

Industrial Relations Act and Other Legislation Amendment Bill 2007

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Industrial Relations Act and Other Legislation Amendment Bill 2007*.

Policy Objectives of the Legislation

The policy objectives of the Bill are to:

- (1) ensure that Queensland maintains a fair industrial relations system for Queensland employers and employees in light of the introduction of the *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices), including strengthening the protection of young workers, facilitating access to the Magistrates Court for employees on low incomes and facilitating access to the Queensland Industrial Relations Commission (QIRC) for parties who wish to have their dispute resolved by the QIRC without the distraction of Commonwealth/State jurisdictional arguments;
- (2) establish a Queensland Workplace Rights Ombudsman to facilitate and promote fair and equitable industrial relations and workplace practices in Queensland;
- (3) provide greater flexibilities in the structure of the Queensland Industrial Relations Commission (QIRC) to respond to changing workloads as a result of the introduction of Work Choices;
- (4) improve a number of operational aspects of the *Industrial Relations Act 1999*, the *Workers' Compensation and Rehabilitation Act 2003* and the *Workplace Health and Safety Act 1995*.

Reasons for the Bill

Work Choices was passed on 7 December 2005, with most of the operative provisions commencing on 27 March 2006. Work Choices significantly reduces the ability of the States to regulate the industrial relations of corporations to which paragraph 51(xx) of the Commonwealth *Constitution* applies (constitutional corporations), other than in limited and specified fields such as workplace health and safety, workers' compensation and child labour.

The manner in which Work Choices overrides State laws has left jurisdictional boundaries unclear, necessitating adjustments to State legislation to clarify where State laws continue to apply.

Ongoing reports about unfair work practices and reductions in terms and conditions for Queensland employees since the introduction of Work Choices necessitates measures to strengthen the protection of Queensland workers, including vulnerable workers such as those on low incomes and workers under the age of 18.

In addition, the Bill implements the recommendation of the QIRC, in its final report of January 2007 on the Inquiry into the impact of Work Choices on Queensland workplaces, employees and employers, to establish a Workplace Rights Ombudsman to facilitate and promote fair industrial relations practices in Queensland and provide information and assistance to the public.

The reduction in State jurisdiction over industrial relations since the introduction of Work Choices also makes it necessary to provide greater flexibility in the QIRC's structure to accommodate changing workloads.

The emergence of a number of issues in the State system with respect to industrial relations, workplace health and safety and workers' compensation necessitate amendments to the *Industrial Relations Act 1999*, the *Workers Compensation and Rehabilitation Act 2003* and the *Workplace Health and Safety Act 1995* to improve the operation of these Acts in a number of areas.

Achievement of the policy objectives

The Bill strengthens the protection of young workers in Queensland and affirms the continued operation of State laws with respect to child labour by clarifying that, even if a young worker is employed by a constitutional corporation, State unfair dismissal laws continue to apply. In addition, the Bill ensures that young workers will receive fair minimum terms and

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conditions commensurate with young workers whose employers are covered by the *Industrial Relations Act 1999*. These amendments necessitate a consequential amendment to the *Education (Work Experience) Act 1996*.

The Bill improves access to justice for employees on low incomes by establishing a low cost procedure in the Magistrates Court for claims by employees relating to breach of the contract of employment. These claims are available to employees earning up to \$98,200 per year, consistent with the income threshold relating to unfair dismissal claims under the *Industrial Relations Act 1999*. These amendments necessitate a consequential amendment to the *Judicial Review Act 1991*.

The Bill establishes the Queensland Workplace Rights Office and the Queensland Workplace Rights Ombudsman to provide assistance to Queensland workers and employees and to facilitate and promote fair and equitable industrial relations practices in Queensland. These amendments necessitate a consequential amendment to the *Public Service Act 1996*.

The Bill enables the QIRC to respond flexibly to changing workloads by removing the requirement that there be particular positions in the QIRC or particular numbers of commissioners.

The Bill also makes a number of amendments to the *Industrial Relations Act 1999*, the *Workers' Compensation and Rehabilitation Act 2003* and the *Workplace Health and Safety Act 1995* to address operational issues and also to make consequential and technical amendments.

Costs for Government Implementation

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 in accordance with the fundamental legislative principles prescribed by the *Legislative Standards Act 1992*.

The operation of the *Judicial Review Act 1991* has been excluded in relation to decisions by the Chief Magistrate to approve or revoke the approval of a conciliator. While such a decision may be considered to be administrative, an alternative review mechanism for appeals to be made to the District Court is in place.

Given that the process of conciliation is part of the judicial process for resolving employment claims under the low cost procedure in the Magistrates Court, the same protection and immunities as would apply in the Magistrates Court have been given to conciliators, parties and their representatives participating in conciliation and to documents produced during conciliation.

The Bill restricts a party's right to legal representation during conciliation. This limitation is considered appropriate given that conciliation is an informal dispute resolution process whereby parties agree on the outcomes, if any, of the dispute and no binding decision is made by a conciliator.

The Bill clarifies that the regulation making power in the *Workplace Health and Safety Act 1995* extends to certificates issued under the former *Workplace Health and Safety Act 1989* and the *Inspection of Machinery Act 1951* and which have been continued in force under the current legislation. A new provision provides an appropriate head of power for future amendments to the *Workplace Health and Safety Regulation 1997*, which are proposed for implementing nationally consistent provisions converting current occupational licensing certificates (such as certificates to operate cranes and forklifts), which are issued for life, to 5 yearly renewable certificates. There is potential for these provisions, when implemented in the future, to breach fundamental legislative principles.

Consultation

Consultation with the relevant government agencies, members of the Industrial Court of Queensland and the Queensland Industrial Relations Commission as well as relevant employer and employee organisations and State peak councils has occurred on the Bill. The magistracy and judiciary have been consulted on the amendments to the *Magistrates Courts Act 1921*. The Chief Justice has also been consulted on amendments to the *Industrial Relations Act 1999* relating to appeals to the Court of Appeal and the appointment of a judge as President.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 sets out the short title of the Act.

Commencement

Clause 2 provides that:

- Parts 5 and 6 of the Bill (relating to the new procedures for employment claims made in the Magistrates Court) commence on 1 January 2008;

Clause 2 further provides for the following to commence on a day to be fixed by proclamation:

- sections 10 to 12
- sections 30 and part 7
- sections 39 (to the extent it inserts section 470);
- section 41(2) (to the extent it inserts definitions *ombudsman* and *QWRO*);
- sections 43 to 45 and part 4.

It should be noted that part 2B, **Dismissal of children by constitutional corporation**, of the *Child Employment Act 2006* commences on the date of the Bill's introduction into the Legislative Assembly.

All the other provisions will commence on royal assent.

Part 2 Amendment of *Industrial Relations Act 1999*

Act amended in pt 2 and schedule

Clause 3 provides that Part 2 of the Bill and the schedule amend the *Industrial Relations Act 1999*.

Amendment of s 3 (Principal object of this Act)

Clause 4 inserts a new object into the Act, to promote collective bargaining and establish the primacy of collective agreements over individual agreements.

The objects of the Act must be taken into account by the Queensland Industrial Relations Commission (QIRC) when exercising its functions and powers.

Insertion of new ch 2, pt 3, div 1A

Clause 5 inserts a new Division 1A into Part 3 of Chapter 2, which deals with long service leave.

Division 1A Relationship between parts 3 and 6 clarifies that the provisions of part 6 of Chapter 2, dealing with continuity of service and employment, are to be applied when working out an employee's long service leave rights and entitlements. This is to put beyond doubt that part 6 is an integral part of the long service leave laws and, as such, deals with a non-excluded matter under section 16(3) of Work Choices.

Amendment of s 43 (Entitlement)

Clause 6 inserts a new subdivision (d) into section 43(4) to the effect that employees (who have completed at least 7 years continuous service under section 43(3)), whose contracts of employment terminate due to the effluxion of time (for example, at the end of a fixed-term contract) are entitled to a proportionate payment for long service leave if the employee had a reasonable expectation that their service with the employer would continue for at least 10 years and the employee was prepared to continue the employment with the employer.

Amendment of s 68 (How part applies)

Clause 7 inserts new subsections (3) and (4) into section 68 to provide that, when working out the period of notice to be given under section 84 to a transferred employee, any period of notice previously given to the employee in relation to the transfer of the calling (whether given before or after the commencement of the subsection) is not to be taken into account. The total period of service with the present and former employer is to be used to determine the correct notice period.

Amendment of s 73 (When is a dismissal unfair)

Clause 8 updates a cross-reference as a consequential amendment arising from the relocation of the provisions of Chapter 3, part 5 of the Act to the *Workers' Compensation and Rehabilitation Act 2003*.

Insertion of new s 108A (Action under full bench order not prohibited conduct)

Clause 9 provides that anything done in accordance with an order of the full bench made under section 279 (which deals with orders about the representation rights of employee organisations) is not prohibited conduct.

Replacement of s 153 (Time for applying for certification)

Clause 10 replaces section 153 to allow an application to be made to the QIRC to certify an agreement, between an employer and one or more employee organisations which has not been signed by a party. The application can be made if all the parties to the agreement have agreed on its terms and the agreement has been approved by a valid majority of the relevant employees in a properly conducted ballot.

Where the agreement has been signed by or for all the parties, the application must be made within 21 days after it has been signed.

Amendment of s 156 (Certifying an agreement)

Clause 11 amends s 156 by inserting a new subsection (1A), which provides that the requirement that an agreement must be signed by or for all the parties to enable certification, does not apply if the QIRC is satisfied, in the particular circumstances, that all the parties have agreed on the terms of the agreement and the application for certification was made within a

reasonable time after the agreement was approved by a valid majority of the relevant employees at the time in a properly conducted ballot.

In making a decision under section 156(1A) the commission would be required to consider all the particular circumstances of the case, including whether -

- (1) the parties negotiated in good faith as required by section 146; and
- (2) any other evidence supporting or not supporting the alleged agreement.

An example of the circumstances that might warrant the QIRC exercising its discretion to dispense with the requirement is where the terms of an agreement are agreed by the parties; a valid majority of employees in a properly conducted ballot approves the agreement; one of the parties subsequently refuses to sign the agreement; and the application to certify is made within a reasonable time after the employees approved the agreement.

Amendment of s 166 (Persons bound)

Clause 12 amends s 166 to provide that, if the QIRC decides to certify an agreement under s 156, the agreement binds the employer and any employee organisation who made the agreement, regardless of the fact that one or more of those entities did not sign the agreement.

Omission of s 178 (No protection if certification application not timely)

Clause 13 deletes section 178 as a consequence of the amendments to sections 153, 156 and 166 and ensures that the protection given to protected industrial action cannot be removed retrospectively.

Amendment of s 230 (Action on industrial dispute)

Clause 14 makes a technical amendment to clarify that the QIRC may do one or any number of the things provided in s 230(4).

Amendment of s 232 (Compulsory conference)

Clause 15 clarifies that the person who is entitled to be paid to attend a compulsory conference is the person referred to in section 232(3).

Amendment of s 234 (Remedies on show cause)

Clause 16 makes a number of technical amendments to section 234 as follows:

- (1) amends the heading so that it reads ‘Remedies on show cause notice’;
- (2) clarifies that the QIRC may do one or any number of the things provided in sections 234(1) and (2); and
- (3) substitutes ‘penalty’ for ‘fine’.

Replacement of s 243 (President of the court)

Clause 17 inserts a new section 243 which provides for the appointment, by Governor in Council, of the president of the Industrial Court of Queensland who may be either a sitting Supreme Court judge or a lawyer of at least 5 years standing (non-judicial appointee). Clause 243(3) provides that a non-judicial appointee can not be –

- (a) a member of the Executive Council or Legislative Assembly; or
- (b) a director of a corporation engaged in a calling; or
- (c) an auditor of a corporation engaged in a calling or of a business; or
- (d) a person who participates in any capacity in the management of—
 - (i) a corporation engaged in a calling; or
 - (ii) a business.

Amendment of s244 (When a judge is appointed as president)

Clause 18 amends section 244 by excluding the reference to the District Court. Subsection 244(3) provides that a Supreme Court judge’s service as president is taken to be service as a Supreme Court judge for all purposes. Subsection 244(3) also provides that when the president is a Supreme Court judge, he/she is not entitled to any additional salary or allowances but that he/she is entitled to be paid expenses reasonably incurred in performing the functions of the president. Subsection 244(5) provides that the section applies regardless of the provisions of any other Act.

Amendment of s 245 (When president holds office)

Clause 19 renumbers subsections 245(1)(a) to (e) as subsections 245(1)(b)(i) to (v) and sets out when the president holds office. In the situation where the president is a Supreme Court judge, the president holds office until:

- the end of the term stated in the gazette notice appointing the president
- the president resigns by signed notice given to the Governor
- the president stops being a Supreme Court judge.

The amendments to subsection 245(2) also clarify that the existing provisions about removal of the president apply only to a non-judicial appointee and on an address of the Legislative Assembly.

The amendments to subsection 245(3) ensure that both a president who is a Supreme Court judge and a president who is a non-judicial appointee may be continued in office, in certain circumstances, to enable a hearing to be completed.

The new subsection 245(5) provides for the Governor in Council to reappoint a president who is a Supreme Court judge and whose term of appointment has ended.

Amendment of s 246 (Acting president of the court)

Clause 20 amends section 246 to provide that a person who is a Supreme Court judge may be appointed to act as president, where the president is a Supreme Court judge and is temporarily unable to perform the functions of office. It also provides that the vice president may be appointed to act in the position of president where the president is a non-judicial appointee and is temporarily unable to perform the functions of office.

Subsections 246(5) and 246(6) ensure that a Supreme Court judge, while acting in the position of president, is not adversely affected in relation to their status, service or remuneration or any other rights and privileges to which they would have been entitled as the holder of the office of judge.

Subsections 246(7) and 246(8) provide that a Supreme Court judge is not entitled to any additional salary or allowances for acting as the president but is entitled to be paid any expenses reasonably incurred in performing the functions of the acting president.

Subsection 246(9) provides that subsections 246(5) to 246(8) apply regardless of the provisions of any other Act.

Amendment of s 256 (Composition)

Clause 21 amends section 256 to provide that the commission consists of the president and the commissioners (the vice president, the deputy presidents (if any) and the industrial commissioners). The effect is to remove the requirement for deputy presidents and specific numbers of commissioners to be appointed.

Subsection 256(2) removes the necessity to have at least one presidential member to make up a full bench where the matter before it is not an appeal or a matter in relation to the deregistration of an industrial organisation.

Insertion of new s 259A

Clause 22 inserts a new section 259A, **Commissioner maybe appointed ombudsman**, into the Act to provide that a commissioner may be appointed as the ombudsman under Chapter 8A of the Act. Although the commissioner retains his/her appointment as commissioner, he/she may not undertake any duties as a commissioner during the appointment as ombudsman. The commissioner's service as ombudsman is taken to be service as a commissioner for all purposes, for example in determining the ombudsman's salary. A commissioner who is appointed as the ombudsman is not entitled to any additional salary or allowances but is entitled to be paid the expenses reasonably incurred by the commissioner in performing the functions of the office of ombudsman.

Amendment of s 264 (Administrative responsibilities for the commission and registry)

Clause 23 amends section 264(8) to relax the requirement that an industry panel of the QIRC must consist of at least one presidential member and one commissioner, by providing that this is only required if it is practicable.

Amendment of s 273 (Commission's functions)

Clause 24 amends section 273 by adding to the functions of the QIRC. Additional functions are resolving disputes by performing the functions conferred on the QIRC under a referral agreement and making declarations about industrial matters.

Insertion of new s 273A

Clause 25 inserts a new section 273A, **Commission may perform dispute resolution functions conferred by agreement of parties to disputes**, to allow the QIRC to perform dispute resolution functions provided for in a written agreement (a referral agreement) between an employee organisation and one or more employers or employer organisations.

A referral agreement may refer a particular industrial dispute to the QIRC or industrial disputes of a particular kind. The QIRC may perform the dispute resolution functions provided for in the referral agreement, which may include conciliation, arbitration, the granting of particular remedies under the IR Act or deciding any issue or question arising in the dispute. However, a decision made by the QIRC when performing these functions cannot bind the parties unless the referral agreement provides for the parties to be bound. Subsection 273A(6) provides that the section does not limit the QIRC's ability to exercise functions and powers under the Act to conciliate, arbitrate or otherwise determine a matter. For example, the QIRC may take action to resolve an industrial dispute under section 230 of the IR Act regardless of whether a referral agreement exists and regardless of the functions conferred by the agreement.

Insertion of new s 274A

Clause 26 inserts a new section 274A, **Power to make declarations**, into the Act to allow the QIRC, on application, to make a declaration about an industrial matter regardless of whether any consequential relief is or could be claimed.

Subsection 274A(3) provides that an application may be made by a person who may be directly affected by the declaration, an inspector, an organisation on behalf of a member who may be directly affected or an organisation which may be directly affected.

Subsection 274A(4) provides that, subject to the right of appeal, a declaration is binding in other proceedings under the Act in relation to the issue that was determined by the declaration.

Amendment of s 279 (Orders about representation rights of employee organisations)

Clause 27 amends section 279 to allow the QIRC, on application, to make orders about exclusive representation rights in relation to associations. Associations are defined as bodies or entities that are formed or carried on

to protect and promote their members' interests in matters concerning their employment but which are not registered as organisations under the Act. Currently, section 279 only provides for orders about exclusive representation rights to be made in relation to registered organisations, resulting in unregistered associations being unable to be supervised by the QIRC under Chapter 12 of the Act.

New subsection 279(3)(b) has the effect that an order in relation to an association may be made if the QIRC is satisfied that the conduct or threatened conduct of the association or of an officer, member or employee of the association is preventing, obstructing or restricting negotiations or discussions between the employer and an organisation or the employer and the employer's employees.

New subsection 279(4A) provides that the full bench may make ancillary orders to support an order made under section 279, including orders –

- (a) prohibiting an officer or employee of an association or organisation from representing a person in a matter before an industrial tribunal (defined as the court, the commissioner, the full bench, or the registrar);
- (b) prohibiting an association or organisation from arranging for an agent to represent a person in relation to making an agreement under chapter 6; and
- (c) prohibiting an association or organisation from holding out membership on the basis of being able to provide representation in stated industrial matters.

New subsection 279(5) provides that orders and ancillary orders may be made subject to conditions and may apply to an individual, an association or an organisation.

Insertion of new s 311A

Clause 28 inserts a new section 311A, **Adoption of result of joint session**, into the Act to allow the result of a joint session to be given practical effect through a general ruling or a statement of policy made under the Act. Currently, section 311 allows the president or a commissioner (at the direction of the president) to participate in a joint session with another Commonwealth or State industrial tribunal, if the other industrial tribunal has a matter before it similar to a matter before the full bench of the QIRC (an example is an application for a State minimum wage ruling). The result

of the joint session may be made the subject of a general ruling or statement of policy with or without any further hearing by the full bench.

Amendment of s 338 (Rules)

Clause 29 inserts a new section 338(4)(a)(iii) to enable rules to be made about the performance of a function conferred on the QIRC under a referral agreement.

Insertion of new ch 8A,

Clause 30 inserts a new chapter, **Queensland Workplace Rights Office**, into the Act to establish the Queensland Workplace Rights Office.

Part 1 Preliminary

339A Definitions for ch 8A

New section 339A provides definitions for Chapter 8A, i.e. “ombudsman” is defined as the Queensland workplace rights ombudsman; and “QWRO” is defined as the Queensland Workplace Rights Office.

339B Purpose of ch 8A

New section 339B sets out the purpose of Chapter 8A, i.e. to provide for the appointment of the Queensland workplace rights ombudsman and the establishment of the QWRO.

Part 2 The Queensland workplace rights ombudsman

339C Ombudsman

New section 339C provides that there is to be an ombudsman.

339D Functions of ombudsman

New section 339D (1) sets out the functions of the ombudsman.

New section 339D(2) provides that the ombudsman may carry out the functions and powers conferred under the Act at his or her own discretion or on the request of the Minister or any other person or entity.

New section 339D(3) defines a public entity as a government entity under the *Public Service Act 1996* or a corporation formed for a commercial purpose, the shares of which are held beneficially on behalf of the State.

339E Ombudsman not subject to direction

New section 339E protects the integrity of the ombudsman's office by providing that the ombudsman is not subject to direction by any person about the way the ombudsman performs his or her functions or gives priority to investigations.

339F Powers of ombudsman

New section 339F confers power on the ombudsman to do all things necessary or convenient to allow the ombudsman to undertake his or her functions.

339G Restrictions on ombudsman's functions

New section 339G provides that the ombudsman does not have the power to represent individuals in proceedings or otherwise act as an agent for an individual. In addition, if the ombudsman becomes aware that a matter is or has been the subject of any proceeding before a State court or tribunal, the ombudsman must not deal with the matter. The ombudsman may deal with the matter if such proceedings are discontinued or did not result in a decision.

Part 3 Particular provisions about the ombudsman

339H Appointment of ombudsman

New section 339H provides that the ombudsman is to be appointed by the Governor in Council and is not appointed under the *Public Service Act 1996*.

339I Eligibility for appointment

New section 339I (1) sets out the eligibility requirements for the ombudsman.

New section 339I (2) provides that a person is not eligible to be, or continue as, ombudsman, if the person:

- (a) is a member of the Executive Council or Legislative Assembly;
- (b) acts as director of a corporation engaged in a calling;
- (c) acts as auditor of a corporation engaged in a calling or of a business;
- (d) participates in any capacity in the management of a corporation engaged in a calling;
- (e) participates in any capacity in the management of a business;
- (f) is an insolvent under administration;
- (g) is convicted of an indictable offence.

New section 339I (3) provides a definition for ‘insolvent under administration.’

339J Term of appointment

New section 339J provides that the term of appointment of the ombudsman is to be set out in the ombudsman’s instrument of appointment and is to be no more than 3 years. The ombudsman may be reappointed but may not hold the position for more than 6 years.

339K Remuneration and conditions

New section 339K provides that, if the ombudsman is not a commissioner, the ombudsman's remuneration and other allowances are to be determined by the Governor in Council and the instrument of appointment is to specify the conditions on which the ombudsman holds office.

339L Acting ombudsman

New section 339L provides for a person to be appointed as acting ombudsman during a vacancy in the office or during any period when the ombudsman cannot perform the duties of office. The eligibility requirements for the acting ombudsman are the same as for the ombudsman.

339M Resignation

New section 339M allows the ombudsman to resign at any time by notifying the Governor in writing.

339N Vacating office

New section 339N provides for the vacating of the ombudsman's office in particular circumstances, i.e. –

- where the person no longer meets the eligibility requirements for appointment as ombudsman; or
- where the person is removed from office under section 339O.

339O Removal of ombudsman from office

New section 339O provides that the Governor in Council may remove the ombudsman from office for mental or physical incapacity or misbehaviour.

Section 339O(2) provides that if the ombudsman is a commissioner, the ombudsman may only be removed from office by the Governor in Council on an address of the Legislative Assembly. Section 339O(3) provides that if an ombudsman who is a commissioner is removed from office, the person also stops being a commissioner.

Part 4 Preservation of rights

339P Preservation of ombudsman's rights if a public service officer

New section 339P provides that where a public service officer is appointed as ombudsman, the person's accrued rights are not affected and continue to accrue as if the service as ombudsman were a continuation of service as a public service officer. Under subsection (3), once the term of appointment as ombudsman ends or the person resigns, the person has a right to return to a department that is the nearest practical equivalent to the department in which the person was employed prior to their appointment as ombudsman, and at the same classification level, remuneration and duties appropriate to the classification level. However, these rights under subsection (3) do not apply if the person is removed from office under subsection 339O.

Under subsection 339P(4), a person who was a member of the *Superannuation (State Public Sector) Act 1990* continues to be, and to be eligible to be, a member of the scheme.

339Q Preservation of ombudsman's rights if ombudsman becomes public service officer

New section 339Q provides that the period of service of the ombudsman is taken to be a period of service as a public service officer, if the person is appointed as a public service officer within 12 months after the person's appointment as ombudsman ends. This is consistent with provisions for public service officers under the *Public Service Act 1996*.

339R Preservation of ombudsman's rights if not previously public service officer

New section 339R provides that where a person who holds an office under the State (other than as a public service officer or a commissioner) is appointed as ombudsman, the person is entitled, on resignation or when their term as ombudsman ends, to be appointed to an office under the State with at least the same classification and remuneration as the person held prior to their appointment as ombudsman. In addition, the period of service of the ombudsman is taken to be a period of service in an office under the State. Under subsection 339R(3), these rights do not apply to a person who is removed from office under section 339O.

Part 5 Establishment of the QWRO

339S Queensland Workplace Rights Office

New section 339S establishes the QWRO, which consists of the ombudsman and the officers of the ombudsman.

339T Function of QWRO

New section 339T provides that the function of the QWRO is to help the ombudsman perform the ombudsman's functions.

339U Control of QWRO

New section 339U provides that the ombudsman controls the QWRO.

339V Officers

New section 339V provides that officers of the QWRO are appointed under the *Public Service Act 1996* and are public service officers.

339W Officers not subject to direction

New section 339W provides that officers of the QWRO are not subject to direction by any person outside the QWRO about the way in which the officer performs the officer's functions under the Act or the priority given to investigations.

339X Finances of QWRO

New section 339X provides that the QWRO is a part of the Department of Employment and Industrial Relations for the purposes of the *Financial Administration and Audit Act 1977*.

Part 6 Other matters

339Y Delegation by ombudsman

New section 339Y provides that the ombudsman may delegate his or her powers (other than the power to delegate) to an appropriately qualified officer of the QWRO.

339Z Quarterly report

New section 339Z requires the ombudsman to give the Minister a quarterly report on the activities carried out by the QWRO, as soon as practicable after the end of each quarter.

Subsection 339Z(3) requires the quarterly report to contain details of investigations carried out by the QWRO, a summary of information given to employers and employees by the QWRO and details of any other activities undertaken by the QWRO.

Subsection 339Z(3) requires the Minister to table a copy of the report in the Legislative Assembly within 14 days after receiving it.

339ZA Annual report

New section 339ZA requires the ombudsman to give the Minister an annual report on the performance of the ombudsman's functions during the financial year, within four months after the end of the financial year.

Subsection 339ZA(3) requires the Minister to table a copy of the report in the Legislative Assembly within 14 days after receiving it.

339ZB Offence of subjecting person to any detriment

New section 339ZB (1) makes it an offence for a person to subject another person to a detriment because a complaint has been made, or information given, to the ombudsman about an industrial matter or work-related matter. A penalty of up to 20 penalty units (currently \$1,500) may be imposed.

Subsection 339ZB(2) provides that conduct under section 339ZB(1) includes:

- (a) terminating the contract under which a person performs work;

- (b) injuring a person in relation to the terms or conditions on which the person performs work;
- (c) altering the position of a person to his or her detriment;
- (d) refusing to employ or engage a person to perform work;
- (e) discriminating against a person in the terms or conditions on which the person is employed or engaged to perform work.

Amendment of s 340 (Appeal from court or full bench)

Clause 31 amends section 340 to provide that a person may appeal a decision of the Industrial Court in proceedings mentioned in section 248(1)(c) to the Court of Appeal. Section 248(1)(c) allows the Industrial Court to hear and decide proceedings for an offence against the IR Act other than an offence for which jurisdiction is expressly conferred on a magistrate. At present, there is no provision for such decisions to be appealed.

A new subsection 340(3A) provides that a person can not appeal against a decision of the full bench if that decision was itself an appeal against a decision of the commission. This is to ensure finality of proceedings.

A transitional provision is included at clause 39 providing that a decision of the full bench made before the commencement of the provisions is appealable under section 340 as it applied before the commencement.

Amendment of 341 (Appeal from commission, magistrate or registrar)

Clause 32 provides that no appeal is available to the Industrial Court from a decision of the QIRC under section 273A (which provides for the QIRC to exercise dispute resolution functions conferred by a referral agreement).

Amendment of s 342 (Appeal from commission, magistrate or registrar)

Clause 33 provides that no appeal is available to the full bench from a decision of the QIRC under section 273A (which provides for the QIRC to exercise dispute resolution functions conferred by a referral agreement).

Amendment of s 350 (Appointment of inspectors)

Clause 34 provides that an inspector appointed under section 350 (4A) is also an authorised person of the Workers' Compensation Regulatory Authority under the *Workers' Compensation and Rehabilitation Act 2003*, but only for the purposes of chapter 4, part 6. This amendment allows inspectors appointed under the IR Act to continue to enforce the provisions protecting injured workers which were relocated from the IR Act to the *Workers' Compensation and Rehabilitation Act 2003* by the *Workplace Health and Safety and Other Acts Amendment Act 2006*.

Amendment of s 662 (False or misleading statements)

Clause 35 amends section 662 to include, as persons to whom false or misleading statements can not be made, the Queensland Workplace Rights Ombudsman and an officer of the QWRO.

Amendment of s 663 (False or misleading documents)

Clause 36 amends section 663 to include, as persons to whom false or misleading documents can not be given, the Queensland Workplace Rights Ombudsman and an officer of the QWRO.

Amendment of s 686 (Application of Act to State)

Clause 37 amends section 686 to provide that section 9A(3) does not apply to a public service employee who is subject to a ruling providing for the same matter as section 9A. The clause is a consequential amendment arising from the *Industrial Relations Amendment Act 2005* which, among other things, provided minimum conditions for working time in section 9A. Amendment of s 702 (Protection from liability)

Clause 38 amends section 702 to include, as persons protected from civil liability for acts or omissions made honestly and without negligence, the Queensland Workplace Rights Ombudsman and an officer of the QWRO.

Insertion of new ch 20, pt 6

Clause 39 inserts a new **Part 6 'Transitional provisions for Industrial Relations Act and Other Legislation Amendment Act 2007'** after section 739.

740 Certification of agreements

New section 740 provides that sections 153, 156 and 166, as in force after the commencement of the section, apply to agreements made before or after commencement, if the application to certify the agreement is made on or after the commencement.

741 Appointment as members

New section 741 provides that a person who held office as a member of the commission immediately before the commencement of section 740 continues to hold the office; and the Act as amended by this Bill applies to the person's appointment.

742 Appointments by industrial gazette notice

New section 742 removes doubt about appointments made by industrial gazette notice under sections 261(2), 297(1) 302(2) and 350(1) before the commencement of section 741 and in force at the commencement, by ensuring that those appointments are continued after the commencement of section 741 as if made by gazette notice.

743 Appeals to Court of Appeal from full bench

New section 743 provides that section 340 (which provides a right of appeal from a decision of the full bench to the Court of Appeal), as in force before the commencement of section 742, continues to apply to a decision of the full bench made before the commencement.

Amendment of sch 2 (Appointments)

Clause 40 is a technical amendment which completes the title of the *Judges (Pensions and Long Leave) Act 1957*.

A new subsection 4A(3) is inserted into Schedule 2 to provide that the Minister may grant leave to a commissioner who has been appointed as the ombudsman on the terms the Minister considers appropriate. 'Leave' does not include leave mentioned in section 15 of the *Judges (Pensions and Long Leave) Act 1957*.

Amendment of sch 5 (Dictionary)

Clause 41 inserts new definitions into schedule 5 as follows:

- ‘association’, in relation to a demarcation dispute – refers to the definition in section 279(8);
- ‘non-judicial appointee’ – refers to the definition in section 243(1)(b);
- ‘ombudsman’ – refers to the definition in section 339A;
- ‘QWRO’ – refers to the definition in section 339A;
- ‘referral agreement’ – refers to the definition in section 273A(1)(b).

Sub-clause (2) redefines ‘demarcation dispute’ to include disputes involving associations.

Part 3 Amendment of Child Employment Act 2006

Act amended in pt 3

Clause 42 provides that this part of the Bill amends the *Child Employment Act 2006*.

Amendment of s 8 (Meaning of work in relation to a child)

Clause 43 reverses the current exclusion of certain types of placements from the definition of work in the *Child Employment Act 2006* so that these types of placement will now be regulated by the specified provisions.

Work done by a child as part of work experience, an apprenticeship, a traineeship or a vocational placement includes work covered by section 8A (see below).

Work done by a child as part of an apprenticeship, a traineeship or a vocational placement includes employment covered by parts 2A and 2B (see below).

Insertion of new s 8A

Clause 44 inserts a new section 8A into the *Child Employment Act 2006* that prohibits employers from requiring or permitting children to work nude or partially nude. In particular this section prohibits children from working while nude or being clothed or covered in another way so the child’s sexual organs, the anus or, in the case of female children who are at

least 5 years of age, breasts are visible. This prohibition does not apply to children under the age of 12 months working in the entertainment industry, if the parent has given written permission and is present when the child is working in this manner.

A maximum penalty of 100 penalty units (currently, \$7500) is prescribed for failing to comply with this provision.

The provisions of section 8A are currently contained in section 3A of the *Child Employment Regulation 2006*. Approval will be sought to delete section 3A of that Regulation prior to, or simultaneously with, the commencement of this section (along with the associated amendments to s 8 contained in clause 43 and to s 9 contained in clause 45) on a date to be proclaimed.

Amendment of s 9 (Restrictions on work performed by children)

As a result of inserting section 8A, Clause 45 amends section 9 of the *Child Employment Act 2006* in respect of the section title.

Insertion of new parts 2A and 2B

Clause 46 inserts a new '**Part 2A Minimum employment conditions for children**' and '**Part 2B Dismissal of children by constitutional corporation**' into the *Child Employment Act 2006*.

Part 2A Minimum employment conditions for children

Division 1 Employment condition

15A Application of pt 2A

New section 15A provides that pt 2A applies to the employment of a child by a constitutional corporation if the child is employed under an agreement under the *Workplace Relations Act 2006* (Cwlth) or another (common law) arrangement entered into after 26 March 2006.

The section provides that pt 2A also applies to the employment of a child by a constitutional corporation if the child was employed under a preserved collective state agreement under the *Workplace Relations Act 2006* (Cwlth) that has been terminated and not replaced by an agreement or other arrangement mentioned in the section. Children who continue in employment under such circumstances are taken to be employed under an arrangement.

Section 15A limits the application of pt 2A to the employment of a child if the child's employer is a constitutional corporation (as defined in the schedule [Dictionary]) and

- (a) a State award or order (as defined in the schedule [Dictionary]) is in force that covers employees who perform similar work to that performed by the child but are not employed by a constitutional corporation; or
- (b) entitlements or protections under specified provisions of the *Industrial Relations Act 1999* cover persons who perform similar work to that performed by the child but are not employed by a constitutional corporation.

Constitutional corporation is defined in the schedule (Dictionary) by reference to the Commonwealth Constitution.

15B Employer to ensure child is not disadvantaged in relation to employment conditions

New section 15B provides that an employer of a child to whose employment pt 2A applies (an affected employer) must ensure that the agreement or arrangement does not disadvantage the child in relation to their employment conditions. The section specifies that there is a disadvantage only if the agreement or arrangement reduces the child's employment entitlements or protections.

The section defines employment entitlements and protections as being the entitlements and protections under a State award or order or in the specified provisions of the *Industrial Relations Act 1999* that cover an employee performing similar work to that of the child under the agreement or arrangement.

15C Industrial commission may decide whether agreement or arrangement reduces child's employment entitlements or protections for s 15B

New section 15C empowers the Queensland Industrial Relations Commission (industrial commission) to decide whether an agreement or arrangement reduces a child's employment entitlements or protections. The way that the industrial commission makes this decision must be as nearly as possible the way it would decide a no disadvantage test in the approval of a certified agreement under the *Industrial Relations Act 1999*.

15D Affected employer to display State award or order at workplace

New section 15D requires an affected employer to conspicuously display at the place where the child is employed a copy of a State award or order that is in force and covers employees performing similar work to that performed for the employer by a child. The maximum penalty for the offence of failing to comply with the section is 20 penalty units (currently, \$1500).

15E Record keeping

New section 15E requires that an affected employer of a child must keep the same time and wages record, in the same manner and under the same conditions as a record would be required to be kept under the *Industrial Relations Act 1999*, section 366. The maximum penalty for the offence of failing to comply with any of the provisions of the section is 40 penalty units (currently, \$3000).

This section does not negate an employer's obligation to comply with existing record keeping requirements about child workers. The setting of these requirements is authorised under section 39(2)(d) of the *Child Employment Act 2006* and the requirements are detailed in the *Child Employment Regulation 2006*.

Division 2 Compliance notices

15F Issue of compliance notice

New section 15F provides that an inspector may issue a compliance notice if they consider an affected employer is or has contravened section 15B i.e. a child is disadvantaged in relation to their employment conditions through their employment entitlements and protections having been reduced.

The compliance notice directs an affected employer to remedy the contravention within a specified period and includes information about the reasons for issuing the notice and the employer's rights of appeal against the notice.

The maximum penalty for the offence of failing to comply with the compliance notice without a reasonable excuse is 100 penalty units (currently, \$7500).

15G Compliance notice may include directions

New section 15G enables a compliance notice to include directions as to the steps an affected employer must take to remedy a contravention of s 15B. This may include a direction to pay to a child an amount that would have been payable under an applicable State award or order or under the specified provisions of the *Industrial Relations Act 1999* if the child's employment was not covered by the agreement or arrangement under consideration.

15H Withdrawal of compliance notice

New section 15H enables a compliance notice which is incorrect or was issued in error to be withdrawn by the inspector who issued it or by another authorised inspector.

15I Industrial magistrate's powers in proceeding for compliance notice offence

New section 15I gives certain powers to an industrial magistrate in proceedings about a failure to comply with a compliance notice (a compliance notice offence – see s 15F).

An industrial magistrate may order an affected employer to pay to a child any amount stated in a direction in a compliance notice to be paid to the

child (the compliance notice amount – see s 15G) or the amount the industrial magistrate considers appropriate for the child.

If the affected employer has been found guilty of the offence, this order may be made in addition to any penalty imposed for the offence. If the affected employer has not been found guilty of the offence, this order may be made if the industrial magistrate is satisfied on the balance of probabilities that the employer should be required to pay the amount.

The industrial magistrates court may, before making such an order against an affected employer, adjourn the proceedings and order an inspector to apply to the industrial commission (under s 15N) for a decision on whether the affected employer has contravened s 15B. If the industrial commission makes an order to remedy the contravention, the industrial magistrate must not make an order under this section.

15J Appeals

New section 15J provides that an affected employer may appeal to the industrial commission against the issue of a compliance notice or the terms of the notice. Procedures for such appeals must be as nearly as possible the same procedures as those for appeals made under the *Industrial Relations Act 1999*, chapter 9, division 5.

15K Decision on appeal

New section 15K provides that the industrial commission may in an appeal confirm the notice, allow the appeal and vary the compliance notice or allow the appeal and revoke the compliance notice.

For deciding the appeal, the industrial commission has the powers of an inspector under this part and the same powers as the industrial commission has in relation to any proceeding for an appeal under the *Industrial Relations Act 1999*.

If it confirms the compliance notice the industrial commission may, in the same proceeding, decide any application under s 15N for orders in relation to the contravention (e.g. an application by an inspector for an order that an affected employer pay a compliance notice amount to a child) to which the compliance notice relates.

15L Revocation or withdrawal of compliance notice does not prevent issue of another notice

New section 15L provides that the revocation or withdrawal of a compliance notice does not prevent the issue of another compliance notice to the affected employer.

15M Proceedings for offence not affected by compliance notice

New section 15M provides that the issue, variation, revocation or withdrawal of a compliance notice does not affect any proceedings for an offence or for the recovery of an amount in connection with the matter for which the notice was issued.

15N Inspector may apply to industrial commission in relation to contravention

New section 15N provides that an inspector may apply to the industrial commission for a decision on whether an affected employer is or has contravened s 15B. Such applications may be made whether or not a compliance notice has been issued to an affected employer.

If the application relates to a failure to comply with a direction to pay a compliance notice amount, such application must be made within 6 years after the amount became payable but cannot relate to an amount payable before 27 March 2006.

15O Consideration of s 15N application

New section 15O applies only where the industrial commission has decided the affected employer is contravening s 15B as a result of an application made under section 15N.

The industrial commission may order the affected employer to remedy the contravention as required in the compliance notice or in another way (e.g. by ordering the affected employer to pay the compliance notice amount to the child). The industrial commission may make orders in the same way and under the same conditions as orders are made about the recovery of unpaid wages under certain specified provisions of section 278 of the *Industrial Relations Act 1999*.

Part 2B Dismissal of children by constitutional corporation

15P Dismissal by constitutional corporation

Section 15P applies to the dismissal of a child from employment by a constitutional corporation from the day this Bill is introduced into the Legislative Assembly (the introduction day). This is known as a relevant dismissal.

The section applies to a relevant dismissal only if the dismissal provisions of the *Industrial Relations Act 1999* would have applied to that dismissal if the employer were not a constitutional corporation.

Applications may be made for orders about a relevant dismissal as if the application were an application under the dismissal provisions of the *Industrial Relations Act 1999*.

This part commences on the date of the Bill's introduction into the Legislative Assembly so that its provisions apply to dismissals made after the intent to legislate becomes public knowledge but before the date that the remainder of the Bill commences.

Amendment of s 26 (Evidentiary provisions)

Clause 47 amends section 26 of the *Child Employment 2006* by inserting a new subsection (b) which states that a copy of a compliance notice issued by an inspector is evidence of what it states.

Replacement of pt 4 heading

Clause 48 inserts a new heading for Part 4 "Appeals against decisions of chief executive" of the *Child Employment Act 2006* making it clear that Part 4 applies to appeals against a decision of the chief executive (see, for example, s 12 and s 13 of the *Child Employment Act 2006*) and not to the appeals to the industrial commission mentioned in s 15J which are appeals about the issue by an inspector of a compliance notice.

Amendment of s 27 (Appeal from decision of the chief executive)

Clause 49 amends section 27 of the *Child Employment Act 2006* by inserting a new subsection (2) which provides that procedures for such appeals must be as nearly as possible the same procedures as those for appeals made under the *Industrial Relations Act 1999*.

Amendment of s 29 (Decision on appeal)

Clause 50 amends section 29 of the *Child Employment Act 2006* by inserting a new subsection (2) which provides that for deciding the appeal, the industrial commission has the powers of the chief executive (i.e Director General of the Department of Employment and Industrial Relations) under this part and the same powers as the industrial commission has in relation to a proceeding under the *Industrial Relations Act 1999*.

Amendment of schedule (Dictionary)

Clause 51 defines certain words and expressions used in the Bill.

Part 4 Amendment of *Education (Work Experience) Act 1996*

Act amended in pt 4

Clause 52 provides that this part amends the *Education (Work Experience) Act 1996*.

Amendment of s 10 (Certain laws not to apply to work experience placements)

Clause 53 amends s 10 of the *Education (Work Experience) Act 1996* to provide that proposed section 8A 'Prohibition on nudity and sexually provocative clothing' of the *Child Employment Act 2006* applies to work experience placements.

Part 5 Amendment of *Judicial Review Act 1991*

Act amended in pt 5

Clause 54 provides that part 3 amends the *Judicial Review Act 1991*.

Amendment of sch 1 (Operation of other laws)

Clause 55 inserts references to sections 42T(1) and 42U(1) of the *Magistrates Courts Act 1921* into schedule 1, part 2 of the *Judicial Review Act 1991*. This amendment excludes decisions made by the Chief Magistrate to approve or refuse to approve a person as a conciliator and also to revoke approval of a person as a conciliator from review under the *Judicial Review Act 1991*.²

Part 6 Amendment of *Magistrates Courts Act 1921*

Act amended in pt 6

Clause 56 provides that part 6 amends the *Magistrates Courts Act 1921*.

Amendment of s 2 (Definitions)

Clause 57 amends section 2 of the *Magistrates Courts Act 1921* to insert definitions for various terms used in the new part 5A of the Act which establishes special low cost processes for employment claims.

Insertion of new 21A

Clause 58 inserts a new section 21A, **Application of parts**, into part 5, division 1 of the *Magistrates Courts Act 1921* to exclude alternative dispute resolution processes for Magistrates Court actions under part 5 from application to a dispute that is the subject of an employment claim.

Insertion of new pt 5A

Clause 59 inserts a new part 5A in the *Magistrates Courts Act 1921*. This new part contains the processes that apply in relation to employment claims.

Part 5A Processes for employment claims

Division 1 Preliminary

42A Object of pt 5A

New section 42A states the object of the new Part 5A. The object of the new part 5A is to reduce the cost of proceedings brought in a Magistrates Court by employees on low incomes against employers for breaches of contracts of employment by:

- (a) prescribing, under section 54 of the Act, lower court fees;
- (b) providing for awards of costs in limited circumstances;
- (c) allowing parties to be represented, without leave, by an organisation; and
- (d) providing for compulsory conciliation before hearing proceedings.

42B Application of pt 5A

New section 42B sets out that part 5A applies to employment claims made under that part. An 'employment claim' is a claim started by an employee against their employer, arising out of a breach of contract of employment between the employee and employer, where the employee's annual wages at the time the breach occurred were not more than \$98,000 (or another amount prescribed by, or calculated in accordance with, a regulation).

Subsection 42B(2) provides that Part 5A does not apply if the cause of action to which the claim relates is within the jurisdiction of the Queensland Industrial Relations Commission.

Subsection 42B(3) provides that Part 5A also applies to claims made under the *Workplace Relations Act 1996* if the claim is made with an employment claim.

42C Decision of Magistrates Court about whether claim is an employment claim

New section 42C allows a party to make an application to a Magistrates Court to determine that a claim is or is not an employment claim. If a court determines that a claim is not an employment claim, the plaintiff may discontinue or withdraw the proceeding and start a proceeding in relation to the claim in the QIRC. If that occurs, section 42C(3) provides that any time limit for commencing the action in the QIRC is not affected by the Magistrates Court claim and that compulsory conciliation for the Magistrates Court proceeding is taken to be conciliation for the purpose of the proceedings in the Commission.

Division 2 Conciliation of disputes

Subdivision 1 What is conciliation

Division 2 of Part 5A provides for compulsory conciliation of employment claims.

42D Meaning of *conciliation process*

New section 42D defines the term ‘conciliation process’. In relation to Part 5A, a conciliation process is a process by which the parties are helped and encouraged by a conciliator to resolve their dispute and includes all steps involved in the process of conciliation, including, for example telephone conferencing.

42E Functions of conciliator

New section 42E sets out the functions of a conciliator. The conciliator’s functions include encouraging the settlement of the dispute that is the subject of an employment claim, promoting the open exchange of information between parties to the dispute, giving the parties information about the operation of the *Magistrates Courts Act 1921* and other laws

relevant to the settlement of the dispute, informing the parties about the conciliator's assessment of the merits of the employment claim and helping to settle the dispute in any other appropriate way.

Subdivision 2 Starting conciliation process

Subdivision 2 sets out the procedure for starting a conciliation process.

42F Registrar must appoint conciliator

Under new section 42F, the registrar of the Magistrates Court in which an employment claim is filed must, as soon as practicable after the claim is filed, appoint a conciliator for the dispute and ensure parties are notified of the name and contact details of the conciliator.

42G Requirement for conciliator to start conciliation process

New section 42G provides that a conciliator must start conciliating a dispute as soon as practicable after being appointed by the registrar.

Subdivision 3 Conduct of conciliation process

Subdivision 3 contains provisions relating to the conduct of a conciliation process.

42H Attendance at and participation in conciliation process

New section 42H provides that the conciliator may require the parties to a dispute to participate in a conciliation process in a particular way, for example by participating in a telephone conference on a specified day and time. Parties must comply with the conciliator's requirements in relation to participation in a conciliation process and a Magistrates Court may impose sanctions on a party that does not comply with a conciliator's requirement.

42I Procedure for conciliation process

New section 42I provides that the conciliator decides the procedure to be used for a conciliation process and may adopt any procedure that will assist

them in carrying out their functions in relation to attempting to resolve the dispute. A Magistrates Court may also give directions about the procedure to be used for a conciliation process.

42J Limited right to representation

New section 42J provides that a party may be represented in a conciliation process by a relevant organisation (defined as an organisation or federal organisation within the meaning of the *Industrial Relations act 1999*, section 409, of which the person is a member or is eligible to become a member).

Where a person wishes to appoint someone other than an organisation as a representative, subsection 42J(2) provides that a person may be represented by another person only if the other person is appointed in writing and the other party agrees or the conciliator is satisfied the party should be permitted to be represented by the other person.

42K No fee or costs payable to conciliator by parties

Section 42K provides that no fees or costs are payable by parties for a conciliation process.

Subdivision 4 Procedure for finishing conciliation process

Subdivision 4 in division 2 contains the procedure for finishing a conciliation process.

42L Conciliator to file certificate

Section 42L requires a conciliator to file a certificate about the conciliation process with the registrar of the referring court as soon as practicable after the conciliation is finished. A Magistrates Court must not hear and decide a dispute unless the dispute has been referred to a conciliation process and the parties cannot resolve all or part of the dispute.

42M Conciliation agreements

Section 42M provides that, if parties resolve all or part of their dispute in a conciliation process, then the agreement must be put into writing and signed by or for each party and the conciliator.

42N Orders giving effect to conciliation agreement

Under section 42N, a party may apply to a Magistrates Court for an order giving effect to an agreement reached in a conciliation process after the conciliator's certificate has been filed and the court may make any order giving effect to the agreement which the court considers is appropriate in the circumstances.

Subdivision 5 Confidentiality, protection and immunity

Subdivision 5 in division 2 contains provisions to ensure conciliators have appropriate protection in performing their functions and provides confidentiality for a conciliation process to ensure that a conciliation process is as effective as possible in helping and encouraging parties to resolve the dispute.

42O Conciliators to maintain secrecy

Under new section 42O it is an offence for a conciliator to disclose information which comes to the conciliator's knowledge during a conciliation process without reasonable excuse. The maximum penalty for this offence is 50 penalty units (currently \$3,750). Subsection 42O(2) specifies when conciliators have a reasonable excuse for disclosing information in breach of this provision, including where the conciliator discloses information for the purpose of performing their functions under Part 5A.

42P Ordinary protection and immunity allowed

New section 42P confers on conciliators, parties and their representatives and on documents produced during conciliation, the same protection and immunities that apply in the Magistrates Court.

42Q Admission made in conciliation process

New section 42Q provides that evidence of anything said, or any admission made, during a conciliation process is not admissible at the trial of the dispute, in any other civil proceedings or anywhere else unless the parties agree. A civil proceeding does not include a proceeding founded on fraud.

42R No official record of conciliation process

New section 42R prohibits any person from making an official record of anything said as part of a conciliation process. The maximum penalty for committing an offence in contravention of this requirement is 20 penalty units (currently \$1,500). However, a conciliator does not breach this section merely by making notes of the conciliation process or filing a conciliation certificate under section 42N.

Subdivision 6 Approval of conciliators

Subdivision 6 provides for the approval of conciliators.

42S Approval of members of industrial relations commission

New section 42S deems any person, other than the President, who is a member of the Queensland Industrial Relations Commission to be approved as a conciliator.

42T Approval of other persons by Chief Magistrate

New section 42T allows the Chief Magistrate to approve or refuse to approve conciliators other than those mentioned in section 42S for the purposes of Part 5A. A person can only be approved to act as a conciliator if they have the appropriate skills and experience to perform the functions of a conciliator.

42U Revocation of approval

New section 42U allows the Chief Magistrate to revoke the approval of conciliators appointed under section 42T. Where approval is revoked, the Chief Magistrate must give a statement of reasons.

42V Appeal against refusal to approve as, or removal of approval of, conciliator

New section 42V gives a person a right of appeal to the District Court if the Chief Magistrate refuses the person's approval as a conciliator or revokes their approval as a conciliator.

42W Payment of conciliators

New section 42W provides that a person approved as a conciliator under section 42T is entitled to be paid the fees prescribed under a regulation.

42X Conciliation register

New section 42X requires that a registrar of a Magistrates Court nominated by the Chief Magistrate must keep a register of information about conciliation processes. The register must include the names and contact details of each conciliator, other information prescribed under the rules and other information required by the Chief Magistrate.

Subdivision 7 Miscellaneous

42Y Rules may be made for conciliation processes

Section 42Y provides that rules may be made for conciliation processes under part 5A.

Division 3 Special provisions for proceedings heard in Magistrates Court

Division 3 sets out the other special procedures for employment claims under Part 5A.

42Z Application of div 3

New section 42Z provides that the procedures in division 3 apply to any proceeding in the Magistrates Court which involves an employment claim.

42ZA Representation of parties

New section 42ZA allows a relevant organisation to appear as a representative of a party to the proceeding without the special leave which would otherwise be required under section 18 of the *Magistrates Courts Act 1921*.

42ZB No inference may be drawn from failure to settle

New section 42ZB ensures that no inference can be drawn against a party because of their failure to resolve all or part of an employment claim during the conciliation process.

42ZC Limitation on awarding of costs

New section 42ZC limits the awarding of costs in proceedings involving employment claims and provides that costs (including those incurred by parties for a conciliation process) are only awarded if the court is satisfied—

- (a) if the party is the plaintiff – the employment claim is frivolous or vexatious or is an abuse of process; or
- (b) an unreasonable act or omission connected with the conduct of the proceeding caused the other party to incur the costs.

Part 7 Amendment of Public Service Act 1996

Act amended in pt 7

Clause 60 provides that this part amends the Public Service Act 1996.

Amendment of sch 1 (Public service officers and their heads)

Clause 61 provides that the Queensland Workplace Rights Office is a public service office for the purposes of the Act, with the Queensland Workplace Rights Ombudsman as the head.

Part 8 Amendment of Workers' Compensation and Rehabilitation Act 2003

Act amended in pt 8

Clause 62 provides that this part amends the *Workers' Compensation and Rehabilitation Act 2003*.

Amendment of s 71 (Issue or renewal of licence to single employer)

Clause 63 amends section 71 which provides the requirements a single employer must satisfy to be a self-insurer. The clause removes the mandatory requirement that an employer have \$100M in net tangible assets on the issue or renewal of a self-insurance licence.

An employer's net tangible assets will remain a consideration of the Authority in determining whether an employer is fit and proper to become a self-insurer, in particular in determining whether they have the capacity to meet their workers' compensation liabilities.

Amendment of s 72 (Issue or renewal of licence to a group employer)

Clause 64 amends section 72 which provides the requirements a group employer must satisfy to be a self-insurer. The clause removes the mandatory requirement that a group employer have \$100M in net tangible assets on the issue or renewal of a self-insurance licence.

A group employer's net tangible assets will remain a consideration of the Authority in determining whether a group employer is fit and proper to become a self-insurer, in particular in determining whether they have the capacity to meet their workers' compensation liabilities.

Amendment of s 370 (Appointment of authorised persons)

Clause 65 amends section 370 which provides for the appointment of authorised persons for the Authority. The clause enables inspectors appointed under the *Industrial Relations Act 1999* to monitor and enforce compliance with the employment security provisions in Chapter 4 Part 6.

Amendment of s 371 (Authorised person's appointment conditions)

Clause 66 amends section 371 which provides the appointment conditions for authorised persons of the authority. The clause clarifies that section 371 does not apply to inspectors appointed under the *Industrial Relations Act 1999*.

Amendment of s 372 (Authorised person's identity card)

Clause 67 amends section 372 which provides for the issuing of identity cards to authorised persons by the Authority. The clause clarifies that section 372 does not apply to inspectors appointed under the *Industrial Relations Act 1999*.

Amendment of s 373 (Display of authorised person's identity card)

Clause 68 amends section 373 which provides for the display of an authorised person's identity card. The clause clarifies that an authorised person, who is also an inspector under the *Industrial Relations Act 1999*, must display the identity card issued under that Act.

Part 9 Amendment of Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005

Act amended in pt 8A

Clause 69 provides for this part to amend the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005*.

Amendment of s 70 (Replacement of s 31 of Act No. 25 of 1995)

Clause 70 amends section 70 of the *Worker's Compensation and Rehabilitation and Other Acts Amendment Act 2005*, which is due to commence 1 July 2007, by repealing provisions relating to reporting requirements for designers (proposed section 30B(3) of the *Workplace*

Health and Safety Act 1995) and project managers (proposed section 30C(2) of the *Workplace Health and Safety Act 1995*).

Part 10 Amendment of Workplace Health and Safety Act 1995

Act amended in pt 9

Clause 71 provides that this part amends the *Workplace Health and Safety Act 1995*.

Insertion of new section 39

Clause 72 inserts a new section, the purpose of which is to clarify that the Act's regulation making power extends to certificates issued under the former *Workplace Health and Safety Act 1989* and the *Inspection of Machinery Act 1951* and which have been continued in force under the current legislation. This new section provides an appropriate head of power for future amendments to the *Workplace Health and Safety Regulation 1997*, which are proposed for implementing nationally consistent provisions converting current occupational licensing certificates (such as certificates to operate cranes and forklifts, which are issued for life, to 5 yearly renewable certificates).

Insertion of new pt 7A div 6

Clause 73 inserts a new **Division 6, Disputes under this part** to provide for an additional independent, transparent and efficient dispute resolution process through the Queensland Industrial Relations Commission for resolving issues arising out of a union right of entry under Part 7A.

90S Definition for div 6

New section 90S provides the definition of the Full Bench for this division.

90T Notice of dispute

New section 90T provides that a party to a dispute, a workplace health and safety inspector or the chief executive may give a notice of dispute to the

industrial registrar only if the dispute remains unresolved after the parties have genuinely attempted to settle the dispute.

90U Action on dispute

New section 90U provides that the commission can take steps it considers appropriate to promptly settle or resolve the dispute by conciliation or arbitration, including making orders.

90V Compulsory conference

New section 90V provides that the commission, in considering a dispute, can hold a compulsory conference to settle or resolve the dispute.

90W Enforcing commission's orders

New section 90W provides the requirements for an order made by the Industrial Commission. It also provides that the industrial registrar must issue a notice to the party to show cause to the full bench if the registrar is not satisfied that there has been substantial compliance with the commission's order.

90X Remedies on show cause notice

New section 90X provides the remedies that the Full Bench may order when considering a show cause notice.

90Y Disobeying penalty orders

New section 90Y provides that it is an offence to disobey a penalty order.

Amendment of s 147A (Definitions for pt 11)

Clause 74 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, the industrial registrar and the Full Bench under the new Part 7A Div 6.

Insertion of new pt 11, div 3A

Clause 75 inserts a new Part 11, **Division 3A, Appeals to full bench**, to provide for appeals to the Full Bench from certain decisions of the

industrial commission under Part 7A. The procedural framework provided by this division and the powers provided to the Full Bench on an appeal, are consistent with those given to the Industrial Court and Industrial Commission in considering other appeals under the Act.

151F Definition for div 3A

New section 151F provides the definition of Full Bench for this division.

151G Who may appeal

New section 151G provides that a person whose interests are affected by a decision of the Industrial Commission may on certain grounds appeal against the decision to the Full Bench.

151H How to start appeal

New section 151H provides how an appeal is to be started before the Full Bench.

151I Stay of operation of decisions

New section 151I provides that the Full Bench may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

151J Hearing procedures

New section 151J provides the hearing procedures for an appeal.

151K Powers of full bench on appeal

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

Amendment of s 152 (Who may appeal?)

Clause 76 amends section 152 which provides who may appeal a decision to the Industrial Court. The Clause clarifies the grounds upon which a decision of the Industrial Commission under the new section 90U may be appealed to the Industrial Court.

Amendment of s 155 (Hearing Procedures)

Clause 77 amends section 155 which provides the hearing procedures for an appeal to the Industrial Court. The clause clarifies that the appeal is by way of rehearing, unaffected by the decision of the chief executive, Industrial Commission or Full Bench.

Amendment of s 157 (Powers of court on appeal)

Clause 78 amends section 157 which provides the powers of the Industrial Court. The clause clarifies that the Court's decision is taken to be that of the chief executive, Industrial Commission or Full Bench.

Amendment of sch 3 (Dictionary)

Clause 79 inserts definition for 'full bench.'

Schedule Minor amendments of the Industrial Relations Act 1999

A schedule of minor amendments:

- (a) eliminates inconsistencies about appointments being by industrial gazette notice or gazette notice by providing that all appointments are by gazette notice;
- (b) provides that a reference to 'pensions Act' is a reference to the *Judges (Pensions and Long Leave) Act 1957*.