

# **WORKERS' COMPENSATION AND REHABILITATION BILL 2003**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Purpose of the Bill**

The purpose of the Bill is to give effect to the model approved by Government for the separation of WorkCover's insurance and regulatory functions as a result of the National Competition Policy review of the *WorkCover Queensland Act 1996*. Key features of the approved model included:

- the repeal of the *WorkCover Queensland Act 1996* and provision for new legislation to provide for the separate delivery and regulation of the workers' compensation scheme;
- maintaining WorkCover as a fully commercial statutory body;
- providing for the establishment of a statutory authority to regulate the scheme; and
- centralising policy and legislative development functions within the Department of Industrial Relations (DIR).

Included as part of this Bill are provisions to ensure that a member of a medical assessment tribunal is not civilly liable for an act done, or an omission made in the discharge of the functions of the Tribunal.

The Bill also includes technical amendments to the *Industrial Relations Act 1999* (IR Act) to clarify that:

- an employee covered by a general ruling of the full bench of the Queensland Industrial Relations Commission (QIRC) setting a minimum wage under section 287(1)(c) of the IR Act (a Queensland minimum wage order), has a legal entitlement to the Queensland minimum wage; and
- the existing compliance, enforcement and recovery of wages provisions of the IR Act extend to the Queensland minimum wage.

## **Reason for the Bill**

The major outcome of the National Competition Policy (NCP) review of the *WorkCover Queensland Act 1996* was the recommendation to formally separate the insurance and regulatory arms of WorkCover Queensland.

Under current legislative and operational arrangements the regulator, Q-COMP, reports to the Board of WorkCover as a business unit of WorkCover Queensland. The Public Benefit Test conducted as part of the review process recommended that, in the interests of transparency and in line with NCP principles, regulatory and commercial functions be completely separated.

The Bill implements the above recommendation, and in doing so establishes Q-COMP as a separate statutory authority whose functions will essentially be the same as those it current undertakes as a division of WorkCover Queensland. The creation of Q-COMP as an autonomous statutory authority will however now ensure true independence and impartiality in relation to regulatory decisions made for all insurers, both self-insurers and WorkCover. In order to retain the integrity of the workers' compensation fund, the Bill maintains premium setting and funds management as part of WorkCover's functions together with insurance underwriting and service delivery.

The change to the title of the legislation to the *Workers' Compensation and Rehabilitation Bill 2003* is proposed in order to better reflect the function of the proposed legislation, being to provide for a scheme of arrangements for the regulation and delivery of optimal workers' compensation and rehabilitation services to Queensland workers and employers.

The amendments to the *Industrial Relations Act 1999* are of a technical nature and ensure that the existing compliance, enforcement and recovery provisions of the IR Act operate in like manner for both award and non-award employees with respect to the Queensland minimum wage.

## **Application**

The main elements of the *Workers' Compensation and Rehabilitation Bill 2003* provide for the:

- repeal of the *WorkCover Queensland Act 1996* and the *WorkCover Queensland Regulation 1997*;
- maintenance of the essential characteristics of Queensland's workers' compensation scheme;

- establishment of WorkCover's regulatory arm, Q-COMP, as a statutory authority with a board to regulate Queensland's workers' compensation scheme;
- establishment of WorkCover as a commercial entity and candidate GOC in the business of workplace accident insurance, including premium setting, with a smaller board divested of regulatory functions;
- establishment of Workers' Compensation Advisory Committees to provide advice to the Minister on scheme design and other policy issues;
- centralisation of policy development and scheme design functions in the Department of Industrial Relations; and
- creation of a complementary regulatory regime for the new Act.

The general provisions of the current *WorkCover Queensland Act 1996* as they relate to other elements of the scheme's operations have been retained with amendments restricted to those necessary to ensure consistency of intent and to be complimentary to the new provisions within the Bill.

Throughout the Bill WorkCover and self-insurers are now been referred to in generic terms as "Insurers" unless provisions relate specifically to one or the other.

The purpose of the indemnity for members of the medical assessment tribunals is to transfer any liability incurred by a member while performing a function of the Tribunal to the Workers' Compensation Regulatory Authority.

The amendments to the IR Act confirm the entitlement of employees to the Queensland minimum wage and amend a number of provisions covering wages recovery, compliance and enforcement by inserting a reference to the Queensland minimum wage.

In addition to the above, this Bill brings into effect un-commenced provisions of the *WorkCover Queensland Act 1996* relating to new cross border arrangements introduced by the *WorkCover Queensland Amendment Act 2002*; and workers' compensation related amendments introduced by the *Workplace Health and Safety Amendment Act 2003*, both of which were passed for commencement from 1 July 2003.

### **Estimated Costs of Government Implementation**

The creation of the Q-COMP Authority (Q-COMP) as an independent statutory authority will have no impact on the Consolidated Fund. Establishment and transitional costs in this regard are being absorbed by WorkCover and there will be no adverse impact on the scheme in terms of premium, benefits or fund viability as a result of WorkCover absorbing such costs.

The ongoing funding of Q-COMP will be by contributions from self-insurers through their annual licensing fee, with WorkCover contributing to the balance after income earned by the Authority through its operations.

The extension of a minimum wage to employees not covered by an industrial instrument may increase resource costs for the compliance and advisory services of the Department of Industrial Relations, if there is an increase in wage complaints as a result of the QIRC's Queensland minimum wage order. However, the increase is likely to be small. Estimates indicate that only between 1.3% - 2.1% of Queensland employees earn less than the minimum wage, with pay rates only slightly less than the minimum.

### **Consistency with fundamental legislative principles**

Those provisions of the Bill in respect to workers' compensation arrangements are consistent with fundamental legislative principles

In relation to the civil liability of medical assessment tribunal members, the transfer of liability does not of itself remove the right to civil action. Accordingly, this change is not considered to adversely affect rights and liberties or impose obligations retrospectively. In addition, because the indemnity applies subject to a Tribunal member acting in good faith, there is considered to be adequate justification to confer immunity from proceedings in these circumstances.

The amendments to the *Industrial Relations Act 1999* are of a technical nature and do not introduce any changes to the intent of the existing provisions which conflict with these principles. It is intended that the amendments will operate retrospectively from 1 April 2003. The commencement date of the general ruling setting the Queensland minimum wage is the first pay period after 1 April 2003. Since the general ruling establishes an entitlement to the Queensland minimum wage and the amendments ensure that the entitlement can be enforced utilising existing processes under the IR Act, it is appropriate that the date of commencement

of the provisions is the date upon which the order came into effect. The exception to this is clauses 619 and 620 of the Bill (which amend sections 666 and 701 of the IR Act respectively). These are penalty provisions and, as such, it is not considered appropriate to give them retrospective operation.

It was assumed and always intended by the Government that the Commission's order would be enforceable by non-award employees in generally the same way as award employees. However, legal opinion differs as to whether this is the case. The amendments are intended to put the issue beyond doubt.

In view of the above, it is considered that the retrospective operation of the amendments do not breach fundamental legislative principles.

## **Consultation**

### ***Workers' Compensation***

Consultation occurred with all major stakeholder groups including employer associations, unions, legal and insurance professional bodies, and relevant State Government departments. The *Workers' Compensation and Rehabilitation Bill 2003* provisions have received support from all stakeholder groups.

### ***Industrial Relations***

The government's application to the QIRC for the establishment of a Queensland minimum wage was widely advertised by the government in the major daily and regional newspapers so that all interested parties would have an opportunity to be heard. No further stakeholder consultation was undertaken, since the IR Act amendments are of a technical drafting nature and merely clarify compliance and enforcement issues about the Queensland minimum wage.

## NOTES ON CLAUSES

### CHAPTER 1—PRELIMINARY

This chapter:

- introduces the Bill
- defines the Bill's objects
- outlines and explains basic workers' compensation concepts.

### PART 1—INTRODUCTION

#### **Short title**

*Clause 1* provides the short title of the Bill.

#### **Commencement**

*Clause 2* provides that the Act commences on 1 July 2003.

#### **Act binds all persons**

*Clause 3* provides that the Act binds all persons, including the State, and, so far as the legislative power of Parliament permits, the other States.

### PART 2—OBJECTS

#### **Objects of Act**

*Clause 4* provides that Chapter 1, Part 2 states the main objectives of the Act which are an aid to the interpretation of the Act.

## **Workers' Compensation Scheme**

*Clause 5* replaces section 5 of the *WorkCover Queensland Act 1996* which establishes a workers' compensation scheme and outlines the provisions and objects for the scheme.

This clause preserves sub-sections 5(1), (2), (3) and (4)(a) to (e) of the *WorkCover Queensland Act 1996* without amendment, and makes only minor modifications to sub-sections 5(2)(e) and 5(4)(b) to change references to WorkCover and self-insurers to "insurers".

The provisions contained in section 5(4)(f), and section 5(5) and (6) of the *WorkCover Queensland Act 1996* relating to WorkCover Queensland's solvency requirements are now provided for under Clause 453 of this Bill.

This clause also retains section 5(7) of the *WorkCover Queensland Act 1996* without amendment.

## **Administration**

*Clause 6* replaces section 7 of the *WorkCover Queensland Act 1996* which currently outlines the reasons for WorkCover's establishment i.e. to provide efficient and economic administration of workers' compensation.

This clause modifies section 7 of the *WorkCover Queensland Act 1996* to state the purpose of the Act as providing for the efficient administration of the scheme and of this Act through the establishment of the Authority and WorkCover.

## **PART 3—DEFINITIONS**

### **Definitions**

*Clause 7* provides that words used in the Bill are defined in the dictionary at schedule 6.

## **PART 4—BASIC CONCEPTS**

### ***Division 1—Accident insurance, compensation and damages***

#### **Meaning of “accident insurance”**

*Clause 8* replaces section 9 of the *WorkCover Queensland Act 1996* defining the term ‘accident insurance’, and has not been changed.

#### **Meaning of “compensation”**

*Clause 9* replaces section 10 of the *WorkCover Queensland Act 1996* which provides a definition for the term ‘compensation’. This clause modifies section 10 of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover or a self-insurer” to “an insurer”.

#### **Meaning of “damages”**

*Clause 10* replaces section 11 of the *WorkCover Queensland Act 1996* defining the term ‘damages’. This clause makes one change to section 11(1) of the *WorkCover Queensland Act 1996* to remove reference to “the” before the word damages. This provides clarity for interpretation in response to the decision in the case of *Karanfilov –v- Inghams Enterprises P/L [2000] QCA 348* which highlighted uncertainty surrounding the reference to “the damages”.

### ***Division 2—Workers***

#### **Who is a “worker”**

*Clause 11* replaces section 12 of the *WorkCover Queensland Act 1996* which provides a definition of ‘worker’, and has not been changed.



***Division 3—Persons entitled to compensation other than workers******Subdivision 1—Volunteers etc.*****Entitlement of persons mentioned in subdivision 1**

*Clause 12* replaces section 14 of the *WorkCover Queensland Act 1996* and has not been changed. A person mentioned in subdivision 1 who is covered under a contract of insurance with WorkCover under this subdivision has the same entitlement to compensation as a “worker”. Coverage for the payment of common law damages remains excluded.

**Counter-disaster volunteer**

*Clause 13* replaces section 15 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to enter into a contract of insurance with the chief executive of the department within which the *State Counter-Disaster Organisation Act 1974* is administered.

**Rural fire brigade member**

*Clause 14* replaces section 16 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to enter into a contract of insurance with the Authority responsible for management of a rural fire brigade under the *Fire and Rescue Authority Act 1990*.

**Volunteer fire fighter or volunteer fire warden**

*Clause 15* replaces section 17 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to enter into a contract of insurance with the Authority responsible for management of the State’s fire services.

**Statutory or industrial body member**

*Clause 16* replaces section 18 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to enter into a contract of insurance with a local government, statutory body, industrial union of employees or employers or an association of employers or a similar body of a public nature.

**Honorary ambulance officers**

*Clause 17* replaces section 19 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to enter into a contract of insurance with the Authority responsible for the State's ambulance transport.

**Person in voluntary or honorary position with religious, charitable or benevolent organisation**

*Clause 18* replaces section 20 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to enter into a contract of insurance with a church, non-profit charitable organisation or benevolent institution.

**Person in voluntary or honorary position with non profit organisations**

*Clause 19* replaces section 21 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to enter into a contract of insurance with a non-profit organization.

***Subdivision 2—Persons performing community service etc.*****Entitlements of persons in subdivision 2**

*Clause 20* replaces section 22 of the *WorkCover Queensland Act 1996* and has not been changed. A person mentioned in subdivision 2 who is covered under a contract of insurance with WorkCover for this subdivision has the same entitlement to compensation as a “worker”. Coverage for the payment of damages for injury sustained by the person is still excluded.

**Persons performing community service or unpaid duties**

*Clause 21* replaces section 23 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to enter into a contract of insurance with the authority responsible for directing the performance of a specified community service order or work related activity or program.

### ***Subdivision 3—Students***

#### **Students**

*Clause 22* replaces section 24 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to enter into a contract of insurance for this subdivision with:

- the authority administering the (*Education (Work Experience) Act 1996*) relating to a State student; or
- the person having control of a non-State school in relation to a student enrolled at the school who is 14 or over; or
- a registered training organisation attended by a vocational placement student.

#### **Subdivision 4 — Eligible persons**

##### **Meaning of “eligible person”**

*Clause 23* replaces section 25 of the *WorkCover Queensland Act 1996* which provides a definition of “eligible person” and has not been changed.

##### **Eligible person may apply to be insured**

*Clause 24* replaces section 26 of the *WorkCover Queensland Act 1996* and has not been changed. It requires WorkCover to enter into a contract of insurance for this subdivision with an eligible person who wishes to enter into such a contract.

##### **Entitlements of eligible persons**

*Clause 25* replaces section 27 of the *WorkCover Queensland Act 1996* prescribing the entitlements of eligible persons, and has not been changed.

***Subdivision 5—Other persons*****Other persons**

*Clause 26* replaces section 28 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to enter into a contract of insurance for this subdivision with a person, whether or not an employer, for injury sustained by other persons.

***Division 4—Spouses, members of the family and dependants*****Meaning of “dependant”**

*Clause 27* replaces section 29 of the *WorkCover Queensland Act 1996* which provides a definition of ‘dependant’, and has not been changed.

**Meaning of “member of the family”**

*Clause 28* replaces section 30 of the *WorkCover Queensland Act 1996* providing a definition for the term ‘member of the family’, and has not been changed.

**Who is the “spouse” of a deceased worker**

*Clause 29* replaces section 31 of the *WorkCover Queensland Act 1996* which provides a definition of “spouse”, and has not been changed.

***Division 5—Employers*****Who is an “employer”**

*Clause 30* replaces section 32 of the *WorkCover Queensland Act 1996* which provides a definition for “employer”, and has not been changed.

***Division 6—Injuries and impairment******Subdivision 1—Event resulting in injury*****Meaning of “event”**

*Clause 31* replaces section 33 of the *WorkCover Queensland Act 1996* which provides a definition for “event”, and has not been changed.

***Subdivision 2—Injury*****Meaning of “injury”**

*Clause 32* replaces section 34 of the *WorkCover Queensland Act 1996* which defines the term “injury”.

This clause modifies section 34(5)(c) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover or a self-insurer” to “an insurer”.

***Subdivision 3—When injury arises out of, or in the course of, employment*****Application of sdiv 3**

*Clause 33* replaces section 35 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that this subdivision does not limit the circumstances in which an injury to a worker arises out of, or in the course of, the worker’s employment.

***Injury while at or after worker attends place of employment***

*Clause 34* replaces section 36 of the *WorkCover Queensland Act 1996* which outlines specific instances that are considered to be work related, and has not been changed.

**Other circumstances**

*Clause 35* replaces section 37 of the *WorkCover Queensland Act 1996* and has not been changed. It outlines further circumstances when an injury is taken to have arisen out of, or in the course of, the worker's employment.

**Injury that happens during particular journeys**

*Clause 36* replaces section 38 of the *WorkCover Queensland Act 1996* relating to injury that happens during particular journeys, and has not been changed.

***Subdivision 4—Impairment from injury*****Meaning of “impairment”**

*Clause 37* replaces section 39 of the *WorkCover Queensland Act 1996* which provides a definition of “impairment” and has not been changed.

**Meaning of “permanent impairment”**

*Clause 38* replaces section 40 of the *WorkCover Queensland Act 1996* which provides a definition of the term “permanent impairment” and has not been changed.

**Meaning of “work related impairment”**

*Clause 39* replaces section 41 of the *WorkCover Queensland Act 1996* which defines the term “work related impairment”, and has not been changed.

***Division 7—Rehabilitation*****Meaning of “rehabilitation”**

*Clause 40* replaces the definition for “rehabilitation” provided for in section 44 of the *WorkCover Queensland Act 1996*.

This clause modifies section 44(1)(a)(iii) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover or a self-insurer” to “an insurer”.

### **Meaning of “rehabilitation coordinator”**

*Clause 41* replaces section 45 of the *WorkCover Queensland Act 1996* defining “rehabilitation coordinator”.

This clause modifies section 45(a) and (b) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the Authority”.

### **Meaning of “suitable duties”**

*Clause 42* replaces section 46 of the *WorkCover Queensland Act 1996* defining the term “suitable duties” and has not been changed.

### **Meaning of “workplace rehabilitation”**

*Clause 43* replaces section 47 of the *WorkCover Queensland Act 1996* which provides a definition for the term “workplace rehabilitation”.

This clause modifies section 47 of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the Authority”.

### **Meaning of “workplace rehabilitation policy and procedures”**

*Clause 44* replaces section 48 of the *WorkCover Queensland Act 1996* defining “workplace rehabilitation policy and procedures”.

This clause modifies section 48 of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the Authority”.

### **Meaning of “accredited workplace”**

*Clause 45* replaces section 49 of the *WorkCover Queensland Act 1996* defining the term “accredited workplace”, and has not been changed.

## **CHAPTER 2—EMPLOYER'S OBLIGATIONS**

The Bill generally reflects provisions contained in chapter 2 of the *WorkCover Queensland Act 1996* which specifies an employer's obligations to insure their workers against workplace injury, and includes:

- the responsibilities of employers
- insurance requirements, including the setting of premiums
- employer's self-insurance

### **PART 1—EMPLOYER'S LEGAL LIABILITY**

#### **Employer's legal liability**

*Clause 46* replaces section 50 of the *WorkCover Queensland Act 1996* which outlines an employer's legal liability, and has not been changed.

#### **WorkCover's liability confined to compensation**

*Clause 47* replaces section 51 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that WorkCover's liability is confined to compensation for the worker.

## **PART 2—EMPLOYER'S INSURANCE REQUIREMENTS**

### *Division 1—General obligations*

#### **Employer's obligation to insure**

*Clause 48* replaces section 52 of the *WorkCover Queensland Act 1996* which provides that every employer must for each worker employed by the employer insure and remain insured against injury sustained by the worker for compensation and damages.



The extent of changes made to section 52 of the *WorkCover Queensland Act 1996* by this clause relates to cross border arrangements introduced by the *WorkCover Queensland Amendment Act 2002* and passed for commencement from 1 July 2003.

The *WorkCover Queensland Amendment Act 2002* repealed section 52(6) of the *WorkCover Queensland Act 1996* which provided that an employer was not required to insure against legal liability for injury sustained by a “seafarer” employed by the employer, unless the “seafarer” is employed on a “Queensland ship”. This clause preserves this amendment.

### **Exemption if employer has other insurance**

*Clause 49* replaces section 53 of the *WorkCover Queensland Act 1996* with modifications.

Currently, the WorkCover Board has a discretionary power to exempt a particular employer from having workers’ compensation insurance in circumstances where the employer has similar insurance for the employer’s worker under another law. The Bill retains WorkCover’s discretionary power in this regard but requires that, prior to WorkCover granting an exemption, it first obtains advice from the Authority that the exemption will not adversely affect the workers’ compensation scheme.

In addition, this clause includes a new provision allowing an employer who is aggrieved by WorkCover’s decision not to exempt the employer from insuring under the Act, to apply to have the decision reviewed under chapter 13.

### ***Division 2—Contravention of employer’s general obligations and associated provisions***

#### **When an employer contravenes the general obligation to insure**

*Clause 50* replaces section 54 of the *WorkCover Queensland Act 1996* and has not been changed. It stipulates when an employer who is not a self-insurer has failed to fulfil their obligation to insure for workers’ compensation.

**Offence of contravening general obligation to insure**

*Clause 51* replaces section 55 of the *WorkCover Queensland Act 1996* creating an offence for an employer who has failed to fulfil their obligation to insure for workers' compensation.

The extent of changes made to section 55 of the *WorkCover Queensland Act 1996* relates to cross border arrangements introduced by the *WorkCover Queensland Amendment Act 2002* and passed for commencement from 1 July 2003.

The *WorkCover Queensland Amendment Act 2002* amended section 55 to provide that for an employer it is a defence to prove that at the time of the alleged offence—

- The employer believed, on reasonable grounds, that they could not be liable under the *WorkCover Queensland Act 1996* in relation to the worker because under Clause 8 of this Bill the worker's employment was not connected with this State; and
- The employer had workers' compensation cover in relation to the worker's employment under the law of the State with which the employer believed, on reasonable grounds, the worker's employment was connected under Clause 8 of this Bill.

This amendment was intended to assist employers to meet their obligation to insure in this State or another State.

The *WorkCover Queensland Amendment Act 2002* also clarified the term "workers' compensation cover", defining it as meaning "insurance or registration required under the law of a State in relation to liability for statutory workers' compensation under that law".

This Bill preserves the abovementioned changes.

**Offence to charge worker for compensation or damages for injury**

*Clause 52* replaces section 56 of the *WorkCover Queensland Act 1996* and has not been changed. It makes it an offence for a person to charge a worker for compensation or damages for injury.

**Recovery of unlawful charge for compensation or damages for injury**

*Clause 53* replaces section 57 of the *WorkCover Queensland Act 1996* and has not been changed. It allows workers who have had monies taken from them in contravention of the previous provision to be recovered by the

worker as a debt from the worker's employer or the person who took the money.

## **PART 3—INSURANCE UNDER WORKCOVER POLICIES GENERALLY**

### *Division 1—Premium setting generally*

#### **Setting of premium**

*Clause 54* replaces section 58 of the *WorkCover Queensland Act 1996* relating to premium setting.

Currently WorkCover must set the premium payable under a policy, and assess the premium payable for the policy for a period of insurance in accordance with the method and rate specified by industrial gazette notice. Prior to publishing a gazette notice in this regard, WorkCover is required to notify the Minister of the proposed specification of method and rate.

This clause modifies section 58(4) of the *WorkCover Queensland Act 1996* to require that WorkCover also notify the new regulatory Authority of the proposed specification of method and rate.

#### **Setting premium on change of ownership of business**

*Clause 55* replaces section 59 of the *WorkCover Queensland Act 1996* and has not been changed. It relates to premium setting in circumstances where a new employer acquires a business, in whole or in part, from a former employer currently insured under a WorkCover policy.

#### **Reassessment of premium for policy**

*Clause 56* replaces section 60 of the *WorkCover Queensland Act 1996* relating to the reassessment of premium, and has not been changed.

***Division 2—Assessments on contravention of general obligation to insure*****Recovery of compensation and unpaid premium**

*Clause 57* replaces section 61 of the *WorkCover Queensland Act 1996* and has not been changed. It enables WorkCover to recover compensation and unpaid premium from an employer who contravenes workers' compensation insurance obligations.

**Default assessment on reasonable suspicion**

*Clause 58* replaces section 62 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to make a default assessment in accordance with the prescribed method and rate if an employer fails to declare wages for a period of insurance.

**Further assessment and recovery after payment of default assessment**

*Clause 59* replaces section 63 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to reassess a default premium when further information becomes available, even if the employer has already paid the default assessment.

**Employer's separate liabilities for 1 period of default**

*Clause 60* replaces section 64 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to issue a default assessment of premium to an employer who has failed to fulfil their obligation to insure.

***Division 3—Additional premiums*****Additional premium payable if premium not paid**

*Clause 61* replaces section 65 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to charge an employer an additional premium for late payment of premium as prescribed under the regulation.

**Further additional premium payable after appeal to industrial magistrate**

*Clause 62* replaces section 66 of the *WorkCover Queensland Act 1996* and has not been changed. It relates to further additional premium payable after an appeal to an industrial magistrate or the industrial court.

**Additional premium for out-of-state workers**

*Clause 63* replaces section 67 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to charge an additional premium to cover workers who work out of the State.

**WorkCover may waive or reduce additional premium**

*Clause 64* replaces section 68 of the *WorkCover Queensland Act 1996* and has not been changed. It allows employers to apply to WorkCover to waive or reduce an additional premium because of extenuating circumstances.

***Division 4—Employer's liability for excess period*****Meaning of “excess period”**

*Clause 65* replaces section 69 of the *WorkCover Queensland Act 1996* which provides a definition of the term “excess period”, and has not been changed.

**Employer's liability for excess period**

*Clause 66* replaces section 70 of the *WorkCover Queensland Act 1996* outlining an employers' liability during the excess period, and has not been changed.

**Employer may insure against payment for excess period**

*Clause 67* replaces section 71 of the *WorkCover Queensland Act 1996* and has not been changed. It allows an employer, by written application, to elect to insure with WorkCover against their liability to pay for the excess period.

## **PART 4—EMPLOYER'S SELF-INSURANCE**

The Bill replaces Part 5 of the *WorkCover Queensland Act 1996* which provides for the option of self-insurance.

While existing provisions of Part 5 have been preserved, this Bill modifies certain sections to reflect the role of the new regulatory Authority in regulating self-insurance in Queensland.

### *Division 1—Preliminary*

#### **What is self-insurance**

*Clause 68* replaces section 98 of the *WorkCover Queensland Act 1996* which explains the concept of “self-insurance”. This clause modifies section 98(4) of the *WorkCover Queensland Act 1996* to change the current reference to “WorkCover” to “the Authority”.

### *Division 2—Issue and renewal of self-insurer's licence*

#### **Who may apply to be a self-insurer**

*Clause 69* replaces section 99 of the *WorkCover Queensland Act 1996* which prescribes the employers who may apply to be licensed as a self-insurer.

This clause preserves current provisions in section 99 of the *WorkCover Queensland Act 1996* with the exception of subsection 99(4) in which the reference to “WorkCover” is replaced with “the Authority”.

#### **How the application is made**

*Clause 70* replaces section 100 of the *WorkCover Queensland Act 1996* which outlines the process for making an application to become a self-insurer.

This clause modifies section 100(a) of the *WorkCover Queensland Act 1996* so as to require applications to be made to the Authority as opposed to WorkCover.

**Issue or renewal of licence to a single employer** (*Clause 71*)**Issue or renewal of licence to a group employer** (*Clause 72*)

These clauses replace sections 101 and 102 of the *WorkCover Queensland Act 1996* which outline the criteria used to establish if a single or group employer's self-insurance licence can be issued or renewed.

These clauses preserve sections 101 and 102 of the *WorkCover Queensland Act 1996* with the exception of subsections 101(1), 101(1)(e) and 101(2); and subsections 102(1), 102(1)(f) and 102(2) which have been modified to reflect the transfer of WorkCover's role in this matter to the new regulatory Authority.

**Calculation of the number of fulltime workers**

*Clause 73* replaces section 103 of the *WorkCover Queensland Act 1996* which outlines the method of calculating the number of fulltime workers.

This clause modifies section 101(1)(a) of the *WorkCover Queensland Act 1996* to replace the reference to "WorkCover" with "the Authority".

**Workers employed in Queensland**

*Clause 74* replaces section 104 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies, for the purposes of licensing self-insurers, when a worker is considered to be employed in Queensland.

**Whether applicant fit and proper**

*Clause 75* replaces section 105 of the *WorkCover Queensland Act 1996* which provides that WorkCover may consider any relevant matters, and must consider certain specific matters in determining whether an applicant is 'fit and proper' for the purposes of self-insurance licensing.

This clause modifies section 105(1), (2) and (2)(d) of the *WorkCover Queensland Act 1996* to replace references to "WorkCover" with "the Authority".

**Audit of self-insurer**

*Clause 76* replaces section 106 of the *WorkCover Queensland Act 1996* which authorises WorkCover, or suitably qualified or experienced persons

they may engage, to carry out an audit to assist WorkCover in deciding whether to issue, renew or continue a self-insurance licence.

This clause modifies section 106(1) and (2) of the *WorkCover Queensland Act 1996* to replace references to “WorkCover” with “the Authority”.

### **Decision on application for the issue of a licence**

*Clause 77* replaces section 107 of the *WorkCover Queensland Act 1996* which outlines WorkCover’s obligations in determining an application for a licence and the applicant’s right of appeal.

This clause modifies section 107(1), (2), (4), (5) and (6) of the *WorkCover Queensland Act 1996* to replace references to “WorkCover” with “the Authority”.

### **Duration of Licence**

*Clause 78* replaces section 108 of the *WorkCover Queensland Act 1996* which outlines the period for which a licence issued to a self-insurer will be valid, and has not been changed.

### **Renewal of Licence**

*Clause 79* replaces section 109 of the *WorkCover Queensland Act 1996* which outlines the process of licence renewal for self-insurers.

This clause modifies section 109(1), (2), (3) and (4) of the *WorkCover Queensland Act 1996* to replace references to “WorkCover” with “the Authority”.

### **Refusal of application for renewal of a licence**

*Clause 80* replaces section 110 of the *WorkCover Queensland Act 1996* which sets out the process that applies if WorkCover refuses an application for renewal of a self-insurance licence, and the applicant’s right of appeal.

This clause modifies section 110 of the *WorkCover Queensland Act 1996* to replace references to “WorkCover” throughout this section with “the Authority”.



**Annual levy payable**

*Clause 81* replaces section 111 of the *WorkCover Queensland Act 1996* requiring self-insurers to pay a levy for each financial year or part of a financial year of a licence.

This clause changes all references to “WorkCover” within section 111 of the *WorkCover Queensland Act 1996* to “the Authority”.

**Additional amount payable if the levy not paid**

*Clause 82* creates a new provision requiring self-insurers to pay the Authority an additional amount, calculated as prescribed in the regulation, if the self-insurer fails to pay the levy amount specified in a written notice by the due date.

**Conditions of licence**

*Clause 83* replaces section 112 of the *WorkCover Queensland Act 1996* which allows WorkCover to impose, and set guidelines for, conditions on a self-insurer’s licence.

This clause modifies section 112(1)(b) and (2) of the *WorkCover Queensland Act 1996* to replace references to “WorkCover” with “the Authority”.

**Bank guarantee or cash deposits**

*Clause 84* replaces section 113 of the *WorkCover Queensland Act 1996* outlining the unconditional bank guarantee or cash deposit requirements for self-insurers.

This clause modifies section 113(1) of the *WorkCover Queensland Act 1996* to require self-insurers to lodge an unconditional bank guarantee or cash deposit with the Authority as opposed to WorkCover.

Section 113(2) of the *WorkCover Queensland Act 1996* has been changed to clarify that the guarantee or deposit should be in favour of WorkCover. Stipulation as to the quantum of the bank guarantee or cash deposit remains unchanged.

Sections 113(3) and (4) of the *WorkCover Queensland Act 1996* have also been modified to replace the reference to “WorkCover” with “the Authority”.

**Investing cash deposits**

*Clause 85* replaces section 114 of the *WorkCover Queensland Act 1996* which outlines the guidelines to be followed by WorkCover for the investment of a cash deposit lodged by a self-insurer.

This clause modifies section 114(1) and (3) of the *WorkCover Queensland Act 1996* to replace references to “WorkCover” with “the Authority”.

**Reinsurance**

*Clause 86* replaces section 115 of the *WorkCover Queensland Act 1996* which outlines the requirements for reinsurance placed on the self-insurer.

This clause modifies section 115(1)(a) and (b), 115(4)(b) and 115(5) of the *WorkCover Queensland Act 1996* to replace references to “WorkCover” with “the Authority”.

**Self-insurer replaces WorkCover in liability for injury**

*Clause 87* replaces section 116 of the *WorkCover Queensland Act 1996* and has not been changed. It clarifies a self-insurer’s responsibility for all claims that result from events which occur during the period covered by the licence.

**Liability of group employers**

*Clause 88* replaces section 117 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that each member of a group self-insurer is jointly and severally liable for any liability or duty imposed by the Act on the group or a member of the group.

***Division 3—Change to membership of self-insurer*****Change in self-insurer’s membership**

*Clause 89* replaces section 118 of the *WorkCover Queensland Act 1996* which allows a group self-insurer to alter its membership subject to WorkCover’s written approval.

This clause modifies section 118(1), (2) and (4) of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “the Authority”.

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

*Clause 90* replaces section 118A of the *WorkCover Queensland Act 1996* which sets out the consequences of change in membership.

This clause modifies section 118A (2), (4), (6), (8) and (9) of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “the Authority”.

### **Continuation of membership in particular circumstances**

*Clause 91* replaces section 118B of the *WorkCover Queensland Act 1996* relating to the continuation of membership in particular circumstances.

This clause modifies section 118B of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the Authority”.

## ***Division 4—Powers, functions and obligations of self-insurer***

### **Powers of self-insurers**

*Clause 92* replaces section 119 of the *WorkCover Queensland Act 1996* which allows for self-insurers to have those same functions and powers of WorkCover which will enable them to manage statutory and common law claims. This clause lists the provisions of this Bill that contain the relevant functions and powers to be given to a self-insurer to allow them to manage statutory and common law claims.

#### **Documents must be kept by self-insurer (*Clause 93*)**

#### **Documents must be given to Authority on request (*Clause 94*)**

These clauses replace sections 120 and 121 of the *WorkCover Queensland Act 1996*. These sections outline the documents, including electronic data that must be kept by a self-insurer and provided to WorkCover on request. Claim documents may be used by WorkCover to manage claims after a self-insurer’s licence is cancelled or to conduct claims or rehabilitation management audits.

Both sections have been modified to change references to “WorkCover” in section 120(2) and section 121(1) and (2) to “the Authority”.

### ***Division 5—Cancellation of self-insurer’s licence***

#### **When licence may be cancelled**

*Clause 95* replaces section 122 of the *WorkCover Queensland Act 1996* which outlines the circumstances whereby a licence may be cancelled by WorkCover.

This clause changes the reference in section 122 of the *WorkCover Queensland Act 1996* to “WorkCover” to “the Authority”.

#### **Procedure for cancellation**

*Clause 96* replaces section 123 of the *WorkCover Queensland Act 1996* which outlines the procedures to be taken if WorkCover wishes to cancel a self-insurer’s licence.

This clause changes references in section 123(1), (2), (3) and (6) of the *WorkCover Queensland Act 1996* to “WorkCover” to “the Authority”.

#### **Self-insurer may ask for cancellation**

*Clause 97* replaces section 124 of the *WorkCover Queensland Act 1996* which outlines the process of cancellation to be used if a self-insurer wishes to cancel its licence.

This clause changes references in section 124(2) and (3)(b) of the *WorkCover Queensland Act 1996* to “WorkCover” to “the Authority”.

#### **Premium payable after cancellation**

*Clause 98* replaces section 125 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that if a self-insurer’s licence is cancelled the premium payable by the former self-insurer is to be calculated in accordance with a regulation.

#### **Transfer to WorkCover after cancellation (*Clause 99*)**

**Certain functions and powers to be held by former self-insurer after cancellation (*Clause 100*)**

These clauses replace sections 126 and 127 of the *WorkCover Queensland Act 1996* which specify the process to be followed after a licence is cancelled.

This clause does not make any changes to Section 126 of the *WorkCover Queensland Act 1996*, but modifies Section 127(2)(3) and (4) of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “the Authority”.

### **Recovery of ongoing costs from former self-insurer**

*Clause 101* replaces section 128 of the *WorkCover Queensland Act 1996* which allows WorkCover to recover the cost of managing claims from a former self-insurer.

This clause modifies section 128 of the *WorkCover Queensland Act 1996* to add new provisions highlighting the role of the Authority in the process.

### **Assessing liability after cancellation**

*Clause 102* replaces section 129 of the *WorkCover Queensland Act 1996* which outlines the process to be followed after a self-insurer’s licence is cancelled to assess the total cost of claims for which the self-insurer is still responsible.

This clause modifies section 129(6) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the Authority”.

### **Return of bank guarantee or cash deposit after cancellation**

*Clause 103* replaces section 130 of the *WorkCover Queensland Act 1996* which specifies the process whereby a former self-insurer may recover any remaining cash deposit or bank guarantee from WorkCover.

This clause modifies Sections 130(2), (3) and (4) of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “the Authority”, reflecting the Authority’s responsibility in the process.

### **Contingency account**

*Clause 104* replaces section 131 of the *WorkCover Queensland Act 1996* which empowers WorkCover to create and maintain a contingency account,

funded by self-insurers' annual levies, to meet any future liability against a former self-insurer.

This clause modifies section 131(1) of the *WorkCover Queensland Act 1996* to empower the Authority rather than WorkCover to create and maintain a contingency account.

## **CHAPTER 3—COMPENSATION**

The Bill replaces provisions contained in chapter 3 of the *WorkCover Queensland Act 1996* with only minor amendments. This chapter outlines a worker's entitlement to compensation and includes:

- requirements and procedures for claiming compensation
- when benefits are payable and when entitlement stops
- maximum entitlement
- weekly payments for total and partial incapacity
- lump sum compensation entitlements (including entitlements on the death of a worker).

### **PART 1—INTERPRETATION FOR CHAPTER 3**

#### **Meaning of “amount payable under an industrial instrument”**

*Clause 105* replaces section 132 of the *WorkCover Queensland Act 1996* and has not been changed. It provides a definition for the term “amount payable under an industrial instrument”.

#### **Meaning of “normal weekly earnings”**

*Clause 106* replaces section 133 of the *WorkCover Queensland Act 1996* and has not been changed. It defines the meaning of the term “normal weekly earnings”.

**Meaning of “QOTE”**

*Clause 107* replaces section 134 of the *WorkCover Queensland Act 1996* and has not been changed. It defines the meaning of “QOTE”.

**PART 2—COMPENSATION ENTITLEMENTS OF WORKERS GENERALLY*****Division 1—General statement of entitlement*****Compensation entitlement**

*Clause 108* replaces section 135 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that compensation is payable under the Act for an injury sustained by a worker. In the event that a worker’s injury is an aggravation mentioned in clause 32(3)(b), the worker is however only entitled to compensation for the injury to the extent of the effects of the aggravation.

**Who must pay compensation**

*Clause 109* replaces section 135A of the *WorkCover Queensland Act 1996* and has not changed. It obligates an employer who is a self-insurer to pay the compensation, otherwise WorkCover must pay compensation subject to Clause 66.

**Compensation entitlement can not be relinquished, assigned or subject to execution**

*Clause 110* replaces section 136 of the *WorkCover Queensland Act 1996* and has not been changed. It states that a person can not relinquish their right to compensation and that an amount payable as compensation to a worker can not be paid to another person, except where, for example, an employer continues to pay the worker’s wage during incapacity. In this case, WorkCover may reimburse the employer the worker’s compensation entitlement paid.

**Public Trustee may act for claimant**

*Clause 111* replaces section 137 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that the public trustee can make and prosecute an application for compensation, and act on a claimant's behalf (if requested by the claimant to do so).

**Public trustee may receive payments for minors**

*Clause 112* replaces section 138 of the *WorkCover Queensland Act 1996* which specifies that lump sum entitlements or redemptions to persons under 18 years of age may be paid to the public trustee on behalf of the person.

This clause modifies section 138(2) of the *WorkCover Queensland Act 1996* to change the reference to "WorkCover" to "the insurer".

***Division 2—Entitlement according to jurisdiction*****Employment must be connected with State**

*Clause 113* replaces section 139 of the *WorkCover Queensland Act 1996* with amendments introduced by the *WorkCover Queensland Amendment Act 2002* relating to new cross border arrangements passed for commencement from 1 July 2003.

In order to satisfy the terms of the Principles Agreement entered into by Queensland, section 139 of the *WorkCover Queensland Act 1996* has been replaced to provide for new arrangements applicable to interstate arrangements.

This Bill, as provided for by the *WorkCover Queensland Amendment Act 2002*, requires that employment must be connected with Queensland for compensation to be payable under the Act. The fact that a worker is outside of Queensland when the injury occurs does not prevent compensation being payable under the Act.

This Bill incorporates tests consistent with the Principles Agreement for determining the State in which a worker's employment is connected. Under the new arrangements, commencing 1 July 2003, a worker's employment will be connected with:



- (i) The State in which the worker usually works in that employment;  
or
- (ii) If no State or no one State is identified by paragraph (i), the State in which the worker is usually based for the purposes of that employment; or
- (iii) If no State or no one State is identified by paragraph (i) or (ii), the State in which the employer has its principal place of business.

If no State is identified by these tests, a worker's employment is connected with a State if the worker is in that State when their injury occurred and the worker is not entitled to compensation for the same matter under the laws of a place outside Australia.

Workers on ships (previously referred to as "seafarers") will be treated in the same way as other workers. However, compensation under the Act will not apply in relation to employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992 (Cwlth)* applies to the worker's employment.

### **Recognition of determination of State of connection in another State**

*Clause 114* incorporates amendments introduced to the *WorkCover Queensland Act 1996* by the *WorkCover Queensland Amendment Act 2002* regarding the new cross border arrangements.

This Bill, as provided for by the *WorkCover Queensland Amendment Act 2002*, provides that where a "designated" court of another State makes a determination of the State with which the worker's employment is connected for the purposes of a corresponding law, this determination is to be recognised as the State with which the worker's employment is connected. A definition of the terms "corresponding law" and "designated court" is also provided for in this Clause.

### ***Division 3—Overseas arrangements***

#### **Overseas arrangements**

*Clause 115* replaces section 140 of the *WorkCover Queensland Act 1996* outlining interstate and overseas arrangements.

This Bill incorporates changes in relation to section 140 of the *WorkCover Queensland Act 1996* made by the *WorkCover Queensland Amendment Act 2002* regarding new cross border arrangements.

The only changes made to Section 140 are to its heading to reflect that this section now only deals with “overseas” arrangements, and to remove references to ‘State or’ now that “interstate” arrangements are provided for separately.

The retention of Queensland’s overseas arrangements is consistent with the Principles Agreement reached with New South Wales and Victoria.

#### ***Division 4—Relationship of entitlement to other compensation***

##### **Entitlement ends if compensated under corresponding law**

*Clause 116* replaces section 141 of the *WorkCover Queensland Act 1996* and has not been changed. It outlines that a person’s entitlement to compensation stops if they receive any payment for their injury under an entitlement under a law of the Commonwealth or of a place other than Queensland.

##### **Compensation recoverable if later paid under corresponding law**

*Clause 117* replaces section 142 of the *WorkCover Queensland Act 1996*. It provides for a safeguard against ‘double dipping’, allowing WorkCover to recover an amount paid to a person for compensation for an injury if the person has received compensation under some other arrangement (e.g. Commonwealth payments) after the payment is made by WorkCover.

This clause introduces reference to “an insurer” at section 142 (1) and modifies the reference to “WorkCover” in section 142 (2) to read “the insurer”.

##### **Condition on compensation application if compensation available under this Act and corresponding law**

*Clause 118* replaces section 143 of the *WorkCover Queensland Act 1996* which sets out conditions on compensation application if compensation is available under this Act and corresponding law.

This clause modifies section 143(2) to change the reference to “WorkCover” to “the insurer”.

### **Entitlement to compensation ends if damages claim is finalised**

*Clause 119* replaces section 144 of the *WorkCover Queensland Act 1996* and has not been changed. It applies if a worker is entitled to compensation under this legislation and has a right of action against their employer, or other person, to recover damages independently of this legislation (e.g. compulsory third party, public liability). It states that entitlement to compensation ceases when a damages action is settled (either by agreement or judgement).

## **PART 3—COMPENSATION ENTITLEMENTS OF PARTICULAR WORKERS**

### *Division 1—Workers on Ships*

#### **Application of div 1**

*Clause 120* replaces section 145 of the *WorkCover Queensland Act 1996* incorporating amendments in the *WorkCover Queensland Amendment Act 2002* regarding new cross border arrangements, and applies to an injury sustained by a worker employed on a ship when the injury was sustained.

#### **Payment on account of workers on ships**

*Clause 121* replaces section 146 of the *WorkCover Queensland Act 1996* incorporating amendments in the *WorkCover Queensland Amendment Act 2002* regarding new cross border arrangements relating to workers on ships.

The definition of “seafarer” provided for by section 146 of the *WorkCover Queensland Act 1996* has been replaced with the definition “workers on ships”. This change in definition is consistent with the Principles Agreement reached by Queensland, New South Wales and Victoria which provided that, as far as possible, workers on ships would be treated the same as other workers.

This clause also omits the entitlement provisions of “seafarers” under sections 145, 146 and 147 of the *WorkCover Queensland Act 1996*. The Bill intends that workers on ships will be treated in the same way as other workers.

Other than amendments to reflect the repeal of the definition of “seafarer”, provisions in section 148 of the *WorkCover Queensland Act 1996* have been retained.

### ***Division 2—Miners***

#### **Application of div 2**

*Clause 122* replaces section 149 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that this division applies to an injury sustained by a worker who was a minor when the injury was sustained, and the injury is the disease silicosis or anthraco-silicosis.

#### **Entitlements of miners**

*Clause 123* replaces section 150 of the *WorkCover Queensland Act 1996* and has not been changed. It outlines requirements for entitlement of miners with silicosis or anthraco-silicosis.

### ***Division 3—Workers with industrial deafness***

#### **Application of div 3**

*Clause 124* replaces section 151 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that the division applies to a worker who has sustained an injury that is industrial deafness.

#### **Entitlements for industrial deafness**

*Clause 125* replaces section 152 of the *WorkCover Queensland Act 1996* which specifies the conditions for a worker’s entitlement for industrial deafness.

This clause modifies section 152(5) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the insurer”.

**Further application for compensation for industrial deafness**

*Clause 126* replaces section 153 of the *WorkCover Queensland Act* which outlines the conditions for a worker's entitlement for further claims for industrial deafness.

This clause modifies section 153(2) of the *WorkCover Queensland Act 1996* to change the reference to "WorkCover" to "the insurer".

***Division 4—Workers with prescribed disfigurement*****Application of div 4**

*Clause 127* replaces section 154 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that the division applies to a worker who has sustained an injury that results in prescribed disfigurement.

**Entitlements of worker who sustains prescribed disfigurement**

*Clause 128* replaces section 155 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that a worker who sustains prescribed disfigurement is only entitled to lump sum compensation for their prescribed disfigurement.

**PART 4—COMPENSATION AFFECTED BY WORKERS' CONDUCT****Self-inflicted injuries**

*Clause 129* replaces section 156 of the *WorkCover Queensland Act 1996* and has not been changed. It prohibits compensation from being payable for an injury sustained by a worker where the injury is intentionally self-inflicted.

**Injury caused by misconduct**

*Clause 130* replaces section 157 of the *WorkCover Queensland Act* which specifies instances where compensation is and is not payable for an

injury sustained by a worker that is caused by the worker's serious and wilful misconduct. It also provides a definition for the term "serious and wilful misconduct" which is unchanged from that provided for in the *WorkCover Queensland Act 1996*.

This clause modifies section 157(1)(b), (3) and (3)(b) of the *WorkCover Queensland Act 1996* to change the references to "WorkCover" to "the insurer".

## **PART 5—COMPENSATION APPLICATION AND OTHER PROCEDURES**

### **Time for applying**

*Clause 131* replaces section 158 of the *WorkCover Queensland Act 1996* which specifies the time limitation for lodging an application for compensation.

This clause modifies section 158(2), (4) and (5) of the *WorkCover Queensland Act 1996* to change the reference to "WorkCover" to "insurer".

### **Applying for compensation**

*Clause 132* replaces section 159 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that an application for compensation must be made in the approved form by the person claiming compensation and must be lodged at an office of WorkCover; or if the employer is a self-insurer, with the self-insurer.

### **Employer's duty to report injury**

*Clause 133* replaces section 160 of the *WorkCover Queensland Act 1996* and has not been changed. It sets out an employer's duty, other than an employer who is a self-insurers, to report an injury for which compensation may be payable.

**Decision about application for compensation**

*Clause 134* replaces section 161 of the *WorkCover Queensland Act*. It states that an application for compensation must be decided by WorkCover, in the first instance, within six months. Claimants may apply for review under chapter 9 after that time if WorkCover has not decided the application.

This clause modifies section 161(1), (2), (3), (4), (5) and (6) of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “the insurer”.

**Examination by registered person**

*Clause 135* replaces section 162 of the *WorkCover Queensland Act 1996*. It allows WorkCover to require a claimant who is applying for compensation (excluding dependants), or a worker after whose claim has been allowed, to submit to a personal medical examination by a registered person for the purpose of deciding an application or managing a claim.

This clause modifies section 162(1) and (2) of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “the insurer”.

**Worker must notify return to work or engagement in a calling**

*Clause 136* replaces section 163 of the *WorkCover Queensland Act 1996* and has not been changed. It requires a worker receiving compensation for an injury to notify WorkCover or a self-insurer in writing, within 14 days of their return to work or engagement in a calling.

**Suspension of compensation during term of imprisonment**

*Clause 137* replaces section 164 of the *WorkCover Queensland Act 1996*. It empowers WorkCover to suspend compensation payable to a worker if the worker is serving a term of imprisonment.

This clause modifies section 164 of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the insurer”.

**Compensation not payable during suspension**

*Clause 138* replaces section 165 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that no compensation (including weekly benefits, medical expenses, rehabilitation costs etc.) is payable during a period of suspension.

**PART 6—MAXIMUM STATUTORY COMPENSATION****Application of pt 6**

*Clause 139* replaces section 166 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that this division applies to one injury, or multiple injuries, sustained by a worker in any one event.

**Maximum entitlement**

*Clause 140* replaces section 167 of the *WorkCover Queensland Act 1996* which specifies the maximum amount of compensation payable for weekly compensation and lump sum compensation (other than additional lump sum under part 9 of this chapter) for any one event.

This clause has increased the quantum of the maximum entitlement amounts specified in section 167 of the *WorkCover Queensland Act 1996* from \$150,000 to \$157,955 to incorporate recent QOTE increases. This amount is reviewed annually - refer clause 205 of the Bill - and variations are notified by Industrial Gazette notice. Adjustments to the QOTE amounts payable from the commencement of the provisions of this Bill will be notified by Industrial Gazette notice on 1 July 2003.

**PART 7—PAYMENT OF COMPENSATION****Time from which compensation is payable**

*Clause 141* replaces section 168 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies the time from which compensation is payable.



## **PART 8—COMPENSATION FOR DAY OF INJURY**

### **Application of pt 8**

*Clause 142* replaces section 168A of the *WorkCover Queensland Act 1996* and has not been changed. It states that this part applies only if, under a statutory instrument, a worker is not entitled to be paid for the whole of the day on which the worker stops work because of an injury.

### **Definition for pt 8**

*Clause 143* replaces section 168B of the *WorkCover Queensland Act 1996* and has not been changed. It provides a definition for the term “compensation under this part”.

### **When employer must pay worker for day of injury**

*Clause 144* replaces section 168C of the *WorkCover Queensland Act 1996* and has not been changed. It stipulates when an employer must pay a worker for day of injury.

## **PART 9—WEEKLY PAYMENT OF COMPENSATION**

### *Division 1—Application*

### **Application and object of pt 9**

*Clause 145* replaces section 169 of the *WorkCover Queensland Act 1996* and has not been changed. It states that this part applies if a worker is totally or partially incapacitated because of injury for which compensation is payable. It further states the objective of this part as being to provide for weekly payments to the worker during the period of incapacity.

***Division 2—Advances on weekly payments*****Advances on account**

*Clause 146* replaces section 170 of the *WorkCover Queensland Act 1996* which allows WorkCover to advance to a worker amounts on account of weekly payments of compensation.

This clause modifies section 170(1) and (2) of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “insurer”.

***Division 3—Adjustment of entitlements under pt 9*****Worker can not receive more than if injury had not been sustained**

*Clause 147* replaces section 171 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that a worker must not receive payments under this part that are more than the worker would have received from their employment with the employer if the worker were at work and the injury had not happened.

**Regard to other benefits for workers**

*Clause 148* replaces section 172 of the *WorkCover Queensland Act*. It specifies that, in assessing the amount of weekly compensation payable, WorkCover may have regard to other entitlements or payments for the injury/incapacity made to the worker and reduce the amount of weekly compensation accordingly e.g. superannuation sickness benefits.

This clause modifies section 172 of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the insurer”.

***Division 4—Entitlement for total incapacity******Subdivision 1—Application of div 4*****Entitlement to weekly payments**

*Clause 149* replaces section 173 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies the compensation payable under this division i.e. weekly payments to totally incapacitated workers or persons.

***Subdivision 2—Workers*****Total incapacity — workers whose employment is governed by an industrial instrument**

*Clause 150* replaces section 174 of the *WorkCover Queensland Act 1996* which specifies the weekly payment to a totally incapacitated worker whose employment is governed by an industrial instrument.

This clause modifies section 174(1)(c)(i) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the insurer”.

**Total incapacity — workers whose employment is not governed by an industrial instrument**

*Clause 151* replaces section 175 of the *WorkCover Queensland Act* which specifies the weekly payment to a totally incapacitated worker whose employment is *not* governed by an industrial instrument.

This clause modifies section 175(1)(c)(i) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the insurer”.

**Total incapacity — certain contract workers**

*Clause 152* replaces section 176 of the *WorkCover Queensland Act 1996* which specifies the weekly payment to a totally incapacitated contract worker as defined in this clause.

This clause modifies section 176(1)(c)(i) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the insurer”.

**Total incapacity — casual or part-time workers**

*Clause 153* replaces section 177 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies the amount of weekly payment to a totally incapacitated worker engaged in casual or part-time employment.

**Total incapacity — workers receiving certain benefits under Commonwealth law**

*Clause 154* replaces section 178 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies the compensation payable to a totally incapacitated worker who, when the worker was injured, was receiving an age, disability support, or class B widow pension under a Commonwealth law.

**Total incapacity — workers with more than 1 employer**

*Clause 155* replaces section 179 of the *WorkCover Queensland Act 1996* which allows WorkCover to determine the weekly payment for a worker who is employed by more than one employer.

This clause modifies section 179(2) and (3) of the *WorkCover Queensland Act 1996* to change the references to “WorkCover” to “the insurer”.

***Subdivision 3—Persons entitled to compensation other than workers, students and eligible persons*****Application of sdiv3**

*Clause 156* replaces section 180 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that this subdivision applies to a person entitled to compensation, other than a worker, a student or an eligible person.

**Total incapacity**

*Clause 157* replaces section 181 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies the amount of weekly payment to a totally incapacitated person other than a worker or a student.

***Subdivision 4—Eligible persons*****Application of sdiv 4**

*Clause 158* replaces section 181A of the *WorkCover Queensland Act 1996* and has not been changed. It provides that this subdivision applies to a person entitled to compensation as an eligible person.

**Total Incapacity**

*Clause 159* replaces section 181B of the *WorkCover Queensland Act 1996* and has not been changed. It specifies the amount of weekly payment to an eligible person.

***Subdivision 5—Reference to tribunal*****Total incapacity—reference about impairment to medical assessment tribunal**

*Clause 160* replaces section 182 of the *WorkCover Queensland Act 1996*. It specifies that the degree of impairment that could result from the injury for determining weekly payment after two years must be decided by a medical assessment tribunal if there is no agreement between WorkCover and the worker.

This clause modifies section 182 of the *WorkCover Queensland Act 1996* to change all references to “WorkCover” to “insurer”.

***Division 5—Entitlement for partial incapacity******Subdivision 1—Persons entitled to compensation other than eligible persons*****Application of sdiv 1**

*Clause 161* replaces section 182A of the *WorkCover Queensland Act 1996* and has not been changed. It provides that this subdivision applies to a person entitled to compensation, other than an eligible person.

**Definitions for sdiv 1**

*Clause 162* replaces section 183 of the *WorkCover Queensland Act 1996* and has not been changed. It defines the terms used in the formula for calculating partial incapacity entitlement.

**Partial incapacity**

*Clause 163* replaces section 184 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies the formula to be used in calculating weekly payment to a partially incapacitated worker i.e. a worker who can return to, or continue at, work on reduced hours.

***Subdivision 2—Eligible persons*****Application of sdiv 2**

*Clause 164* replaces section 184A of the *WorkCover Queensland Act 1996* which provides that this subdivision applies to an eligible person, and has not been changed.

**Definitions for sdiv 2**

*Clause 165* replaces section 184B of the *WorkCover Queensland Act 1996* which defines the terms used in the formula for calculating partial incapacity entitlement, and has not been changed.

**Partial incapacity**

*Clause 166* replaces section 184C of the *WorkCover Queensland Act 1996*, and has not been changed. It specifies the formula to be used in calculating weekly payment to a partially incapacitated.

### ***Subdivison 3—Requiring Information***

#### **Insurer may require information from partially incapacitated worker or person**

*Clause 167* replaces section 185 of the *WorkCover Queensland Act*. It allows WorkCover to require a partially incapacitated worker to give particulars of their employment and earnings during the period of partial incapacity.

This clause modifies section 185 of the *WorkCover Queensland Act 1996* to change all references to “WorkCover” to “insurer”.

### ***Division 6—Review of compensation***

#### **Review of compensation and associated payments**

*Clause 168* replaces section 186 of the *WorkCover Queensland Act 1996* allowing WorkCover to review an entitlement to compensation, and terminate or suspend entitlements following a review.

This clause modifies section 186(1) and (2) of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “insurer”.

#### **Review of weekly payments — worker under 18**

*Clause 169* replaces section 187 of the *WorkCover Queensland Act 1996* and has not been changed. It applies to workers receiving weekly payments who, when the injury happened, were under 18 years of age. If a review takes place more than 12 months after the injury happened, WorkCover may increase the amount payable to the worker from the date of review. This allows payments to these workers to reflect change in remuneration according to age under the industrial instrument.

#### **Recovery of compensation overpaid**

*Clause 170* replaces section 188 of the *WorkCover Queensland Act 1996* which allows WorkCover to recover an amount paid to a person that is more than the amount to which they are entitled.

This clause modifies section 188(2) of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “the insurer”.

***Division 7—Redemption of weekly payments***

**Redemption — worker receiving weekly payments for at least 2 years** (*Clause 171*)

**Redemption — worker moves interstate** (*Clause 172*)

**Redemption — worker moves abroad** (*Clause 173*)

These clauses replace sections 189, 190 and 191 of the *WorkCover Queensland Act 1996* respectively.

These clauses enable WorkCover, where the workers' injury is not stable and stationery for the purposes of assessing permanent impairment, to discharge the liability to make weekly payments by making a lump sum redemption payment to the worker in an amount agreed between WorkCover and the worker.

This clause modifies sections 189(1)(b) and (2), 190(1)(b) and (2), and 191(3) of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "the insurer".

**Calculation of redemption payment**

*Clause 174* replaces section 192 of the *WorkCover Queensland Act 1996*. It provides the formula for calculating the maximum amount payable for redemption of weekly payments.

This clause modifies section 192(1) of the *WorkCover Queensland Act 1996* to change the reference to "WorkCover" to "the insurer".

**Review of redemption payment**

*Clause 175* replaces section 193 of the *WorkCover Queensland Act 1996* which allows for a worker to request a review of the redemption payment within 12 months after the payment has been made.

This clause modifies section 193(1) and (2) of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "the insurer".



**No compensation after redemption payment made**

*Clause 176* replaces section 194 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that once a redemption payment has been paid to a worker, they have no further entitlement to compensation for the injury.

***Division 8—When entitlement to weekly payments stops*****When weekly payments stop**

*Clause 177* replaces section 195 of the *WorkCover Queensland Act 1996* which specifies when a worker's entitlement to weekly payments ceases and has not been changed.

**PART 10—ENTITLEMENT TO COMPENSATION FOR  
PERMANENT IMPAIRMENT*****Division 1—General Statement*****Entitlement to assessment of permanent impairment and lump sum compensation**

*Clause 178* replaces section 196 of the *WorkCover Queensland Act 1996*. It provides for an assessment to determine if a worker has sustained a permanent impairment and if so, to provide for payment or an offer of lump sum compensation for the permanent impairment.

This clause modifies section 196(1) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “insurer”.

***Division 2—Assessment of permanent impairment under table of injuries*****Assessment of permanent impairment**

*Clause 179* replaces section 197 of the *WorkCover Queensland Act 1996* which specifies how the degree of permanent impairment is to be assessed and has not been changed.

This clause modifies section 197 of the *WorkCover Queensland Act 1996* to change all references to “WorkCover” to “insurer”.

**Calculation of lump sum compensation**

*Clause 180* replaces section 198 of the *WorkCover Queensland Act 1996*. It specifies that the amount of lump sum compensation is the amount worked out under a regulation having regard to the worker’s degree of permanent impairment and the table of injuries. The regulation specifies the method to be used to calculate a lump sum entitlement from the degree of permanent impairment for an injury.

This clause also specifies the date of calculation of the lump sum as the day the offer of lump sum has been made.

This clause modifies section 198(3) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the insurer”.

**Regard to previous entitlement to lump sum compensation for injury other than industrial deafness**

*Clause 181* replaces section 199 of the *WorkCover Queensland Act 1996* and has not been changed. It applies if a worker has an entitlement for injury to a part of the worker’s body and the worker sustains further injury to the same part of the body. Lump sum compensation for the later injury must be reduced by the entitlement from the previous injury.

**Regard to previous assessment for industrial deafness**

*Clause 182* replaces section 200 of the *WorkCover Queensland Act 1996* and has not been changed. It applies if a worker has previously had a lump sum compensation entitlement for industrial deafness and the worker sustains further industrial deafness. Compensation for the injury must be

reduced by the percentage loss of hearing for which the worker was previously assessed.

### **Calculation of WRI**

*Clause 183* replaces section 201 of the *WorkCover Queensland Act 1996*. It specifies that WorkCover must calculate the worker's work related impairment if permanent impairment has been assessed as specified in this division.

This clause modifies section 201(1) of the *WorkCover Queensland Act 1996* to change the reference to "WorkCover" to "the insurer".

### ***Division 3—Notification of assessment of permanent impairment***

#### **Application of div 3**

*Clause 184* replaces section 202 of the *WorkCover Queensland Act 1996* which outlines that this division applies if permanent impairment has been assessed and has not been changed.

#### **Insurer to give notice of assessment of permanent impairment**

*Clause 185* replaces section 203 of the *WorkCover Queensland Act 1996*. It specifies that WorkCover must, within 14 days of receiving an assessment of a worker's permanent impairment, give the worker a notice of assessment. However, where multiple injuries have been sustained by a worker in an event, WorkCover must give the notice only after the worker's degree of permanent impairment from all the injuries has been assessed.

This clause modifies section 203(1),(2) and (4) of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "the insurer".

#### **Worker's disagreement with assessment of permanent impairment**

*Clause 186* replaces section 204 of the *WorkCover Queensland Act 1996*. It outlines the process if the worker disagrees with the assessment of permanent impairment that has not been assessed by a medical assessment tribunal. Also stipulated is the right of the worker to dispute the notice of claim within 28 days after the notice of claim is given. In this

circumstance, the degree of permanent impairment may then be decided only by a medical assessment tribunal.

This clause modifies section 204(2) and (4) of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “the insurer”.

### **Offer of lump sum compensation**

*Clause 187* replaces section 205 of the *WorkCover Queensland Act 1996* which clarifies that the notice of assessment must contain an offer where a worker has an entitlement to lump sum compensation.

This clause modifies section 205 of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the insurer”.

### **Worker’s decision about lump sum compensation—WRI 20% or more**

*Clause 188* replaces section 206 of the *WorkCover Queensland Act 1996*. It applies if the worker has a psychiatric or psychological injury that results in a WRI of the worker of 20% or more, or another injury that results in a WRI of the worker of 20% or more, and the worker is entitled to lump sum compensation. The worker may accept or defer a decision about the offer by giving WorkCover a written notice within the decision period of 28 days. The worker is taken to have deferred the decision if, within the decision period, the worker does not advise WorkCover that the offer is accepted, or the worker wants to defer the decision.

This clause modifies section 206(2)(3) and (4) of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “the insurer”.

### **Worker’s decision about lump sum compensation—WRI less than 20% or no WRI**

*Clause 189* replaces section 207 of the *WorkCover Queensland Act 1996*. It applies if the worker has a psychiatric or psychological injury that results in a WRI of the worker of less than 20%, or another injury that results in a WRI of the worker of less than 20%, and the worker is entitled to lump sum compensation, or the worker has an injury that does not result in any WRI of the worker. For a worker a WRI of less than 20% or an injury that does not result in a WRI when giving the notice of assessment, WorkCover must advise the worker they must make an irrevocable election between

accepting lump sum compensation or seeking damages. The worker may accept, reject or defer a decision about the offer within the decision period after the offer is made by giving a written notice to WorkCover.

This clause modifies section 207 of the *WorkCover Queensland Act 1996* to change all references to “WorkCover” to “the insurer”.

### **No further compensation after fixed time**

*Clause 190* replaces section 208 of the *WorkCover Queensland Act 1996*. It specifies that no further compensation is payable (including weekly payments, medical, rehabilitation or other expenses) after the worker notifies WorkCover of their decision or after 28 days after receiving the offer, whichever is first. This does not limit the worker’s entitlement to payment of the lump sum or any additional lump sum compensation (if entitled).

This clause modifies section 208(2)(a) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the insurer”.

## ***Division 4—Additional lump sum compensation***

### **Application of div 4**

*Clause 191* replaces section 209 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that this division applies if the worker’s work related impairment has been calculated. Entitlements in this division are based on the level of work related impairment.

### **Additional lump sum compensation for certain workers**

*Clause 192* replaces section 210 of the *WorkCover Queensland Act 1996* which provides for the entitlement of persons with a WRI of 50% or more, and has not been changed.

This clause has increased the quantum of the maximum entitlement amounts specified in section 167 of the *WorkCover Queensland Act 1996* from \$150,000 to \$157,955 to incorporate recent QOTE increases. This amount is reviewed annually - refer clause 205 of the Bill - and variations are notified by Industrial Gazette notice. Adjustments to the QOTE amounts payable from the commencement of the provisions of this Bill will be notified by Industrial Gazette notice on 1 July 2003.

**Additional lump sum compensation for gratuitous care**

*Clause 193* replaces section 211 of the *WorkCover Queensland Act 1996* which specifies a worker's entitlement for additional lump sum compensation for gratuitous care.

This clause modifies section 211(4), (5), (6) and (7) of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "insurer". Section 211(6) of the *WorkCover Queensland Act 1996* was also been modified with the quantum of additional compensation being increased from \$150,000 to \$195,960 as a result of an increase to these benefits in support of changes to the damages provisions contained in the *WorkCover Queensland Amendment Act 2001*.

**PART 11—COMPENSATION ON WORKER'S DEATH****Application and object of pt 11**

*Clause 194* replaces section 212 of the *WorkCover Queensland Act 1996*. It specifies that this part applies if a worker dies because of an injury, and provides for payment of particular expenses arising from the worker's injury and death and compensation to persons having an entitlement to compensation under this part.

This clause modifies section 212 of the *WorkCover Queensland Act 1996* to change the reference to "WorkCover" to "an insurer".

**Definition for pt 11**

*Clause 195* replaces section 213 of the *WorkCover Queensland Act 1996* which provides a definition for "student", and has not been changed.

**To whom payments made for death of worker**

*Clause 196* replaces section 214 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies to whom compensation for the death of a worker is payable.

**Total and partial dependants**

*Clause 197* replaces section 215 of the *WorkCover Queensland Act 1996* and has not been changed. It allows compensation to be apportioned to the dependants of the worker.

**Dependant's compensation payable to public trustee**

*Clause 198* replaces section 216 of the *WorkCover Queensland Act 1996*. It allows WorkCover to pay an amount of compensation payable to a dependant to the public trustee for the dependant's benefit.

This clause modifies section 216 of the *WorkCover Queensland Act 1996* to change the reference to "WorkCover" to "an insurer".

**Medical and funeral expenses must be paid by insurer**

*Clause 199* replaces section 217 of the *WorkCover Queensland Act 1996*. It provides that WorkCover must pay the reasonable expenses of the medical treatment of, or attendance on, the worker; and for the worker's funeral.

This clause modifies section 217 of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "an insurer".

**Total Dependency**

*Clause 200* replaces section 218 of the *WorkCover Queensland Act 1996*. This clause applies in circumstances where at least 1 of the worker's dependants was, at the time of the worker's death, totally dependant on the worker's earnings, and prescribes the amount of compensation payable for the worker's dependants.

This clause has increased the quantum of compensation payable specified in section 218(2)(a) of the *WorkCover Queensland Act 1996* from \$250,000 to \$263,255; and in section 218(2)(b) of the *WorkCover Queensland Act 1996* from \$9,375 to \$9,875 to incorporate recent QOTE increases. This amount is reviewed annually - refer clause 205 of the Bill - and variations are notified by Industrial Gazette notice. Adjustments to the QOTE amounts payable from the commencement of the provisions of this Bill will be notified by Industrial Gazette notice on 1 July 2003.

**Partial Dependency**

*Clause 201* replaces section 219 of the *WorkCover Queensland Act 1996*. This clause applies if all of the worker's dependants were, at the time of the worker's death, partially dependant on the worker's earnings, and prescribes the amount of compensation payable in such circumstances.

This clause modifies section 219(2)(a) of the *WorkCover Queensland Act 1996* to change the reference to "WorkCover" to "the insurer".

**Workers under 21**

*Clause 202* replaces section 220 of the *WorkCover Queensland Act 1996*. This clause is applicable if the worker was under 21 and left a parent ordinarily resident in the State but no dependants. The amount of compensation payable in such circumstances, and in circumstances where more than 1 parent is entitled to compensation is prescribed in this section.

This clause modifies section 220(3)(b) of the *WorkCover Queensland Act 1996* to change the reference to "WorkCover" to "the insurer". This clause has also increased the quantum of compensation payable under section 218(2) and (3) of the *WorkCover Queensland Act 1996* from \$11,395 to \$14,905 to incorporate recent QOTE increases. This amount is reviewed annually – refer clause 205 of the Bill- and variations are notified by Industrial Gazette notice. Adjustments to the QOTE amounts payable from the commencement of the provisions of this Bill will be notified by Industrial Gazette notice on 1 July 2003.

**Reduction of amount payable on death**

*Clause 203* replaces section 221 of the *WorkCover Queensland Act 1996* and has not been changed. It provides for the reduction of the amount of compensation payable if weekly payments of compensation, a redemption payment, or lump sum payments have been made for an injury sustained by a worker that results in the worker's death.

**Reduced compensation if dependant dies before payment made**

*Clause 204* replaces section 222 of the *WorkCover Queensland Act 1996* and has not been changed. It provides for compensation entitlements in circumstances where the worker is survived by a dependant who dies before payment of compensation is made for the dependant's benefit.



## **PART 12—AUTOMATIC VARIATION OF COMPENSATION PAYABLE**

### **Variation of payment for injuries**

*Clause 205* replaces section 223 of the *WorkCover Queensland Act 1996* which allows for a variation in the dollar amounts referenced in the parts specified in the clause (eg. Maximum statutory compensation) when QOTE is varied.

The only change made to section 223 of the *WorkCover Queensland Act 1996* relates to section 223(3) which provides that changes in such figures are to be published in the industrial gazette. This clause modifies the section to specify that this is the responsibility of the Authority.

### **Construing entitlements in light of variation**

*Clause 206* replaces section 224 of the *WorkCover Queensland Act 1996* and has not been changed. It states that a payment varied because of variations in QOTE is taken to be the worker's entitlement.

### **Application of part to existing benefits**

*Clause 207* replaces section 225 of the *WorkCover Queensland Act 1996* and has not been changed. It allows for benefits paid and entitlements accrued under a former Act to be carried over into this Bill.

## **CHAPTER 4—INJURY MANAGEMENT**

The Bill replaces provisions contained in chapter 4 of the *WorkCover Queensland Act 1996* with only minor amendments which reflect the role of the new regulatory Authority established by the Bill. This chapter specifies an insurer's responsibility and liability for medical treatment, hospitalisation, travel and rehabilitation. It also specifies employers' and workers' obligations regarding rehabilitation.

## **PART 1—APPLICATION**

### **Application and object of ch 4**

*Clause 208* replaces section 226 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that this chapter applies if a worker has sustained an injury for which compensation is payable, and that its objective is to provide for appropriate medical treatment, hospitalisation and rehabilitation of the worker.

## **PART 2—LIABILITY FOR MEDICAL TREATMENT, HOSPITALISATION AND EXPENSES**

### *Division 1—Application and general statement of liability*

### **Application and pt 2**

*Clause 209* replaces section 227 of the *WorkCover Queensland Act 1996* and has not been changed. It states that this part applies if medical treatment or hospitalisation of a worker is required for the management of an injury sustained by the worker.

### **Insurer's liability for medical treatment and hospitalisation**

*Clause 210* replaces section 228 of the *WorkCover Queensland Act 1996* which specifies that WorkCover is liable for the cost of medical treatment and hospitalisation that the insurer considers to be reasonable, having regard to the injury.

This clause modifies section 228(1) of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the insurer”. The only other change made to section 228 of the *WorkCover Queensland Act 1996* relates to the reference in section 228(2) to WorkCover being able to impose conditions on the provision of medical treatment under the table of costs. This will now be the responsibility of the new regulatory Authority.

***Division 2—Medical treatment costs*****Extent of liability for medical treatment**

*Clause 211* replaces section 229 of the *WorkCover Queensland Act 1996* which outlines the extent of WorkCover's liability for the cost of medical treatment.

This clause modifies section 229 of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "the insurer".

**Extent of liability for prosthetic expenses**

*Clause 212* replaces section 230 of the *WorkCover Queensland Act 1996* which outlines the extent of WorkCover's liability for prosthetic expenses.

This clause modifies section 230 of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "the insurer".

**Accounts for medical treatment, certificate in approved form**

*Clause 213* replaces section 231 of the *WorkCover Queensland Act 1996* which applies where WorkCover is liable for the costs of medical treatment, and requires accounts for medical treatment to be sent to WorkCover promptly and within 2 months after the treatment is completed. Information to be included in such accounts is prescribed in this clause.

This clause modifies section 231 of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "insurer".

**Review of costs payable**

*Clause 214* replaces section 232 of the *WorkCover Queensland Act 1996* which allows a provider of medical treatment to request WorkCover to review the cost payable if the provider considers that, because of special circumstances, the cost is inadequate in a particular case.

This clause modifies section 232 of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "the insurer".

### ***Division 3—Hospitalisation***

#### **Definition for div 3**

*Clause 215* replaces section 233 of the *WorkCover Queensland Act 1996* and has not been changed. It provides a definition for the terms “elective hospitalisation”, “private hospital” and “public hospital”.

#### **Extent of liability for period of hospitalisation**

*Clause 216* replaces section 234 of the *WorkCover Queensland Act 1996* which sets out WorkCover’s liability for the cost of hospitalisation.

This clause modifies section 234 of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “insurer”.

#### **Cost of hospitalisation**

*Clause 217* replaces section 235 of the *WorkCover Queensland Act 1996* which specifies that the cost of hospitalisation is the cost for providing the facility where the procedure is undertaken. The costs payable for hospitalisation are those specified in an industrial gazette notice.

This clause modifies section 235 of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “insurer”. Also changed is the reference in section 235(3)(a) of the *WorkCover Queensland Act 1996* to “WorkCover” which has been changed to “the Authority”.

#### **Maximum liability for cost of hospitalisation**

*Clause 218* replaces section 236 of the *WorkCover Queensland Act 1996* which specifies the maximum liability of cost of hospitalisation.

This clause modifies section 236 of the *WorkCover Queensland Act 1996* to change references to “WorkCover” to “insurer”.

***Division 4—Travelling expenses*****Extent of liability for travelling expenses**

*Clause 219* replaces section 237 of the *WorkCover Queensland Act 1996* which specifies WorkCover's liability for reasonable expenses incurred by a worker for necessary travel to obtain medical treatment, rehabilitation, attending a medical assessment tribunal, or undertaking examination by a registered person.

This clause modifies section 237 of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "insurer".

**PART 3—RESPONSIBILITY FOR REHABILITATION*****Division 1—Responsibility for rehabilitation*****Insurer's responsibility for worker's rehabilitation**

*Clause 220* replaces section 238 of the *WorkCover Queensland Act 1996* which specifies WorkCover's responsibility to ensure the rehabilitation of injured workers.

This clause modifies section 238(1) of the *WorkCover Queensland Act 1996* to change the reference to "WorkCover" to "an insurer". In addition, this clause removes section 238(2) requiring WorkCover to provide or approve workplace rehabilitation training courses for employers; and to ensure that rehabilitation programs are provided for workers. These functions will now be the responsibility of the Authority (refer *Clause 221* below).

**Authority's responsibility for rehabilitation**

*Clause 221* specifies the new authority's responsibilities in regard to rehabilitation which largely emulates those previously applying to WorkCover in section 238(2) of the *WorkCover Queensland Act 1996*. This clause prescribes that it is the Authority's responsibility to provide rehabilitation advisory services; approve or provide workplace

rehabilitation courses; and ensure employers and insurers comply with their rehabilitation requirements under the Act.

### ***Division 2—Insurer's liability for rehabilitation fees and costs***

#### **Liability for rehabilitation fees and costs**

*Clause 222* replaces section 239 of the *WorkCover Queensland Act 1996* which sets out WorkCover's liability for the costs of rehabilitation of injured workers.

This clause modifies section 239 of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "insurer". Also changed is the reference in section 239(3) of the *WorkCover Queensland Act 1996* to "WorkCover" which has been changed to "the Authority".

#### **Extent of Liability for rehabilitation fees and costs**

*Clause 223* replaces section 240 of the *WorkCover Queensland Act 1996* which outlines the extent of WorkCover's liability for the cost of rehabilitation.

This clause modifies section 240 of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "insurer".

### ***Division 3—Caring allowance***

#### **Liability for caring allowance**

*Clause 224* replaces section 241 of the *WorkCover Queensland Act 1996* which provides for the payment of a caring allowance in certain circumstances.

This clause modifies section 241 of the *WorkCover Queensland Act 1996* to change references to "WorkCover" to "insurer".

#### **Extent of liability for caring allowance**

*Clause 225* replaces section 242 of the *WorkCover Queensland Act 1996* which allows WorkCover to pay the caring allowance in the way prescribed under a regulation and to, or on account of, the person providing the care.

This clause modifies section 242 of the *WorkCover Queensland Act 1996* to change the reference to “WorkCover” to “the insurer”.

## **PART 4—EMPLOYER’S OBLIGATION FOR REHABILITATION**

### **Employer’s obligation to appoint rehabilitation coordinator**

*Clause 226* replaces section 243 of the *WorkCover Queensland Act 1996* which requires employers who employ 30 or more workers at a workplace to appoint a rehabilitation coordinator.

The only change made by this clause relates to a change in reference at section 243(3)(b) and (4) of the *WorkCover Queensland Act 1996* from “WorkCover” to “the Authority”.

### **Employer’s obligation to have workplace rehabilitation policy and procedures**

*Clause 227* replaces section 244 of the *WorkCover Queensland Act 1996* which outlines the responsibility of employers with 30 or more workers at a workplace to have workplace rehabilitation policies and procedures.

The only change made by this clause relates to a change in reference at section 244(3)(b) of the *WorkCover Queensland Act 1996* from “WorkCover” to “the Authority”.

### **Employer’s obligation to assist or provide rehabilitation**

*Clause 228* replaces section 245 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that all employers must take reasonable steps to help or provide a worker with rehabilitation for the period for which compensation is payable.

### **Employer’s failure in relation to rehabilitation**

*Clause 229* replaces section 246 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies the consequences of an employer,

other than a self-insurer, failing to take reasonable steps to assist or provide the worker with rehabilitation.

## **PART 5—WORKER'S MITIGATION AND REHABILITATION OBLIGATIONS**

### **Application of pt 5**

*Clause 230* replaces section 247 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that this part applies to a worker who has sustained an injury and is required to participate in rehabilitation.

### **Worker must mitigate loss**

*Clause 231* replaces section 248 of the *WorkCover Queensland Act 1996*. It specifies that the common law duty of mitigation of loss applies to the worker, and that this duty may be discharged by the worker participating in rehabilitation.

### **Worker must participate in rehabilitation**

*Clause 232* replaces section 249 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that the worker must satisfactorily participate in rehabilitation as soon as practicable after the injury is sustained, and for the period for which the worker is entitled to compensation.

The only change made by this clause relates to a change in reference at section 249(3) of the *WorkCover Queensland Act 1996* from “WorkCover” to “the insurer”.

## **CHAPTER 5—ACCESS TO DAMAGES**

The format of the explanatory notations in this Chapter includes a more detailed discussion of the effect of amendments made by the *WorkCover*



*Queensland Amendment Act 2001* to the equivalent provisions of the *WorkCover Queensland Act 1996*. This additional detail is provided for clarity of intent and to ensure an understanding by the reader that the only changes made are complimentary to the changes in other parts of the Bill and do not otherwise impact the operation of the equivalent CHAPTER 5—ACCESS TO DAMAGES in the repealed act.

## **PART 1—INTERPRETATION AND APPLICATION**

The Bill preserves Chapter 5 of the *WorkCover Queensland Act 1996* (as amended).

Chapter 5 regulates access to damages for all injured workers and provides for a pre-proceeding claims process, which must be complied with.

Regard must also be had to the application provisions of the *Personal Injuries Proceedings Act 2002* and the *Civil Liability Act 2003*.

### **Definitions for Chapter 5**

*Clause 233* provides for certain definitions for Chapter 5- Access to Damages.

*Clause 233* preserves the definitions of “claimant”, “worker” and “written final offer” as provided for by section 233 of the *WorkCover Queensland Act 1996* as amended by the *WorkCover Queensland Amendment Act 2001*.

The *WorkCover Queensland Amendment Act 2001*, in order to expedite the pre-proceedings process for Chapter 5, repealed the need for damages certificates to be issued before proceedings commence. The *WorkCover Queensland Amendment Act 2001* also provided for the inclusion of a definition of ‘written final offer’, as meaning the written final offer under s 294 of the *WorkCover Queensland Act 1996*.

It is intended that if the claim is not settled at a conference pursuant to section 292 (Compulsory Conference) each party must make a written final offer at the conference and the court must have regard to these offers in making a decision about costs under Part 12- Costs.

**Meaning of “terminal condition”**

*Clause 234* provides a definition of “Terminal Condition” for Chapter 5.

The definition of “Terminal Condition” is not intended to be restricted to a work related injury but can also apply to a worker who has been diagnosed with a condition, other than a compensable injury, that is expected to terminate the worker’s life within two years. This definition is required to support the application of this chapter to a worker with a terminal condition: see Clause 238 Worker with Terminal Condition.

Clause 234 preserves section 251 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” in section 251(2) is replaced with “the relevant insurer”.

The Bill provides at Schedule 6 (Dictionary) that “insurer” means WorkCover or a self-insurer.

**Requirements of chapter to prevail and are substantive law**

*Clause 235* provides that the provisions contained in this chapter take priority over any other legislation. The rules and principles provided in this chapter are those that relate to a person’s right and duties when accessing damages for an injury sustained by a worker.

This clause is intended to prevent forum shopping by claimants attempting to overcome the rules provided by this chapter i.e. the irrevocable election which must be made by some claimants and restrictions on damages.

*Clause 235* preserves section 252 of the *WorkCover Queensland Act 1996* (as amended)

**Period of limitation under Limitation of Actions Act 1974 never affected**

*Clause 236* confirms the decision of the Queensland Court of Appeal in *Tanks –v– WorkCover Queensland* [2001] QCA 103 by declaring that nothing in the *WorkCover Queensland Act 1996* affects or has ever affected the commencement of the limitation period provided by section 11 of the *Limitation of Actions Act 1974*.

The declaration is provided to cause certainty in the interpretation of workers’ compensation damages claims, and does not operate to deny an individual’s entitlement.

Clause 236 preserves section 252A of the *WorkCover Queensland Act 1996* as inserted by the *WorkCover Queensland Amendment Bill 2002*.

## **PART 2—ENTITLEMENT CONDITIONS**

### ***Division 1—Limitations on persons entitled to seek damages***

The Bill preserves Chapter 5— Part 2 of the *WorkCover Queensland Act 1996*.

#### **General limitation on persons entitled to seek damages**

*Clause 237* preserves section 253 of the *WorkCover Queensland Act 1996* (as amended) see in particular the *WorkCover Queensland Amendment Act 2001* and *WorkCover Queensland Amendment Act 2002*) other than the reference to “WorkCover” is replaced with “the relevant insurer”.

*Clause 237* provides for the five categories of persons listed at 1 (a) to (e) who are entitled to seek damages for an injury sustained by a worker. To remove any doubt, *Clause 237* declares that the Bill abolishes any entitlement of a person not provided for to seek damages for an injury sustained by a worker.

Under Category (a) it is intended to allow a worker to seek damages where not *all* of the injuries resulting from an event have been assessed. However, in order to seek damages the worker must have received a notice of assessment for at least one of the injuries resulting from the same event. If a worker has received a notice of assessment and is required under *clause 239* to make an election to seek damages for an injury and has accepted lump sum compensation under Chapter 3, Part 10, Division 3 for an injury, the worker other than under *Clause 266* is not entitled or otherwise able to seek damages for any injury resulting from the same event.

Under Category (c) the worker if the worker has lodged an application for compensation for the injury that is or has been the subject a review or appeal under Chapter 9, and has not yet been decided. This category allows a worker seeking review or an appeal of a decision of an insurer under Chapter 9 to be able to complete the appeal without the time taken to start

and end the review and appeals process causing the person to otherwise be denied claiming damages for an injury because the period of review or appeal has caused the worker to fall outside of the period of time allowed under the *Limitation of Actions Act 1974*.

### **Worker with terminal condition**

*Clause 238* identifies those provisions of Chapter 5 (Access to damages) that do not apply to a worker with a terminal condition and allows a worker who has a terminal condition to bypass some of the pre-proceedings requirements of Chapter 5, if they choose, to achieve more speedy resolution of the damages claim due to the extenuating circumstances of their condition.

*Clause 238* preserves other than amending the necessary cross referencing of clauses section 254 of the *WorkCover Queensland Act 1996* (as amended).

### **Worker who is required to make election to seek damages**

*Clause 239* applies if a worker's notice of assessment states that:

- The workers WRI is less than 20%; or
- The worker has an injury that does not result in any WRI of the worker.

For the meaning of WRI see *Clause 39* and for the calculation of WRI see *Clause 183* of the Bill.

*Clause 239* provides that if, in the notice of assessment, the worker is offered a payment of lump sum compensation for the injury, the worker is not entitled to both—

- payment of lump sum compensation for the injury; and
- damages for the injury.

If, in the notice of assessment, the worker is required to make an election to seek damages for the injury, the worker can not change the worker's election—

- if the worker has elected to seek damages for the injury—after notice of the election is given to the insurer; or

- if the worker is taken, under section 189(7) to have elected to seek damages for the injury—after the worker lodges a notice of claim.

Clause 239 preserves section 255 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “the insurer”.

### ***Division 2—Consequences, to costs, of seeking damages***

#### **Consequences, to costs of seeking damages**

*Clause 240* provides which particular cost provisions under the Bill apply to:

- a worker with a WRI of 20% or more: and
- a worker with a WRI of 20% or less, or one who has an injury that does not result in any WRI; and
- a claimant who is a dependant

For a worker with a WRI of 20% or more, Part 12 div 1 applies in relation to costs (indemnity costs), and for a worker with a WRI of nil or less than 20%, Part 12, Division 2 applies in relation to costs (standard costs).

If the claimant is a dependant, Part 12, Division 1 applies in relation to costs (indemnity costs) in the claimant’s proceeding for damages.

Clause 240 preserves section 256 of the *WorkCover Queensland Act 1996* (as amended).

### ***Division 3—Claimant who has received notice of assessment***

#### ***Subdivision 1—Application of Division 3***

*Clause 241* provides that Division 3 applies to a claimant who has received a notice of assessment.

***Subdivision 2—Claimant mentioned in s237(1)(a)(i)*****Application of sub-div 2**

Clause 242 provides that subdiv 2 applies to a worker if the worker has received a notice of assessment from the relevant insurer for the injury and preserves section 258 of the *WorkCover Queensland Act 1996* (as amended).

**Need for Urgent Proceedings**

Clause 243 preserves section 259 of the *WorkCover Queensland Act 1996* (as amended) and applies to an urgent need for the claimant to start a proceeding for damages.

The claimant may also seek leave from a court to start a proceeding for damages for an injury without complying with s 295 of the Bill: see Clause 298. However, if the court gives the leave, the proceeding started by leave is stayed until the claimant complies with s 295 of the Bill.

***Subdivision 3—Claimant mentioned in s237(1)(a)(ii)*****Application of sub-div 3**

Clause 244 provides that sub-div 2 applies to a worker if the worker has not received a notice of assessment for the injury but has:

- Received a notice of assessment for any injury resulting from the same event the “assessed injury”, and
- For the assessed injury, the worker has a WRI of 20% or more or under Clause 239 the worker has elected to seek damages.

Clause 244 preserves section 260 of the *WorkCover Queensland Act 1996* (as amended).

**Claimant with more than 1 injury from an event**

Clause 245 provides for circumstances where a claimant has more than one injury from an event, and has not received a notice of assessment for the injury but has received a notice of assessment for any other injury resulting from the same event.

In these circumstances, the claimant need not have, and the relevant insurer cannot decide to have, the injury assessed to decide if the injury has resulted in a degree of permanent impairment.

Furthermore, the insurer cannot decide that the claimant's notice of claim does not comply with clause 275 of this Bill solely on the fact that the claimant has not received a notice of assessment for the injury.

However, for the claimant to be entitled to seek damages for the injury, the insurer must decide that the claimant was a worker when the injury was sustained, and that the worker has sustained an injury.

The insurer must make these decisions within 3 months after:

- the claimant gives, or is taken to have given, a complying notice of claim, or
- the claimant gives a notice for which the insurer waives compliance with the requirements of clause 275 with or without conditions, or
- a court makes a declaration under clause 297 of the Bill.

The insurer is required to notify the claimant and the claimant's employer of its decision and, where the insurer decides that the claimant was not a worker when the injury was sustained, or that the worker has not sustained an injury, the notification must include written reasons for the decision.

If the insurer does not make a decision within the 3-month timeframe, the claimant may have the failure to make a decision reviewed under Chapter 13 of the Bill.

Where a claimant is aggrieved by a decision made by insurer in relation to the question of whether the claimant was a "worker" when the injury was sustained, and whether or not the "worker" has sustained the injury, the claimant may apply to have the decision reviewed under Chapter 13 of the Bill.

Clause 245 preserves section 261 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "the insurer".

### **Claimant may ask for injury to be assessed for permanent impairment**

*Clause 246* allows a claimant to ask the insurer to have the injury assessed to decide if the injury has resulted in a degree of permanent

impairment. The insurer must have the degree of permanent impairment assessed and give the claimant a notice of assessment. However the notice of assessment is only for the purposes of assessing the degree of permanent impairment for the purposes of Chapter 5, Part 12.

To remove any doubt the Bill declares that the assessment does not give the claimant an entitlement to lump sum compensation for the injury.

Clause 246 preserves section 262 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “the insurer”.

### **Need for urgent proceedings**

*Clause 247* provides that where there is an urgent need, the claimant may start a proceeding for damages.

The claimant may also, seek leave from a court to start a proceeding for damages for an injury without complying with s 295 of the Bill: see Clause 298. However, if the leave is given by the court, the proceeding started by leave is stayed until:

- The insurer decides that the claimant was a worker when the injury was sustained;
- The insurer decides that the claimant has sustained an injury;
- any review or appeal ends,
- if the claimant decides to have the injury assessed under Chapter 3, Part 10 and the insurer gives the claimant a notice of assessment; and
- the claimant complies with Clause 295 of the Bill.

Clause 247 preserves section 263 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “the insurer”.

### **When urgent proceeding must be discontinued**

*Clause 248* provides that urgent proceedings must be discontinued if it is decided by the insurer, or on review or appeal under chapter 9 of the Bill, that the claimant was not a worker when the injury was sustained or the worker has not sustained an injury.



Clause 248 preserves section 263 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “the insurer”.

#### ***Division 4—Claimant mentioned in s237(1)(b)***

#### **Application of div 4**

*Clause 249* preserves section 265 of the *WorkCover Queensland Act 1996* and provides that div4 applies to the worker if the workers' application for compensation was allowed and the injury sustained by the worker has not been assessed for permanent impairment.

#### **Claimant may seek damages only after being assessed**

*Clause 250* provides that a claimant may seek damages only after being provided with a notice of assessment, unless there is an urgent need for the claimant to start a proceeding for damages.

Clause 250 preserves section 266 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

#### **Need for urgent proceedings**

*Clause 251* applies to an urgent need for the claimant to start a proceeding for damages.

The claimant may also, seek leave from a court to start a proceeding for damages for an injury without complying with s 295 of the Bill: see Clause 298.

However, if the leave is given by the court, the proceeding started by leave is stayed until the claimant complies with s 295 of the Bill.

The claimant may also, seek leave to start a proceeding for damages for an injury without complying with s 295 of the Bill. However, if the leave is given, the proceeding started by leave is stayed until the insurer gives the claimant a notice of assessment and the claimant elects to seek damages for the injury, and complies with s 295 of the Bill.

Clause 251 preserves section 267 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **When Urgent proceeding must be discontinued**

*Clause 252* provides that urgent proceedings must be discontinued if the claimant has started an urgent proceeding is required under Clause 239 to make an election to seek damages for the injury and elects to accept an offer of payment of lump sum compensation for the injury.

Clause 252 preserves section 268 of the *WorkCover Queensland Act 1996* (as amended).

### ***Division 5—Claimant mentioned in s 237(1)C***

#### **Application of div 5**

*Clause 253* provides that Division 5 applies to the worker if the worker has lodged an application for compensation for the injury that is or has been the subject a review or appeal under Chapter 9, and has not yet been decided in or following the review or appeal.

Clause 253 preserves section 269 of the *WorkCover Queensland Act 1996* (as amended).

#### **Access to damages if application for compensation is subject to review or appeal**

*Clause 254* provides that a person to which Division 5 applies may seek damages for the injury only after:

- any review or appeal under Chapter 9 of the *WorkCover Queensland Act 1996* ends;
- the application for compensation is decided; and
- the insurer gives the claimant a notice of assessment.

Clause 254 preserves section 270 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

**Need for Urgent Proceedings**

*Clause 255* applies to an urgent need for the claimant to start a proceeding for damages.

The claimant may also, seek leave from a court to start a proceeding for damages for an injury without complying with s 295 of the Bill: see Clause 298. However, if the leave is given by the court, the proceeding started by leave is stayed until:

- Any review or appeal under chapter 13 ends; and
- The insurer gives the claimant a notice of assessment; and
- The claimant elects to seek damages for the injury and the claimant complies with s 295 of the Bill.

Clause 255 preserves section 271 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

**When Urgent proceedings must be discontinued**

*Clause 256* provides when urgent proceedings must be discontinued.

If the claimant has started an urgent proceeding and it has been decided by:

- the insurer or on review or appeal under Chapter 13, that the claimant—
- was not a worker when the injury was sustained; or
- has not sustained an injury; or
- the claimant is required to make an election to seek damages for the injury and elects to accept an offer of payment of lump sum compensation under Chapter 3, Part 9 for the injury.

The claimant must discontinue the proceeding.

Clause 256 preserves section 272 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

***Division 6—Claimant mentioned in s237(1)(d)*****Application of div 6**

*Clause 257* preserves section 273 of the *WorkCover Queensland Act 1996* which provides that Division 6 applies to the worker, if the worker has not lodged an application for compensation for the injury.

**Access to damages if claimant has not lodged application for compensation**

*Clause 258* provides that the claimant may only seek damages for any injury resulting from the event if the insurer decides:

- that the claimant was a worker when the injury was sustained and has sustained an injury; and gives the claimant a notice of assessment for every injury.

The insurer must make a decision or decisions in this regard within 3 months after:

- the claimant gives, or is taken to have given, a complying notice of claim, or
- the claimant gives a notice for which the insurer waives compliance with the requirements of Clause 275 with or without conditions, or
- a court makes a declaration under Clause 297 of the Bill.

The insurer must notify the claimant and the claimant's employer of its decision and where the insurer decides that the claimant was not a worker when the injury was sustained, or the worker has not sustained an injury, the notification must include written reasons for the decision.

If the insurer does not make a decision within the 3-month timeframe, the claimant may have the failure to make a decision reviewed under chapter 13 of the Bill.

A person aggrieved by a decision made by the insurer as to whether the claimant was a worker when the injury was sustained and has sustained an injury, may have the decision reviewed under ch 13 of the Bill.

Where the insurer gives the claimant a notice of assessment for the injury Chapter 3, Part 10 applies to the assessment but only for the

purposes of assessing the degree of permanent impairment for the purposes of Part 12.

To remove any doubt it is declared that the assessment does not give the claimant an entitlement to lump sum under Chapter 3, Part 10 Division 3 for the injury.

Clause 258 preserves section 273 A of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **Need for Urgent Proceedings**

*Clause 259* applies to an urgent need for the claimant to start a proceeding for damages.

The claimant may also, seek leave from a court to start a proceeding for damages for an injury without complying with s 295 of the Bill: see Clause 298. However, if the leave is given by the court, the proceeding started by leave is stayed until:

- The insurer decides that the claimant was a worker when the injury was sustained and the worker has sustained an injury;
- any review or appeal under Chapter 13 ends;
- The insurer gives the claimant a notice of assessment, and;
- the claimant complies with Clause 295 of the Bill.

Clause 259 preserves section 273 B of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **When proceedings must be discontinued**

*Clause 260* provides that urgent proceedings must be discontinued if the claimant has started an urgent proceeding and it has been decided by the insurer or on review or appeal under chapter 13 that the claimant was not a worker when the injury was sustained, or the claimant has not sustained an injury.

Clause 260 preserves section 273 C of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

***Division 7—Person mentioned in s237(1)(e)*****Application of div 7**

*Clause 261* provides that Division 7 applies to a dependant of the deceased worker if the injury results in the worker's death.

*Clause 261* preserves section 273D of the *WorkCover Queensland Act 1996* (as amended).

**Claimant may seek damages only in particular cases**

*Clause 262* provides that the claimant may only seek damages for the injury, if any of the following apply:

- An application has been made for compensation under Chapter 3, Part 11 and
  - The insurer has paid compensation under Chapter 3, pt 11 for the worker's death to the claimant as a dependant of a worker; or
  - The application is or has been the subject of a review or appeal under Chapter 13 and the application has not been decided in or following the review or appeal.
- An application for compensation has not been made, and the insurer decides that the claimant was a dependant of the worker; the deceased was a worker when the event happened and the worker sustained an injury in the event and the injury caused the worker's death.

The insurer must make a decision on an application for compensation within 3 months after:

- the claimant gives, or is taken to have given, a complying notice of claim, or
- the claimant gives a notice for which the insurer waives compliance with the requirements of *Clause 275* with or without conditions, or
- a court makes a declaration under *Clause 297* of the Bill.

The insurer must notify the claimant and the claimant's employer of its decision about an application for compensation if the insurer decides that:

- the claimant was not a dependant of the worker; or
- the deceased was not a worker when the event happened, or
- the worker did not sustain an injury resulting from the event, or
- the injury did not cause the worker's death, the notification include written reasons for the decision.

If, where an application for compensation has not been made, the insurer does not make a decision within the 3-month timeframe; the claimant may have the failure to make a decision reviewed under Chapter 13 of the Bill.

A person aggrieved by a decision made by the insurer, where an application for compensation has not been made, may apply to have the decision reviewed under chapter 13 of the Bill.

Clause 262 preserves section 273 E of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

### **Need for Urgent Proceedings**

*Clause 263* applies to an urgent need for the claimant to start a proceeding for damages.

The claimant may also, seek leave from a court to start a proceeding for damages for an injury without complying with s 295 of the Bill: see Clause 298. However, if leave is given in circumstances where the insurer has paid compensation under chapter 3, pt 11 of the Bill for the worker's death to the claimant as a dependant of a worker, the proceeding started with the leave is stayed until the claimant complies with Clause 295 of the Bill.

In circumstances where the application for compensation has not been made or is the subject of a review or appeal under Chapter 13 and the application has not been decided in or following the review or appeal, the procedure is stayed until the insurer decides that

- the claimant was a dependant of the worker,
- the deceased was a worker when the event happened,
- the worker sustained an injury from the event, and the injury caused the workers death,
- any review or appeal under Chapter 13 ends, and
- the claimant complies with clause 295 of the Bill.

Clause 263 preserves section 273 F of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **When proceedings must be discontinued**

*Clause 264* applies to urgent proceedings in circumstances where the application for compensation has not been made or is the subject of a review or appeal under chapter 13 and the application has not been decided in or following the review or appeal.

Such urgent proceedings must be discontinued if it is decided by the insurer, or on review or appeal under Chapter 13, that the claimant was not a dependant of the worker, or the deceased was not a worker when the event happened, or the worker did not sustain an injury from the event, or the injury did not cause the worker’s death.

Clause 264 preserves section 273(G) of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### ***Division 8—Review of worker’s decision to accept payment of lump sum compensation for injury-WRI less than 20% or no WRI***

#### **Application of div 8**

*Clause 265* provides that div 8 applies where;

- a worker has elected, under Clause 189 to accept payment of lump sum compensation for an injury; and
- the worker has been assessed under Chapter 3, Part 10 as having sustained a degree of permanent impairment that—
- results in a WRI of the worker of less than 20%; or
- does not result in any WRI of the worker.

Clause 265 preserves section 273(H) of the *WorkCover Queensland Act 1996* (as amended).



**Decision not to seek damages reviewable in certain circumstances**

*Clause 266* provides that a worker may when seeking damages only ask an insurer to consider fresh medical evidence within the period of limitation provided by the *Limitation of Actions Act 1974* about the worker's injury for which lump sum compensation was previously accepted.

The insurer is required to consider the medical evidence only if:

- there was no reason to believe that there would be material deterioration of the injury when the degree of permanent impairment was assessed; and
- the further material deterioration is a deterioration of the injury for which the worker accepted lump sum compensation; and
- the medical evidence was not available when the permanent impairment was assessed or when the worker elected not to seek damages; and
- the medical evidence establishes that there has been a material deterioration of the injury which would have entitled the worker to at least an additional 10% work related impairment.

If the insurer rejects the evidence it must refer the evidence to a review panel, whose decision is final.

If the insurer or the review panel accepts the medical evidence, the insurer must refer the question of the degree of permanent impairment to the appropriate medical assessment tribunal.

The worker may seek damages for the injury if the insurer is satisfied that—

- the worker's further material deterioration is an additional WRI of 10% or more; and
- the deterioration is a deterioration of the injury for which the worker has accepted payment of lump sum compensation; and
- the deterioration does not arise from combining a psychiatric or psychological injury with another injury; and
- the additional WRI, when added to the worker's WRI as previously calculated by the insurer results in a WRI of the worker of 20% or more.

Clause 266 preserves section 274 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

## **PART 3—MITIGATION OF LOSS AND REHABILITATION**

### **Mitigation of loss**

*Clause 267* provides that the common law duty to mitigate loss applies to all workers in relation to claims or proceedings for damages, and the worker must satisfactorily participate in rehabilitation. The worker’s duty in this regard is in addition to any duty the worker may have under s 231 of the Bill.

Clause 267 preserves section 275 of the *WorkCover Queensland Act 1996* (as amended).

### **Provision of Rehabilitation**

*Clause 268* provides that an insurer may make rehabilitation available to a worker on the insurer’s initiative or if the worker asks for it.

If the insurer makes rehabilitation available to a worker before admitting or denying liability for damages, this must not be taken, for that reason alone, as an admission of liability. If liability has been admitted for damages, or the insurer agrees to fund rehabilitation without making an admission of liability, the insurer must, if the worker asks, ensure that reasonable and appropriate rehabilitation is made available to the worker.

The Clause also provides for a mediation process if a worker is not satisfied that the rehabilitation is reasonable and appropriate. Fees and expenses of a mediator are to be paid as agreed between the parties or, in the absence of agreement, by the parties in equal proportions.

The insurer must make rehabilitation available to the worker and the worker must satisfactorily participate in the rehabilitation in sufficient time to enable the insurer and the worker to comply with:

- Part 5—Pre-court proceedings;
- Part 6—Settlement of claims;

- Part 7—Start of court proceedings

Clause 268 preserves section 275(A) of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **Costs of Rehabilitation**

*Clause 269* provides that an insurer must bear, or reimburse, the cost of providing the rehabilitation, unless the insurer’s liability for the cost is reduced by agreement with the worker, or by order of the court.

The insurer may seek to recover the cost of rehabilitation if, before the rehabilitation commenced, they have provided a written statement to the worker of the estimated rehabilitation costs.

The following applies if the costs of rehabilitation are to be taken into account in the assessment of damages:

- the damages are first assessed, without reduction for contributory negligence, on the assumption that the worker has incurred the cost of the rehabilitation,
- then, any reduction of the damages assessed, on account of contributory negligence, is made,
- then, the total cost of rehabilitation is set-off against the amount assessed.

Clause 269 preserves section 275 B of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

## **PART 4—REDUCTION OF RECOVERABLE DAMAGES**

### **When damages are to be reduced**

*Clause 270* ensures claimants are not compensated twice for the same injury. The damages paid to the claimant must be reduced by the total amount, including tax, paid or payable by the insurer under the workers’ compensation statutory claim. Lump sums paid for gratuitous care under

Chapter 3, commonly known as Griffiths v Kerkemeyer awards, are excluded from a claim for damages under this chapter.

This clause does not limit the reduction of damages payable to the claimant by any other amount refundable by the claimant under any other Federal or State law because of the statutory charge imposed by such legislation on the damages payable e.g. repayments to Department of Social Security, Medicare refund to Health Insurance Commission.

Clause 270 preserves section 276 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **Assessment by court of total liability for damages**

*Clause 271* applies when damages are awarded by the court or a claim for an injury is settled. It allows a court, on application by either the insurer or the claimant, to assess the amount of statutory compensation, paid by the insurer, to be deducted from the awarded or agreed damages before the claimant receives the balance subject to other charges e.g. Department of Social Security, Health Insurance Commission.

Clause 271 preserves section 277 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **Insurer's charge on damages for compensation paid**

*Clause 272* applies where the worker's employer is not indemnified by this legislation or another person has a legal liability to pay damages for the injury independently of this legislation, this clause ensures that an insurer can recover any workers' compensation paid from damages awarded as a first charge. Any question relating to indemnity can be decided by an industrial magistrate if both parties agree.

Clause 272 preserves section 278 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

## **PART 5—PRE-COURT PROCEDURES**

### **Object of pt 5**

*Clause 273* describes the objective of Part 5.

This objective emulates rule 5 of the *Uniform Civil Procedure Act 1999* relating to pre-proceedings. The purpose of the rules is to:

- facilitate the just and expeditious resolution of the real issues in civil proceedings at minimum expense;
- the rules are to be applied by the courts with the objective of avoiding undue delay, expense and technicality and facilitating the purpose of these rules.
- a party impliedly undertakes to the court and to the other parties to proceed in an expeditious way,
- the court may impose appropriate sanctions if a party does not comply with these rules or an order of the court.

The intention of the objective is to place a greater emphasis on pre court proceedings as a means of facilitating the just and expeditious resolution of the real issues in a claim for damages at the minimum expense.

The pre-proceeding process of this part is intended to:

- implement a simplified procedure for the speedy resolution of claims for personal injury;
- minimise costs associated with a claim for both parties;
- promote early settlement of claims;
- encourage complete preparation and investigation of a damages claim prior to legal proceedings being initiated; and
- ensure the claimant is fully informed of the possible cost penalties involved in proceeding further after an insurer makes an offer or counter offer to settle.

Clause 273 preserves section 279 of the *WorkCover Queensland Act 1996* (as amended).

**Overriding obligations of parties**

*Clause 274* supports the objective by requiring that the objective be applied by the parties to avoid undue delay, expense and technicality. That is, that a party undertakes to other parties to proceed in an expeditious way. A court may impose appropriate sanctions if a party does not comply with a provision of this part: see *Clause 287 – Court's power to enforce compliance with chapter*.

*Clause 274* preserves section 279A of the *WorkCover Queensland Act 1996* (as amended).

**Notice of claim for damages**

*Clause 275* defines the obligations of a claimant when serving a notice of claim on a insurer. These provisions are consistent with chapter 4, pts 3 and 4 of the *Uniform Civil Procedure Act 1999*, relating to service in particular cases and ordinary service respectively.

A Notice of Claim was introduced by the *WorkCover Queensland Act 1996* to support the pre-proceedings process: see in particular the *WorkCover Queensland Amendment Act 2001*.

The Bill requires a claimant to give a notice of claim (including supporting documentation) to an insurer in the approved form and a copy of the notice of claim (excluding supporting documents) to the employer before any court proceedings for damages are started. The notice of claim must be given to the insurer within the limitation period prescribed by the *Limitation of Actions Act 1974*. The notice is designed to give sufficient information to an insurer to enable it to investigate the allegations of negligence and extent of damages with a view to resolving the claim as soon as possible.

The claimant must state the extent of any admitted contributory negligence in the notice of claim and must make a genuine offer of settlement or state why an offer of settlement can not yet be made.

The notice of claim must also state any particulars outlined in a Regulation which will include heads of damage and method of calculation. The claimant is required to give the insurer written authority to obtain relevant information including copies of documents from other persons and agencies.

The claimant is to verify by statutory declaration any statement made in the notice of claim for damages that is from the claimant's own personal knowledge.

Clause 275 preserves section 280 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “relevant insurer”.

### **Non-compliance with s275 and urgent proceedings**

*Clause 276* enables a claimant to avoid the need to bring an application under Clause 298 (Court to have given leave despite non-compliance) of the Bill. Clause 276 provides the ability to achieve compliance without providing a notice of claim.

If there is an urgent need to start a proceeding for damages the claimant must, in the notice of claim, state the reasons for the urgency and the need to start the proceeding, and ask the insurer to waive compliance with Clause 275.

Clause 276 requires the insurer, within 3 business days of receiving a notice of claim, to advise the claimant whether or not the insurer agrees that there is an urgent need to start a proceeding for damages. The Bill provides that the claimant’s notice of claim may be given to the insurer by facsimile transmission. A claimant’s lawyer may sign the notice of claim on the claimant’s behalf if it is not reasonably practicable for the claimant to do so.

The Bill also provides that, if an insurer agrees that there is an urgent need to start proceedings for damages, the insurer may impose conditions it considers necessary and appropriate to justify waiving compliance with Clause 275. The claimant must comply with the conditions within an agreed reasonable time.

Clause 276 preserves section 280A of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **Claimant to tell insurer of change to information in notice of claim**

*Clause 277* requires that only significant changes to the information given in the notice of claim be provided to the insurer by way of a written notice. This clause provides for a similar reference to that in the *Uniform Civil Procedure Rules 1999*, which requires a plaintiff to supplement a statement of loss and damage where a significant change occurs.

Clause 277 preserves section 281 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **Response to notice of claim**

*Clause 278* applies if a notice of claim is given to an insurer and requires an insurer to respond to a notice of claim within 14 days of receipt by giving notice that the insurer is satisfied the notice of claim complies with requirements, or if it does not comply, identifying the non compliance and stating whether the insurer waives compliance.

If the insurer does not waive compliance the claimant has at least 30 days (or a longer period specified by the insurer) to explain how the notice of claim does comply or to take reasonable action to remedy the non compliance.

If there is an urgent need to start a proceeding, the insurer must include a statement within the written notice confirming that the notice of claim is a complying one, and that the insurer is willing to waive compliance with the requirements if the claimant agrees to satisfy certain conditions imposed by the insurer. The insurer must provide a statement, without admitting liability, whether they will meet the reasonable and appropriate costs of the claimant’s rehabilitation.

The Bill provides provision that, if the insurer does not respond in writing within 14 days after receiving the notice of claim, the notice of claim will be taken to be a complying notice of claim.

Clause 278 preserves section 282 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **Claimant and insurer to cooperate**

*Clause 279* provides that an insurer must disclose to the claimant any relevant information it holds, subject to the non-disclosure provisions in Clause 284 (Non-disclosure of certain material).

Clause 279 provides for an obligation on both the insurer and the claimant to cooperate. They must provide each other with copies of relevant documents in their possession in relation to the circumstances of the event that resulted in the injury, the injury itself, or the claimant’s prospects of rehabilitation.



The insurer must provide copies of the relevant documents to the claimant within 30 days of receiving a notice of claim or, if documents come into the insurer's possession after the expiration of 30 days, then within 30 days of the documents coming into their possession.

The Bill also provides a mutual obligation for either party to provide information to the other within 30 days, if requested to do so.

This clause also defines the term 'relevant documents' to mean reports and other documentary material, including written statements made by the claimant, the worker's employer, or by witnesses.

Clause 279 preserves section 283 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

### **Employer to cooperate with WorkCover**

*Clause 280* ensures that an employer assists WorkCover in the early resolution of damages claims. It allows WorkCover to recover from an employer who does not cooperate, any additional legal and/or investigative costs it has reasonably incurred in connection with the claim.

Clause 280 preserves section 284 of the *WorkCover Queensland Act 1996* (as amended).

### **WorkCover and claimant to attempt to resolve claim**

*Clause 281* requires an insurer and the claimant to resolve a claim as quickly as possible. It requires the insurer to give the claimant a written response to a complying notice of claim within six months, or in the case of a terminal condition, within three months of :

- the insurer receiving a compliant notice of claim
- the insurer waiving the non-compliance of the notice of claim
- the court declaring the notice of claim compliant; or
- the court giving leave to proceed.

This response must include:

- the insurer's attitude to liability; and
- acceptance or rejection of any offer of settlement; and

- a genuine counter offer of settlement (or a statement of reasons if WorkCover is unable to make an offer); and
- copies of any supporting documentation not previously given to the claimant that may help the claimant make a proper assessment of the offer.

Any offer or counteroffer must not be disclosed to a court except when the court is determining the issue of costs. This ensures that the making of an offer does not prejudice either party.

This clause also provides that any admission of liability by an insurer:

- is not binding if it:
  - is later shown at the trial in the proceeding for damages that the claimant was relevantly guilty of fraud or attempted fraud
  - was admitted because of misrepresentation by any person
- is not an admission about the claimant's loss or damage
- does not permit the claimant to apply to a court for judgment.

An insurer must state whether it admits or denies liability in connection with the event to which the claim relates. If it admits liability, the insurer must state whether it is claiming contributory liability from the worker or another party, and the extent to which the insurer admits liability (expressed as a percentage). If the insurer denies liability, in full or in part, it must state the basis of such a denial.

A copy of the written notice must be given to the claimant's employer (i.e. the employer at the time of the injury), within 7 days after giving the original to the claimant.

The Bill provides that in calculating the 6 month period in which the insurer must issue the written response, any period in which a decision of the insurer relevant to the claim is subject to a review or appeal is not to be counted towards the 6 month period.

Clause 281 preserves section 285 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

**Worker to undergo medical examination**

*Clause 282* assists an insurer to assess the claimant's loss by allowing an insurer to request that the claimant undergo a medical examination or an assessment of their cognitive, functional or vocational capacities. The claimant may refuse to comply with an insurer's request if it is unreasonable.

*Clause 282* preserves section 286 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

**Joint expert reports**

*Clause 283* allows an insurer and the claimant to jointly arrange for expert reports where both parties agree on the experts, are each provided with a copy of the report and share the costs. This allows the parties to avoid unnecessary expenses associated with each obtaining their own reports. Neither party is compelled to comply with this provision.

*Clause 283* preserves section 287 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

**Non-disclosure of certain material**

*Clause 284* intends that statements of opinion other than expert opinion will not be excluded from disclosure. It is intended that all documents provided for in *Clause 284 (2)* of the Bill be disclosed in their entirety.

It is intended that this clause, in part, overcome difficulties caused by the decisions of *Parr v Bavarian Steak House P/L [2000] QCA 429 (24 October 2000)* and *James v WorkCover [2000] QCA 507 (14 December 2000)*.

Documents may also be withheld if an insurer has reasonable grounds to suspect the claimant of fraud or misrepresentation. An insurer may withhold from disclosure information, or omit a document or a passage from a document, that:

- would alert the claimant to the suspicion; or
- could help further the fraud; or
- the insurer believes would meet the requirements of the *Freedom of Information Act 1992*, Part 3, Division 2.

Clause 284 preserves section 288 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **Consequence of failure to give information**

*Clause 285* provides that if a document, other than a document exempted under the clause providing for non-disclosure of certain material, is not given to another party, that document can not be used in a court proceeding for the claim by the party who failed to disclose it unless the court orders otherwise. If the document comes to the other party’s knowledge, that other party may use the document.

Clause 285 preserves section 289 of the *WorkCover Queensland Act 1996* (as amended).

### **Privilege and duties**

*Clause 286* provides for information and documents which are disclosed as part of the pre-proceedings process to be treated in the same way as if they were disclosed in court proceedings. For example, parties must maintain confidentiality of disclosed documents and such documents can not be used in defamation proceedings.

Clause 286 preserves section 290 of the *WorkCover Queensland Act 1996* (as amended).

### **Court’s power to enforce compliance with chapter**

*Clause 287* gives a court power to order a party or parties to comply with a provision of this chapter and the court may make such consequential or ancillary orders as may be necessary or desirable.

Clause 287 preserves section 291 of the *WorkCover Queensland Act 1996* (as amended).

## **PART 6—SETTLEMENT OF CLAIMS**

### *Division 1—Compulsory conference*

#### **Application of div 1**

*Clause 288* provides that div 1 does not apply to a claim that is otherwise settled by negotiation between the parties.

*Clause 288* preserves section 292 of the *WorkCover Queensland Act 1996* (as amended).

#### **Compulsory conference**

*Clause 289* requires that a compulsory conference be held for all proceedings for damages. The conference is to be held within 3 months of an insurer providing a written notice to the worker, under the clause 281.

However, if the parties agree, the conference may be held at a later date and may be held with a court-approved mediator. The Bill requires the exchange of any documents not previously exchanged, to ensure that all parties are fully informed. The claimant and a person authorised by an insurer to settle the claim must attend the conference and actively attempt to settle the claim. If a face-to-face conference cannot reasonably be held, another agreed method and time is allowed.

The Bill provides that either party may request the compulsory conference, and the parties may agree to defer the conference to a date not within the 3-month period. Once a conference time has been agreed to, the insurer must advise the worker's employer of the details of the conference. Either party may apply to the court to set a time and place for a compulsory conference, or dispense with the requirement for a compulsory conference. A court, when considering whether to dispense with a requirement for a compulsory conference, must take into account the extent to which the parties have complied with their obligations under the Bill.

*Clause 289* preserves section 293 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

**Procedure at conference**

*Clause 290* provides for procedures to be complied with for the compulsory conference. The parties may agree or apply to the court for the conference to be held with a mediator. The mediator must be independent of the parties, and either agreed to by the parties or nominated by the registrar of the court. All relevant documentation must be exchanged between the parties 7 days before the conference.

Before a settlement of claim may be attempted, each party's lawyer must give the party a financial statement. The financial statement must contain:

- the legal costs incurred up to the conclusion of the conference,
- an estimate of legal costs and an estimate of net damages likely to be paid if the matter proceeds to trial;
- the possible costs orders that may be made should the matter proceed to trial; and the likely consequences this will have on the party; and
- costs and net damages that may result if the claim is settled without proceeding to trial.

Such financial statements are provided for in order to ensure that each party is fully informed of the legal costs associated with all stages of the legal proceedings of the damages claim and the possible legal cost implication of failing to settle for a reasonable amount at an early stage.

*Clause 290* preserves section 293A of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

**Information to be given by party's lawyer before other type of settlement attempted**

*Clause 291* provides that before settlement of a claim is attempted in a way other than by a compulsory conference, each party's lawyer must give the party a financial statement containing the information required by *Clause 290*.

*Clause 291* preserves section 293B of the *WorkCover Queensland Act 1996* (as amended).

**Parties to make written final offer if claim not settled at compulsory conference**

*Clause 292* ensures the claimant and an insurer make every attempt to resolve a claim before proceedings are started. If the claim is not settled at a conference each party must (at the conference) make a final written offer that is to remain open for 14 days from the date of conference. This additional 14 days allows each party time to give proper consideration to acceptance of the offer. Court proceedings must not be started while the offers remain open.

If the claimant starts court proceedings, the final written offers must be filed at the court in a sealed envelope. The court is prevented from reading the final written offers until after the court has decided the claim, so that the court's decision on liability and quantum is not influenced by the offers, but the court must have regard to the offers in deciding costs.

*Clause 292* preserves section 294 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

***Division 2—Settlement before Court proceedings*****Settlement of claim for damages**

*Clause 293* requires the parties to a settlement to sign a discharge for the claim. This then makes the agreement binding on parties to the settlement.

*Clause 293* preserves section 300 of the *WorkCover Queensland Act 1996* (as amended).

**PART 7—START OF COURT PROCEEDINGS*****Division 1—When claimant can start court proceedings*****Application of div 1**

*Clause 294* provides that div 1 states the conditions that must be satisfied before a claimant can start a court proceeding.

Clause 294 preserves section 301 of the *WorkCover Queensland Act 1996* (as amended).

### **Compliance necessary before starting proceeding**

*Clause 295* provides that the claimant may start a proceeding in a court for damages only if the claimant has complied with:

- the relevant division under Part 2— Entitlement Conditions, to the extent the division imposes a requirement on the person; and
- Part 5— Pre-Court proceedings, other than as provided by Clauses 297 and 298 and
- Part 6—Settlement of Claims and
- Clause 296.

Clause 295 preserves section 302 of the *WorkCover Queensland Act 1996* (as amended).

### **Claimant to have given complying notice of claim or WorkCover to have waived compliance**

*Clause 296* provides that a claimant may commence proceedings if:

- At least 6 months or, for a terminal condition, 3 months have elapsed after the claimant has either been given or is taken to have been given a compliant notice of claim, or an insurer has waived the claimant's non-compliance with the notice with or without conditions; or
- The court has made an order under clause 297 or 298.

A claimant may also commence proceedings if:

- An insurer has admitted liability, but is claiming contributory liability from the claimant or another party, and the claimant has given WorkCover written notice that the extent of the admission is disputed; or
- An insurer has admitted liability but damages can not be agreed.

Clause 296 preserves section 303 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.



**Court to make declaration about non-compliance**

*Clause 297* allows the claimant to apply to the court for a declaration that a notice of claim has been given, or that the claimant has remedied any non-compliance in respect of a notice of claim if an insurer does not consider the claimant has lodged a complying notice of claim. If a court makes a declaration in the claimant's favour, the court may attach conditions to the order to minimise any prejudice to an insurer due to the claimant's failure to comply with the notice of claim.

*Clause 297* preserves section 304 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

**Court to have given leave despite non-compliance**

*Clause 298* allows the court to give leave for a claimant to start a proceeding despite non-compliance in respect of a notice of claim. If a court gives a claimant leave to proceed, the court may attach conditions to minimise prejudice to an insurer due to the claimant's failure to comply with the requirements in respect of a notice of claim.

*Clause 298* preserves section 305 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

**Other provision for urgent proceedings**

*Clause 299* provides for the urgent starting of proceedings by persons mentioned in *Clause 237(1)*, and for the staying and discontinuance of those proceedings.

*Clause 299* preserves section 305A of the *WorkCover Queensland Act 1996* (as amended).

***Division 2—Court proceedings*****Carriage of proceedings**

*Clause 300* requires that a proceeding for damages must be brought against the employer of the injured or deceased worker and may only be brought against WorkCover in circumstances permitted by the clause.

The claimant must serve the initiating legal process on the employer and on WorkCover within the time specified in this clause. The claimant can take no further step in the action until WorkCover has been served—unless the employer was self-insured.

An employer, other than a self-insurer, is required to cooperate with WorkCover by attending to the execution of documents and do everything reasonably requested by WorkCover to ensure the proceedings are conducted in a timely manner. In certain circumstances, WorkCover may execute documents with respect to the legal process on behalf of the employer to ensure WorkCover is not disadvantaged in the conduct of the proceeding. The disadvantage could be in relation to cost orders imposed by the court for failure to lodge a document within the required time frame.

Clause 300 preserves section 306 of the *WorkCover Queensland Act 1996* (as amended).

### **Exclusion of Jury trial**

*Clause 301* requires that a proceeding for damages must be heard by a judge sitting without a jury.

Clause 301 preserves section 307 of the *WorkCover Queensland Act 1996* (as amended).

### **Alteration of period of limitation**

*Clause 302* provides that a claimant may bring a proceeding for damages for personal injury after the end of the period of limitation imposed by the *Limitations of Actions Act 1974*. A claimant may bring proceedings if certain relevant issues are satisfied before the end of the period of limitation, and the claimant complies with Clause 295 of the Bill.

If legal proceedings are to be issued outside the period of limitations, the Bill requires that the pre-proceedings process be complied with before legal proceedings are commenced. The proceedings may only be brought within 60 days after the day of the compulsory conference.

Clause 302 preserves section 308 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

**Court may have regard to claimant's non-compliance with s275 in relation to cost and interest**

*Clause 303* acts as an incentive to the claimant to ensure that a complying notice of claim is lodged with an insurer. The notice of claim is a vital part of the pre-proceedings process. The Bill allows the court to award legal and investigation costs incurred by an insurer because of the claimant's failure to comply with the requirements for a notice of claim. The court may only award interest in the claimant's favour for the period of the claimant's default, if, in the court's opinion, there was a reasonable excuse for the failure to comply.

Clause 303 preserves section 309 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "the relevant insurer".

**Court may have regard to compulsory conference**

*Clause 304* permits the court when deciding whether it is appropriate to refer a claim for damages to an alternate dispute resolution process to have regard to the compulsory conference undertaken in the pre-proceedings process. The court may have regard to the compulsory conference when determining costs.

Clause 304 preserves section 310 of the *WorkCover Queensland Act 1996* (as amended).

**PART 8—STRUCTURED SETTLEMENTS****Court may make consent order for structured settlement**

*Clause 305* allows parties to agree on terms for all or part of a damages payment to be made in the format of periodic payments. These periodic payments may be funded through the use of an annuity or other appropriate method.

The Bill allows parties agreeing to settle a claim by a structured settlement to apply to a court to make a consent order approving the terms of the settlement.

The Bill also allows the court to make such an order even when the form of the damages payment is not a lump sum payment. Clause 305 is consistent with amendments brought by the *Personal Injuries Proceedings Act 2001* to the *Motor Accidents Insurance Act 1994*.

Clause 305 preserves section 310A of the *WorkCover Queensland Act 1996* (as amended).

## **PART 9—PARTICULAR MATTERS AFFECTING ASSESSMENTS OF LIABILITY**

### **Absolute defences not introduced**

*Clause 306* provides that this Bill does not reintroduce the absolute defence of contributory negligence or common employment.

An employer can still be found vicariously liable for injury that is caused by the acts or omissions of their employees while in the course of employment.

The clause also prevents the reintroduction of the doctrine of common employment which was abolished in Queensland in 1951.

The doctrine of common employment was that where an employee was injured through the negligence of a fellow employee, the employer could not be held vicariously liable.

Clause 306 preserves section 311 of the *WorkCover Queensland Act 1996* (as amended).

### **Contributory Negligence**

*Clause 307* provides that judicial discretion will be used on a case-by-case basis when determining compensation awards. It also provides a non-exhaustive list of examples of contributory negligence, which may be referred to by a Court when making a determination in relation to compensation awards.

Contributory negligence is a common law principle that acknowledges workers' carelessness in looking after their own safety. It is a defence for an employer in an action for damages to show that an injured worker failed to take reasonable care of themselves, thus contributing to their injury.

See also *Wylie v the ANICorporation Limited* [2000] QCA 314 and *Liftronic Pty Limited v Unver*[2001] HCA 24 (3 April 2001) see also *Law Reform Amendment Bill No. 1,2001*.

Clause 307 preserves section 312 of the *WorkCover Queensland Act 1996* as amended by the *WorkCover Queensland Amendment Act 2001*.

## **PART 10—NO RIGHT TO PARTICULAR DAMAGES**

### **Gratuitous Services**

*Clause 308* relates to the head of damage commonly referred to as a *Griffiths v Kerkemeyer* award. The clause prevents the court awarding the worker damages for the value of gratuitous services of a domestic nature or gratuitous services relating to nursing and attendance when those services are provided by another person i.e. spouse, parents, siblings, other relatives or friends of the claimant.

The Bill recognises there will be a need in certain circumstances for gratuitous care. Therefore, provision has been made in the statutory compensation benefits design (under Chapter 3-Compensation) for payment of a lump sum in lieu of gratuitous care awards under common law for the more seriously injured workers in need of ongoing unpaid care assistance.

Clause 308 preserves section 315 of the *WorkCover Queensland Act 1996* (as amended).

## **PART 11—EXEMPLARY DAMAGES**

### **Exemplary damages**

*Clause 309* prevents a court from awarding exemplary damages against WorkCover. The court may make a separate judgment against the employer for the payment of exemplary or punitive damages if the court considers the employer acted in total disregard for the worker's safety. However,

indemnity for exemplary damages can not be provided for employers under a policy of insurance with WorkCover.

Clause 309 preserves section 319 of the *WorkCover Queensland Act 1996* (as amended).

## **PART 12—COSTS**

### ***Division 1—Costs applying to a worker with a WRI of 20% or more or dependant***

#### **Application of div 1**

*Clause 310* provides that div 1 applies only if the claimant is :

- A worker, if the worker's WRI is 20% or more; or
- A dependant.

Clause 310 preserves section 320 of the *WorkCover Queensland Act 1996* (as amended).

#### **Principles about orders as to costs**

*Clause 311* preserves section 321 of the *WorkCover Queensland Act 1996* as amended by the *WorkCover Queensland Amendment Act 2001* which provides that a court, giving a judgment for costs under this part, must apply the principles set out in clauses 312, 313 and 314.

#### **Costs if written final offer by claimant**

*Clause 312* applies if:

- the claimant makes a written final offer that is not accepted by the relevant insurer; and
- the claimant obtains a judgment no less favourable to the claimant than the written final offer; and

- the court is satisfied that the claimant was at all material times willing and able to carry out what was proposed in the written final offer.

The court must order the insurer to pay the claimant's costs, calculated on the indemnity basis, unless the insurer shows another order for costs is appropriate in the circumstances.

Clause 312 preserves section 322 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

### **Costs if written *final offer* by insurer**

*Clause 313* applies if—

- An insurer makes a written final offer that is not accepted by the claimant; and
- the claimant obtains a judgment that is not more favourable to the claimant than the written final offer; and
- the court is satisfied that the insurer was at all material times willing and able to carry out what was proposed in the written final offer.

Unless a party shows another order for costs is appropriate in the circumstances, the court must:

- order the insurer to pay the claimant's costs, calculated on the standard basis, up to and including the day of service of the written final offer; and
- order the claimant to pay the insurer's costs, calculated on the standard basis, after the day of service of the written final offer.

Clause 313 preserves section 323 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

### **Interest after service of written final offer**

*Clause 314* provides that the court must disregard the interest or damages in the nature of interest relating to the period after the day the written final offer is given.

Clause 314 preserves section 323A of the *WorkCover Queensland Act 1996* (as amended).

### ***Division 2—Cost applying to worker with WRI less than 20% or no WRI***

#### **Application of div 2**

*Clause 315* provides that div 2 applies if the claimant is a worker who has a WRI of less than 20% or no WRI.

Clause 315 preserves section 324 of the *WorkCover Queensland Act 1996* (as amended).

#### **Principles about orders as to costs**

*Clause 316* provides that a court, giving a judgment for costs under this division, must apply the principles set out in this clause.

The Bill provides for the language used for costs in the Bill to reflect rule 743 of the *Uniform Civil Procedure Rules 1999*.

Rule 743 stipulates that party and party costs now equate to standard basis costs and solicitor and client costs now equate to indemnity costs.

The Bill also provides for the inclusion of a definition of “written final offer”, as meaning the written final offer under s.294 of the Bill.

The definition of final offer makes clear that for the purposes of awards of costs by a court any reference to final written offer under Part 12 is taken to be the final written offers exchanged under clause 292.

If a party to the proceeding makes a written final offer of settlement that is refused and the court later awards damages to the worker, the court must, in the following circumstances, make the order about costs provided for:

- if the amount of damages awarded is equal to or more than the worker’s written final offer—an order that an insurer pay the worker’s costs on the standard basis from the day of the written final offer;
- if the amount of damages awarded is equal to or less than the insurer’s written final offer—an order that the worker pay the insurer’s costs on the standard basis from the day of the final offer.



If the award of damages is less than the claimant's written final offer but more than the insurer's written final offer, each party bears the party's own costs. The aim of this provision is to further ensure that parties make realistic offers during the pre-proceedings process. Thus provides an incentive to reach agreement rather than proceeding to trial and incurring further legal expense, with no certainty of the success of an application for costs.

An order about costs for an interlocutory application may be made only if the court is satisfied that the application has been brought because of unreasonable delay by one of the parties. If an entity other than the worker's employer or relevant insurer is joined as a defendant in the proceeding, the court may make an order about costs in favour of, or against, the entity according to the proportion of liability of the defendants.

Clause 316 preserves section 325 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to "WorkCover" is replaced with "insurer".

### ***Division 3—Costs generally***

#### **Application of div 3**

*Clause 317* provides that div 3 applies to all claimants and preserves section 326 of the *WorkCover Queensland Act 1996* (as amended).

#### **Costs if proceeding could have been brought in a lower court**

*Clause 318* provides that if the amount of damages a court awards could have been awarded in a lower court, the court must order any costs in favour of the claimant under the scale of costs applying in the lower court.

Clause 318 preserves section 327 of the *WorkCover Queensland Act 1996* (as amended).

## **PART 13—EXCESS DAMAGES AWARDED IN ANOTHER JURISDICTION**

### **Application of pt 13**

*Clause 319* provides that div 1 applies if:

- a person is entitled to seek as a claimant damages for an injury sustained by a worker in a court of the State, other than under the *Jurisdiction of Courts (Cross-vesting) Act 1987*; and
- damages for the injury are awarded by a court that is not a court of the State; and
- the court that awards the damages does not do so subject to this chapter; and
- the amount of the damages awarded to a claimant is more than the amount that would have been awarded subject to this chapter in a proceeding before a court of the State; and
- a relevant insurer would be liable to pay all the damages if clause 320 did not apply.

Clause 319 preserves section 328 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

### **No liability for excess damages**

*Clause 320* provides that an insurer is not liable for the difference between the amount of damages awarded to the claimant and the amount of damages that would have been awarded in a proceeding before a court of the State.

Clause 320 preserves section 329 of the *WorkCover Queensland Act 1996* (as amended) other than the reference to “WorkCover” is replaced with “insurer”.

## **CHAPTER 6—CHOICE OF LAW FOR DAMAGES**

### **PART 1—APPLICATION OF CHAPTER 6**

Chapter 6 preserves cross border provisions introduced by the *WorkCover Queensland Amendment Act 2002*. These amendments introduce new choice of law arrangements and will commence on proclamation of the Bill.

#### **Claims to which chapter applies**

*Clause 321* defines the damages actions covered by this chapter.

### **INTERPRETATION OF PART 2 & PART 3— SUBSTANTIVE LAW THAT GOVERNS CLAIM**

*Clause 322 to 325*—The Bill in these Parts intends to give effect to an agreement between Queensland, New South Wales and Victoria based upon certain general principles, which seek as their objective to give effect to clause (i) of the Principles Agreement reached by Queensland, New South Wales and Victoria. Clause (i) provides that in relation to common law access:

- A claim in tort in respect of a work related personal injury suffered by a worker is to be determined in accordance with the substantive law of the State with which the worker's employment is connected at the time of injury;
- The relevant rules would apply to actions taken against an employer or a person for whom the employer may be vicariously liable;
- Courts would apply the substantive law of the "home" jurisdiction; and
- "Substantive" law would be defined and would include any procedural provisions applying under the workers' compensation legislation and any other legislation of the "home" jurisdiction.

The Bill provides that if compensation is payable (whether or not it has been paid) under the statutory workers' compensation scheme of a State in relation to an injury to a worker, the substantive law of that State is the substantive law that governs—

- whether or not a claim for damages in relation to the injury can be made; and
- if it can be made, the determination of the claim.

## **CHAPTER 7—THE AUTHORITY**

### **PART 1—ESTABLISHMENT**

The chapter establishes a statutory authority to regulate the workers' compensation scheme in Queensland and in doing so formally separates WorkCover's regulatory functions from its commercial activities.

Under current legislative and operational arrangements Q-COMP, a business unit of WorkCover, undertakes regulatory functions and reports to the Board of WorkCover on such matters. The Public Benefit Test conducted as part of the National Competition Policy (NCP) Review process recommended that, in the interests of transparency and in line with NCP principles, regulatory functions should be completely removed from the ambit of WorkCover's responsibility.

The new regulatory Authority will be known as Q-COMP, with this name to be prescribed by regulation. This name has been retained given the successful brand recognition it has achieved since its creation as the trading name of the Regulatory Division of WorkCover in 2000.

The creation of an autonomous statutory authority will ensure independent and impartial decision making in relation to matters affecting all insurers, both self-insurers and WorkCover.

The Board of the Authority is established by this chapter and will have a maximum of 7 members appointed by Governor in Council. The Board will report to the Minister for the Authority's performance as regulator of Queensland's workers' compensation scheme.

The Bill also abolishes the WorkCover Review Council provided for in Chapter 6A of the *WorkCover Queensland Act 1996* and provides for the functions and responsibilities of the WorkCover Review Council to be transferred to the Board of the new Authority.

### **Authority is established**

*Clause 326* establishes the Workers' Compensation Regulatory Authority.

### **Authority is a body corporate etc.**

*Clause 327* establishes the Authority as a legal entity in the form of a body corporate. The new Authority will possess all characteristics of a body corporate, such as being able to sue and be sued and being able to acquire and hold property.

### **Authority may operate under trading name**

*Clause 328* provides that the Authority may operate under a trading name prescribed under a regulation.

### **Authority represents the State**

*Clause 329* declares that the Authority represents the State and as such has the rights and protection afforded to agencies of the Crown.

## **PART 2—FUNCTIONS AND POWERS**

### **General statement of Authority's functions**

*Clause 330* states the primary function of the new Authority as being to regulate the workers' compensation scheme. It also outlines the general functions of the Authority which encompasses the regulatory, administrative and review functional areas, presently the responsibility of WorkCover's Regulatory Division, including:

- provision of rehabilitation and compliance advisory services;

- reviews and appeals;
- oversight of and support for the medical assessment tribunals;
- licensing and insurer compliance; and
- scheme-wide issues such as table of costs.

### **Authority's general powers**

*Clause 331* states that the Authority has all the powers of a 'natural person'. This means that the Authority can engage in the same activities as an individual. Examples of these activities are provided, such as engaging in contracts, buying and selling property and hiring the services of consultants.

## **PART 3—REPORTING OBLIGATIONS**

### **Quarterly reports**

*Clause 332* requires the Authority's board to give the Minister quarterly reports which include information about the Authority's operations under each of its functions, and prescribes the timeframe for submission of such reports.

### **Matters to be included in annual report**

*Clause 333* sets out the information required to be included in annual reports of the Authority.

### **Board to keep Minister informed**

*Clause 334* sets out the information, reports and other matters required to be provided to the Minister by the Board of the Authority.

## **PART 4—BOARD OF DIRECTORS**

### ***Division 1—Establishment of Authority's board***

#### **Establishment of board**

*Clause 335* provides for the establishment of the Authority's board of directors, and restricts the Board's membership to a maximum of 7 directors. Board members are to be appointed by the Governor in Council.

#### **Appointment of chairperson and deputy chairperson**

*Clause 336* provides that the Governor in Council may appoint a director to be the Board's chairperson, and another director to be the deputy chairperson. The deputy chairperson is required to act as the chairperson during a vacancy of the chairperson's position or at times when the chairperson is absent or unable to perform the functions of the office.

#### **Regard to particular ability in appointment of directors**

*Clause 337* states the criteria that the Governor in Council should use to appoint a person as a director of the Authority's board. In appointing directors to the Board, the Governor in Council must have regard to the person's ability to make a contribution to the Authority's performance as a regulator.

This clause also restricts persons from being appointed as a director if the person is not able to manage a corporation or is a director because of the Corporations Act, or is a director, officer or employee of WorkCover or a self-insurer.

#### **Role of Board**

*Clause 338* provides that the role of the Board is to:

- decide the objectives, strategies and policies to be followed by the Authority;
- monitor the performance and outcomes of the medical assessment tribunals;

- ensure that the Authority performs its functions in a proper, effective and efficient way;
- account to the Minister for the Authority's performance as required by this Act or another Act;
- keep the Minister informed, on its own initiative or on the Minister's request, on the Board's responsibilities and functions; and
- perform other functions conferred on the Board under this or another Act.

The Board will generally oversee the management of the Authority to ensure the efficient and appropriate discharge of its functions and powers.

### **Delegation by Board**

*Clause 339* states to whom the Board may delegate its powers.

### ***Division 2—Meetings and other business of board***

#### **Meaning of “required minimum number” of directors**

*Clause 340* gives the meaning of “required minimum number” of directors for use in this division.

#### **Conduct of meetings and other business**

*Clause 341* allows the Board of the Authority to conduct its business in the way it considers appropriate.

#### **Times and places of meetings**

*Clause 342* sets out requirements for determining when and where board meetings can be held.

#### **Presiding at meetings**

*Clause 343* states who can preside at meetings of the Board.



**Quorum and voting at meetings**

*Clause 344* states the number of directors that make up a quorum and the procedure for voting at meetings.

**Disclosure of interests by director**

*Clause 345* requires a director of the Authority who has a director or indirect interest in a matter being considered, or about to be considered by the Authority's board, to disclose the nature of the interest to a meeting of the Board as soon as practicably possible after the relevant facts come to the director's knowledge.

**Voting by interested director**

*Clause 346* restricts a director of the Authority who has a material personal interest in a matter being considered by the Authority's board from voting on the matter or on a proposed resolution relating to the matter, or from being present while the matter or a related resolution is being considered by the Board.

**Participation in meetings**

*Clause 347* allows the Board to hold meetings, or directors to take part in its meetings, through the use of technology that reasonably allows directors to hear and take part in discussions as they happen such as teleconferencing.

**Resolutions without meetings**

*Clause 348* allows a resolution of the Board to be passed without a meeting, if at least a majority of directors sign a document containing a statement that they are in favour of a resolution set out in the document. Resolutions passed in this manner are taken to be passed as if a board meeting had taken place. If a resolution is passed in this manner, each director must be immediately advised of the resolution and provided with a copy. Each director does not have to sign the same copy of the resolution for the resolution to be passed. It will suffice if each director individually signs an identical copy of the resolution.

**Minutes**

*Clause 349* requires the Board to keep minutes of its proceedings.

***Division 3—Other provisions about directors*****Term of appointment of directors**

*Clause 350* states that a director is to be appointed by the Governor in Council for a term of not more than 5 years.

**Term of appointment not provided for under Act**

*Clause 351* states that, except as determined by the Governor in Council, a director is not to receive payment of any kind whilst being a director or in connection with retirement, or termination from office.

**Appointment of acting director**

*Clause 352* enables the appointment of an acting director during a period when a director is absent from duty or is unable to perform the functions of the office.

**Resignation**

*Clause 353* states that a director may resign from office by signed notice given to the Governor; the chairperson and deputy chairperson may resign from office but still remain as a director.

**Termination of appointment as director**

*Clause 354* states that the appointment of any or all of the directors of the Board may be terminated by the Governor in Council at any time and a reason is not necessary. The appointment of a director, appointed as a public service officer, terminates when that person ceases to be a public service officer.

## **PART 5—THE CHIEF EXECUTIVE OFFICER**

### **Authority's chief executive officer**

*Clause 355* provides for a Chief Executive Officer of the Authority (however called) to be appointed under the Act by Governor in Council on the recommendation of the Board to the Minister.

### **Duties of chief executive officer**

*Clause 356* specifies the chief executive officer's duty to manage the Authority under the Board.

### **Things done by chief executive officer**

*Clause 357* specifies that anything done in the name of or for the Authority by the chief executive officer is taken to have been done by the Authority. This allows the chief executive officer the necessary level of autonomy.

### **Delegation by chief executive officer**

*Clause 358* allows the chief executive officer to delegate powers to any employee of the Authority whom the chief executive officer deems appropriately qualified. The delegations of such powers are subject to the direction of the Board.

### **Additional provisions relating to chief executive officer**

*Clause 359* outlines acting arrangements to apply where the chief executive officer is unavailable. It also provides for the termination or resignation of the chief executive officer.

## **PART 6—OTHER EMPLOYMENT PROVISIONS**

### **Basis of employment generally**

*Clause 360* allows the Authority to employ persons it considers necessary or convenient for the administration of its functions or powers under any Act, and provides that persons employed by the Authority are to be employed under the *Public Service Act 1996*.

Transitional provisions are included in the Bill (refer clause 594) which provide for the transfer of existing staff from WorkCover to the new authority, and the preservation of terms and conditions of their employment.

Staff employed by the Authority after the commencement of the legislation will be covered by the same terms and conditions of employment as the transferred staff.

### **EEO Legislation is applicable**

*Clause 361* specifies that the provisions of the *Equal Opportunity in Public Employment Act 1992* are applicable to the Authority.

## **PART 7—FINANCIAL PROVISIONS**

### **Funding of Authority**

*Clause 362* provides that the new authority is to be funded by contributions from insurers and income received in the exercise of its functions. This reflects current funding arrangements.

### **Application of financial legislation**

*Clause 363* provides for the Authority to be regarded as a statutory body under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

**Funds and accounts**

*Clause 364* allows the Authority to establish funds and accounts, requires the Authority to pay all amounts received by it into the funds and accounts, and specifies the purposes for which amounts may be paid out of an authority fund.

**Reserves**

*Clause 365* allows the Authority to establish reserves it considers appropriate for the performance of its functions.

**PART 8—AUTHORISED PERSONS***Division 1—General***Function of authorised person of the Authority**

*Clause 366* provides that an authorised person of the Authority is able to conduct investigations, carry out inspections and monitor compliance in connection with the requirements of the Authority in the discharge of its functions under this Act

**Authorised person subject to the Authority's directions**

*Clause 367* provides that an authorised person must act under the Authority's directions in exercising their powers.

**Powers of authorised persons**

*Clause 368* provides that an authorised person has the powers given to them by this Bill or another Act.

**Limitation on powers of authorised person**

*Clause 369* specifies that the powers of an authorised person may be limited under a regulation, under a condition of appointment, or by written notice given by the Authority to the authorised person.

***Division 2—Appointment of authorised persons and other matters*****Appointment of authorised persons**

*Clause 370* allows the Authority to appoint an employee of the Authority as an authorised person, but only if the Authority considers the employee to have the necessary expertise or experience to be an authorised person.

**Authorised person's appointment conditions**

*Clause 371* provides for the appointment conditions of authorised persons.

**Authorised person's identity card**

*Clause 372* requires the Authority give an identity card to each authorised person, and sets out requirements in relation to the identify card.

**Display of authorised person's identity card**

*Clause 373* requires an authorised person to display their identity card before exercising their powers.

**Protection from liability**

*Clause 374* protects an authorised person from civil liability in the exercise of their power.

## **PART 9—OTHER PROVISIONS ABOUT THE AUTHORITY**

### **Authority's seal**

*Clause 375* provides for the use of the Authority's seal, which is the 'signature' of the Authority and is used in formal documentation.

### **Authentication of documents**

*Clause 376* provides tests to establish whether documents can be taken to be a formal representation of the Authority.

### **Judicial notice of certain signatures**

*Clause 377* requires that judicial notice must be taken of the official signature of a person who is or has been chairperson of the Authority's board, a director of the Authority or the chief executive officer of the Authority; and the fact that the person holds or has held the relevant office. This clause assists in authenticating documents for judicial purposes.

### **Giving of documents to board**

*Clause 378* allows documents required by the Authority's board to be given to the Chairperson on behalf of the Board.

### **Application of various other Acts**

*Clause 379* outlines the application of various Acts to the Authority.

## **CHAPTER 8—WORKCOVER QUEENSLAND**

The Bill replaces provisions contained in chapter 6 of the *WorkCover Queensland Act 1996* establishing WorkCover Queensland as a legal entity with the primary function of managing the workers' compensation scheme.

The Act currently recognises WorkCover as the regulator and commercial provider of workers' compensation insurance in Queensland.

The Bill removes from WorkCover's authorised functions responsibility for all regulatory, review and policy functions in relation to Queensland's workers' compensation scheme. All other functions of WorkCover remain unchanged. In order to retain the integrity of the workers' compensation fund the Bill maintains premium setting and funds management as part of WorkCover's functions together with insurance underwriting and service delivery.

Reflecting this narrowing of functions, the WorkCover Board established by the Bill will have a streamlined business focus, and has been reduced to a maximum of seven directors including the Chair.

## **PART 1—ESTABLISHMENT**

### **WorkCover is established**

*Clause 380* replaces section 330 of the *WorkCover Queensland Act 1996* establishing WorkCover Queensland and has not been changed.

### **WorkCover is a body corporate etc**

*Clause 381* replaces section 331 of the *WorkCover Queensland Act 1996* and has not been changed. It establishes WorkCover as a legal entity in the form of a body corporate. It possesses all characteristics of a body corporate, such as being able to sue and be sued and being able to acquire and hold property.

### **Relationship with State**

*Clause 382* replaces section 332 of the *WorkCover Queensland Act 1996* and has not been changed. It declares that WorkCover represents the State which provides WorkCover with the protection of Crown immunity.



## **PART 2—FUNCTIONS AND POWERS**

### ***Division 1—Functions and insurance business***

#### **General statement of WorkCover's functions**

*Clause 383* replaces section 333 of the *WorkCover Queensland Act 1996* which outlines the general functions of WorkCover.

This clause deletes functions provided for in section 333 of the *WorkCover Queensland Act 1996* relating to WorkCover managing the scheme and enforcing the Act as a regulator. Such functions are now the responsibility of the new regulatory Authority.

#### **WorkCover's insurance business**

*Clause 384* replaces section 334 of the *WorkCover Queensland Act 1996* and has not been changed. It outlines the type of insurance WorkCover can provide and that it may reinsure all or part of any risk accepted by it.

#### **WorkCover as the exclusive provider of accident insurance**

*Clause 385* replaces section 335 of the *WorkCover Queensland Act 1996* and has not been changed. It provides for WorkCover to be the sole provider of accident insurance. This clause is subject to provisions authorising licensed self-insurers to provide accident insurance for their workers.

#### **WorkCover offices**

*Clause 386* replaces section 336 of the *WorkCover Queensland Act 1996* and has not been changed. It enables WorkCover to establish offices anywhere, and discontinue any WorkCover offices.

## ***Division 2—Powers generally***

### **Objects of div 2**

*Clause 387* replaces section 337 of the *WorkCover Queensland Act 1996* and has not been changed. It outlines that the objectives of the division are to:

- abolish any application of the doctrine of *ultra vires* to WorkCover; and
- ensure that WorkCover gives effect to any restrictions on its objects or powers, without affecting the validity of its dealings with outsiders.

### **WorkCover's general powers**

*Clause 388* replaces section 338 of the *WorkCover Queensland Act 1996* and has not been changed. It states that WorkCover has all the powers of a 'natural person'. This means that WorkCover can engage in the same activities as an individual. Examples of these activities are provided, such as engaging in contracts, buying and selling property and hiring the services of consultants.

### **General restriction on WorkCover's powers**

*Clause 389* replaces section 339 of the *WorkCover Queensland Act 1996* which replicates section 150 of the *Government Owned Corporations Act 1993* and has not been changed. It provides a general restriction on WorkCover's powers.

### **Disposal of main undertakings**

*Clause 390* replaces section 340 of the *WorkCover Queensland Act 1996* which replicates section 162 of the *Government Owned Corporations Act 1993* and has not been changed. It provides that decisions to dispose of or sell any of WorkCover's main undertakings may only proceed with the written permission of the Minister.

**Acquiring and disposing of subsidiaries**

*Clause 391* replaces section 341 of the *WorkCover Queensland Act 1996* which replicates section 163 of the *Government Owned Corporations Act 1993* and has not been changed. It prevents WorkCover from establishing or disposing of a subsidiary body without Ministerial permission.

**Protection of persons who deal with WorkCover**

*Clause 392* replaces section 342 of the *WorkCover Queensland Act 1996* which replicates section 151 of the *Government Owned Corporations Act 1993* and has not been changed. It abolishes WorkCover's ability to apply the doctrine of 'ultra vires' to break arrangements it enters into with other parties. In practical terms, the clause protects reasonable assumptions that a person dealing with WorkCover may make e.g. that the Act has been complied with, authorities are valid, and so on.

**Reserve power of Minister to direct that assets not be disposed of**

*Clause 393* replaces section 343 of the *WorkCover Queensland Act 1996* which replicates section 161 of the *Government Owned Corporations Act 1993* and incorporates only minor changes.

Section 343 of the *WorkCover Queensland Act 1996* allows the Minister the power to prevent WorkCover from selling or otherwise disposing of a particular WorkCover asset. In keeping with the principle of transparency, whereby Ministerial intervention via directions are to be made public, a copy of any direction under this provision is to be published in the industrial gazette within 21 days after it is given.

This clause amends Section 343 of the *WorkCover Queensland Act 1996* changing the reference to "the Board" to "WorkCover's Board", and section 343(3) to clarify that the gazette as being the "industrial gazette".

## **PART 3—OBLIGATIONS**

### ***Division 1—Corporate Plan***

#### **WorkCover must have a corporate plan**

*Clause 394* replaces section 344 of the *WorkCover Queensland Act 1996* which replicates section 103 of the *Government Owned Corporations Act 1993* and has not been changed. It requires WorkCover to have a corporate plan, and has not been changed.

#### **Guidelines in relation to corporate plans**

*Clause 395* replaces section 345 of the *WorkCover Queensland Act 1996* which replicates section 105 of the *Government Owned Corporations Act 1993*, and has not been changed. It enables the Minister to issue guidelines about the form and content of any corporate plan, which must be complied with by WorkCover.

#### **Draft corporate plan**

*Clause 396* replaces section 346 of the *WorkCover Queensland Act 1996* which replicates section 106 of the *Government Owned Corporations Act 1993*, and has not been changed. It specifies that the Board of WorkCover must prepare and submit to the Minister for agreement a draft corporate plan not later than two months before the start of each financial year.

#### **Special procedures for draft corporate plan**

*Clause 397* replaces section 347 of the *WorkCover Queensland Act 1996* which replicates section 107 of the *Government Owned Corporations Act 1993*, and has not been changed. It sets out the procedures and time limits for the Minister to request or direct on the contents of, and other matters in relation to, the draft corporate plan.

#### **Corporate plan on agreement**

*Clause 398* replaces section 348 of the *WorkCover Queensland Act 1996* which replicates section 108 of the *Government Owned Corporations Act*

1993, and has not been changed. It provides for the draft corporate plan to become WorkCover's corporate plan when it is agreed to by the Minister.

### **Corporate plan pending agreement**

*Clause 399* replaces section 349 of the *WorkCover Queensland Act 1996* which replicates section 109 of the *Government Owned Corporations Act 1993*. It provides that the draft corporate plan submitted, or last submitted, by WorkCover's board before the start of the financial year is taken to be the corporate plan until a draft corporate plan is agreed to under the previous clause.

### **Changes to corporate plan**

*Clause 400* replaces section 350 of the *WorkCover Queensland Act 1996* which replicates section 110 of the *Government Owned Corporations Act 1993*, and has not been changed. It provides for the modification of the corporate plan with the agreement of the Minister or by a direction to the Board. In keeping with the principle of transparency, whereby Ministerial intervention via directions is to be made public, a copy of any direction is to be published in the industrial gazette within 21 days after it is given.

## ***Division 2—Statement of corporate intent***

### **WorkCover must have a statement of corporate intent**

*Clause 401* replaces section 351 of the *WorkCover Queensland Act 1996* which replicates section 111 of the *Government Owned Corporations Act 1993*, and has not been changed. It states WorkCover must have a statement of corporate intent for each financial year.

### **Statement of corporate intent must be consistent with corporate plan**

*Clause 402* replaces section 352 of the *WorkCover Queensland Act 1996* which replicates section 113 of the *Government Owned Corporations Act 1993*, and has not been changed. It states the statement of corporate intent must be consistent with the corporate plan of WorkCover.

**Matters to be included in the statement of corporate intent**

*Clause 403* replaces section 353 of the *WorkCover Queensland Act 1996* which replicates section 114 of the *Government Owned Corporations Act 1993*, and has not been changed. It provides that WorkCover's statement of corporate intent must specify both financial and non-financial performance targets for its activities for the relevant financial year. The statement of corporate intent is also to include the matters required by clauses referred to in this clause.

**Additional matters to be included in the statement of corporate intent**

*Clause 404* replaces section 354 of the *WorkCover Queensland Act 1996* which replicates section 115 of the *Government Owned Corporations Act 1993*, and has not been changed. It sets out the additional matters which must be included in the statement of corporate intent.

**Draft statement of corporate intent**

*Clause 405* replaces section 355 of the *WorkCover Queensland Act 1996* which replicates section 116 of the *Government Owned Corporations Act 1993*, and has not been changed. It requires WorkCover's board to prepare and submit to the Minister for agreement a draft statement of corporate intent no later than two months before the start of each financial year. The Board and the Minister must endeavour to reach agreement on the draft statement of corporate intent as soon as possible.

**Special procedures for draft statement of corporate intent**

*Clause 406* replaces section 356 of the *WorkCover Queensland Act 1996* which replicates section 117 of the *Government Owned Corporations Act 1993*, and has not been changed. It sets out the procedures for the Minister to request or direct modifications to the statement of corporate intent. In keeping with the principle of transparency, whereby Ministerial intervention via directions is to be made public, a copy of any direction is to be published in the gazette within 21 days after it is given.

**Statement of corporate intent on agreement**

*Clause 407* replaces section 357 of the *WorkCover Queensland Act 1996* which replicates section 118 of the *Government Owned Corporations Act*

1993, and has not been changed. It provides for the draft statement of corporate intent to become WorkCover's statement of corporate intent when it has been agreed to by the Minister.

### **Changes to statement of corporate intent**

*Clause 408* replaces section 358 of the *WorkCover Queensland Act 1996* which replicates section 120 of the *Government Owned Corporations Act 1993*, and has not been changed. It provides for changes to the statement of corporate intent by the Board with the agreement of the Minister or by a direction from the Minister to the Board. In keeping with the principle of transparency, whereby Ministerial intervention via directions is to be made public, a copy of any direction is to be published in the industrial gazette within 21 days after it is given.

### ***Division 3—Community service obligations***

#### **Meaning of “community service obligations”**

*Clause 409* replaces section 359 of the *WorkCover Queensland Act 1996* which defines the term “consumer service obligations” for WorkCover.

This clause modifies section 359(2)(h) of the *WorkCover Queensland Act 1996* to remove the reference to activities of a regulatory or policy formulation nature.

#### **Community service obligations to be specified in statement of corporate intent**

*Clause 410* replaces section 360 of the *WorkCover Queensland Act 1996* which replicates section 122 of the *Government Owned Corporations Act 1993*, and has not been changed. It states that the community service obligations of WorkCover are to be specified in its statement of corporate intent, as are the costings of, funding for, or other arrangements to make adjustments relating to the community service obligations.

***Division 4—Reports and other accountability matters*****Quarterly reports**

*Clause 411* replaces section 361 of the *WorkCover Queensland Act 1996* which replicates section 130 of the *Government Owned Corporations Act 1993*. It sets out the requirements for quarterly reports to be given to the Minister by WorkCover.

This clause removes section 361(3)(b) requiring that the quarterly report include a report from the review council. This reflects the transfer of responsibilities of the council to the Board of the workers' compensation regulatory Authority.

**Matters to be included in annual report**

*Clause 412* replaces section 362 of the *WorkCover Queensland Act 1996* which replicates section 131 of the *Government Owned Corporations Act 1993*, and has not been changed. It sets out the content of annual reports of WorkCover. References in section 131 to the Corporations Law have been excluded from the WorkCover provision as WorkCover is not subject to Corporations Law.

**Deletion of commercially sensitive matters from annual report etc**

*Clause 413* replaces section 363 of the *WorkCover Queensland Act 1996* which replicates section 132 of the *Government Owned Corporations Act 1993*, and has not been changed. It enables WorkCover's board to apply to the Minister to have commercially sensitive matters deleted from the copy of the annual report and accompanying documents that are to be made available to the public.

**Board to keep Minister informed**

*Clause 414* replaces section 364 of the *WorkCover Queensland Act 1996* which replicates section 133 of the *Government Owned Corporations Act 1993*, and has not been changed. It sets out the information, reports and other matters required to be provided to the Minister by the Board of WorkCover.



***Division 5—Duties and liabilities of directors and other officers of WorkCover***

**Disclosure of interests by director**

*Clause 415* replaces section 365 of the *WorkCover Queensland Act 1996* which replicates section 134 of the *Government Owned Corporations Act 1993*, and has not been changed. It sets out the requirements for disclosure of a direct or indirect interest in a matter being, or about to be considered, by the Board.

**Voting by interested director**

*Clause 416* replaces section 366 of the *WorkCover Queensland Act 1996* which replicates section 135 of the *Government Owned Corporations Act 1993*, and has not been changed. It specifies that a director, who has a material interest in a matter, is not able to participate in any decision in relation to the matter or in any related resolution made relating to the matter, except when the Board has passed a resolution stating the director should not be disqualified from voting on the matter. This provision is designed to prevent conflicts of interest arising in directors' decision-making.

**Duty and liability of certain officers of WorkCover**

*Clause 417* replaces section 367 of the *WorkCover Queensland Act 1996* which replicates section 136 of the *Government Owned Corporations Act 1993*, and has not been changed. It describes the standards of corporate conduct that are required from officers of WorkCover.

**Prohibition on loans to directors**

*Clause 418* replaces section 368 of the *WorkCover Queensland Act 1996* which replicates section 137 of the *Government Owned Corporations Act 1993*, and has not been changed. It prohibits WorkCover directors from using their position to establish financial loans from WorkCover to themselves or their relatives. An exception is however provided if a director borrows money from WorkCover under an arrangement that is available to members of the public.

**WorkCover not to indemnify WorkCover officers**

*Clause 419* replaces section 369 of the *WorkCover Queensland Act 1996* which replicates section 138 of the *Government Owned Corporations Act 1993*, and has not been changed. It prevents WorkCover from indemnifying a person who is or has been a WorkCover officer against a liability incurred as an officer; or exempting a person who is or has been an officer from a liability incurred as an officer.

**WorkCover not to pay premiums for certain liabilities of WorkCover officers**

*Clause 420* replaces section 370 of the *WorkCover Queensland Act 1996* which replicates section 139 of the *Government Owned Corporations Act 1993*, and has not been changed. It prevents WorkCover from paying, or agreeing to pay, a premium in relation to certain liabilities of officers.

**Examination of persons concerned with WorkCover**

*Clause 421* replaces section 371 of the *WorkCover Queensland Act 1996* which replicates section 142 of the *Government Owned Corporations Act 1993* and has not been changed. It provides for the examination—by the Supreme or a District Court—of persons who have been or may have been guilty of fraud, negligence, default, breach of trust, breach of duty or other misconduct in relation to WorkCover. This also relates to persons who may be capable of giving information in relation to the management, administration, or affairs of WorkCover.

**Power to grant relief**

*Clause 422* replaces section 372 of the *WorkCover Queensland Act 1996* which replicates section 143 of the *Government Owned Corporations Act 1993*, and has not been changed. It provides that WorkCover directors, the chief executive officer of WorkCover and other employees will be liable for strict penalties if they engage in inappropriate corporate behaviour such as negligence, default, breach of trust or breach of duty. However, even though there may be a case for stating an officer is liable for a breach of any of these behaviours, the officer may have a reasonable excuse for their behaviour, such as they honestly believed they were following the correct course of action, and there was no intent to engage in inappropriate behaviour.

In these cases, the officer can apply to the Supreme Court or a District Court for 'relief'. The court may then relieve i.e. absolve the person, completely or partly, from liability on terms that the court considers appropriate.

If a case is being tried by a judge with a jury, the judge may, after hearing evidence, relieve the officer completely or partly of liability if the judge deems this to be appropriate.

### **False or misleading information or documents**

*Clause 423* replaces section 373 of the *WorkCover Queensland Act 1996* which replicates section 144 of the *Government Owned Corporations Act 1993*, and has not been changed. It prohibits an officer of WorkCover from making false or misleading statements concerning WorkCover to another officer or the Minister.

A similar prohibition exists in relation to false or misleading documents, unless the officer indicates to the recipient that the documents are false or misleading, and provides correct information if possible. A penalty is applicable if it is established that the officer provided the false or misleading information or documents with intent to deceive or defraud.

## **PART 4—BOARD OF DIRECTORS**

### *Division 1—Establishment of WorkCover's board*

#### **Establishment of board**

*Clause 424* replaces section 381 of the *WorkCover Queensland Act 1996* which provided for the establishment of WorkCover's board of directors, and that the Board consists of at least 7 members.

This clause amends section 381(2) to require that the Board consist of a maximum of 7 members. This change reflects the narrowing of functions of the Board following the transfer of WorkCover's regulatory functions to the new Authority. Given the streamlined business focus of the new board, no more than 7 directors will be necessary.

**Appointment of chairperson and deputy chairperson**

*Clause 425* replaces section 382 of the *WorkCover Queensland Act 1996* and has not been changed. It states that the chairperson and deputy chairperson are appointed by the Governor in Council. The deputy chairperson is required to act as chairperson during a vacancy of the Chairperson's position or at times when the chairperson is absent or unable to perform the functions of the office.

**Regard to particular ability in appointment of directors**

*Clause 426* replaces section 383 of the *WorkCover Queensland Act 1996* which states the criteria that the Governor in Council should use to appoint WorkCover directors. Currently the Governor in Council must have regard to the person's ability to make a contribution to WorkCover's implementation of its statement of corporate intent and for its performance as a commercial enterprise and regulator.

Given the separation of regulatory functions to the new regulatory authority established by this Bill, reference to "regulator" has been removed from the criteria.

**Role of Board**

*Clause 427* replaces section 384 of the *WorkCover Queensland Act 1996* which states the role of the Board. Currently, the Board's responsibilities reflect both the commercial and regulatory nature of WorkCover's operations.

This clause deletes roles reflecting regulatory aspects of WorkCover's current operations that are to be undertaken by the new regulatory Authority. Also deleted is reference to the Board's role in making recommendations to the Minister about legislative policy issues. Such advice will now be provided by the department responsible for administering the legislation.

This clause also creates a requirement for WorkCover's board to notify the regulatory Authority, in addition to the Minister, of the methods and rates it proposes to use to assess premiums. WorkCover also now has a legislative requirement to give timely advice to the Authority on information impacting on the workers' compensation scheme.

**Delegation by board**

*Clause 428* replaces section 385 of the *WorkCover Queensland Act 1996* which states to whom the Board may delegate its powers, and has not been changed.

***Division 2—Meetings and other business of board*****Meaning of “required minimum number” of directors**

*Clause 429* replaces section 386 of the *WorkCover Queensland Act 1996* which gives the meaning of “required minimum number” of directors for use in this division, and has not been changed.

**Conduct of meetings and other business**

*Clause 430* replaces section 387 of the *WorkCover Queensland Act 1996* which allows the Board of WorkCover to conduct its business in the way it considers appropriate, and has not been changed.

**Times and places of meetings**

*Clause 431* replaces section 388 of the *WorkCover Queensland Act 1996* which gives the requirements for determining when and where board meetings can be held, and has not been changed.

**Presiding at meetings**

*Clause 432* replaces section 389 of the *WorkCover Queensland Act 1996* which states who can preside at meetings of the Board, and has not been changed.

**Quorum and voting at meetings**

*Clause 433* replaces section 390 of the *WorkCover Queensland Act 1996* which states the number of directors that make up a quorum and the procedure for voting at meetings, and has not been changed.

**Participation in meetings by telephone etc**

*Clause 434* replaces section 391 of the *WorkCover Queensland Act 1996* which states how directors are able to participate in meetings.

**Resolutions without meetings**

*Clause 435* replaces section 392 of the *WorkCover Queensland Act 1996* and has not been changed. It allows a resolution of the Board to be passed without a meeting, if at least a majority of directors sign a document containing a statement that they are in favour of a resolution set out in the document.

**Minutes**

*Clause 436* replaces section 393 of the *WorkCover Queensland Act 1996* which requires the Board to keep minutes of its proceedings, and has not been changed.

***Division 3—Other provisions about directors*****Term of appointment of directors**

*Clause 437* replaces section 394 of the *WorkCover Queensland Act 1996* and has not been changed. It states that a director is to be appointed by the Governor in Council for a term of not more than 5 years.

**Term of appointment not provided for under Act**

*Clause 438* replaces section 395 of the *WorkCover Queensland Act 1996* and has not been changed. It states that, except as determined by the Governor in Council, a director is not to receive payment of any kind whilst being a director or in connection with retirement, or termination from office.

**Appointment of acting director**

*Clause 439* replaces section 396 of the *WorkCover Queensland Act 1996* and has not been changed. It enables the appointment of an acting director

during a period when a director is absent from duty or is unable to perform the functions of the office.

### **Resignation**

*Clause 440* replaces section 397 of the *WorkCover Queensland Act 1996* and has not been changed. It states that a director may resign from office by signed notice given to the Governor and the chairperson and deputy chairperson may resign from office but still remain as a director.

### **Termination of appointment as director**

*Clause 441* replaces section 398 of the *WorkCover Queensland Act 1996* and has not been changed. It states that the appointment of any or all of the directors of the Board may be terminated by the Governor in Council at any time and a reason is not necessary. The appointment of a director, who is a public service officer, terminates when that person ceases to be a public service officer.

## **PART 5—THE CHIEF EXECUTIVE OFFICER**

### **WorkCover's chief executive officer**

*Clause 442* replaces section 399 of the *WorkCover Queensland Act 1996* and has not been changed. It requires WorkCover to have a chief executive officer and outlines the appointment requirements for this position. The chief executive officer is to be appointed under a contract with WorkCover, rather than under the *Public Service Act 1996*.

### **Duties of chief executive officer**

*Clause 443* replaces section 400 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies the chief executive officer's duty to manage WorkCover under the Board.

**Things done by chief executive officer**

*Clause 444* replaces section 401 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that anything done by the chief executive officer is taken to have been done by WorkCover. This allows the chief executive officer the requisite level of autonomy.

**Delegation by chief executive officer**

*Clause 445* replaces section 402 of the *WorkCover Queensland Act 1996* and has not been changed. It allows the chief executive officer to delegate powers to any employee of WorkCover whom the chief executive officer deems appropriately qualified. The delegations of such powers are subject to the direction of the Board.

**Additional provisions relating to chief executive officer**

*Clause 446* replaces section 403 of the *WorkCover Queensland Act 1996* and has not been changed. It outlines acting arrangements to apply where the chief executive officer is unavailable. It also provides for the termination or resignation of the chief executive officer.

**PART 6—OTHER EMPLOYMENT PROVISIONS****Appointment of senior executives**

*Clause 447* replaces section 404 of the *WorkCover Queensland Act 1996* and has not been changed. It states the appointment requirements for senior executives of WorkCover. Senior executives will be appointed by a contract with WorkCover rather than under the *Public Service Act 1996*.

**Basis of employment generally**

*Clause 448* replaces section 405 of the *WorkCover Queensland Act 1996* which currently allows WorkCover to employ persons it considers necessary or convenient for the administration of the *WorkCover Queensland Act 1996* or for its functions or powers under any Act.



This clause amends section 405(2) to remove reference to “this Act or for...”, reflecting the separation of regulatory and insurance functions under the new arrangements.

The *Public Service Act 1996* does not apply to WorkCover appointments.

### **Superannuation schemes**

*Clause 449* replaces section 406 of the *WorkCover Queensland Act 1996* and has not been changed. It sets out the options and audit requirements for WorkCover in relation to superannuation arrangements for its employees.

### **Arrangements relating to staff**

*Clause 450* replaces section 407 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to arrange for the services of staff of government departments/agencies to be made available to it. Similarly, WorkCover can arrange for its own staff to be available to such bodies.

### **Employment and industrial relations plan**

*Clause 451* replaces section 408 of the *WorkCover Queensland Act 1996* and has not been changed. It requires WorkCover to develop an employment and industrial relations plan that specifies the major employment and industrial relations issues pertaining to WorkCover. This plan forms part of the statement of corporate intent.

### **EEO legislation is applicable**

*Clause 452* replaces section 409 of the *WorkCover Queensland Act 1996* and has not been changed. It applies the provisions of the *Equal Opportunity in Public Employment Act 1992* to WorkCover.

## **PART 7—FINANCIAL PROVISIONS**

### **WorkCover's solvency**

*Clause 453* inserts a provision stating that WorkCover is taken to be fully funded if it is able to meet its liabilities for compensation and damages payable from its fund and accounts, maintains minimum solvency of 15%, and complies with any additional solvency requirements prescribed under a regulation. Solvency is defined for the purposes of this clause.

### **Application of financial legislation**

*Clause 454* replaces section 410 of the *WorkCover Queensland Act 1996* and has not been changed. It provides for WorkCover to be regarded as a statutory body under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

### **Liability for State taxes**

*Clause 455* replaces section 411 of the *WorkCover Queensland Act 1996* and has not been changed. It establishes WorkCover's obligation to pay State taxes, such as payroll tax and stamp duty and a discretionary power for the Treasurer to exempt WorkCover from the payment of State taxes.

### **Liability for Commonwealth tax equivalents**

*Clause 456* replaces section 412 of the *WorkCover Queensland Act 1996* and has not been changed. It requires that WorkCover must pay amounts to the Treasurer for payment into the consolidated fund as required under the tax equivalent manual. It also provides a definition for the "tax equivalents manual".

### **Funds and accounts**

*Clause 457* replaces section 414 of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to establish funds and accounts for the effective financial administration of the scheme.

**Reserves**

*Clause 458* replaces section 415 of the *WorkCover Queensland Act 1996* which allows WorkCover to establish financial reserves within the fund for purposes which it deems appropriate in the conduct of its business.

This clause amends section 415 to insert a new sub-section stipulating that reserves are not to be taken into account in determining solvency under clause 453(2).

**Procedures for borrowing**

*Clause 459* replaces section 413 of the *WorkCover Queensland Act 1996* highlighting procedures for borrowing, and has not been changed.

**Payment to consolidated fund**

*Clause 460* replaces section 417 of the *WorkCover Queensland Act 1996* allowing WorkCover to make payments to the consolidated fund when a surplus is achieved over and above full funding, as opposed to paying dividends to the government. WorkCover is unable to pay dividends to the government as it has no share capital.

This clause modifies section 417(2) of the *WorkCover Queensland Act 1996* replacing references to the workers' compensation scheme with "WorkCover".

**Additional financial reporting requirements**

*Clause 461* replaces section 418 of the *WorkCover Queensland Act 1996* requiring WorkCover to engage an actuary on an annual basis to provide a report to government on the financial performance of the workers' compensation scheme. It is an additional accountability measure.

This clause modifies section 418(1) of the *WorkCover Queensland Act 1996* replacing the reference to "the workers' compensation scheme" with "WorkCover".

## **PART 8—AUTHORISED PERSONS**

### *Division 1—General*

#### **Function of authorised person**

*Clause 462* replaces section 458 of the *WorkCover Queensland Act 1996* relating to the functions of authorised persons.

This clause modifies section 458 of the *WorkCover Queensland Act 1996* to provide that authorised persons of WorkCover are able to conduct investigations, carry out inspections and monitor compliance in connected with the requirements of WorkCover in the discharge of its functions under the Act.

#### **Authorised person subject to WorkCover's directions**

*Clause 463* replaces section 459 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that an authorised person must act under WorkCover's directions in exercising their powers.

#### **Powers of authorised persons**

*Clause 464* replaces section 460 of the *WorkCover Queensland Act 1996* which provides that an authorised person has the power given to them by this Bill or another Act, and has not been changed.

#### **Limitation on powers of authorised person**

*Clause 465* replaces section 461 of the *WorkCover Queensland Act 1996* specifying how the powers of an authorised person may be limited, and has not been changed.

***Division 2—Appointment of authorised persons and other matters*****Appointment of authorised persons**

*Clause 466* replaces section 462 of the *WorkCover Queensland Act 1996* which outlines the way in which an authorised person is to be appointed, and has not been changed.

**Authorised person's appointment conditions**

*Clause 467* replaces section 463 of the *WorkCover Queensland Act 1996* relating to the appointment conditions of authorised persons, and has not been changed.

**Authorised person's identity card**

*Clause 468* replaces section 464 of the *WorkCover Queensland Act 1996* and has not been changed. It requires WorkCover to give an identity card to each authorised person, and sets out requirements in relation to the identify card.

**Display of authorised person's identity card**

*Clause 469* replaces section 465 of the *WorkCover Queensland Act 1996* and has not been changed. It requires an authorised person to display their identity card before exercising their powers.

**Protection from liability**

*Clause 470* replaces section 466 of the *WorkCover Queensland Act 1996* and has not been changed. It protects an authorised person from civil liability in the exercise of their power.

## **PART 9—OTHER PROVISIONS ABOUT WORKCOVER**

### **WorkCover's seal**

*Clause 471* replaces section 419 of the *WorkCover Queensland Act 1996* and has not been changed. It provides for the use of WorkCover's seal, which is the 'signature' of WorkCover and is used in formal documentation.

### **Authentication of documents**

*Clause 472* replaces section 420 of the *WorkCover Queensland Act 1996* and has not been changed. It provides tests to establish whether documents can be taken to be a formal representation of WorkCover.

### **Judicial notice of certain signatures**

*Clause 473* replaces section 421 of the *WorkCover Queensland Act 1996* and has not been changed. It assists in authenticating documents for judicial purposes.

### **Giving of documents to board**

*Clause 474* replaces section 422 of the *WorkCover Queensland Act 1996* and has not been changed. It allows documents required by the Board to be given to the Chairperson on behalf of the Board.

### **Application of various other Acts**

*Clause 475* replaces section 423 of the *WorkCover Queensland Act 1996* which outlines the application of various Acts and has not been changed.

## **CHAPTER 9—THE MINISTER**

### **PART 1—THE MINISTER AND THE AUTHORITY**

#### **Reserve power of Minister to give direction in public interest**

*Clause 476* emulates section 375 of the *WorkCover Queensland Act 1996* with changes to reflect the section's applicability to the new Authority. It allows the Minister to give the Authority's board a written direction in relation to the Authority if the Minister is satisfied that it is necessary to give the direction in the public interest.

#### **Additional power to direct Authority**

*Clause 477* emulates section 376 of the *WorkCover Queensland Act 1996* with changes to reflect the section's applicability to the new Authority. It allows the Minister to give a written direction for the administration of the Act.

#### **Monitoring and assessment of Authority**

*Clause 478* emulates section 380 of the *WorkCover Queensland Act 1996* with changes to reflect the section's applicability to the new Authority. It allows the Minister to delegate the Minister's monitoring powers under the specified clause of this chapter to the department chief executive officer or a suitable officer of the Authority or the department.

#### **Amounts payable by Authority on Minister's instruction**

*Clause 479* emulates section 416 of the *WorkCover Queensland Act 1996* with changes to reflect the section's applicability to the new Authority. It requires the Authority to make payments to organisations or bodies that the Minister considers will help in certain specified areas.

## **PART 2—THE MINISTER AND WORKCOVER**

### **Reserve power of Minister to notify board of public sector policies**

*Clause 480* replaces section 374 of the *WorkCover Queensland Act 1996* and has not been changed. It replicates section 123 of the *Government Owned Corporations Act 1993*, and provides a reserve power for the Minister to notify the WorkCover board in writing of a public sector policy that is to apply to WorkCover if the Minister is satisfied that it is necessary to give the notification in the public interest.

### **Reserve power of Minister to give directions in public interest.**

*Clause 481* replaces section 375 of the *WorkCover Queensland Act 1996* and has not been changed. It replicates section 124 of the *Government Owned Corporations Act 1993*, and allows the Minister to give the WorkCover board a written direction in relation to WorkCover if the Minister is satisfied that it is necessary to give the direction in the public interest.

### **Additional power to direct WorkCover**

*Clause 482* replaces section 376 of the *WorkCover Queensland Act 1996*. It allows the Minister to give the Board directions regarding the non-commercial administration of this legislation. It is designed to be a mechanism for Ministerial intervention into the regulatory management of WorkCover.

The only change made by this clause is at section 376(3)(a) to clearly specify the Board as “WorkCover’s Board”.

### **Notice of suspected threat to full funding because of direction or notification**

*Clause 483* replaces section 377 of the *WorkCover Queensland Act 1996* and has been updated in line with current drafting practices. It incorporates provisions similar in style to section 147 of the *Government Owned Corporations Act 1993* with modifications reflecting the solvency issues which need to be considered in the administration of a workers’ compensation fund. It requires the Board of WorkCover to immediately advise the Minister and the Auditor General if the Board believes a



Ministerial direction will threaten WorkCover's ability to achieve or maintain full funding.

### **WorkCover and WorkCover's board not otherwise subject to government direction**

*Clause 484* replaces section 378 of the *WorkCover Queensland Act 1996* which states that notwithstanding the Minister's ability to influence WorkCover operations via directions under powers in this chapter, the WorkCover board is to act autonomously in managing WorkCover's operations, free from government interference.

The only change made by this clause is to clearly specify the Board as "WorkCover's board" in the heading.

### **Minister not director etc**

*Clause 485* replaces section 379 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that the Minister is not to be treated as a director of WorkCover, and reflects the autonomous nature of WorkCover in that any action taken against WorkCover does not extend to the Minister.

### **Monitoring and assessment of WorkCover**

*Clause 486* replaces section 380 of the *WorkCover Queensland Act 1996* and has not been changed. It replicates section 185 of the *Government Owned Corporations Act 1993* and enables the Minister to delegate the Minister's monitoring powers under the specified clause of this chapter to the department chief executive officer or a suitable officer of WorkCover or the department.

## **CHAPTER 10—WORKERS' COMPENSATION ADVISORY COMMITTEES**

### **Establishment of committees**

*Clause 487* allows the Minister to establish one or more workers' compensation advisory committees.

This provision has been included to enable the Minister to establish consultation and advisory forums, as and when considered appropriate by the Minister, to consider matters relating to workers' compensation in Queensland.

### **Membership of Committee**

*Clause 488* provides that, when a committee is established, it is to comprise representatives of workers, employers, Government, self-insurers, WorkCover and the Authority, and persons who have other experience or expertise the Minister considers appropriate to the issue under consideration.

### **Role of committees**

*Clause 489* provides that the role of a committee will be to consider matters referred to it by the Minister, and to report to the Minister on its recommendations.

## **CHAPTER 11—MEDICAL ASSESSMENT TRIBUNALS**

The Bill replaces provisions contained in chapter 7 of the *WorkCover Queensland Act 1996*. This chapter outlines the composition and proceedings of tribunals, the tribunals' jurisdiction and proceedings for exercise of tribunals' jurisdiction.

The Bill largely replaces current provisions of chapter 7 without amendment. The only major change made to this chapter is the inclusion of provisions to ensure that a member of a General or Specialist Medical

Assessment Tribunal is not civilly liable for an act done, or an omission made in the discharge of the functions of the Tribunal.

## **PART 1—OBJECT**

### **Object of ch 11**

*Clause 490* replaces section 424 of the *WorkCover Queensland Act 1996* and has not been changed. It states that the object of chapter 10 is to provide for an independent system of medical review and assessment of injury and impairment sustained by workers.

## **PART 2—COMPOSITION AND PROCEEDINGS OF TRIBUNALS**

### **Assessment tribunals to be maintained**

*Clause 491* replaces section 425 of the *WorkCover Queensland Act 1996* and has not been changed. It outlines the seven medical assessment tribunals that are maintained under this Act.

### **General Medical Assessment Tribunal**

*Clause 492* replaces section 426 of the *WorkCover Queensland Act 1996* and has not been changed. It outlines the constitution of the General Medical Assessment Tribunal and terms of appointment.

### **Chairperson and deputy chairperson of General Medical Assessment Tribunal**

*Clause 493* replaces section 429 of the *WorkCover Queensland Act 1996* and has not been changed. It provides for the appointment of a chairperson and deputy chairpersons, and provides that a deputy chairperson may, if designated, act as chairperson if the chairperson is unavailable to attend to the business of the tribunal.

**Constitution of General Medical Assessment Tribunal for reference**

*Clause 494* replaces section 430 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies the requirements for the constitution of the General Medical Assessment Tribunal when deciding a matter referred to it.

**Panel for speciality medical assessment tribunal**

*Clause 495* replaces section 431 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies the requirements for the constitution of speciality medical assessment tribunals.

**Chairperson and deputy chairperson of speciality medical assessment tribunal**

*Clause 496* replaces section 432 of the *WorkCover Queensland Act 1996* and has not been changed. It provides for the appointment of a chairperson and the appointment of at least one deputy chairperson to the specialist medical assessment tribunal, and for a deputy chairperson to act as chairperson if the chairperson is not available to attend to the business of the tribunal.

**Speciality medical assessment tribunal**

*Clause 497* replaces section 433 of the *WorkCover Queensland Act 1996* and has not been changed. It provides for the formation of a specialist medical assessment tribunal.

**Conditions of appointment to tribunal**

*Clause 498* replaces section 434 of the *WorkCover Queensland Act 1996* specifying the conditions of appointment to a tribunal.

This clause modifies section 434(3)(d) of the *WorkCover Queensland Act 1996* to change the reference to “either WorkCover or a self-insurer” to “the Authority or an insurer”.

**Proceedings of tribunals**

*Clause 499* replaces section 435 of the *WorkCover Queensland Act 1996* relating to the proceedings of general and speciality medical assessment tribunals.

Currently, section 435 specifies that WorkCover may appoint a secretary for each tribunal. Reference to “WorkCover” has been replaced with “the Authority” to reflect the role of the new workers’ compensation regulatory authority in overseeing the activities of the tribunals.

All other aspects of section 435 remain unchanged and require the tribunals to decide the time and place where they are to meet, and if there is any disagreement amongst tribunal members as to their determination of a reference, the decision of the tribunal is that of the majority of the members.

**PART 3—JURISDICTION OF TRIBUNALS****Reference to tribunals**

*Clause 500* replaces section 437 of the *WorkCover Queensland Act 1996* which specifies matters that may be referred to the tribunal for decision.

This clause modifies section 437 to replace the current reference to “WorkCover” with “an insurer”. A new subdivision has also been included to clarify that the insurer must give the tribunal all relevant information and documents in relation to the matter referred to the tribunal that is in, or comes into, the insurer’s possession.

**Reference about application for compensation**

*Clause 501* replaces section 438 of the *WorkCover Queensland Act 1996* relating to reference to a tribunal about an application for compensation. This clause modifies section 438(2), (2) (c), and (5) (b) of the *WorkCover Queensland Act 1996* to change the references to “WorkCover” to “the insurer”.

**Reference about worker's capacity for work**

*Clause 502* replaces section 439 of the *WorkCover Queensland Act 1996* about what the tribunal must decide in relation to a reference about a worker's capacity to work. This clause modifies section 439(3)(c) of the *WorkCover Queensland Act 1996* to change the references to "WorkCover" to "the insurer".

**Reference about worker's injury**

*Clause 503* replaces section 440 of the *WorkCover Queensland Act 1996* about what the tribunal must decide in relation to a reference about a worker's injury. This clause modifies section 440(2) of the *WorkCover Queensland Act 1996* to change the references to "WorkCover" to "the insurer".

**Reference about worker's impairment**

*Clause 504* replaces section 441 of the *WorkCover Queensland Act 1996* about what the tribunal must decide in relation to a reference about a worker's impairment, and has not been changed.

**Reference about worker's permanent impairment**

*Clause 505* replaces section 442 of the *WorkCover Queensland Act 1996* about what the tribunal must decide in relation to a reference about a worker's permanent impairment, and has not been changed.

**Reference about worker's level of dependency**

*Clause 506* replaces section 443 of the *WorkCover Queensland Act 1996* requiring the tribunal to decide the workers' level of dependency in the way prescribed by regulation, and has not been changed.

**Reference about review of worker's permanent impairment**

*Clause 507* replaces section 445 of the *WorkCover Queensland Act 1996* relating to review of a worker's permanent impairment, and has not been changed. It requires the tribunal to review the medical evidence and decide if there has been a further material deterioration in relation to the worker's permanent impairment; and the degree of the further permanent

impairment. The tribunal must assess the nature and degree of further permanent impairment in the way prescribed under a regulation.

### **Assessment of additional compensation for prescribed disfigurement**

*Clause 508* replaces section 445A of the *WorkCover Queensland Act 1996* and has not been changed. It requires the tribunal to assess, by personal examination of the worker, whether the disfigurement is prescribed disfigurement; and if it assessed the disfigurement to be described disfigurement, the degree of permanent impairment resulting from the disfigurement. The tribunal must assess the degree of the permanent impairment in the way prescribed under a regulation.

### **Limitation of tribunals' jurisdiction**

*Clause 509* replaces section 446 of the *WorkCover Queensland Act 1996* and has not been changed. It specifies that a tribunal has no jurisdiction to decide whether a person to whom a claim relates, is or is not, or was or was not, a worker at any time material to the claim. It also stipulates that a decision of a tribunal is not admissible in evidence as proof, or as tending to proof of such an issue.

### **Power of tribunal to examine worker**

*Clause 510* replaces section 447 of the *WorkCover Queensland Act 1996* and has not been changed. It allows a tribunal (on a reference to it about a non-fatal injury) to make a personal examination of the worker, or to arrange for an examination by a nominated medical practitioner.

## **PART 4—PROCEEDINGS FOR EXERCISE OF TRIBUNALS' JURISDICTION**

### **Right to be heard before tribunals**

*Clause 511* replaces section 453 of the *WorkCover Queensland Act 1996* which gives the worker the right to be heard before the tribunal either in person or by a representative, and has not been changed.

**Further reference on fresh evidence**

*Clause 512* replaces section 454 of the *WorkCover Queensland Act 1996* allowing the worker to ask WorkCover to consider fresh medical evidence about the worker's injury within 12 months of the making of the original decision, and requires WorkCover to forward such information to a review panel for consideration. If the review panel accepts the medical evidence, WorkCover must refer the application to the appropriate tribunal for further decision. If practicable, the application under this section must be further decided by the original tribunal.

If, as a result of the review, the worker entitled to further lump sum compensation for an injury resulting in a WRI of the worker of less than 20%, the worker's entitlement does not extend to a further election under clause 189 for the injury.

This clause modifies section 454(2),(3) and (6) of the *WorkCover Queensland Act 1996* to change the references to "WorkCover" to "the insurer".

**Deferral of decisions**

*Clause 513* replaces section 455 of the *WorkCover Queensland Act 1996* and has not been changed. It allows a tribunal, from time to time, to defer its decision on a reference to it. However, a deferral must not be for longer than three months at any one time.

**Tribunal may refer non-medical matters back to insurer**

*Clause 514* replaces section 455A of the *WorkCover Queensland Act 1996* allowing the tribunal, where it considers that the terms of a reference includes both medical and non-medical matters; or entirely non-medical matters, to refer the non-medical matters back to WorkCover for a decision.

This clause modifies section 455A (1) and (3) of the *WorkCover Queensland Act 1996* to change the references to "WorkCover" to "the insurer".

**Finality of tribunal's decisions**

*Clause 515* replaces section 456 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that specific decisions of the tribunal



are final and can not be questioned in a proceeding before a tribunal or a court, except in circumstances outlined clause 512.

### **Decisions of tribunal**

*Clause 516* replaces section 457 of the *WorkCover Queensland Act 1996* requiring a tribunal to provide a written decision (including reasons for the decision) for a matter referred to it.

This clause modifies section 457(2) of the *WorkCover Queensland Act 1996* to change the references to “WorkCover” to “the insurer”.

### **Protection from liability**

*Clause 517* inserts a new section under this chapter which provides that a member of a tribunal does not incur civil liability for an act done, or omission made, honestly and without negligence under the Act. Any civil liability incurred by a member while performing a function of the Tribunal will instead be attached to the Authority.

## **CHAPTER 12—ENFORCEMENT**

The Bill replaces provisions contained in chapter 8 of the *WorkCover Queensland Act 1996* which specifies enforcement matters and offences and includes the powers of authorised persons.

## **PART 1—AUTHORISED OFFICERS AND ENFORCEMENT**

### *Division 1—Powers of authorised persons*

#### **Entry to workplaces**

*Clause 518* replaces section 467 of the *WorkCover Queensland Act 1996* and has not been changed. It allows an authorised person, at any reasonable time, to enter a workplace to monitor or enforce compliance with this Act.

#### **Power to require information from certain persons**

*Clause 519* replaces section 468 of the *WorkCover Queensland Act 1996* and has not been changed. It allows an authorised person to require information relevant to:

- any person's liability to insure as an employer, including liability for premiums;
- any person's entitlement to compensation;
- any person's entitlement to claim damages;
- any offence the authorised person reasonably believes has been committed against this Bill.

from a person reasonably suspected of having the information.

#### **Keeping and inspection of documents**

*Clause 520* replaces section 469 of the *WorkCover Queensland Act 1996* and has not been changed. It requires employers and contractors to keep documents about workers, and contracts for the performance of work, prescribed under a regulation, for at least three financial years after the last entry is made in it. It also allows authorised persons to keep a document to make a copy of it, and requires them to return the document to the person as soon as practicable after making the copy.

**Warrants for entry**

*Clause 521* replaces section 471 of the *WorkCover Queensland Act 1996* which allows an authorised person to apply to a magistrate for a warrant for entry into a place, and has not been changed.

**Warrants—applications made other than in person**

*Clause 522* replaces section 472 of the *WorkCover Queensland Act 1996* and has not been changed. It allows an authorised person to apply for warrants other than in person i.e. via telephone, fax, radio or other form of communication.

**General powers after entering place**

*Clause 523* replaces section 472A of the *WorkCover Queensland Act 1996* which outlines general powers of an authorised person after they enter a place, and has not been changed.

**Power to seize evidence**

*Clause 524* replaces section 473 of the *WorkCover Queensland Act 1996* which allows an authorised person, who enters a place with a warrant, to seize evidence, and has not been changed.

**Receipt for seized things**

*Clause 525* replaces section 474 of the *WorkCover Queensland Act 1996* which requires an authorised person to provide a receipt to the person from whom evidence has been seized, and has not been changed.

**Access to seized things**

*Clause 526* replaces section 475 of the *WorkCover Queensland Act 1996* which requires an authorised person to allow the owner of a seized item access to inspect it, or in the case of documents, to make copies, and has not been changed.

**Return of seized things**

*Clause 527* replaces section 476 of the *WorkCover Queensland Act 1996*, and has not been changed. It requires the authorised person to return a seized thing to its owner at the end of six months or at the end of the prosecution and any appeal from the prosecution.

***Division 2—Other enforcement matters*****Authorised person to give notice of damage**

*Clause 528* replaces section 477 of the *WorkCover Queensland Act 1996* and has not been changed. It requires an authorised person to give written notice to the owner about any damage to anything resulting from the exercise of their power.

**Restitution**

*Clause 529* replaces section 478 of the *WorkCover Queensland Act 1996* with modifications. This section allowed a person to claim from WorkCover restitution for any loss or expense incurred due to the exercise of power by an authorised person.

This clause modifies section 478(2) of the *WorkCover Queensland Act 1996* to allow restitution to be claimed from WorkCover or the Authority. This reflects the fact that the new Authority also has enforcement powers and will have authorised persons.

**Costs of investigation**

*Clause 530* replaces section 479 of the *WorkCover Queensland Act 1996* with modifications. It allows WorkCover to recover administrative costs incurred in investigating and preparing for the prosecution of offences in the case of a conviction.

This clause modifies section 479(2) of the *WorkCover Queensland Act 1996* to allow the new Authority to also recover such costs.

***Division 3—Obstructing or impersonating authorised persons*****Obstruction of authorised persons**

*Clause 531* replaces section 480 of the *WorkCover Queensland Act 1996* which specifies that a person must not obstruct an authorised person in the exercise of a power, and has not changed.

**Impersonation of authorised persons**

*Clause 532* replaces section 481 of the *WorkCover Queensland Act 1996* which specifies that a person must not pretend to be an authorised person, and has not been changed.

**PART 2—FRAUD AND FALSE AND MISLEADING STATEMENTS****Offences involving fraud**

*Clause 533* replaces section 482 of the *WorkCover Queensland Act 1996* which makes it an offence for persons to in any way defraud or attempt to defraud WorkCover or a self-insurer.

This clause modifies this section by amending sub-section 482(1) of the *WorkCover Queensland Act 1996* to change the current reference to “WorkCover or a self-insurer” to “an insurer”.

**False and misleading information or documents**

*Clause 534* replaces section 483 of the *WorkCover Queensland Act 1996* with modifications. It states that it is an offence for a person to state anything, or give documents containing information to WorkCover, self-insurers or a registered person that the person knows is false or misleading in a material particular.

This clause modifies this section by amending sub-sections 483(1)(a), (2), (3) and (4) of the *WorkCover Queensland Act 1996* to include reference to the new Authority. In addition, an obsolete reference in sub-section 483(3) to “a self-rater” has been removed.

**Particular acts taken to be fraud**

*Clause 535* replaces section 484 of the *WorkCover Queensland Act 1996* with minor modifications.

This section applies if a person lodges an application for compensation; and engages in a calling and without reasonable excuse fails to inform WorkCover or a self-insurer as required of the person's engagement in a calling. Where compensation is paid under the application to a person or anyone else after the start of the engagement in a calling and before WorkCover or the self-insurer is informed, the person is taken to have defrauded WorkCover or the self-insurer.

This clause modifies this section by amending sub-sections 484(1)(a),(c) and (2) of the *WorkCover Queensland Act 1996* to change the current reference to "WorkCover or a self-insurer" to "insurer".

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

*Clause 536* replaces section 485 of the *WorkCover Queensland Act 1996* which places a responsibility on employers, including self-insured employers, to report to WorkCover instances of workers' compensation fraud they reasonably believe are occurring so that WorkCover may undertake investigations and prosecutions where appropriate.

This clause modifies section 485 of the *WorkCover Queensland Act 1996* to require self-insured employers to report instances of workers' compensation fraud they reasonably believe are occurring to the new regulatory Authority.

**Fraud and related offences end entitlement to compensation and damages**

*Clause 537* replaces section 486 of the *WorkCover Queensland Act 1996* which outlines the consequences to a person who, in relation to their claim for compensation or damages, is convicted of:

- defrauding or attempting to defraud WorkCover or a self-insurer
- an offence or an attempt to commit an offence against specific sections of the Criminal Code.

This clause modifies section 486 of the *WorkCover Queensland Act 1996* changing current references to "WorkCover or a self-insurer" to "an

insurer”, and including a new sub-section which allows the Authority to represent the self-insurer in the proceedings for the offence.

## **CHAPTER 13—REVIEWS AND APPEALS**

This chapter replaces chapter 9 of the *WorkCover Queensland Act 1996* which allows for a review process for employers, self-insurers, claimants and workers.

The objective of the formal review process is to provide an efficient and cost effective system whereby employers, self-insurers, claimants or workers may apply to have decisions reviewed instead of relying only on the legal system. Employers, self-insurers, claimants and workers retain the right to appeal to a court if aggrieved by the review decision.

The Bill amends chapter 9 of the *WorkCover Queensland Act 1996* to reflect the role of the new Authority in terms of the review and appeals process.

### **PART 1—INTERNAL REVIEW OF PROPOSED DECISIONS**

#### **Internal review by insurer**

*Clause 538* replaces section 487 of the *WorkCover Queensland Act 1996* and has not been amended. It requires that before WorkCover or a self-insurer makes a decision to reject an application for compensation or to terminate compensation they must undertake an internal review of the proposed decision. This clause modifies the section 487 to change the references to “WorkCover or self-insurer” to “the insurer”.

## **PART 2—AUTHORITY'S REVIEW OF DECISIONS**

### **Object of pt 2**

*Clause 539* replaces section 488 of the *WorkCover Queensland Act 1996* which specifies the objective of this part.

This clause modifies section 488 of the *WorkCover Queensland Act 1996* to remove sub-section (a) which states one of the objectives as being to provide for a review process separate from WorkCover's commercial insurance business.

The clause now simply states that the objective of the part is to provide a non-adversarial system for prompt resolution of disputes. This amendment reflects the shifting of regulatory and review functions from WorkCover to the new Authority.

### **Application of pt 2**

*Clause 540* replaces section 489 of the *WorkCover Queensland Act 1996* which provides that this part applies to decisions by WorkCover and self-insurers as specified.

This clause excludes the reference sub-section 489(1)(a)(vi) of the *WorkCover Queensland Act 1996*. This sub-section relates to a decision about the annual levy payable by self-insurers. This decision will now be made by the Authority whose decisions will be reviewed, on application by self-insurers, by a court of competent jurisdiction.

Section 489(5) of the *WorkCover Queensland Act 1996* has also been modified to remove reference to the "review unit" replacing it with the "Authority".

### **Who may apply for review**

*Clause 541* replaces section 490 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that a claimant, worker or an employer aggrieved by a decision or the failure to make a decision may apply for review.



**Applying for review**

*Clause 542* replaces section 491 of the *WorkCover Queensland Act 1996* relating to the process and procedures for making an application for review.

This clause modifies section 491 of the *WorkCover Queensland Act 1996* to replace references to the “WorkCover board” and “the review unit” with “the Authority”.

**Right of appearance**

*Clause 543* replaces section 492 of the *WorkCover Queensland Act 1996* relating to right of appearance. Currently, the applicant may appear before the review unit in person or be represented by another person. The applicant may also make representations to the review unit by telephone or another form of communication.

This clause modifies section 492 of the *WorkCover Queensland Act 1996* to change references to “the review unit” to “the Authority”.

**Decision-maker must give information to Authority**

*Clause 544* replaces section 493 of the *WorkCover Queensland Act 1996* which allows the review unit, by written notice, to require the decision maker to give information to the unit.

This clause modifies 493 of the *WorkCover Queensland Act 1996* to change references to “the review unit” to “the Authority” and to clarify the nature of information required.

**Review of decision or failure to make a decision**

*Clause 545* replaces section 494 of the *WorkCover Queensland Act 1996* which outlines procedures to be followed in relation to the review of a decision or the failure to make a decision.

This clause modifies 494 of the *WorkCover Queensland Act 1996* to change references to “the review unit” to “the Authority”.

**Notice of review decision**

*Clause 546* replaces section 495 of the *WorkCover Queensland Act 1996* requiring the review unit to give written notice of review decisions to specified parties.

This clause modifies 495 of the *WorkCover Queensland Act 1996* to change references to “the review unit” to “the Authority”.

**Reimbursement of costs of examination and report**

*Clause 547* replaces section 496 of the *WorkCover Queensland Act 1996* which applies if the review unit sets aside or varies a decision by the decision-maker to reject an application for compensation by a worker or claimant under chapter 3. It requires the decision-maker to reimburse the worker or claimant for the cost of examination and report if the review unit considers the examination and report substantially contributed to the setting aside or variation of the decision.

This clause modifies 496 of the *WorkCover Queensland Act 1996* to change references to “the review unit” to “the Authority”.

**PART 3—APPEALS*****Division 1—Appeal to Industrial Magistrate or Industrial Court*****Application of div 1**

*Clause 548* replaces section 497 of the *WorkCover Queensland Act 1996* which outlines the decisions to which this division applies.

This clause modifies section 497(b) of the *WorkCover Queensland Act 1996* to replace the reference to “WorkCover or a self-insurer” with “an insurer”.

**Who may appeal**

*Clause 549* replaces section 498 of the *WorkCover Queensland Act 1996* which sets out who may appeal to an industrial magistrate. This clause modifies this provision to change the reference in section 498(1) of the

*WorkCover Queensland Act 1996* to “the review unit, WorkCover or the self-insurer” to “the Authority or an insurer”.

### **Procedure for appeal**

*Clause 550* replaces section 499 of the *WorkCover Queensland Act 1996* which outlines the procedure for particular appeals. This clause modifies this provision to change the reference in section 499(6)(a) *WorkCover Queensland Act 1996* to “the review unit” to “the Authority”. It also changes the reference in section 499(6)(b) to “WorkCover or the self-insurer” to “the insurer”.

### **Appeal about amount of premium**

*Clause 551* replaces section 500 of the *WorkCover Queensland Act 1996* which outlines requirements relating to appeals about an amount of premium specified in a premium notice, and has not been changed.

### **Notice of time and place of hearing**

*Clause 552* replaces section 501 of the *WorkCover Queensland Act 1996* and has not been changed. It requires the registrar of the Magistrates Court at which a notice of appeal is filed, to give the parties to an appeal written notice of the time and place fixed for the hearing. It also stipulates documents that should be made available to the Industrial Magistrate hearing the matter.

### **Application of Uniform Civil Procedure Rules and Industrial Relations (Tribunals) Rules**

*Clause 553* replaces section 501A of the *WorkCover Queensland Act 1996* and has not been changed. It provides that chapter 7, pt 2 and chapter 9, pt 4 of the Uniform Civil Procedure Rules 1999 and rules 96 to 98 of the Industrial Relations (Tribunal) Rules 2000 apply in relation to appeals to the industrial magistrate or to the Industrial Court. However, if there is inconsistency between this division of the *WorkCover Queensland Act* and the *Uniform Civil Procedure Rules and Industrial Relations (Tribunal) Rules 2000*, the *WorkCover Queensland Act 1996* will apply to the extent of the inconsistency.

**Exchanging Evidence before Hearing**

*Clause 554* replaces section 502 of the *WorkCover Queensland Act 1996* which requires the parties to exchange relevant documentation each party wants to adduce as evidence at the hearing, and has not been changed.

**Adjourning hearing**

*Clause 555* replaces section 503 of the *WorkCover Queensland Act 1996* and has not been changed. It allows the industrial magistrate, prior to or after the start of the hearing, to adjourn the hearing in certain circumstances, and includes provisions relevant to circumstances where the magistrate adjourns the hearing to another industrial magistrate.

**Additional medical evidence**

*Clause 556* replaces section 504 of the *WorkCover Queensland Act 1996* and has not been changed. It allows the industrial magistrate to order the claimant or worker to submit to a personal examination by one or more specified registered person in certain circumstances.

**Correcting defects in proceedings**

*Clause 557* replaces section 505 of the *WorkCover Queensland Act 1996* and has not been changed. It allows industrial magistrates to order that anything necessary be supplied, or that defects or errors be corrected, in order to ensure the proper hearing of an appeal.

**Powers of industrial magistrate**

*Clause 558* replaces section 506 of the *WorkCover Queensland Act 1996* setting out the powers of the industrial magistrate in deciding an appeal, and provides that the costs of the hearing are in the magistrate's decision, except to the extent provided under a regulation.

This clause modifies section 506(2) of the *WorkCover Queensland Act 1996* to change the reference to 'WorkCover or the self-insurer' to 'the insurer'.

**Decision of industrial magistrate**

*Clause 559* replaces section 507 of the *WorkCover Queensland Act 1996* and has not been changed. It requires the industrial magistrate to give their decision in a hearing in open court; and a written copy of the decision to each party.

**Recovery of costs**

*Clause 560* replaces section 508 of the *WorkCover Queensland Act 1996* which outlines requirements in relation to the recover of costs, and has not been changed.

**Appeal from industrial magistrate to Industrial Court**

*Clause 561* replaces section 509 of the *WorkCover Queensland Act 1996* which allows a party aggrieved by the industrial magistrate's decision to appeal to the industrial court, and has not been changed.

**Powers of Industrial Court**

*Clause 562* replaces section 510 of the *WorkCover Queensland Act 1996* setting out powers of the industrial court in deciding an appeal.

This clause modifies section 510(2) of the *WorkCover Queensland Act 1996* to change the reference to 'WorkCover or the self-insurer' to 'the insurer'.

**Costs of appeal to Industrial Court**

*Clause 563* replaces section 510A of the *WorkCover Queensland Act 1996* and has not been changed. It allows the court to have the discretion to award costs on an appeal from an industrial magistrate to the Industrial Court.

**Recovery of costs**

*Clause 564* replaces section 510B of the *WorkCover Queensland Act 1996* and has not been changed. It provides that if the industrial court makes an order for costs, the amount ordered to be paid is debt payable to the party in whose favour the order is made.

**Decision about amount of premium**

*Clause 565* replaces section 511 of the *WorkCover Queensland Act 1996* and has not been changed. It provides that, where an appeal is about an amount of premium, the premium assessed by an industrial magistrate or the industrial court is the premium payable by the employer.

**Decision about payment of compensation**

*Clause 566* replaces section 512 of the *WorkCover Queensland Act 1996* which applies to decisions of an industrial magistrate or the industrial court where WorkCover or a self-insurer is found not to be liable to make payments of compensation to persons, and provides that the person who received compensation is not required to refund payment to WorkCover or the self-insurer.

This clause modifies section 512(1) and (2) of the *WorkCover Queensland Act 1996* to change the references to 'WorkCover or the self-insurer' to 'insurer'.

***Division 2—Appeal to court of competent jurisdiction*****Application of div 2**

*Clause 567* replaces section 513 of the *WorkCover Queensland Act 1996* which lists WorkCover decisions applicable to this division.

This clause modifies section 513 so as to make it applicable to decisions of the Authority as opposed to WorkCover. The list of decisions remains the same as provided for under section 513 of the *WorkCover Queensland Act 1996* with the exception of one additional decision under clause 81 relating to the amount of levy payable by a self-insurer.

**Who may appeal**

*Clause 568* replaces section 514 of the *WorkCover Queensland Act 1996* providing that an employer or self-insurer aggrieved by the decision may appeal against the decision, and has not been changed.

**Starting appeals**

*Clause 569* replaces section 515 of the *WorkCover Queensland Act 1996*. It allows appeals to be made to a court with jurisdiction in Brisbane, and sets out requirements in this regard.

This clause modifies section 515(5)(b) of the *WorkCover Queensland Act 1996* to change the current reference to “WorkCover” to “the Authority”.

**Powers of court on appeal**

*Clause 570* replaces section 516 of the *WorkCover Queensland Act 1996*. It sets out powers of the court in deciding an appeal.

This clause modifies section 516(3)(c) of the *WorkCover Queensland Act 1996* to change the current reference to “WorkCover” to “the Authority”.

**Effect of decision of court on appeal**

*Clause 571* replaces section 517 of the *WorkCover Queensland Act 1996* which provides that if a court substitutes another decision, the substituted decision is taken for this act, other than this part, to be WorkCover’s decision.

This clause modifies section 517 of the *WorkCover Queensland Act 1996* to make the decision the Authority’s rather than WorkCover.

## CHAPTER 14—MISCELLANEOUS

The Bill replaces provisions contained in chapter 10 of the *WorkCover Queensland Act 1996* containing miscellaneous provisions including those relating to:

- information retrieval and dissemination
- proceedings for offences against this legislation.

## **PART 1—INFORMATION**

### **Claimant or Worker entitled to obtain certain documents**

*Clause 572* replaces section 519 of the *WorkCover Queensland Act 1996* which allows workers or claimants access to certain documents. This clause modifies section 519(1) of the *WorkCover Queensland Act 1996* to include a reference to the Authority and change the reference to “WorkCover or a self-insurer” to “insurer”.

### **Disclosure of information**

*Clause 573* replaces section 520 of the *WorkCover Queensland Act 1996* which outlines who may disclose information to WorkCover and to whom WorkCover may disclose information.

This clause modifies section 520(1), (2), (3) and (6) of the *WorkCover Queensland Act 1996* to include reference to the Authority, thereby making the provisions applicable to both the Authority and WorkCover.

A new section has also been included requiring an insurer, if requested by the Authority, to disclose statistical or other information in the way required by the Authority, but only to discharge the Authority’s functions under the Act.

In addition, a definition has been provided for the term “chief executive officer” for this section, and means the chief executive officer of the Authority and WorkCover.

### **Information from Commissioner of Police Service**

*Clause 574* replaces section 521 of the *WorkCover Queensland Act 1996* which allows WorkCover to request information from the Commissioner of the Police Service regarding a person who they reasonably suspect of committing or attempting to commit an offence against the legislation.

This clause modifies section 521 of the *WorkCover Queensland Act 1996* to include references to the Authority, thereby making the provisions applicable to both the Authority and WorkCover.

In addition, a definition has been provided for the term “chief executive officer” for this section, and means the chief executive officer of the Authority and WorkCover.



**Information use immunity**

*Clause 575* replaces section 522 of the *WorkCover Queensland Act 1996* and has not been changed. It is designed to protect employers, witnesses and other persons from legal action resulting from statements made by them in the course of the administration of a statutory compensation or a damages claim.

**Information not actionable**

*Clause 576* replaces section 523 of the *WorkCover Queensland Act 1996* which prevents actions for damages or any other proceedings from being brought by any person claiming to be aggrieved as a result of the disclosure of information held by WorkCover or a self-insurer.

This clause modifies section 523 of the *WorkCover Queensland Act 1996* to include references to the Authority in subsection (1) and (2), and to change the reference to “WorkCover or a self-insurer” in subsections (1), (2) and (4) to “an insurer”.

## **PART 2—AUDITS**

**Audit of wages and contracts**

*Clause 577* replaces section 523A of the *WorkCover Queensland Act 1996* and has not been changed. It allows WorkCover to engage the services of a person with appropriate qualifications and experience to carry out audits of wages and contracts.

## **PART 3—PROCEEDINGS**

**Proceedings for offences against ch 8**

*Clause 578* replaces section 524 of the *WorkCover Queensland Act 1996* which outlines the way in which proceedings are to be taken for offences by directors of the Board or officers of WorkCover against any of the provisions of Chapter 8. The accountability provisions of the *Government*

*Owned Corporations Act 1993* have been replicated in chapter 8 and WorkCover Queensland is bound by these provisions. Consequently, the proceedings provisions of the *Government Owned Corporations Act 1993* have been replicated in this clause to deal with offences against Chapter 8.

This clause amends section 524 of the *WorkCover Queensland Act 1996* in line with current drafting practices to declare whether an indictable offence is a crime or misdemeanor.

### **Summary proceedings for offences other than against ch 8**

*Clause 579* replaces section 525 of the *WorkCover Queensland Act 1996* which specifies that offences (other than offences under Chapter 8) are to be taken by way of complaint and summons before an industrial magistrate.

This clause modifies Sections 525(2),(3) and (4) of the *WorkCover Queensland Act 1996* to apply to both WorkCover and the Authority.

### **Recovery of debts under this Act**

*Clause 580* replaces section 526 of the *WorkCover Queensland Act 1996* which allows WorkCover to recover any debts arising out of the enforcement of this Act.

This clause inserts a new sub-section providing that an amount payable to or recoverable by the Authority on any account whatever is a debt owed to the Authority by the person liable to pay or from whom the amount is recoverable.

This clause also changes section 526 (2) of the *WorkCover Queensland Act 1996* so as to apply to the Authority.

### **Self-insurer recovery of debts**

*Clause 581* replaces section 527 of the *WorkCover Queensland Act 1996* and has not been changed. It allows a self-insurer to recover a debt owed to the self-insurer because of payments made by the self-insurer in relation to claims for compensation.

**Powers of industrial magistrate**

*Clause 582* replaces section 528 of the *WorkCover Queensland Act 1996* and has not been changed. It outlines the powers of an industrial magistrate in relation to matters arising under this legislation.

**Evidence**

*Clause 583* replaces section 529 of the *WorkCover Queensland Act 1996* which allows for WorkCover to issue a certificate attesting to certain facts where proceedings are brought by WorkCover in relation to an offence under this legislation. This clause allows an industrial magistrate to regard the certificate as evidence of the facts attested.

This clause modifies section 529 of the *WorkCover Queensland Act 1996* by specifying instances where the Authority and WorkCover can issue certificates.

**PART 4—REGULATIONS****Regulation-making power**

*Clause 584* replaces section 530 of the *WorkCover Queensland Act 1996* and has not been changed. It allows the Governor in Council to make regulations under this legislation and that a regulation may make provisions for anything specified in schedule 1.

**PART 5—OTHER PROVISIONS****Entitlements to compensation under industrial instrument prohibited and void**

*Clause 585* replaces section 531 of the *WorkCover Queensland Act 1996* and has not been changed. It outlines that the Industrial Relations Commission can not include in awards any provision for payment of an amount for accident pay or other payment on account of a worker sustaining injury.

**Approval of forms**

*Clause 586* replaces section 532 of the *WorkCover Queensland Act 1996* which allows WorkCover to approve forms for use under this legislation e.g. notice of assessment or application for compensation.

This clause modifies section 532 of the *WorkCover Queensland Act 1996* to stipulate the chapters under which WorkCover may approve forms for use under the Act, and to allow the chief executive officer of the Authority to approve other forms for use under the Act.

**Service of documents**

*Clause 587* replaces section 533 of the *WorkCover Queensland Act 1996* and has not been changed. It extends the provision under the *Acts Interpretation Act 1954* where legal documents can be served to include a postal address.

**Repeal**

*Clause 588* repeals the *WorkCover Queensland Act 1996*.

## **CHAPTER 15 – TRANSITIONALS PROVISIONS FOR WORKERS'S COMPENSATION AND REHABILITATION ACT 2003**

### **PART 1—INTERPRETATION**

**Definitions for ch 15**

*Clause 589* defines terms commonly used throughout the Act but that have specific meanings within this chapter.

**Other savings preserved**

*Clause 590* outlines that this chapter does not limit section 20 of the *Acts Interpretation Act 1954* regarding saving of the operation of repealed Acts.

## **PART 2—LEGAL SUCCESSION**

### **Continuation of WorkCover Queensland**

*Clause 591* provides that WorkCover Queensland mentioned as being established under clause 380 is a continuation of WorkCover Queensland established by the repealed Act.

### **Authority is legal successor of Q-COMP**

*Clause 592* provides that the Authority is the successor in law of Q-COMP.

This clause outlines that any assets and liabilities of Q-COMP become assets and liabilities of the Authority, and that anything under the control of Q-COMP becomes under the control of the Authority.

It also outlines that if a proceeding has commenced that has not ended, or a proceeding could have been taken by or against Q-COMP, the proceeding may be continued or taken by or against the Authority.

Finally, this clause also provides that on and from the commencement of this clause, in an Act, instrument or document, that a reference to WorkCover in its regulatory capacity under a former Act may, if the context permits, be taken as a reference to the Authority.

## **PART 3—TRANSFER TO THE AUTHORITY**

### **Transfer of general manager of Q-COMP**

*Clause 593* transfers the general manager from Q-COMP, a division of WorkCover Queensland, to become the chief executive officer of the Authority. On transfer, the chief executive officer will retain the same conditions of appointment which applied to the person immediately before commencement.

**Transfer of staff of Q-COMP to Authority**

*Clause 594* transfers all staff from Q-COMP to the Authority. On transfer, these staff cease to be employees of WorkCover and become public service officers.

All entitlements (e.g. sick leave, recreation leave) owing to staff transferred to the Authority will be treated as if they were accrued as an employee of the Authority. That is, the Authority is responsible for honouring those accrued entitlements not used. Long service leave entitlements are specified to ensure that the Authority calculates a person's long service leave as if the person's service with WorkCover was service with the Authority.

**Preserved employment conditions**

*Clause 595* states that on transfer employees are to continue to receive the same rate of salary and the same conditions of employment that applied immediately prior to the transfer. Persons employed by the Authority who have not transferred from WorkCover are to be employed on the same conditions of employment as a transferred person.

**Transferred persons' superannuation on becoming public service officers**

*Clause 596* provides that despite the transfer, staff may continue to contribute to or be a member of the superannuation scheme to which they contributed to or were a member of, before the commencement of this section.

**PART 4—INSURANCE****Merit bonuses and demerit charges**

*Clause 597* clarifies that merit bonuses and demerit charges are applicable to policies entered into before the repeal of the *Workers' Compensation Act 1990* as if it had not been repealed.

**Other contracts of insurance**

*Clause 598* provides that on and from the commencement of this clause, a contract of insurance, other than a policy issued under a former Act is taken to be a contract of insurance issued by WorkCover.

**Previous non-policy compensation arrangement with State**

*Clause 599* is applicable to amounts that would have been payable by a government entity to the workers' compensation board under section 198 of the *Workers' Compensation Act 1990*, and requires the government entity to pay the amounts to WorkCover.

**PART 5—SELF-INSURANCE****Licences**

*Clause 600* provides that a licence issued to a self-insurer by WorkCover, or an application for a licence by an employer to WorkCover under the *WorkCover Queensland Act 1996* is taken to be a licence issued by the Authority, or an application for a licence to the Authority, under this Act.

**Number of full-time workers**

*Clause 601* provides that sections 101(a) or 102(b) of the *WorkCover Queensland Act 1996*, as in force immediately before 3 March 1999 continue to apply to the renewal of a self-insurers licence in the specified circumstances.

**Self-insurer's bank guarantee**

*Clause 602* provides for transitional arrangements in relation to a self-insurer that made an election under the repealed *WorkCover Queensland Regulation 1997* to accept an interim payment of an amount on account of the self-insurer's outstanding liability.

This clause applies only until the end of 5 years after the self-insurer became liable for compensation and damages for the outstanding liability.

This clause sets out the amount of the unconditional bank guarantee or cash deposit required to be lodged by the self-insurer before renewal of the licence on and from the commencement of this clause.

## **PART 6—INJURIES**

### **Injury under former Act**

*Clause 603* provides that, if a worker sustained an injury before the commencement of this clause, a former Act as in force when the injury was sustained, applies in relation to the injury. However, a person entitled to lump sum compensation, weekly payments or dependant allowances under a former Act is entitled to the benefit of every increase in QOTE.

### **Ex gratia payments**

*Clause 604* allows WorkCover to make an ex gratia lump sum payment in relation to a person who sustained an injury, on or after 1 July 1999, but before 1 July 2000, that resulted in death or could result in a WRI of 20% or more.

This clause also provides that payment may be made only if the person is not a worker within the meaning of the repealed Act as in force immediately before 1 July 2000, but would be a worker within the meaning of the *WorkCover Queensland Act 1996*, as in force on 1 July 2000; or this Act. This clause also requires that such a payment must be in the amount decided by WorkCover, but may not be more than the amount that would be payable if the person was a worker.

## **PART 7—INJURY MANAGEMENT**

### **Rehabilitation coordinators**

*Clause 605* clarifies that a person who is a rehabilitation coordinator under chapter 4 the *WorkCover Queensland Act 1996* is taken to be a rehabilitation coordinator under this Act.



**Workplace rehabilitation policies and procedures**

*Clause 606* clarifies that workplace rehabilitation policies and procedures under chapter 4 of the *WorkCover Queensland Act 1996* are taken to be workplace rehabilitation policies and procedures under this Act.

**PART 8—MEDICAL ASSESSMENT TRIBUNALS****Continuation of tribunals**

*Clause 607* clarifies that each medical assessment tribunal is a continuance in existence of the corresponding tribunal maintained under the *WorkCover Queensland Act 1996*.

**PART 9—OFFENCES****Offences**

*Clause 608* outlines that proceedings for an offence against the *WorkCover Queensland Act 1996* may be started or continued under this legislation.

**PART 10—REVIEWS AND APPEALS****Decisions by WorkCover or self-insurer**

*Clause 609* provides that Chapter 9 of the *WorkCover Queensland Act 1996*, as in force immediately before 1 July 1999, continues to apply to a decision made by WorkCover or a self-insurer before 1 July 1999 as if section 45 *WorkCover Queensland Amendment Act 1999* had not been enacted.

## **PART 11—MISCELLANEOUS**

### **Claim for loss of consortium**

*Clause 610* clarifies that an entitlement to seek damages for loss of consortium in relation to an injury continues despite the repeal of the *WorkCover Queensland Act 1996*.

### **Spouse of worker dying before 1 April 2004**

*Clause 611* applies in relation to the death of a worker after the commencement of the Act, but before 1 April 2004. It provides that for this Act, the spouse of the deceased worker includes a person who, although not legally married to the deceased worker, lived with the worker as the worker's husband or wife for a period of at least 1 year immediately before the commencement of this section, and continued to live with the worker as the worker's husband or wife until the worker died.

## **CHAPTER 16—AMENDMENT OF OTHER LEGISLATION**

### **PART 1—AMENDMENT OF *INDUSTRIAL RELATIONS ACT 1999***

#### **Act amended in pt 1**

*Clause 612* provides that part 1 amends the *Industrial Relations Act 1999*.

#### **Insertion of new ch 2, pt 1, div 1A**

*Clause 613* inserts a new division 1A (Minimum Wage) into chapter 2 (General Employment Conditions). The division comprises a new section 8A.

This clause inserts a new section 8A and provides that an employee is entitled to a wage not less than the Queensland minimum wage (QMW), save for any employees excluded from the operation of the QMW.

**Amendment of s 275 (Power to declare persons to be employees or employers)**

*Clause 614* provides that in exercising its discretion whether to declare a class of persons to be employees, the full bench may consider (among other things) whether the contract is designed to, or does, exclude the operation of the QMW.

**Amendment of s 276 (Power to amend or void contracts)**

*Clause 615* provides that in exercising its discretion whether to amend or declare void a contract, the QIRC may consider (among other things) the QMW.

**Amendment of s 293 (Magistrates' jurisdiction is exclusive)**

*Clause 616* provides that a magistrate's jurisdiction is not exclusive with respect to a claim for wages payable under a general ruling for the QMW.

**Amendment of s 367 (Time and wages record — non-industrial-instrument employees)**

*Clause 617* requires additional information to be recorded for employees who are subject to the operation of the QMW, being the employee's name and address, date of birth and daily and weekly number of hours worked.

**Amendment of s 376 (Definitions for pt 2)**

*Clause 618* amends the definition of "fixed rate" to include the rate fixed by a general ruling for the QMW.

**Amendment of s 666 (Non-payment of wages)**

*Clause 619* imposes a statutory obligation on employers to pay wages under an industrial instrument, permit, section 136 or section 8A to the

employee or in accordance with the employee's written direction. This is a penalty provision.

### **Amendment of s 701 (False pretences relating to employment)**

*Clause 620* provides that the obligation not to give false information or make false statements applies with respect to employment in which wages are determined by a general ruling for the QMW. This is a penalty provision.

### **Amendment of sch 5 (Dictionary)**

*Clause 621* amends the definitions of "reduced wages" and "claim for wages" as follows:

- for persons covered by a general ruling for the QMW, "reduced wages" includes wages at a rate less than that provided for by a general ruling for the QMW; and
- "claim for wages" includes a claim for wages payable under a general ruling for the QMW.

## **PART 2—MINOR AND CONSEQUENTIAL AMENDMENTS**

### **Acts amended in sch 5**

*Clause 622* provides that schedule 5 amends the acts it mentions.

## **SCHEDULE 1**

### **REGULATIONS**

This schedule replaces Schedule 1 of the *WorkCover Queensland Act 1996* which gives the power to create provisions in a regulation other than those provided for elsewhere in this legislation, and has not been changed.

## **SCHEDULE 2**

### **WHO IS A WORKER**

This schedule replaces Schedule 2 of the *WorkCover Queensland Act 1996* which specify categories of persons declared to be workers and persons who are not workers 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, and has not been changed.

While Part 2 of the schedule has been replaced without being amended, this clause incorporates changes to Part 1 introduced by the *Workplace Health and Safety Amendment Act 2003* to commence from 1 July 2003.

The Bill carries over and amends schedule 2, Part 1 of the *WorkCover Queensland Act 1996*, inserting a new provision specifying that any person who works for another person under a contract (regardless of whether the contract is a contract of service) is a “worker” unless the person can satisfy all three elements of a results test, or it can be shown that a personal services business determination is in effect for the person under the *Income Tax Assessment Act 1997* (Cwlth).

The three elements of the results test to be satisfied are that:

- The person performing the work is paid to achieve a specified result or outcome.
- The person performing the work has to supply the plant and equipment or tools of trade needed to perform the work.
- The person is, or would be, liable for the cost of rectifying any defect in the work performed.

A person who works for another person under a contract would ordinarily be a person who works for labour only or substantially for labour only, or a person who seeks to receive a reward mainly for his or her personal efforts or skills. However, for the purposes of the results test, it does not matter whether the contract is a contract of service, a contract for services, or any other type of contract.

For example, a contract which is substantially for supplying or selling goods, granting a right to use property, or providing the use of an asset may involve some degree of labour which is incidental or ancillary to the main purpose of the contract. The provision of labour would not be the substantial intent of the contract and section 1A would not apply because the contract does not substantially concern one person working for another person. In determining the main purpose of the contract, it may be necessary to look past the contract to the true nature of the agreement between the two parties.

In order to prove that an individual is not a “worker”, all three elements of the results test must be met.

Despite the results test, a person will not be considered to be a worker if they have a personal services business determination under the *Income Tax Assessment Act 1997* (Cwlth), section 87-60. This section specifies the matters about which the Commissioner of Taxation must be satisfied in order to make a determination that a person is performing work and receiving income as a personal services business.

In the event of an application for compensation being lodged, all of the information available at the time of the claim may be considered. This is in keeping with the current common law as enunciated by the High Court of Australia in *Stevens v. Brodribb Sawmilling Co. Pty Ltd* (1986) 160 CLR 16 and *Hollis v. Vabu Pty Ltd* (2001) HCA 44 that there is no single objective test for deciding who is an “employee” or “worker” and that all of the circumstances of a case must be considered, on an individual case by case basis. Part 1 does not therefore seek to replace or codify the common law meaning of “employee” or “worker”.

## **SCHEDULE 3**

### **PERSONS WHO ARE EMPLOYERS**

This schedule replaces Schedule 2A of the *WorkCover Queensland Act 1996* specifying 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.

This clause incorporates changes made to schedule 2A of the *WorkCover Queensland Act 1996* by the *Workplace Health and Safety Amendment Act 2003* inserting a new part 2 (persons who are not employers) which specifies that a person is not an employer of a person who works for the person (regardless of whether the contract is a contract of service) if the person performing the work can satisfy all three elements of the results test, or it can be shown that a personal services business determination is in effect for the person under the *Income Tax Assessment Act 1997* (Cwlth).

## **SCHEDULE 4**

### **ADJACENT AREAS**

This Bill provides for the inclusion of a new schedule 'Adjacent Areas'. This is an un-commenced provision introduced by the *WorkCover Queensland Amendment Act 2002* relating to new cross border arrangements passed for commencement from 1 July 2003.

This schedule includes definitions for "continental shelf" and "territorial sea". For consistency, "continental shelf" and "territorial sea" have been given the same meaning as in the *Seas and Submerged Land Act 1973*. The schedule also provides clarification as to adjacent areas applicable for each jurisdiction in Australia. Each adjacent area covered by the Bill consistent with the areas described in the *Petroleum (Submerged Lands) Act 1967* (Cwlth).

## **SCHEDULE 5**

### **ACTS AMENDED**

This Bill provides for the inclusion of a schedule highlighting Acts amended as a result of this Bill.

## **SCHEDULE 6**

### **DICTIONARY**

This schedule replaces schedule 3 of the *WorkCover Queensland Act 1996* providing a dictionary of “definitions” as referred in chapter 1 of the Act.

While most of the definitions contained in schedule 3 of the *WorkCover Queensland Act 1996* have been preserved, a number of amendments and new definitions have been incorporated in this Bill as follows:

- “Authorised person” — has been changed to reflect that such a person may be appointed by either the Authority under clause 370 or WorkCover under clause 466.
- “Authority” — this is a new definition meaning the Workers’ Compensation Regulatory Authority.
- “Board” — has been changed to reflect that there are now two boards. The term “Boards is now defined as meaning the Board of the Authority or the Board of WorkCover.
- “Chief executive officer” — has been changed to reflect that such a person is appointed for both the Authority under clause 355 and WorkCover under clause 442.
- “Committee” — this is a new definition meaning the Workers’ Compensation Advisory Committee.
- “Employee” — has been changed to define the term “employee” in relation to both the Authority and WorkCover.



- “Former Act” — has been amended to include the *WorkCover Queensland Act 1996*.
- “Fully funded” — has been changed to relate to WorkCover being fully funded as provided by clause 453(2).
- “Insurer” — this is a new definition which encompasses both WorkCover and self-insurers.
- “Table of costs” — has been amended to reflect the transfer of responsibility for the table of costs from WorkCover to the new Authority.
- “Tribunal” — this definition has been moved to the dictionary and is defined as meaning the medical assessment tribunal, other than in clause 114(4) of the Bill.
- “Workers’ Compensation Advisory Committee” — this is a new definition which refers to clause 487 of this Bill.
- “Workers’ Compensation Regulatory Authority” — this is a new definition which refers to clause 326 of this Bill.

In addition, this Bill incorporates amendments introduced by the *WorkCover Queensland Amendment Act 2002* in relation to new cross border arrangements to repeal definitions for “coaster”, “port”, “Queensland ship”, “seafarer”, “ship” and “state ship”.

This Bill also replaces the definition of “ship” within the *WorkCover Queensland Act 1996* from ‘a ship, boat or vessel of any kind designed for use in or on water’ to ‘any kind of vessel used in navigation by water, however propelled or moved, including—

- (a) a barge, lighter, or other floating vessel; and
- (b) an air-cushioned vehicle, or other similar craft, used wholly or primarily in navigation by water’.

A definition for “substantive law” is referenced as being provided for in chapter 6 of the Bill.