 1999 in relation to the recovery of costs by WorkCover for claims incurred during the self-insurer's licence period continue to apply.

Assessing residual liability after cancellation

If a self-insurer's licence is cancelled before the self-insurer becomes liable for their outstanding claims, the provisions existing before the 3 March 1999 in relation to the assessment of residual liability by WorkCover for claims incurred during the self-insurer's licence period continue to apply.

Review and Appeals

The amendments to the review and appeal provisions apply to all decisions made after 30 June 1999.

Insertion of new schs 2 and 2A

Clause 50 inserts a new Schedule 2 and 2A which specify categories of persons declared to be workers and employers for the purposes of the Act.

Part 1 specifies certain persons as workers to provide clarity in relation to coverage for certain occupational groups, eg. pieceworkers and outworkers, salespersons paid by commission, workers employed by holding companies and labour hire agencies.

Part 2 specifies persons who are not workers, eg. professional sportspersons, persons on "work for the dole" programs.

Schedule 2A specifies who is an employer of a worker, eg. labour hire agencies and holding companies are specified as employers of those workers who they arrange to do work for someone else.

Amendment of sch 3 (Dictionary)

Clause 51 amends the dictionary in Schedule 3. It:

- deletes the definition of "PAYE taxpayer" which is no longer necessary as this requirement has been removed from the definition of "worker";
- inserts a definition of "OHS certificate" for the purposes of issuing and renewing self-insurance licences;
- inserts a reference in relation to the definition of "outstanding liability" in relation to self-insurance;
- inserts a reference in relation to the definition of "residual liability" in relation to self-insurance;
- inserts a definition of "self-insurer's workers" in relation to outstanding, residual and total liability;
- inserts a reference in relation to the definition of "total liability" in relation to self-insurance;
- inserts a definition of "authorised auditor" which is defined in s 523A;
- inserts a definition of "bank guarantee" to include a guarantee by Queensland Treasury Corporation in relation to self-insurance;
- inserts a definition of "council" to refer to the WorkCover Review Council;
- inserts a definition of "medical condition" in relation to the definition of "injury";
- inserts a reference in relation to the definition of "non-reviewable decision" under chapter 9;
- inserts a reference in relation to the definition of "review decision" under chapter 9;

- inserts a reference in relation to the definition of "review unit" under section 403A;
- inserts a reference in relation to the definition of "WorkCover Review Council" under section 423A;
- inserts a definition of "arrangement" for the purposes of the definitions of "worker" and "employer";
- inserts a definition of "group training scheme" for the purposes of the definitions of "worker" and "employer". This is to clarify this type of scheme as one defined under the *Vocational Education, Training and Employment Act 1991* (ie. "an industrial organisation or a body corporate that is approved by the State Training Council to employ apprentices or trainees but which uses the facilities of its members or other employers to train those apprentices or trainees");
- inserts a definition of "holding company" for the purposes of the definitions of "worker" and "employer";
- inserts a definition of "labour hire agency" for the purposes of the definitions of "worker" and "employer";

Amendment of Workplace Health & Safety Act 1995

Clause 52 is a consequential amendment to the *Workplace Health and Safety Act 1995*.

The clause inserts a new division providing for the issue of OHS certificates for the issue and renewal of self-insurance licences. This clause allows the chief executive of the Department of Employment, Training and Industrial Relations to issue an OHS certificate if satisfied that the applicant for such a certificate meets the performance standards published by the Department. The applicant for a certificate must pay the appropriate fee before the certificate will be issued. This fee which will be calculated under regulation is dependent on the complexity of the employer's business operations, eg. the diversity of the employer's operations, the level of regionalisation. The certificate remains current for 6 months from date of issue.

Schedule

Minor and Consequential Amendments

Part 1 of this schedule contains the minor and consequential amendments required in relation to the abolition of self-rating. These amendments delete reference to self-rating from a number of provisions throughout the Act.

Part 2 of this schedule includes minor and consequential amendments in relation to the amendment to benefit levels for eligible persons.