

# **Workers' Compensation and Rehabilitation and Other Acts Amendment Bill 2004**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the Bill is the *Workers' Compensation and Rehabilitation and Other Acts Amendment Bill 2004*.

#### **Policy Objectives of the Legislation**

The primary objectives of the Bill are to:

- improve the workers' compensation benefits for injured workers; and
- ensure the continued effective and efficient administration of Queensland's workers' compensation, electrical safety and workplace health and safety arrangements.

#### **Reasons for the Bill**

In 2003 the Department of Industrial Relations conducted a review of the funding arrangements for workers' compensation and workplace health and safety services. For the workers' compensation scheme this highlighted national inconsistencies in the wage base used for calculating workers' compensation premiums, and for workplace health and safety services inconsistencies with national requirements for the registration of plant, as well as inequities in the requirements to register workplaces. The Bill, along with consequential regulatory amendments, are required to provide national consistency and remove inequities within in these arrangements.

In addition the Department of Industrial Relations has received representations from WorkCover Queensland and Q-COMP, the workers' compensation scheme regulator, on ways to both improve benefits to workers as well as to ensure that the legislative framework supports the

continued efficient operation of the scheme. The Bill will implement the resulting range of measures designed at ensuring the continued effective operation of the Queensland workers' compensation scheme.

The Bill is also required to make necessary minor and technical amendments to enhance the operation of the *Workplace Health and Safety Act 1995*. In particular amendments are required to consolidate the amendments made by the *Workplace Health and Safety and Other Acts Amendment Act 2003* by clarifying provisions which have been identified as causing confusion, and to enhance consistency between the Act and the *Electrical Safety Act 2002*.

Further, upon representations by industry, the Bill will clarify confusion surrounding the application of the electrical safety regulatory framework in the *Electrical Safety Act 2002* to a number of standard work practices within the electricity industry. The Bill is also required to remove identified inconsistencies between the enforcement tools available where a person has performed defective unlicensed electrical work with the tools available for other trade and building work under the *Queensland Building Services Authority Act 1991*.

## **Achieving the Objectives**

### *Workers' Compensation*

The proposed Bill will achieve its objectives for the workers' compensation scheme primarily by:

- aligning the definition of 'wages' for calculating workers' compensation premiums to include superannuation contributions with most other jurisdictions in line with the federal move for greater consistency between state workers' compensation schemes;
- increasing efficiency in the administration of workers' compensation policies and claims management practices by allowing employers five days to comply with their obligation to insure, and simplifying the employer excess period;
- improving worker benefits, through providing an additional step down in benefits for injured workers between 26 and 39 weeks, removing the link between weekly and lump sum compensation and increasing the compensation payable to dependent family members on the death of a worker;

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- making consequential amendments resulting from the Queensland Court of Appeal decisions in *Karanfilov –v Inghams Enterprises P/L* [2003] QCA 242 and *WorkCover Queensland –v- Australian Meat Holdings P/L* [2003] QCA 350 to increase certainty in worker's entitlements and minimise unnecessary litigation;
- facilitating early settlement of common law claims by fine-tuning current pre-proceeding processes, and introducing new procedures for allowing the early participation of third parties in the common law claims process consistent with the *Personal Injuries Proceedings Act 2002*;
- enhancing the ability of the workers' compensation scheme regulator to enforce the Act through introducing Codes of Practice that state the ways insurers may meet their obligations under the Act; and
- ensuring a fair and effective review and appeal process which includes allowing workers, claimants, and employers to elect certain appeals to be heard before the Queensland Industrial Relations Commission or an Industrial Magistrate.

### *Workplace Health and Safety*

The proposed Bill will achieve its objectives for workplace health and safety primarily by:

- consolidating amendments made in the *Workplace Health and Safety and Other Acts Amendment Act 2003* including by ensuring consistent wording in workplace health and safety obligations, and removing obsolete terminology;
- promoting consistency between the Act and the *Electrical Safety Act 2002* by aligning the definition of employer;
- removing unnecessarily complexity and duplication which exists between industry codes of practice and advisory standards by merging these instruments into "codes of practice";
- clarifying the power of inspectors to give advice to obligation holders;
- removing the specific head of power for the imposition of fees for workplace registrations as a result of their abolition from 1 February 2005; and
- more closely aligning the definition of gas cylinder with national standards.

### ***Electrical Safety***

The proposed Bill will achieve its objectives for electrical safety primarily by:

- clarifying the application of the legislative framework to industry work practices by clarifying that certain work performed by trades assistants and structural work on certain railways falls outside of the definition of “electrical work”;
- improving the enforcement framework for defective and unlicensed electrical work by introducing the power for the chief executive to require this work to be rectified by a licensed person consistent with the *Queensland Building Services Authority Act 1991*;
- ensuring safety requirements extend to the installation and maintenance of all electrical equipment in hazardous areas by extending the definition of “electrical equipment” to include extra-low voltage equipment in these areas; and
- clarifying the chief executive’s powers to request information or documentation from electrical licence holders during the licence period necessary to satisfy the chief executive that the person continues to meet the requirements for the licence.

### **Administrative Costs**

The Bill has minimal administrative cost implications for the Department of Industrial Relations or other Government agencies. In addition, the amendments to the *Workers' Compensation and Rehabilitation Act 2003* are able to be achieved within the current financial state of the workers' compensation scheme.

### **Fundamental Legislative Principles**

The Bill has been drafted with regard to the fundamental legislative principles prescribed by the *Legislative Standards Act 1992* and is considered to comply with these principles.

The making of codes of practice for insurers under the *Workers' Compensation and Rehabilitation Act 2003* as outlined in clause 62 of the Bill may raise a potential fundamental legislative principle regarding the making of statutory instruments of a legislative nature other than by regulation. However, these codes are not envisaged to be “of a legislative nature”, but rather provide a best practice benchmark or standardised set of

procedures for all insurers in managing claims. The Bill also allows for parliament to scrutinise these documents as their notification is considered subordinate legislation which must be tabled in Parliament. Similar provisions are adopted in the *Workplace Health and Safety Act 1995* and the *Electrical Safety Act 2002*.

## **Consultation**

The Department of Industrial Relations has consulted with a number of government agencies and statutory bodies in the preparation of the Bill. This includes the Department of Premiers and Cabinet, Treasury Department, Queensland Health, the Motor Accident Insurance Commission, the Department of Justice and Attorney General, Q-COMP, WorkCover Queensland, and the Electrical Safety Commissioner.

In addition the Department of Industrial Relations has consulted with the following stakeholders:

### *Workers' Compensation and Rehabilitation*

#### Unions

The Queensland Council of Unions and the Australian Workers Union (Queensland).

#### Employer Groups

The Australian Industry Group, National Retailers Association, Commerce Queensland, and Queensland Master Builders Association.

#### Legal Professionals

The Queensland Law Society and the Australian Plaintiff Lawyers Association (Queensland).

### *Workplace Health and Safety*

The Workplace Health and Safety Board established under the *Workplace Health and Safety Act 1995*, Queensland Council of Unions and Australian Industry Group.

### *Electrical Safety*

The Communications Electrical Plumbing Union, Electrical and Communications Association, Energex Limited, Ergon Energy, Queensland Rail and Powerlink.

## **Notes on Provisions**

### **Part 1 Preliminary**

#### **Short Title**

Clause 1 sets out the short title of the Act as the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004*.

#### **Commencement**

Clause 2 provides that the Act will commence on its assent, other than certain sections which will commence at various later dates or on proclamation.

### **Part 2 Amendment of Workers' Compensation and Rehabilitation Act 2003**

#### **Act amended in pt 2 and sch**

Clause 3 provides that Part 2 and the schedule of the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004* amends the *Workers' Compensation and Rehabilitation Act 2003*.

#### **Replacement of s 11 (Who is a "worker")**

Clause 4 amends s 11 which provides the definition of "worker". The clause aligns the terminology in the definition with the amended definition of employer (clause 5). The scope and application of the definition has not been changed.

#### **Replacement of s 30 (Who is an "employer")**

Clause 5 amends s 30 which provides the definition of "employer". The clause clarifies the original intention of the definition. An employer is a person that contracts with an individual under either a contract of service or

another type of contract where the individual is considered a worker. For example, an employer is a person who contracts with an individual who works for them at piecework rates for labour only or substantially labour only.

The clause also removes the exclusion of certain persons from the definition of worker. The exclusion was a duplication of one of the tests of worker (Schedule 2, part 1, section 2) which has led to discrepancies in determining the employer for some workers.

### **Amendment of s 32 (Meaning of “injury”)**

Clause 6 amends s 32 which provides the definition of “injury”. The clause clarifies that an injury does not include a psychiatric or psychological disorder arising out of, or in the course of any action by the Authority in connection with a worker’s application for compensation.

### **Amendment of s 50 (When an employer contravenes the general obligation to insure)**

Clause 7 amends s 50 which prescribes the circumstances in which an employer contravenes their general obligation to insure under s 48 of the Act. The clause extends the time that an employer has after they start to employ any worker or workers to apply to WorkCover for a workers’ compensation policy to 5 business days. This amendment does not affect workers’ entitlements to compensation under the Act.

### **Replacement of s 65 (Meaning of “excess period”)**

Clause 8 amends s 65 which provides the meaning of “excess period” when determining an employer’s liability for compensation for the initial period of a claim. The calculation of the excess period has been found to lack administrative ease for employers and workers, and can prevent employers from accurately predicting the amount of excess for each claim. The clause simplifies the calculation by aligning the period with the amount of weekly compensation an employer has paid to a worker. An employer’s excess period will expire at the end of the day that the compensation paid to the worker exceeds a standard amount prescribed in a regulation.

The excess will be set at a rate based on proportionate amount of Queensland’s weekly average ordinary time earnings. The provision of a pro-rata excess for casual and part-time workers will continue.

### **Amendment of s 66 (Employer's liability for excess period)**

Clause 9 amends s 66 which outlines employers' liability during the excess period. The clause clarifies that the compensation an employer must pay in this period is "weekly" compensation in accordance with the intent of s 66.

### **Amendment of s 81 (Annual levy payable)**

Clause 10 amends s 81 which requires self-insurers to pay a levy for each financial year or part of a financial year of a licence. This clause clarifies that the levy may include an amount that relates to costs incurred by the authority in performing its functions or exercising its powers under the Act. Costs incurred may include administrative costs incurred by the Authority in providing its regulatory services.

### **Amendment of s 84 (Bank guarantee or cash deposit)**

Clause 11 amends s 84 which outlines the unconditional bank guarantee or cash deposit requirements for self-insurers. The clause provides that a self-insurer's estimated claims liability must be calculated in the way prescribed in the Regulation. The method for calculating estimated claims liability is currently provided under Part 4, Division 3A of the *Workers' Compensation and Rehabilitation Regulation 2003*.

### **Replacement of Ch 3, pt 1, hdg**

Clause 12 amends the heading of Part 1 to "Interpretation".

### **Omission of s 105 (Meaning of "amount payable under an industrial instrument")**

Clause 13 removes s 105 which provides the definition of amount payable under an industrial instrument. The definition has been amended and relocated into a new Part 1A.

### **Insertion of new ch 3, pt 1A**

Clause 14 inserts a new Part into Chapter 3 which provides the process for determining a worker's entitlement to compensation under an industrial instrument.

The new s 107A defines "amount" and "Industrial Act" for this part.



The new s 107B defines “amount payable under an industrial instrument”. The clause clarifies the previous definition as a result of the Queensland Court of Appeal decision in *WorkCover Queensland –v- Australian Meat Holdings P/L* [2003] QCA 350. It also provides greater flexibility and ensures that fair and equitable compensation is paid to workers where it is difficult to determine the appropriate amount of wages payable under the industrial instrument, such as in modern instruments that may contain rolled up wage rates or which are based on achievement of performance targets. The clause recognises, that in negotiating an instrument, parties may agree on a weekly wage rate for the purpose of this provision. The clause also gives the Authority’s Board the power to approve or reject this amount as the amount payable if a worker under the instrument is incapacitated.

The new s 107C defines a worker’s usual employment for the purpose of determining the amount payable under an instrument where an amount is not approved by the Authority’s Board. This is the worker’s permanent designated position or classification of employment whether the employment is on a casual, part-time or full time basis. If a worker is temporarily appointed to another position or classification at the time of the incapacity, the workers’ usual employment is the temporary position or classification for the period of that appointment (e.g. 1 day, 1 week or 1 month).

The new s 107D continues the prohibition against an industrial instrument providing entitlements to compensation contained in the previous s 585 of the Act subject to a new exclusion. The exclusion allows an industrial instrument other than an award to provide, and the Industrial Commission to approve, certify or have registered, an instrument that provides for an amount as the weekly wage rate if a worker becomes incapacitated. There is no restriction on how the wage rate is described, however the effect of the instrument must be that an identifiable amount applies when a worker is incapacitated. However, this amount has no force or effect under the Act unless it is approved by the Authority’s Board under the new s 107E.

The new s 107E outlines the process that must be followed by the Authority’s Board to approve an amount in an industrial instrument as the weekly wage rate applicable to workers who are incapacitated. An employer must make an application to the Board and the Board must accept or reject this application within a prescribed timeframe. The Board can only approve amounts provided by an instrument that are approved or certified under an Industrial Act. This ensures that there is agreement to the amount by employees or employee associations which may be party to the

instrument. An employee association is an association of employees that is registered under either the *Industrial Relations Act 1999* or the *Workplace Relations Act 1996 (Cwlth)*. The Board must also have regard to certain matters in making its decision depending on the nature of the industrial instrument.

If the Authority's Board refuses to approve an amount, the employer may appeal the Board's decision to the Industrial Magistrate under Chapter 13.

### **Amendment of s 109 (Who must pay compensation)**

Clause 15 amends s 109 which obligates an employer who is a self-insurer to pay the compensation, otherwise obligates WorkCover to pay compensation, subject to s 66.

The payment of compensation by WorkCover can impact on an employer's claims experience and may lead to increases in the employer's workers compensation premium. Increasingly employers who are paying out large claims, including the cost of time lost and medical expenses, to avoid potential premium increases are being identified when claims are made a substantial time after the injury and after significant amounts of compensation paid. This can have detrimental impacts on a worker's rehabilitation, return to work outcomes, and increase the total quantum of claims.

The clause provides that an employer must not pay a worker an amount either in compensation or instead of compensation payable by WorkCover under the Act for an injury sustained by the worker. This excludes any compensation paid by an employer in the excess period (s 66) as well as compensation paid where an employer has complied with their obligation to notify WorkCover of a claim (s 133A) and a worker has made an application for compensation to WorkCover. This allows an employer to choose to continue to pay their worker a salary or wages while WorkCover is considering an application for compensation. This amount may, at the discretion of WorkCover, be refunded under s.110 (5).

### **Insertion of new s 109A**

Clause 16 provides that where an employer pays an amount as compensation to a worker for a claim in contravention of s 109 (3) (clause 15) WorkCover may require the employer to pay WorkCover a maximum penalty of 50% of the employer's actual premium for the current period of insurance. In determining whether to impose a penalty WorkCover must

consider the severity of the injury, the magnitude of the contravention and the employer's compliance history.

The process WorkCover must follow to impose and recover this penalty is based on s 57 of the Act. This provides an employer with the opportunity to seek a waiver or reduction of this penalty. A decision of WorkCover to refuse to waive or reduce a penalty is reviewable by the Authority under Chapter 13.

### **Insertion of new s 133A**

Clause 17 inserts a new provision which extends an employer's duty to notify of an injury, to a duty to notify WorkCover when an amount is paid to a worker as or instead of compensation, or a request is made by a worker for amount to be paid as compensation. Compensation payable by an employer includes weekly compensation paid during the excess period for an injury. One way a worker may ask an employer for compensation is by providing the employer with a completed application form under s 132 of the Act.

### **Amendment of s 134 (Decision about application for compensation)**

Clause 18 amends s 134 which provides that an insurer must make a decision on whether to allow or reject a claimant's application for compensation within certain timeframes. This clause reduces the timeframes for making a decision on applications for injuries, other than applications relating to psychiatric or psychological injuries or the death of a worker, to 40 business days to more closely align with other State jurisdictions. Due to the complexity of applications relating to psychiatric or psychological injuries or the death of a worker the timeframe an insurer has to make a decision regarding these applications remains at 60 business days.

### **Amendment of s 140 (Maximum entitlement)**

Clause 19 amends s 140 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 removes the nexus between the payment of weekly compensation and lump sum compensation increasing the statutory compensation payable to injured workers. The maximum amount payable

as weekly payments is \$174,625. In addition, the maximum amount payable as lump sum compensation under s 180 is \$174,625.

### **Insertion of new ch 3, pt 8A**

Clause 20 inserts a new division which provides when a worker's entitlement to certain types of compensation stops.

The new s 144B clarifies that an entitlement to the payment of compensation for medical treatment, hospitalisation and expenses under Chapter 4 ceases when a worker's entitlement to weekly compensation stops, and the medical treatment by a registered person is no longer required for the management of the injury.

### **Amendment of s 150 (Total incapacity – workers whose employment is governed by an industrial instrument)**

Clause 21 amends s 150 which specifies the weekly payment to a totally incapacitated worker whose employment is governed by an industrial instrument. The clause increases the amount of compensation payable to injured workers by increasing the rate of compensation payable from the end of the first 26 weeks of incapacity until the end of the first 39 weeks of incapacity.

### **Amendment of s 151 (Total incapacity – workers whose employment is not governed by industrial instrument)**

Clause 22 amends s 151 which specifies the weekly payment to a totally incapacitated worker whose employment is *not* governed by an industrial instrument. The clause increases the amount of compensation payable to injured workers by increasing the rate of compensation payable from the end of the first 26 weeks of incapacity until the end of the first 39 weeks of incapacity.

### **Amendment of s 152 (Total incapacity – certain contract workers)**

Clause 23 amends s 152 which specifies the weekly payment to a totally incapacitated contract worker as defined in this clause. The clause increases the amount of compensation payable to injured contract workers by increasing in the rate of compensation payable from the end of the first 26 weeks of incapacity until the end of the first 39 weeks of incapacity.

### **Amendment of s 157 (Total incapacity)**

Clause 24 amends s 157 which specifies the amount of weekly payment to a totally incapacitated person who is entitled to compensation other than a worker, a student or eligible person. The clause increases the amount of compensation payable to injured persons by increasing the rate of compensation payable from the end of the first 26 weeks of incapacity until the end of the first 39 weeks of incapacity.

### **Amendment of s 159 (Total incapacity)**

Clause 25 amends s 159 which specifies the amount of weekly payment to an eligible person. The clause increases the amount of compensation payable to injured eligible persons by increasing the rate of compensation payable from the end of the first 26 weeks of incapacity until the end of the first 39 weeks of incapacity.

### **Amendment of s 160 (Total incapacity—reference about impairment to medical assessment tribunal)**

Clause 26 amends s 160 which 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 an insurer and the worker. The clause makes consequential amendments as a result of the introduction of the new step down in compensation under ss 150, 151, 152, 157 and 159 (clauses 21 to 25).

### **Amendment, relocation and renumbering of s 177 (When to weekly payments stops)**

Clause 27 relocates s 177 which specifies when a worker's entitlement to weekly payments ceases to the new chapter 2, part 8A (clause 20). The clause also clarifies that this section only applies to weekly compensation paid under Chapter 3, Part 9 of the Act.

### **Amendment of s 192 (Additional lump sum compensation for certain workers)**

Clause 28 amends s 192 which prescribes the amount of additional lump sum compensation payable to certain workers. The clause updates the

prescribed compensation payable with the actual compensation payable from 1 July 2004.

### **Amendment of s 193 (Additional lump sum compensation for certain gratuitous care)**

Clause 29 amends s 193 which specifies a worker's entitlement for additional lump sum compensation for gratuitous care. The clause updates the prescribed compensation payable with the actual compensation payable from 1 July 2004.

### **Amendment of s 200 (Total dependency)**

Clause 30 amends s 200 which prescribes the amount of compensation payable to a worker's dependants. The clause increases the compensation payable to dependant members of the worker's family to \$300,000. It also updates the prescribed compensation payable to dependant members of a worker's family where a worker has a totally dependent spouse with the actual compensation payable from 1 July 2004.

### **Amendment of s 202 (Workers under 21)**

Clause 31 amends s 202 which prescribes the amount of compensation payable to a parent of a worker who has died under the age of 21. This clause updates the prescribed compensation payable with the actual compensation payable from 1 July 2004.

### **Insertion of new ch 3, pt 13**

Clause 32 inserts a new part and s 207A which allows an insurer to recover from a person a reasonable proportion of reasonable costs incurred by the insurer in obtaining reports in relation to a claim in which an injury to a worker has created a legal liability in the person to pay damages independent of the Act.

The clause is intended not only to provide certainty in the ability of insurers to recover these costs but also to ensure that costs are reasonably shared between the parties, having regard to each party's portion of liability for the claim, as well as the context and purpose of the report obtained.

The clause also clarifies that reports covered by this provision do not include those of a legal nature, such as advice provided by an insurer's lawyer.

### **Amendment of s 211 (Extent of liability for medical treatment)**

Clause 33 amends s 211 which outlines the extent of an insurer's liability for medical treatment. The clause clarifies that an insurer's liability for certain medical treatments in s 211(1)(b) do not apply where given to a worker as an inpatient in both public and private hospitals.

### **Amendment of s 212 (Extent of liability for prosthetic expenses)**

Clause 34 amends s 212 which outlines the extent of an insurer's liability for prosthetic expenses. The clause removes the circumstances in which an insurer's liability under this section stops to avoid duplication with the new section 144B (clause 20).

### **Insertion of ch 4, pt 2, div 3, sdiv 1 hdg**

Clause 35 inserts a new subdivision which provides the definitions for Chapter 4, Part 2, Division 3 (Hospitalisation).

### **Amendment of s 215 (Definition for div 3)**

Clause 36 amends s 215 which provides a definition for the terms "elective hospitalisation", "private hospital" and "public hospital". The clause updates and clarifies the definitions of "private hospital" and "public hospital". The clause also introduces definitions of "contracted hospital", "hospital", "private patient" and "public patient".

### **Insertion of new ch 4, pt 2, div 3, subdiv 2 hdg**

Clause 37 inserts a new subdivision for private hospitalisation. This subdivision includes the existing ss 216 and 217 which prescribe an insurer's liability for private hospitalisation.

### **Amendment of s 216 (Extent of liability for period of hospitalisation)**

Clause 38 amends s 216 which sets out an insurer's liability for the cost of private hospitalisation. The clause aligns the terminology used within this section with the changes to s 215 (clause 36).

### **Amendment of s 217 (Cost of hospitalisation)**

Clause 39 amends s 217 which specifies the cost of private hospitalisation. The clause aligns the terminology used within this section with the changes to s 215 (clause 36).

### **Omission of s 218 (Maximum liability for cost of hospitalisation)**

Clause 40 removes s 218 which specifies the maximum liability of cost of private hospitalisation. There will no longer be a maximum liability for the cost of private hospitalisation.

### **Insertion of new ch 4, pt 2, div 3, sdiv 2**

Clause 41 inserts a new subdivision for public hospitalisation. This subdivision includes new provisions which prescribe an insurer's liability for public hospitalisation where a public hospital imposes a cost for this hospitalisation.

The new s 218A details the extent of liability an insurer has for the hospitalisation of a worker for an injury. For non-elective hospitalisation an insurer will be liable for the cost of the hospitalisation for 4 days. After this time, an insurer will be liable where the non-elective hospitalisation is reasonable having regard to the worker's injury. In determining what is "reasonable", an insurer must have regard to the medical determination made by the worker's treating medical practitioner.

Consistent with the liability of insurers for elective hospitalisation in a private hospital, an insurer is liable for costs of elective hospitalisation imposed by a public hospital for the public hospitalisation to the extent it is agreed by the insurer under arrangements entered into between the insurer and the worker before the hospitalisation.

The clause also clarifies that a worker will not be liable for the cost of hospitalisation as an in-patient at a public hospital for an injury, subject to the *Health Services Act 1991*.

The new s 218B outlines that an insurer's liability for hospitalisation includes the provision of the facility as well as medical treatment provided at the hospital.



### **Amendment of s 233 (Definitions for ch 5)**

Clause 42 amends s 233 which provides the definitions for Chapter 5 (Access to Damages). The clause introduces a new definition of “party” for chapter 5 as a consequence of the new provisions which allow an insurer to add another party, a “contributor” into the pre-proceedings process (clause 43).

### **Insertion of new ss 278A and 278B**

Clause 43 inserts two new sections which allow an insurer to add another party into the pre-proceedings process in order to have that party to contribute towards or indemnify the insurer for that party’s liability. This will assist in the facilitation of early settlement of common law claims and provide greater consistency between the pre-proceedings process under the Act and the *Personal Injuries Proceedings Act 2002* upon which the clause was modelled (ss 16 and 17).

The new s 278A sets out the procedure that an insurer must follow to add a contributor and prescribes the period in which this must occur. If the prescribed time has ended further contributors can only be added with the contributor’s and claimant’s agreement or the court’s leave.

The new s 278B provides that the person served with the contribution notice must respond to the notice within a prescribed period by admitting, denying or partially denying or admitting the contribution or indemnity.

### **Amendment of s 279 (Claimant and insurer to cooperate)**

Clause 44 amends s 279 which provides an obligation on the claimant and insurer to cooperate and share relevant documentation and information. The clause provides that a contributor has a like obligation to cooperate through providing relevant documentation and information reasonably requested by another party subject to the non-disclosure requirements in s.284.

### **Amendment of s 281 (Claimant and insurer to attempt to resolve claim)**

Clause 45 amends s 281 which provides an obligation on the claimant and insurer to endeavour to resolve a claim as quickly as possible. The clause provides that a contributor has a like obligation to endeavour to resolve a claim as quickly as possible. An insurer is also given an obligation to

notify the contributor of the insurer's written response to a claimants complying notice of claim.

### **Amendment of s 282 (Worker to undergo medical examination)**

Clause 46 amends s 282 which allows an insurer to request a claimant undergo a medical examination or an assessment of their cognitive, functional or vocational capacities. The clause clarifies the intent of s 282 as well as provides that a contributor may ask a worker to undergo at the contributors expense these examinations or assessments. In determining whether a request of a contributor is reasonable or unnecessarily repetitious regard must be had to whether the same examination or assessment has already been undertaken by an insurer.

### **Amendment of s 283 (Joint expert reports)**

Clause 47 amends s 283 which allows an insurer and the claimant to jointly arrange for expert reports. The clause provides that a contributor may also jointly arrange for an expert report with either one or both of the other parties. This allows the parties to avoid unnecessary expenses associated with each obtaining their own reports. None of the parties are compelled to comply with this provision.

### **Amendment of s 284 (Non-disclosure of certain material)**

Clause 48 amends s 284 which provides for the non-disclosure of certain material. The clause ensures the effective operation of a parties obligation to cooperate and provide relevant documents under s 279 by providing that these documents must be disclosed even though they may otherwise be protected by legal professional privilege. Although the clause maintains legal professional privilege over correspondence that passes between a party and their lawyer, relevant documents attached to this correspondence must be disclosed.

In addition the clause extends s 284 to apply to contributors.

### **Amendment of s 285 (Consequence of failure to give information)**

Clause 49 amends s 285 which details the consequences of the failure of a claimant and insurer to disclose information under Chapter 5. The clause

provides the consequences of a failure to give information to another party equally apply to a contributor.

### **Amendment of s 289 (Compulsory conference)**

Clause 50 amends s 289 which requires that a compulsory conference be held for all proceedings for damages. To support the facilitation of early resolution of claims this clause provides that a contributor will, with an insurer and a claimant, be able to call a compulsory conference. Further, a person authorised to settle on behalf of a contributor must attend the conference and actively participate in an attempt to settle the claim.

### **Amendment of s 290 (Procedure at conference)**

Clause 51 amends s 290 which provides for procedures to be complied with for a compulsory conference. The clause applies these procedures to contributors as well as claimants and insurers. It also removes the requirements on insurers and claimants for the exchange of certain material and relocates these to a new section 290A (clause 52).

### **Insertion of new s 290A hdg**

Clause 52 inserts a new s 290A which provides the requirements on insurers and claimants to exchange certain material prior to a compulsory conference. The section is largely relocated from the previous requirements in s 290 (5) to (8) (clause 51). Consistent with the *Personal Injuries Proceedings Act 2002* these requirements do not apply to contributors.

### **Amendment of s 292 (Parties to make written final offer if claim not settled at compulsory conference)**

Clause 53 amends s 292 which mandates that parties make a final written offer if a claim is not settled at a compulsory conference. The clause clarifies that, consistent with the *Personal Injuries Proceedings Act 2002*, the requirement to make a final written offer only applies to a claimant and an insurer.

The clause also provides greater certainty, and assists in the facilitation of the early resolution of claims by allowing the making of a consolidated final offer where more than 1 of a claimant's claims is considered at a compulsory conference. To ensure transparency this offer must detail the

apportionment of the offer between each claim. A consolidated offer can only be either accepted or rejected in full.

### **Insertion of new s 292A**

Clause 54 introduces a new provision to facilitate the making of offers to contribute by an insurer or a contributor in a contribution or indemnity claim. The clause was modelled on s.41 of the *Personal Injuries Proceedings Act 2002*.

### **Amendment of s 293 (Settlement of claim for damages)**

Clause 55 amends s 293 which requires parties to sign a discharge on the settlement of a claim. The clause expands the ambit of the requirement to include contribution or indemnity claims.

### **Amendment of s 296 (Claimant to have given complying notice of claim or insurer to have waived compliance)**

Clause 56 amends s 296 which outlines when a claimant may commence proceedings. The clause specifically includes a contributor as a party.

### **Replacement of ch 5, pt 10 (No right to particular damages)**

Clause 57 replaces chapter 5, part 10 and s 308 which prevented a court from awarding of damages commonly referred to as a Griffiths v Kerkemeyer award.

The clause clarifies the circumstances in which a court is prevented from awarding a worker damages for the value or cost of domestic, nursing and caring services where these services have been provided to a worker by a member of the worker's family, household or friend. It also confirms the original intention of s 308 that awards for damages for future paid domestic, nursing or caring services are unable to be made if a worker has been in receipt of the services gratuitously in the past.

The new s 308A provides the definitions for the Part. It defines "gratuitous services", "paid services" and "services". Gratuitous services are services of a domestic, nursing or caring nature that are provided to a worker by a member of the worker's family or household, or by a friend of the worker. Gratuitous services do not include paid services, which are services that are paid for and provided by a person in their professional capacity or the course of their business. An example of paid services would be a seriously

injured worker receiving paid assistance with daily activities from a professional care provider.

The new s 308B prevents the award of damages where paid services have been provided to a worker before the injury.

The new s 308C prevents the award of damages where a worker performed services themselves before an injury and has received these services as gratuitous services since the injury. This section also prevents these gratuitous services from being converted into paid services into the future for the purpose of calculating damages.

The new s 308D prevents the award of damages where gratuitous services have been provided to a worker before the injury.

The new s 308E prevents the award of damages where a worker did not require services before the injury and received these services as gratuitous services since the injury. This section also prevents these gratuitous services from being converted into paid services into the future for the purpose of calculating damages.

The Act continues to recognise there will be a need in certain circumstances for gratuitous services by providing in the statutory compensation benefits under Chapter 3 for payment of a lump sum in lieu of gratuitous care awards under common law for more seriously injured workers.

### **Amendment of s 313 (Costs if written final offer by insurer)**

Clause 58 amends s 313 which provides for the costs were there is a written final offer not accepted by a claimant. As a consequential amendment of the new definition of “party” in Chapter 5 the clause removes the reference to a “party”. This will be shown by either the claimant or the insurer depending on the circumstance.

### **Amendment of s 316 (Principles about orders as to costs)**

Clause 59 amends s 316 which provides that a court, giving a judgment for costs under this division, must apply the principles set out in this clause. As a consequential amendment to the insertion of a new definition of “party” in Chapter 5 the clause replaces the reference to a “party to the proceeding” with either the claimant or insurer.

### **Amendment of s 330 (General statement of Authority's functions)**

Clause 60 amends s 330 which outlines the Authority's general functions. The clause clarifies that these functions include the approval of amounts payable under an industrial instrument for the purpose of the new s 107D (Clause 14).

### **Amendment of s 453 (WorkCover's solvency)**

Clause 61 amends s 453 which provides the requirements WorkCover must meet to be considered fully funded. The clause updates these requirements from a solvency basis to a capital adequacy basis which through the regulation will directly align with the requirements placed on other insurers by the Australian Prudential Regulation Authority under the *Insurance Act 1973 (Cwth)*.

### **Insertion of new ch 9, pt 3**

Clause 62 inserts a new Part 3 into Chapter 9 which enables the Minister to make codes of practice.

The new s 486A states that the Minister may make codes of practice that state ways that an insurer may perform its functions, exercise its powers, and meet its obligations under the Act. The Authority's Board must recommend the making of a code. The Minister must notify the making of a code of practice and to provide certainty for insurers codes will have a life of 10 years consistent with other types of statutory instruments in the *Statutory Instruments Act 1992*.

The new s 486B provides that an insurer, including WorkCover, will commit an offence where they contravene or act inconsistently with the code, and do not follow another way that is equally effective to, or more effective than the way set out in the code for complying with a requirement of the Act.

### **Amendment of s 540 (Application of pt 2)**

Clause 63 amends s 540 which provides the decisions of WorkCover and self insurers that Part 2 applies.

The clause clarifies that the Authority can review a decision made by an insurer to allow or reject an application for compensation for medical treatment, hospitalisation and expenses under Chapter 4, or a decision to

terminate or suspend the payment of this compensation. For example, an insurer may terminate a worker's payment of compensation due to the cessation of their entitlement to that compensation under ss 144A or 144B. The clause does not provide the Authority with the power to review the amount of compensation paid by an insurer, or any increases or decreases to the amount of compensation paid by an insurer for medical treatment, hospitalisation and expenses under Chapter 4.

The clause also allows the Authority to review a decision made under s 109A (clause 16) by WorkCover to refuse to waive or reduce a penalty imposed on an employer.

### **Amendment of s 545 (Review of decision or failure to make a decision)**

Clause 64 amends s 545 which outlines procedures to be followed in relation to the review of a decision or the failure to make a decision. The clause provides the Authority with the power to set aside and return the matter to the decision maker with directions they consider appropriate in certain circumstances.

The clause also allows the Authority to extend the time in which it has to make a decision to allow the applicant a right of appearance, to make representations or, when requested by the applicant in writing, to provide further information. An extension of time can only be given with the applicant's consent.

### **Amendment of s 546 (Notice of review decision)**

Clause 65 amends s 546 which requires the Authority to give written notice of review decisions to specified parties. The clause provides that a decision of the Authority to return a matter to a decision-maker is not able to be appealed. The decision maker's new decision is appealable.

### **Insertion of new s 546A**

Clause 66 inserts a new provision which provides the guidelines on a decision-maker if the Authority returns a matter to the decision-maker under s 545. The decision-maker must make a decision and give the applicant and the Authority written notice of the decision within the time specified. In certain circumstances the decision-maker must also notify the claimant, worker and employer. The decision maker's new decision is appealable.

### **Amendment of s 548 (Application of div 1)**

Clause 67 amends s 548 which outlines the decisions to which this division 1 of Part 3 applies. The clause provides that a decision of the Authority to return a matter to the decision-maker is not able to be appealed. However, the decision maker's new decision is appealable.

### **Insertion of new s 548A**

Clause 68 inserts a new section which allows certain appeals to be heard by either an Industrial Magistrate or the Queensland Industrial Relations Commission established under the *Industrial Relations Act 1999*. The clause supports the objects of Chapter 13 and provides an alternative for claimants where conciliation, arbitration and mediation processes are desirable in the resolution of an appeal.

In addition the clause states a number of prescribed review decisions and all non-reviewable decisions that will remain appropriately in the exclusively jurisdiction of an industrial magistrate.

### **Amendment of s 549 (Who may appeal)**

Clause 69 amends s 549 which sets out who may appeal to an industrial magistrate. The clause expands the coverage to include both appeal bodies, the Queensland Industrial Relations Commission and the Industrial Magistrate.

The clause also provides WorkCover with a right to appeal decisions of the Authority on prescribed decisions relating to premium as WorkCover may be directly aggrieved by the Authority's decision. To ensure natural justice the clause gives both an employer and WorkCover the right to be joined as a party to an appeal relating to premium decisions.

### **Amendment of s 550 (Procedure for appeal)**

Clause 70 amends s 550 which outlines the procedure for particular appeals. The clause expands the coverage to include both appeal bodies, the Queensland Industrial Relations Commission and the Industrial Magistrate. It also clarifies that an appeal can only be started with one appeal body. Once started an appeal is unable to be transferred to the alternate appeal body unless the body does not have jurisdiction to hear the appeal.



### **Amendment of s 552 (Notice of time and place for hearing)**

Clause 71 amends s 552 which requires the registrar of the Magistrates Court to give parties to an appeal written notice of the time and place fixed for the hearing. The clause expands the coverage to include both appeal bodies, the Queensland Industrial Relations Commission and the Industrial Magistrate.

### **Amendment of s 554 (Exchanging evidence before hearing)**

Clause 72 amends s 554 which requires the parties to exchange relevant documentation each party wants to adduce as evidence at the hearing. The clause expands the coverage to include both appeal bodies, the Queensland Industrial Relations Commission and the Industrial Magistrate.

The clause also extends the timeframes for exchanging documentation. This will provide a greater opportunity for all parties to consider new information provided consequently facilitating the resolution of claims prior a hearing.

### **Amendment of s 555 (Adjourning hearing)**

Clause 73 amends s 555 which allows the industrial magistrate, prior to or after the start of the hearing, to adjourn the hearing in certain circumstances. The clause also provides the Queensland Industrial Relations Commission this power.

### **Amendment of s 556 (Additional medical evidence)**

Clause 74 amends s 556 which 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. The clause also provides the Queensland Industrial Relations Commission this power.

### **Amendment of s 557 (Correcting defects in proceedings)**

Clause 75 amends s 557 which 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. The clause also provides the Queensland Industrial Relations Commission with this power.

### **Amendment of s 558 (Powers of industrial magistrate)**

Clause 76 amends s 558 which sets out the powers of the industrial magistrate in deciding an appeal. The clause also provides the Queensland Industrial Relations Commission with these powers.

### **Amendment of s 559 (Decision of industrial magistrate)**

Clause 77 amends s 559 which requires the industrial magistrate to give their decision in a hearing in open court and a written copy of the decision to each party. The clause also makes these requirements of the Queensland Industrial Relations Commission.

### **Amendment of s 560 (Recovery of costs)**

Clause 78 amends s 560 which outlines requirements in relation to the recovery of costs. The clause aligns the recovery of costs in the Queensland Industrial Relations Commission with the industrial magistrate.

### **Amendment of s 561 (Appeal from Industrial Magistrate to Industrial Court)**

Clause 79 amends s 561 which allows a party aggrieved by the industrial magistrate's decision to appeal to the industrial court. The clause aligns the appeal rights of a decision of the Queensland Industrial Relations Commission with a decision of the Industrial Magistrate.

### **Amendment of s 566 (Decision about payment of compensation)**

Clause 80 amends s 566 which provides that a person who has received compensation is not required to refund the payment if on appeal the insurer is found not liable for the payments. The clause includes a decision of the Industrial Relations Commission.

### **Amendment of s 569 (Starting appeals)**

Clause 81 amends s 569 which allows appeals of certain decisions of the Authority relating to self-insurers to be made to a court with jurisdiction in Brisbane and sets out requirements in this regard. The clause replaces the basis for determining the courts jurisdiction in an appeal with from "deemed premium" to "deemed levy" as a deemed premium is no longer required to be calculated for a self-insurers.

### **Amendment of s 573 (Disclosure of information)**

Clause 82 amends s 573 which outlines who may disclose information to insurers and the Authority and to whom insurers and the Authority may disclose information. The clause clarifies that the Authority has the power, if asked by an insurer, to disclose any information to the insurer relevant to a claim against the insurer.

### **Amendment of s 576 (Information not actionable)**

Clause 83 amends s 576 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 the Authority or an insurer. This clause extends the section to include disclosure information about the credibility of an employer, insurer, contributor, or another person involved in the claim if the disclosure is relevant to the claim. It also aligns the restriction on the provisions' application to information disclosed by WorkCover with self-insurers.

### **Amendment of s 579 (Summary proceedings for offences other than against ch 8)**

Clause 84 amends s 579 which specifies that offences (other than offences under Chapter 8) are to be taken by way of complaint and summons before an industrial magistrate. The clause provides that a decision of the industrial magistrate can only be appealed to a District Court judge. This aligns the appeal rights of appellants for all summary offences under the Act, and for these types of offences (e.g. fraud) under other legislative regimes.

The clause also clarifies the process for bringing a proceeding against WorkCover for the offence of failing to comply with s 486B.

### **Omission of s 585 (Entitlements to compensation under industrial instrument prohibited and void)**

Clause 85 removes s 585 which outlines that the Industrial Relations Commission can not include in industrial instruments any provision for payment of an amount for accident pay or other payment on account of a worker sustaining injury. This section has been amended and relocated to Chapter 3 Part 1A (clause 14).

## **Insertion of new ch 16**

Clause 86 inserts a new chapter 16 which contains the transitional provisions for the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004*.

The new s 612 provides the definitions for this Chapter including "amending Act".

The new ss 613 to 625 provides for the transition of various amendments to the Act made by the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004*.

The new s 613 provides for the transition of amendments to the definition of worker, employer and injury. The amendments only apply to injuries sustained by a worker on or after the commencement of the amendments.

The new s 614 provides for the transition of amendments to the definition of excess period and an employers liability for the excess period. The amendments only apply to injuries sustained by a worker on or after the commencement of the amendments on 1 July 2005.

The new 615 provides for the transition of the introduction of requirements on employers to notify of compensation claims, and the restriction on the amounts an employer can pay as or instead of compensation. The amendments only apply to injuries sustained by a worker on or after the commencement of the amendments on 1 January 2005.

The new s 616 provides for the transition of amendments to workers entitlements to compensation. This includes amendments which change the definition of amounts payable under an industrial instrument, break the nexus between weekly payments of compensation and lump sum compensation, increasing the benefits payable to dependent family members on a workers death and aligning the amounts of compensation payable with actual amounts from 1 July 2004. These amendments will only apply to injuries sustained by a worker on or after the commencement of the amendments on 1 January 2005

The new s 617 provides for the transition of amended timeframes an insurer has to make a decision about a worker's application for compensation. The amendments apply to an application for compensation made on or after the commencement of the amendments.

The new s 618 provides for the transition of the introduction of the requirements for when a worker's entitlement to compensation under

Chapter 4 stops. The amendments apply to injuries sustained by a worker on or after the commencement of the amendments.

The new s 619 provides for the transition of amendments to the weekly payment of compensation for total incapacity which introduced an additional step down in compensation between 26 and 39 weeks. The amendments apply to injuries sustained by a worker on or after the commencement of the amendments.

The new s 620 provides for the transition of the introduction of the ability for an insurer to recover certain claims costs from third parties. The amendments apply to applications for compensation made on or after the commencement of the amendments.

The new s 621 provides for the transition of the introduction of the ability for public hospitals to recover the cost of public hospitalisation from an insurer. The amendments only apply to new hospitalisations of a worker as an in-patient at a public hospital on or after the commencement of the amendment.

The new s 622 provides for the transition of amendments to the recovery of damages for particular services. These amendments only apply to proceedings for damages if the trial in the proceeding starts on or after the commencement of the amendment.

The new s 623 and 624 provides for the transition of amendments to the review and appeals process under Chapter 13 that start on the commencement of the Act. The amendments only apply to decisions of an insurer or the Authority made on or after the commencement of the amendment.

The new s 625 provides for the transition of amendments to the appeals process under Chapter 13 that start after the commencement of the Act, in particular the ability for an appellant to elect to have certain review decisions heard by either an industrial magistrate or the Queensland Industrial Relations Commission. The amendments only apply to decisions of the Authority made on or after the commencement of the amendment.

### **Amendment of sch 2 (Who is a worker)**

Clause 87 amends schedule 2 which outlines who is a worker. The clause amends the heading of this section to align with the terminology used in s 11 (Who is a “worker”).

### **Amendment of sch 3 (Who is an employer)**

Clause 88 amends schedule 3 which outlines who is an employer. The clause amends the heading of this schedule to align with the terminology used in s 30 (Who is an employer). It provides greater clarity as to who is an employer in all contractual arrangements where a worker is either lent or hired to another party, or works for a labour hire agency or group training organisation. The clause also removes Schedule 3 Part 2 as a consequential amendment to the amendment to the definition of employer in clause 5.

### **Amendment of sch 6 (Dictionary)**

Clause 89 amends the Act's dictionary of definitions. The clause:

- inserts new definitions for “contribution notice” and “contributor” to support the new sections 278A and 278B (clause 43);
- replaces the definition of “deemed premium” with “deemed levy” as a deemed premium is no longer calculated for self-insurers (clause 81);
- expands the definition of “hospitalisation” to include hospitalisation in a public hospital;
- inserts a new definition of superannuation contribution that ensures consistency for employers with the *Pay-roll Tax Act 1971*; and
- amends the definition of “wages” to ensure national consistency with the majority of other State jurisdictions. The clause has the effect of including superannuation contributions in the definition of wages under the Act (e.g. for assessing an employer's premium) except for deciding the amount of compensation payable to a worker (e.g. for assessing a workers normal weekly earnings).

The clause also makes a number of consequential amendments and additions to the dictionary as a result of other amendments made by the Act.

## **Part 3 Amendment of Workplace Health and Safety Act 1995**

### **Act amended in pt 3 and sch**

Clause 90 provides that Part 3 and the schedule of the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004* amends the *Workplace Health and Safety Act 1995*.

### **Amendment of s 3A (Relationship with Electrical Safety Act 2002)**

Clause 91 amends s 3A which provides the relationship between the Act and the *Electrical Safety Act 2002*. The clause removes the reference to a “worker at work” as a consequential amendment to the omission of s 16 (clause 95).

### **Replacement of s 9 (What is a “workplace”?)**

Clause 92 amends s 9 which provides the definition of “workplace”. The clause clarifies that a workplace includes a place where work is, or is to be, performed by a person who conducts a business or undertaking. The clause also increases certainty for obligation holders by removing the coverage of places where work is “likely” to be performed.

### **Amendment of s 10 (Who is an “employer”?)**

Clause 93 amends s 10 which provides the definition of “employer”. The clause ensures consistency between the Act and the *Electrical Safety Act 2002* (s 21) for employers by removing the requirement that a person’s business or undertaking be conducted for gain or reward.

### **Amendment of s 14 (What is a “construction workplace”?)**

Clause 94 amends s 14 which provides the definition of “construction workplace”. The clause aligns the definition with other building and construction related legislation such as the *Building and Construction Industry (Portable Long Service Leave) Act 1991* by including GST in the threshold estimated final price at practical completion of \$80,000 for building or construction work.

### **Omission of s 16 (When is a worker at work?)**

Clause 95 omits s 16 which provides the circumstances in which a worker is at work. The section is no longer required subsequent to the amendments in the *Workplace Health and Safety and Other Acts Amendment Act 2003*.

### **Amendment to s 26 (How obligations can be discharged if regulation etc. made)**

Clause 96 amends s 26 which prescribes how obligations can be discharged if a regulation, ministerial notice or advisory standard or industry code of practice is made. The clause aligns subsection (3) with subsection (1) by clarifying that a person's workplace health and safety obligation will only be discharged for exposure to the risk provided in the code of practice.

### **Amendment of s 28 (Obligations of employers)**

Clause 97 amends s 28 which provides the workplace health and safety obligation of an employer. The clause aligns the terminology used in describing an employer's obligation with other workplace health and safety obligations.

### **Amendment of s 29 (Obligations of self-employed persons)**

Clause 98 amends s 29 which provides the workplace health and safety obligation of self-employed persons. The clause aligns the terminology used in describing a self-employed person's obligation with other workplace health and safety obligations.

### **Amendment of s 29A (Obligations of persons conducting a business or undertaking)**

Clause 99 amends s 29A which provides the workplace health and safety obligation of persons conducting a business or undertaking. The clause aligns the terminology used in describing the obligation of persons who conduct a business or undertaking with other workplace health and safety obligations.

### **Amendment of s 38 (Regulations)**

Clause 100 amends s 38 which allows the Governor in Council to make regulations under the Act. This clause removes the specific inclusion of



'registrable workplaces' as these fees will no longer be prescribed or payable under the *Workplace Health and Safety Regulation 1997*.

### **Replacement of s 41 (Advisory standards and industry codes of practice)**

Clause 101 amends s 41 by renaming advisory standards and industry codes of practice as "codes of practice". The clause will reduce industry confusion surrounding the nature of and differences between advisory standards and industry codes of practice. This is consistent with the terminology used in the *Electrical Safety Act 2002* and other States.

To provide greater certainty for industry the clause extends the life of a codes of practice to 10 years. This makes the timeframes consistent with other types of statutory instruments in the *Statutory Instruments Act 1992*.

### **Insertion of new s42DA**

Clause 102 inserts a new provision which provides that a person must make a workplace health and safety undertaking within the timeframe prescribed under a regulation.

### **Amendment of s 42I (Contravention of a workplace health and safety undertaking)**

Clause 103 amends s 42I which provides that the chief executive may apply to the industrial court for particular orders where they consider an operating workplace health and safety undertaking has been contravened. The clause replaces the jurisdiction of the industrial court with the industrial magistrate.

### **Insertion of new s 103A**

Clause 104 inserts a new provision which clarifies that an inspector may give advice to an obligation holder in relation to their compliance with the Act.

### **Amendment of s 108 (General powers after entering places)**

Clause 105 amends s 108 which outlines an inspector's general powers after entering a place. The clause clarifies that the privilege against self-incrimination does not apply to corporations.

### **Amendment of s 117 (Improvement notice)**

Clause 106 amends s 117 which permits an inspector to issue an improvement notice. The clause aligns subsection (3)(b) with subsection (1) and clarifies that an improvement notice must state briefly either how the provision is being, or has been contravened. It also provides that an inspector may give an obligation holder a direction under this provision orally which is consistent with an inspector's powers under s 118 for the issue of a prohibition notice.

### **Amendment of s 118 (Prohibition Notice)**

Clause 107 amends s 118 which permits an inspector to give an oral direction and issue a prohibition notice. The clause clarifies when this section applies. It also omits the requirement for the notice to provide the provision be contravened due to the operation of s 117, and that the notice to detail the circumstances that the notice maybe lifted as the notice will always continue for the life of the risk.

### **Amendment of s 120 (Power to require name and address)**

Clause 108 amends s 120 which provides the circumstances in which an inspector may require a person to provide their name and address. The clause clarifies the application of this section.

### **Amendment of s 121 (Power to inquire into workplace incident)**

Clause 109 amends s 121 which permits an inspector inquire into the circumstances and probable causes of a workplace incident. The clause clarifies that the privilege against self-incrimination does not apply to corporations.

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

Clause 110 amends s 122 which permits an inspector to require the production of certain documents. The clause clarifies that the privilege against self-incrimination does not apply to corporations.

### **Amendment of s 144 (Offences by witnesses)**

Clause 111 amends s 144 which provides that a person who has been given a notice under s 141 to attend a board of inquiry meeting, unless the person

has a reasonable excuse. The clause clarifies that the privilege against self-incrimination does not apply to corporations.

### **Replacement of s 182 (Revocation of accredited provider's appointment)**

Clause 112 amends s 182 which provides that the chief executive may revoke an accredited provider's appointment to also allow the chief executive to suspend this appointment.

### **Replacement of pt 17, divs 2 and 3**

Clause 113 omits the previous transitional provisions from the *Workplace Health and Safety and Other Acts Amendment Act 2003* as these provisions have expired. These are replaced with transitional provisions for the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004*.

The new s 190 provides that current advisory standards continue in force as codes of practice, and will now expire 10 years from their commencement consistent with s 41 (clause 101).

The new s 191 provides that current industry codes of practice continue in force as codes of practice and will now expire 10 years from their commencement consistent with s 41 (clause 101).

### **Amendment of sch 2 (Specified high risk plant)**

Clause 114 amends schedule 2 which defines specified high risk plant. The clause replaces the definition of "gas cylinder" with the more specific "LP gas cylinder". This will reduce confusion between the definition and use of the phrase "refillable gas cylinder" in the *Workplace Health and Safety Regulation 1997*. The clause also updates the definition to ensure greater alignment with the current Australian Standard for gas cylinders in AS 2030-1999 which specify an upper capacity for gas cylinders of 3,000 kg.

### **Amendment of sch 3 (Dictionary)**

Clause 115 amends Schedule 3 which provides definitions for the Act. The clause makes consequential amendments to "gas cylinder" and clarifies the operation of the Act in offshore waters in an amendment to the definition of "place" and "water". The clause also clarifies the definition of "workplace incident".

## **Part 4 Amendment of Electrical Safety Act 2002**

### **Act amended in pt 4 and sch**

Clause 116 provides that Part 4 and the schedule of the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004* amends the *Electrical Safety Act 2002*.

### **Amendment of s 14 (Meaning of “electrical equipment”)**

Clause 117 amends s 14 which defines “electrical equipment”. The clause includes extra low voltage equipment in hazardous areas within the meaning of electrical equipment.

In ordinary circumstances, extra low voltage (ELV) equipment presents no electrical safety risk. However, if this equipment is located in a hazardous area (an area likely to contain an explosive atmosphere such as a fuel refinery) a small spark or arc can initiate an explosion. In including this equipment the clause ensures this equipment is covered by the electrical safety framework provided by the Act.

### **Amendment of s 18 (Meaning of “electrical work”)**

Clause 118 amends s 18 which provide the definition of electrical work. The clause clarifies that certain work activities are excluded from the definition of electrical work.

The exclusions cover work that does not require special electrical skill or knowledge, or that is performed where there are controls to ensure safety, or where the electrical risk has been eliminated. In particular the amendment excludes and gives legislative clarity to certain traditional work activities.

A consequential amendment as a result of the abolition of registered workplaces under the *Workplace Health and Safety Act 1995* is also made to the current exclusion for registered workplaces. The regulation will prescribe coverage for only those workplaces that the workplace registration requirements previously applied.

### **Amendment of s 44 (Code of practice about discharging electrical safety obligation)**

Clause 119 amends s 44 which allows the Minister to make a code of practice. The clause provides greater certainty for industry by extending the life of codes of practice to 10 years. This also makes the timeframes consistent with other types of statutory instruments in the *Statutory Instruments Act 1992*.

### **Insertion of new s49A**

Clause 120 inserts a new provision which provides that a person must make a workplace health and safety undertaking within the timeframe prescribed under a regulation.

### **Amendment of s 54 (Contravention of electrical safety undertaking)**

Clause 121 amends s 54 which provides that the chief executive may apply to the industrial court for particular orders where they consider an operating electrical safety undertaking has been contravened. The clause replaces the jurisdiction of the industrial court with the industrial magistrate.

### **Insertion of new part 4, div 2A**

Clause 122 inserts a new division into Part 4 which allows for an order to be made by the chief executive for the rectification of defective electrical work. This creates alignment with the *Queensland Building Services Authority Act 1991* which provides for a similar order for rectification of defective building work. The division also gives better effect to one of the purposes of the *Electrical Safety Act 2002* in providing for protection of consumers.

The new s 57A defines the power of the chief executive to require defective electrical work to be rectified and the circumstances in which this power can be exercised.

The new s 57B further outlines the process to be followed. It provides that a notice of proposed action in respect of rectification of defective electrical work must be issued and the information the notice must contain including the grounds, the facts and circumstances forming the basis for the action.

This notice must give the person at least 14 days to give reasons why the proposed action should not be taken.

The new s 57B also gives the chief executive the power to order that defective electrical work be rectified at the cost of the person responsible for the defective work, in accordance with the principles of natural justice. The section has penalties if the work is not rectified.

### **Insertion of new pt 4, div 1A**

Clause 123 inserts a new division into Part 4 which allows the chief executive to request information and documentation necessary to satisfy the chief executive that the person continues to meet electrical licence requirements. This measure ensures the ability to audit the continued legitimacy and accuracy of licence applications, and of declarations made about licence requirements and assists in maintaining the integrity of the electrical licensing regime.

### **Amendment of s 88 (Functions of licensing committee)**

Clause 124 amends s 88 which provides the functions of the licensing committee. The clause aligns the terminology used in sub section 88(1)(c) with Part 12 (Reviews and Appeals) by replacing “hear appeals” with “review decisions”.

### **Replacement of s 134 (Revocation of accredited auditor's appointment)**

Clause 125 amends s 134 which provides that the chief executive may revoke an accredited auditor's appointment to also allow the chief executive to suspend this appointment.

### **Insertion of new s 143A**

Clause 126 inserts a new provision which clarifies that an inspector may give advice to an obligation holder in relation to their compliance with the Act.

### **Amendment of s 144 (General powers after entering place)**

Clause 127 amends s 144 which outlines an inspector's general powers after entering a place. The clause clarifies that the privilege against self-incrimination does not apply to corporations.

### **Amendment of s 153 (Improvement Notice)**

Clause 128 amends s 153 which permits an inspector to give an oral direction and issue an improvement notice. The clause aligns subsection (4)(c) with subsection (1) and clarifies that an improvement notice must state briefly either how the provision is being, or has been contravened.

### **Amendment of s 154 (Electrical Safety Protection Notice)**

Clause 129 amends s 154 which permits an inspector to give an oral direction and issue an electrical safety protection notice. The clause omits the requirement for an electrical safety protection notice to detail the circumstances, if any, that the notice maybe lifted as the notice will continue for the life of the risk.

### **Amendment of s 157A (Power to inquire into serious electrical incident or dangerous electrical event)**

Clause 130 amends s 157A which permits an inspector to inquire into the circumstances and probable causes of a serious electrical incident or dangerous electrical event. The clause clarifies that the privilege against self-incrimination does not apply to corporations.

### **Amendment of s 158 (Power to require production of certain documents)**

Clause 131 amends s 158 which permits an inspector to require the production of certain documents. The clause clarifies that the privilege against self-incrimination does not apply to corporations.

### **Insertion of new pt 16**

Clause 132 inserts a new Part 16 which provides the transitional provisions for the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004*.

The new s 242 provides that the current codes of practice expire 10 years after their commencement consistent with s 44 (clause 119).

## **Part 5 Amendment of Industrial Relations Act 1999**

### **Act amended in pt 5**

Clause 133 provides that Part 5 of the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004* amends the *Industrial Relations Act 1999*.

### **Amendment of s 267 (Commission's jurisdiction is exclusive)**

Clause 134 amends s 267 which establishes that the Queensland Industrial Relation Commission's original and appellate jurisdiction is exclusive unless otherwise prescribed by the Act. The clause extends this exception to include other Acts as the Bill provides that the industrial magistrate and the commission have dual jurisdiction for certain appeals under Chapter 13 of the *Workers' Compensation and Rehabilitation Act 2003* (Clause 68).

## **Part 6 Amendment of Statutory Instruments Act 1992**

### **Act amended in pt 6**

Clause 135 provides that Part 6 amends the *Statutory Instruments Act 1992*.

### **Amendment of s 46 (When is preparation of a regulatory impact statement unnecessary?)**

Clause 136 amends s 46 which provides when the preparation of a regulatory impact statement is not necessary. The clause amends the reference to the *Workplace Health and Safety Act 1989* to the *Workplace Health and Safety Act 1995* and clarifies that likewise a regulatory impact statement is not necessary for the notice about a codes of an identical nature made under the *Electrical Safety Act 2002* and the *Workers' Compensation and Rehabilitation Act 2003*.



## **Schedule Minor Amendments**

### **Workers' Compensation and Rehabilitation Act 2003**

The schedule makes minor amendments to various provisions of the *Workers' Compensation and Rehabilitation Act 2003*. This includes:

- amending various provisions to convert the timeframes for complying with certain provisions of the Act to business days. This ensures consistency in timeframes, especially around public holidays;
- omitting the heading for the current Division 8 “When entitlement to weekly payments stops”, as s 177 (When entitlement to weekly payments stop) is relocated to the new chapter 3, part 8A (clause 27);
- amending the heading of Chapter 15 to indicate that the transitional provisions in Chapter 15 apply to the *Workers Compensation and Rehabilitation Act 2003* (Act No. 27 of 2003); and
- clarifying the application of various sections in Schedule 2 (Who is a worker in particular circumstances).

### **Workplace Health and Safety Act 1995**

The schedule makes minor amendments to various provisions of the *Workplace Health and Safety Act 1995*. This includes:

- amending the terminology “workplace activities” and “workplace activity” to “work activities” and “work activity”. This ensures coverage of not only the physical manifestations of the workplace but also the way in which work is organised and administered;
- amending various provisions as a consequence of the amendment to s 41 which renames “advisory standard or industry codes of practice” as “codes of practice” (clause 101); and
- including specific references to “relevant workplace area” to consolidate the amendments made in the *Workplace Health and Safety and Other Acts Amendment Act 2003*.

### **Electrical Safety Act 2002**

The schedule makes minor amendments to various provisions of the *Electrical Safety Act 2002*. This includes:

*Workers' Compensation and Rehabilitation and Other  
Acts Amendment Bill 2004*

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- amending amends s 30 which provides the electrical safety obligation of an employer or self-employed person, to rectify the incorrect reference in subsection (3) by replacing subsection (2) with subsection (1); and
- amending the Part 15 heading to clarify that it provides the transitional provisions for the *Electrical Safety Act 2002* (Act No. 42 of 2002).