

# **Workplace Health and Safety and Other Acts Amendment Bill 2006**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the Bill is the *Workplace Health and Safety and Other Acts Amendment Bill 2006*.

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

The primary objectives of the Bill are to:

- provide authorised representatives of employee organisations with the capacity to contribute to workplace health and safety in workplaces and relevant workplace areas under the *Workplace Health and Safety Act 1995*; and
- relocate provisions which protect an injured worker's employment following a work related injury to the *Workers' Compensation and Rehabilitation Act 2003*.

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

The *Workplace Health and Safety Act 1995* is aimed at preventing death, injury or illness being caused at a workplace or relevant workplace area by work activities, plant or substances. In achieving these outcomes, it has been proven that a relationship exists between the presence of representative structures and a more systematic approach to occupational health and safety management. In particular that employee organisation involvement in occupational health and safety matters at workplaces can result in beneficial safety outcomes.

Under the *Industrial Relations Act 1999* industrial officers from employee organisations have had powers of entry to workplaces on a number of grounds. Often the exercise of these powers overlaps with workplace health

and safety matters. However, the *Workplace Relations Amendment (Work Choices) Act 2005* and its associated regulations commenced on 27 March 2006, restricting union rights of entry with the exception of rights of entry under State occupational health and safety laws. As a result clarity is needed about the powers that union representatives have to enter workplaces on workplace health and safety grounds.

The Bill provides this clarity and as a consequence will lead to a more proactive approach to managing health and safety issues in workplaces. It also will bring Queensland into line with the current rights of entry employee organisations have in the occupational health and safety laws of New South Wales, Victoria and the Australian Capital Territory.

A primary focus of Queensland's workers' compensation scheme is to reduce costs by ensuring, where possible, that a worker with a work-related injury returns to work with their pre-injury employer. The *Industrial Relations Act 1999* currently provides employment protection for workers who have sustained a work-related injury or disease for a period of twelve months. These provisions play an important role in achieving rehabilitation and return to work outcomes by ensuring that employers take responsibility for the return to work of their injured workers and focuses effort on the prevention of work-related injury and disease. Consequently it is appropriate that they be transferred from the *Industrial Relations Act 1999* to the *Workers' Compensation and Rehabilitation Act 2003*.

## **Achieving the Objectives**

The proposed Bill will achieve its objectives primarily by:

- allowing the Queensland Industrial Registrar to appoint authorised representatives of employee organisations who meet certain requirements (including undertaking occupational health and safety training) to enter workplaces and relevant workplace areas, and exercise prescribed powers, where there is a reasonable suspicion that a contravention of the Act involving workplace health and safety has happened or is happening and that relates to or affects an eligible member, or to discuss workplace health and safety matters; and
- transferring protections for injured workers in the Queensland *Industrial Relations Act 1999* to the *Worker's Compensation and Rehabilitation Act 2003*.

## **Administrative Costs**

There are no anticipated increases in costs for government or the workers' compensation scheme arising from this legislation.

## **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.

## **Consultation**

The Department of Industrial Relations has consulted with a number of government departments in the preparation of the Bill. This includes the Department of the Premier and Cabinet and Queensland Treasury.

The Department of Industrial Relations also consulted the Workplace Health and Safety Board established under the *Workplace Health and Safety Act 1995*, and employee and employer organisations.

# **Notes on Provisions**

## **Part 1 Preliminary**

### **Short title**

Clause 1 sets out the short title of the Act as the *Workplace Health and Safety and Other Acts Amendment Act 2006*.

## **Part 2 Amendment of Workplace Health and Safety Act 1995**

### **Act amended in pt 2**

Clause 2 provides that this part amends the *Workplace Health and Safety Act 1995*.

### **Amendment of s 7 (Objective of Act)**

Clause 3 amends section 7 which states the objectives of the Act. The clause inserts a new objective, to provide for the appointment of authorised representatives to assist workers with workplace health and safety issues.

### **Insertion of new pt 7A**

Clause 4 inserts a new part 7A to provide for the appointment of authorised representatives of employee organisations, and to provide those authorised representatives with certain powers to contribute to workplace health and safety in workplaces and relevant workplace areas.

The new section 90A provides the purpose of the Part.

The new section 90B provides the definitions for the Part: authorised representative, eligible member and employee organisation.

The new section 90C provides that an application to become an authorised representative of an employee organisation must be made by the organisation.

The new section 90D provides the grounds (including a requirement for occupational health and safety training), on which an industrial registrar may appoint an authorised representative of an employee organisation. An employee organisation may have more than one authorised representative. This appointment is for a term of not more than 3 years.

The new section 90E provides that an authorised representative's powers may be limited by regulation or condition of appointment. This condition may be imposed by the industrial registrar or the industrial commission under this Part.

The new section 90F provides an authorised representative's appointment conditions and when their appointment ends.

The new section 90G requires an employee organisation to give notice if an authorised representative is no longer employed by, or holds office with, the organisation.

The new section 90H provides the requirements for the issue and return of an authorised representative's identity card.

The new section 90I provides an authorised representative's powers of entry to a workplace or relevant workplace area and powers after entry, where they have a reasonable suspicion that a contravention of the Act involving workplace health and safety that relates to or affect an eligible member has happened or is happening at the place. An authorised representative can only exercise their powers after entry for the purpose of enquiring into the suspected contravention. Further any documents that the authorised representative requires access to must be relevant to the contravention that they are enquiring into. For example an authorised representative may need to access a worker's timesheets, rosters and overtime records to follow up on a complaint about fatigue.

The new section 90J provides an authorised representative's powers of entry and powers after entry, for the purpose of discussing workplace health and safety matters at a place with an eligible member. A discussion may only take place when the eligible member is on a work break. This includes a meal break, or periods immediately before a worker commences, or immediately after a worker finishes, work.

The new section 90K provides the requirements on an authorised representative to notify of their entry to a workplace or relevant workplace area and to give written notice detailing their reasons for entry. Where an authorised representative enters a workplace or relevant workplace area for the purpose of enquiring into a suspected contravention of the Act (s90I), they must only give notice to the occupier on entering the place. However, if after this entry they require access to employment records relevant to the suspected contravention they are enquiring into they must give the occupier 24 hours notice before accessing these records. An authorised representative also has to give 24 hours notice if they are entering to discuss workplace health and safety matters with an eligible member (s 90J). The notice must detail the reasons for entry including detail of why the person is entering and detail the person's reasonable suspicion if entering under s 90I. It does not require an authorised representative to disclose the names of an eligible member.

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The new section 90L provides that the authorised representative must, to remain at a place, produce their identity card if required by the occupier of a workplace or relevant workplace area.

The new section 90M provides the circumstances in which an authorised representative's powers must not be exercised. An authorised representative cannot enter a part of a place that is used as domestic premises. Further they are not permitted to exercise any powers where this would not be permitted under another Act (e.g. another Act which places restrictions around entry into detention centres and correctional facilities or around access to the personal information of third parties who have a relationship with the business or undertaking at the workplace). Further, the authorised representative must comply with reasonable requests of the occupier to comply with workplace health and safety requirements that apply to the request.

The new section 90N provides requirements on the conduct of authorised persons when acting, or purporting to act under this Part. The powers of an authorised representative can only be exercised, or purported to be exercised for a purpose relating to the workplace health and safety of an eligible member of the employee organisation. Further, an authorised representative must not unreasonably hinder, obstruct, intimidate or threaten a worker or another person at the place. A contravention of these provisions may result in suspension or cancellation of the authorised representative's appointment or an amendment of a condition of the appointment (see new Part 7A Division 5).

The new section 90O provides that the chief executive or occupier of a place (or their representative) may apply to the industrial commission for the suspension, cancellation, or amendment of a condition, of an authorised representative's appointment.

The new section 90P provides that the industrial commission has the discretion to decide this application on the papers or at a hearing. An industrial commission can take action if they are satisfied, on the balance of probabilities, that the authorised representative has contravened a provision of this part or a condition of their appointment.

The new section 90Q provides how an application must be decided on the papers.

The new section 90R provides how an application must be decided at a hearing.

A decision of the industrial commission under either section may be appealed under Part 11 of the Act to the Industrial Court.

Note the new Part 7A does not restrict the powers of an inspector to monitor and enforce compliance with the Act (including Part 7A) in any way. In particular, it does not prevent an occupier or authorised representative, who has concerns about compliance with these provisions, raising these concerns with an inspector. In the case of a disagreement about the seriousness of an issue or whether there is a health and safety issue at all, either party can contact an inspector. An inspector may also provide assistance where an authorised person is being obstructed in the exercise of their power (clause 13).

### **Amendment of s 99 (Appointment)**

Clause 5 amends section 99 which provides for the appointment of inspectors. This clause clarifies that the person must finish a training course approved by the chief executive for this section.

### **Amendment of pt 11**

Clause 6 amends part 11 (Appeals) by renumbering the part's divisions to allow a new division, which applies to appeals from a decision of the industrial registrar under the new Chapter 7A, (clause 4) to be inserted.

### **Amendment of s 147A (Definitions for pt 11)**

Clause 7 amends section 147A which provides the definitions for Part 11. The definition of original decision is amended to allow for appeals from the industrial commission and the industrial registrar under the new Part 7A (clause 4).

### **Amendment of pt 11, div 2, hdg (Appeals)**

Clause 7 amends the heading of Part 11, Division 2 to clarify that it applies to appeals to the Industrial Court.

### **Insertion of new pt 11, div 3**

Clause 8 inserts a new Part 11, Division 3 to provide for appeals to the Industrial Commission from a decision of the Industrial Registrar under the new Part 7A (see clause 4). The procedural framework provided by this clause and the powers provided to the Commission on an appeal, are

consistent with those given to the Industrial Court in considering other appeals under the Act.

The new section 151A provides that a person whose interests are affected by a decision of the Industrial Registrar may appeal against the decision to the Industrial Commission.

The new section 151B provides how an appeal is to be started in the Industrial Commission.

The new section 151C provides that the Industrial Commission may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

The new section 151D provides the hearing procedures for an appeal.

The new section 151E provides the powers of the Industrial Commission in deciding an appeal. The Commission may confirm, vary or set aside a decision of the Industrial Registrar. The Industrial Commission's appeal decision is taken to be that of the Industrial Registrar.

### **Amendment of pt 11, div 4, hdg (Appeals)**

Clause 9 amends the heading of Division 4 to "Appeals to Industrial Court".

### **Amendment of s 171 (False or misleading statements)**

Clause 10 amends section 171 which prevents the making of false or misleading statements. The application of this section is extended to false or misleading statements made to authorised representatives.

### **Amendment of s 172 (False, misleading or incomplete documents)**

Clause 11 amends section 172 which prevents the giving of false, misleading or incomplete documents. The application of this section is extended to the provision of false or misleading documents to authorised representatives.

### **Insertion of new s 173A**

Clause 12 inserts a new s 173A which prevents a person obstructing an authorised representative in the exercise of a power unless the person has a reasonable excuse. The authorised person must issue a warning to the



person if they are to proceed with the exercise of a power, and if required may ask an inspector for help in the exercise of their power.

### **Amendment of s 174 (Discrimination or victimisation)**

Clause 13 amends section 174 which prevents an employer from dismissing a worker or acting to the detriment of a worker on certain grounds. These grounds are extended to include where a worker has contacted or given help to an authorised representative.

### **Amendment of s 175 (Employers and principal contractor not to encourage refusal to answer questions)**

Clause 14 amends section 175 which prevents employers or principal contractors from encouraging workers to refuse to answer questions by an inspector. The application of this section is extended to include authorised representatives.

### **Amendment of s 176 (Impersonating inspectors and others)**

Clause 15 amends section 176 which prevents a person presenting to be an inspector, accredited provider, workplace health and safety officer or workplace health and safety representative. The application of this section is extended to include authorised representatives.

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

Clause 16 amends the Act's dictionary of definitions as a consequence of the new provisions for the appointment of authorised representatives.

## **Part 3 Amendment of Workers' Compensation and Rehabilitation Act 2003**

### **Act amended in pt 3**

Clause 17 provides that this part amends the *Workers' Compensation and Rehabilitation Act 2003*.

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

Clause 18 amends s 107E which provides that the Authority's board may approve amounts payable under an industrial instrument as a weekly rate of wages (however described) to a worker if the worker becomes incapacitated. This clause relocates the definition of employee organisation to the Act's dictionary of definitions in Schedule 6.

### **Amendment of s 108 (Compensation entitlement)**

Clause 19 amends s 108 which provides a worker's entitlement to compensation. This clause transfers a protection for injured workers from s 92(3) of the *Industrial Relations Act 1999* (see clause 33).

### **Replacement of s 142 (Application of pt 8)**

Clause 20 amends section 142 which provides the circumstances in which Part 8 (Compensation for day of injury) applies. This clause extends the application of this chapter to align with protection for injured workers in s 92(1) being transferred from of the *Industrial Relations Act 1999* (see clause 33).

### **Amendment of s 144 (When employer must pay worker for day of injury)**

Clause 21 amends section 144 which provides the requirements on an employer to pay "compensation under this part" to a worker on the day of injury. This clause aligns section 144 with the protection for injured workers in s 92(1) being transferred from the *Industrial Relations Act 1999* (see clause 33).

### **Insertion of new ch 4, pt 6**

Clause 22 inserts a new Chapter 4, Part 6 to provide employment protections for injured workers. This new chapter is relocated from sections 93 to 96 in Chapter 3, Part 5 of the *Industrial Relations Act 1999* with only minor consequential changes (see clause 33). A decision of the Industrial Commission under this part can be appealed to the Industrial Court (clause 26).

### **Replacement of ch 13, pt 3, div 1 hdg**

Clause 23 amends the heading of Chapter 13, Part 3, Division 1 to clarify that this division will only apply to appeals to the industrial magistrate or industrial commission, as a new division is to be inserted which applies to appeals to the industrial court (clause 26).

### **Amendment of s 548A (Meaning of appeal body)**

Clause 24 amends s 548A which provides the meaning of appeal body. This meaning will only apply to Chapter 13, Part 3, Division 1.

### **Insertion of new ch 13, pt 3, div 1A hdg and new s 560A**

Clause 25 inserts a new division into Chapter 13, Part 3 which provides for appeals to the Industrial Court. The new section 560A provides that this division applies to appeals of certain decisions of an industrial magistrate or the industrial commission. It also includes a decision of the industrial commission under the new Chapter 4, Part 6 (clause 23).

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

Clause 26 amends section 561 which provides that a party aggrieved by a decision of an appeal body may apply to the Industrial Court for an appeal. This clause replaces references to an appeal body with an industrial magistrate or the industrial commission.

### **Amendment of s 562 (Powers of Industrial Court)**

Clause 27 amends s 562 which provides the powers of the Industrial Court in an appeal. This clause clarifies that where the Court makes a decision relating to a decision of the industrial commission under the new Chapter 4, Part 6 (Clause 23) the decision is taken to be the decision of the industrial commission.

### **Insertion of new ch 13, pt 3, div 1B hdg**

Clause 28 inserts a new division which provides existing provisions about particular appeal decisions under division 1 and the new division 1A.

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

Clause 29 amends section 566 which provides that a person who has received compensation is not required to refund it to an insurer after an appeal decision. This clause replaces references to an appeal body with an industrial magistrate or the industrial commission.

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

Clause 30 amends the Act's dictionary of definitions as a consequence of amendments to Chapter 13, Part 3.

## **Part 4 Amendment of Industrial Relations Act 1999**

### **Act amended in pt 4**

Clause 31 provides that this part amends the *Industrial Relations Act 1999*.

### **Omission of ch 3, pt 5**

Clause 32 omits Chapter 3, Part 5 of the Act which provided employment protections for injured workers under the *Workers' Compensation and Rehabilitation Act 2003*. This chapter is relocated to *Workers' Compensation and Rehabilitation Act 2003* with only minor consequential changes (clauses 20, 21, 22 and 23).

### **Amendment of sch5 (Dictionary)**

Clause 33 amends the Act's dictionary of definitions as consequence of transferring the employment protections for injured workers to the *Workers' Compensation and Rehabilitation Act 2003*.