

# **Statutory Bodies Legislation Amendment Bill 2007**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the Bill is the *Statutory Bodies Legislation Amendment Bill 2007*

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

The primary objectives of the Bill are to:

- Implement Government's policy and election commitments to return employees of certain statutory bodies affected by the federal Work Choices legislation to the State industrial system.
- Give effect to a statutory scheme whereby the employees of statutory bodies affected by Work Choices are able to continue to perform work for that body but be employed by a "non-corporate" government entity which will have State rather than federal industrial coverage.
- Corresponding with each existing statutory body (other than the Museum, the State Library, and the Art Gallery), establish a "non-corporate" entity as an employing office: this entity will employ staff who will perform work for the statutory body under a work performance arrangement between the two entities. In the case of the Museum, the State Library and the Art Gallery the "non-corporate" entity is the relevant government department.
- Provide for the appointment of an executive officer of each employing office with the employing office acting through that executive officer.

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

The federal *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices) which is based on the Commonwealth's "corporations

power” brought within the federal industrial jurisdiction all constitutional corporations. Included within this group are statutory bodies which engage in trading or financial activities. Since Work Choices took effect in 2006, employees of these bodies have been subject to federal industrial coverage. A challenge by the States and some unions to the validity of Work Choices, resulted in the High Court upholding the legislation. The State unapologetically is opposed to the nature of this legislation and its effect, in particular, on its employees. It has therefore sought to ensure they can enjoy the security and protection of Queensland’s State industrial jurisdiction which is better balanced regarding employers’ and employees’ rights and obligations.

In furtherance of this, the Government has pursued a policy of ensuring that as many employees as possible of statutory bodies affected by Work Choices can be returned to the State industrial jurisdiction. Various legislative options for achieving this outcome have been examined. A legislative model that will preserve each statutory body’s existing management control and organisational integrity has been preferred. The Statutory Bodies Legislation Amendment (SBLA) Bill enables this to occur. It ensures staff are employed in unincorporated government entities and therefore employees become employees of the Crown. It contains a statutory scheme that (other than for the Museum, the State Library, and the Art Gallery) provides for the creation alongside each statutory body of an additional entity to be the employer of relevant staff. In the case of the Museum, the State Library and the Art Gallery the “non-corporate” entity is the relevant government department. The SBLA Bill consists of 12 parts, a Preliminary Part 1, followed by Parts 2-12 each of which amend a different Act. The Acts being amended together with the statutory bodies each governs are as follows:

- *Agricultural College Act 2005* (Australian Agricultural College Corporation)
- *Libraries Act 1988* (Library Board of Queensland)
- *Major Sports Facilities Act 2001* (Major Sports Facilities Authority)
- *Queensland Art Gallery Act 1987* (Queensland Art Gallery Board of Trustees)
- *Queensland Building Services Authority Act 1991* (Building Services Authority)
- *Queensland Museum Act 1970* (Board of the Queensland Museum)

- *Residential Tenancies Act 1994* (Residential Tenancies Authority)
- *South Bank Corporation Act 1989* (South Bank Corporation)
- *Tourism Queensland Act 1979* (Tourism Queensland)
- *Workers' Compensation and Rehabilitation Act 2003* (WorkCover)
- *Water Act 2000* (“Category One” water boards: Gladstone Area Water Board and Mount Isa Water Board) and *Water Regulation 2002* (governing “Category Two” water boards).

### **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 those principles.

### **Administrative Costs**

It is anticipated that the executive officer appointed to each employing office will be the same person who holds an existing appointment as the chief executive officer (howsoever named) of the statutory body. No additional salary is expected to be paid for the performance of the dual role.

Some statutory bodies report that they will need to establish and operate new systems to administer the functions prescribed under the legislation. While some functions currently performed by a particular statutory body will be transferred to the new employing office, some reporting and other functions will have to operate separately in each of the two entities.

### **Consultation**

In the preparation of the Bill the Department of Employment and Industrial Relations has consulted extensively with statutory bodies impacted by the Bill and with Government Departments with responsibility for administering the legislation, with central agencies, including the Department of the Premier and Cabinet, Queensland Treasury, the Office of the Public Service Commissioner and the Office of the Queensland Parliamentary Counsel, and with relevant unions.

## **Notes on Provisions**

### **Part 1                      Preliminary**

#### **Clause 1                      Short Title**

Clause 1 is the short title of the *Statutory Bodies Legislation Amendment Act 2007*.

### **Part 2                      Amendment of *Agricultural College Act 2005***

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

Clause 2 provides that Part 2 of the *Statutory Bodies Legislation Amendment Act* amends the *Agricultural College Act 2005*.

#### **Clause 3                      Amendment of long title**

Clause 3 amends the long title of the Act to also include provision for the establishment of the Australian Agricultural College Employing Office which is referred to subsequently in the Act as “the employing office”.

#### **Clause 4                      Amendment of s 14 (Delegation by corporation)**

Clause 4 amends s 14 by renumbering existing s 14(1)(a) and (b) as new 14(1)(b) and (c) and inserting a new s 14(1)(a) to provide for the corporation to also delegate its powers to an appropriately qualified employee of either the employing office or of another government entity who is performing work for the corporation under a work performance arrangement, the definition of which is stated in Schedule 2 (Dictionary) of the Act.

**Clause 5                      Replacement of pt 2, div 5 (Staff of corporation)**

Clause 5 replaces part 2, division 5 “Staff of corporation” with a new division 5 “Other Provisions”. The existing part 2, division 5 being repealed consists of sections 15 -20.

**s 15 Corporation may enter into work performance arrangements**

Clause 5 replaces existing s 15 “Officers” with a new s 15. It provides for the corporation to be able to enter into work performance arrangements. The repeal of s 15 removed the corporation’s express power to employ officers as the primary mode of staffing will be pursuant to a work performance arrangement.

The new s 15(1) provides for the corporation to be able to enter into and give effect to a work performance arrangement with either the employing office or the appropriate authority of another government entity. For a definition of “government entity” Schedule 2 (Dictionary) of the Act refers to s21 of the *Public Service Act 1996*.

The new s 15(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the corporation’s functions set out in the existing s 10 and s 11.

The new s 15(3) provides some inclusive examples of what a work performance arrangement may provide for.

The new s 15(4) makes it clear that a person who performs work for the corporation under a work performance arrangement is not an employee of the corporation and at all times remains an employee of the entity which is the other party to the arrangement, namely the Employing Office or other government entity.

The new s 15(5) expressly provides that the corporation has no power to employ any person while they are performing work for the corporation under a work performance arrangement.

**Clause 6**                      **Insertion of new pt 2A Australian  
Agricultural College Employing Office**

**Division 1**                    **Establishment and functions of  
employing office**

Clause 6 inserts a new Part 2A. The purpose of Part 2A is to provide for the new Australian Agricultural College Employing Office (the employing office), its executive officer and staff. Division 1 of Part 2A establishes the employing office and outlines its functions.

**s 16 Establishment of employing office**

New s 16 establishes the Australian Agricultural College Employing Office (the employing office) as a separate unincorporated entity from the Australian Agricultural College Corporation. It provides that the employing office consists of both the employing office's executive officer and its staff.

**s 17 Employing office represents the state**

New s 17 provides that the employing office represents the State and has all the privileges and immunities of the State. The intention is to ensure that employment in the employing office is employment by the Crown.

**s 18 Functions of employing office**

New s 18 lists the functions of the employing office.

New section 18(1) sets out the main functions of the employing office.

- (a) The first main function is for it to enter into a work performance arrangement with the corporation under which arrangement, the staff of the employing office will perform work for the corporation.
- (b) The second function is for it to employ staff, on behalf of the State, to perform work for the corporation under a work performance arrangement.
- (c) A third main function is to do anything that is incidental to (a) and (b).

New section s18(2) provides for the employing office to have any other function that the *Agricultural College Act 2005* or another Act of the Queensland Parliament confers on it.

New s 18(3) makes clear that the section does not limit the power of the employing office to be able to enter into and give effect to a work performance arrangement with a different government entity from the corporation.

## **Division 2            Executive Officer**

### **s 19 Appointment of executive officer**

New section 19 provides for the statutory appointment of an executive officer of the employing office. It mandates the appointment of this executive officer and provides for the appointment to be made by the Governor in Council. The section makes clear that the executive officer's appointment is made pursuant to the *Agricultural College Act 2005*.

### **s 20 Executive officer acting for employing office**

New s 20 provides for the executive officer to be the authorised person through whom the employing office acts. Anything the executive officer does in the name of or for the employing office is regarded as being done by the employing office.

## **Division 3            Staff of employing office**

### **s 20A Employing office may employ staff**

New s 20A provides a discretionary right for the employing office to be able to employ staff. It provides that such employment is done so on behalf of the State, consistent with the intention that staff are employees of the Crown. It clarifies that a person employed by the employing office is an employee of that office. It grants the employing office the authority to decide its employees' terms of appointment, subject to any industrial instrument that applies. It makes clear that the employment of employing office staff is done pursuant to the *Agricultural College Act 2005*.

## **s 20B Preservation of rights in relation to public service employees**

New s 20B replaces existing sections 18 and 19. The new s 20B concerns a person who takes up an appointment as an employee of the employing office and who immediately before taking up that appointment was a public service employee. Such a person is able to retain all existing and accruing rights to which they were entitled as if service in the employing office were a continuation of service as a public service employee.

In addition, new 20B provides for people who are appointed as a public service employee, if immediately before taking up that appointment they were an employee of the employing office. This section mandates that their service as an employee of the employing office be regarded as service as a public service employee.

## **s 20C Secondment as employee of employing office**

New s 20C replaces existing s 20. It enables public service employees to be seconded to the employing office. It makes clear that during such secondment, the person is an employee of the employing office and the *Public Service Act 1996* has no application in such event. During the course of the secondment, the person is entitled to their existing and accruing rights as if their employment as an employee of the employing office were a continuation of employment as a public service employee. Section 20C permits the person to apply for positions and be employed in the public service on the same basis as they would as a public service employee. At the end of the secondment, for the purpose of calculating the person's rights and entitlements, the person's employment on secondment is regarded to be service of the same nature as would service in the public service. Provided the person's secondment ended for reasons other than misconduct, the person is entitled to be employed as a public service employee. During the term of a public service employee's secondment to the employing office, the person remains an employee of the employing office, notwithstanding the fact that the seconded employee might perform work for the corporation under a work performance arrangement between the employing office and the corporation.

## **s 20D Employing office may enter into work performance arrangements**

Section 20D is the reciprocal provision for the new s 15.



The new s 20D(1) enables the employing office to be able to enter into and give effect to a work performance arrangement with either the corporation or the appropriate authority of another government entity. For a definition of “government entity” Schedule 2 (Dictionary) of the Act refers to s21 of the *Public Service Act 1996*.

The new s 20D(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the corporation’s functions set out in the existing s 10 and s 11.

The new s 20D(3) provides some inclusive examples of what the terms of a work performance arrangement may provide for.

The new s 20D(4) makes it clear that a person who performs work for the corporation or other government entity under a work performance arrangement is not an employee of the corporation or the other government entity which is party to the agreement. At all times the person remains an employee of the employing office.

The new s 20D(5) expressly provides that the corporation or other government entity cannot employ a person who performs work for that entity under a work performance arrangement with the employing office.

## **Division 4            Other provisions**

### **s 20E Employing office is statutory body**

The new s 20E provides that the employing office is a statutory body under and subject to the *Financial Administration and Audit Act 1997* and the *Statutory Bodies Financial Arrangements Act 1982*. Existing s 12 provides similarly for the corporation.

In the application of the *Financial Administration and Audit Act 1997*, new s 20E deems the employing office’s executive officer as the chairperson under that Act and in that role imposes express obligations arising under that Act, for example action to be taken relating to the auditor-general’s report on audit.

**Clause 7**                      **Amendment of pt 4, div 2 hdg (Director and other staff of agricultural college)**

**New heading: Director of agricultural college**

Clause 7 amends the heading to Part 4, division 2 by deleting the reference to “and other staff”. This reflects deletion from the division of references to “other staff” of the corporation.

**Clause 8**                      **Amendment of s 37 (Director and other staff)**

Clause 8 omits existing s 37(3) to remove the corporation’s express power to employ staff other than the director as the primary mode of staffing will be pursuant to a work performance arrangement. Clause 8 amends s 37(4) and s 37(6) to delete reference to “and other staff”. Existing section 37(4) to (6) is renumbered to section 37(3) to (5).

**Clause 9**                      **Amendment of s 39 (Student advisory council)**

Clause 9 amends s 39 to make clear that in the election of staff members of the agricultural college to the student advisory council, only employees who are performing work for the corporation under a work performance arrangement can elect and be elected.

**Clause 10**                    **Insertion of new pt 6, div 3 Transitional provisions for Statutory Bodies Legislation Amendment Act 2007**

**s 60 Rights and entitlements of particular employees**

Clause 10 inserts a new s 60 to provide for employees who take up employment with the employing office and who immediately before doing so were employees of the corporation.

The new s 60(1) prescribes that a person who was an employee of the corporation immediately before the commencement of the section and immediately before becoming an employee of the employing office will benefit from the transitional arrangements associated with the preservation of employment terms and conditions, recognition of accrual of entitlements, and continuity of service. Such preservation of rights and entitlements will not extend to a person whose employment with the

corporation ceased prior to the commencement date of the section, or a person who, having previously been employed by the corporation, is employed by another employer or not employed at the time of taking up new employment with the employing office.

Section 60(2) provides that upon becoming employed by the employing office a person is taken to be employed on the conditions on which the person would have been employed by the corporation, immediately before the person became an employee of the employing office, if the corporation had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. The intent is to ensure a person's employment conditions are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)* and in particular that any entitlements prescribed by this Act and that may have prevailed during the period it had any application to the corporation are not continued with the person's employment by the employing office.

Section 60(3) provides that a person is to keep rights and entitlements accrued during the period the person was employed by the corporation as if the corporation had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. It also provides that the person's superannuation entitlements are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)*.

Section 60(4) provides for the recognition and continuity of service of a person during the period the person was an employee of the corporation, for the purpose of calculating the person's rights and entitlements.

Section 60(5) allows employee secondment arrangements to be unaffected by the operation of the Statutory Bodies Legislation Amendment Act 2007 and for the provision relating to the preservation of terms and conditions of employment to have effect in respect of a person when the person concludes the person's period of secondment. In this way s 60(5) is an exception to s 60(2) and temporarily suspends its operation for the duration of an existing period of secondment of an employee.

Section 60(6) clarifies that the transitional provisions subsections 60(2) and 60(5)(b) relating to the preservation of terms and conditions of employment of an employee upon becoming an employee of the employing office, do not limit subsections 20A(3) and (4) which provide for the employing office to decide the terms of employment of employees of the employing office. This allows the employing office to decide the future terms and conditions of employment of an employee of the employing office after the employee commences employment with the employing office.

Section 60(7) defines “employee of the corporation” and “seconded employee” for the purposes of this section.

### **s 61 Application of industrial instruments**

Clause 10 inserts a new s 61 to ensure that the employing office is bound by the same industrial instruments by which the corporation was bound prior to 27 March 2006, the date the *Workplace Relations Act 1996 (Cwlth)* commenced its application to the corporation.

### **s 62 Amending Act does not affect particular powers of corporation**

Clause 10 inserts a new s 62 to put beyond doubt that the corporation’s legal capacity and the general powers of a person that it enjoys as a corporation are not affected or diminished by the *Statutory Bodies Legislation Amendment Act 2007*.

### **s 63 Continued application of repealed provisions**

Clause 10 inserts a transitional provision to continue the application of repealed part 2, division 5 (comprising old sections 15 to 20) to employees who have been employed by the corporation pursuant to that repealed division, while that employment continues. In the circumstances outlined in existing section 19, on becoming a public service employee, the person’s service as an officer or employee of the corporation is regarded as service as a public service employee.

The new s 63 makes clear that notwithstanding the repeal of s 37(3) which provided for the employment of staff other than the director of the agricultural college, the provisions of existing s 37 will continue to apply to employees who have been employed by the corporation pursuant to that section while that employment continues.

### **Clause 11                      Amendment of sch 2 (Dictionary)**

Clause 11 amends schedule 2 by inserting relevant new definitions into the Act’s dictionary.

## **Part 3                      Amendment of *Libraries Act 1988***

### **Clause 12                      Act amended in pt 3**

Clause 12 provides that Part 3 amends the *Libraries Act 1988*.

### **Clause 13                      Amendment of s 2 (Interpretation)**

Clause 13 amends existing s 2(1) by inserting new definitions. The broad definition of “government entity” set out in section 21 of the *Public Service Act 1996* has been utilised and imported into the *Libraries Act 1988*. Use of this definition has been made for no other purpose than to provide wide eligibility for entry into a “work performance arrangement” which is also defined and in so doing, makes use of the term, “government entity”.

### **Clause 14                      Amendment of pt 2, div 2 hdg (State librarian and staff)**

Clause 14 amends the heading to part 2, div 2 by omitting the reference to “and staff” from the existing heading.

### **Clause 15                      Amendment of s 13 (State librarian and other officers)**

Clause 15 replaces the heading to existing s13 with “Appointment of State Librarian” and omits existing s 13(3), thereby removing reference to anyone other than the State Librarian.

### **Clause 16                      Amendment of s 17 (Delegation by State Librarian)**

Clause 16 amends existing s 17(1) to provide for the State librarian to be able to delegate powers to a person performing work for the Library Board under a work performance arrangement, as opposed to someone performing work for the board under, for example, a delegation by the chief executive of a public service department.

In addition, clause 16 continues to provide for the State librarian to be able to delegate powers to an appropriately qualified employee of the board. A person employed pursuant to existing s 13(3) is not an “employee of the board”. However, a person employed pursuant to existing s 18 would be an

“employee of the board”. In addition, a person employed by the board pursuant to the board’s general powers set out in existing s 22 would also be an “employee of the board”.

**Clause 17                      Omission of s 18 (Employees)**

Clause 17 repeals the board’s express power to be able to employ staff as the primary mode of staffing will be pursuant to a work performance arrangement. In the event the Board wishes to employ a person directly, it could do so pursuant to its general powers outlined in existing s 22.

**Clause 18                      Relocation and renumbering of s 19  
(Superannuation schemes)**

Clause 18 relocates and renumbers existing s 19 to section 40B.

**Clause 19                      Amendment of s 20 (Functions of board)**

Clause 19 amends s 20 by replacing s20(1)(f) with a new subsection to broaden the board’s staff supervisory function to include the supervision of people performing work for the board under a work performance agreement.

**Clause 20                      Amendment of s 24 (Restrictions on powers  
of board)**

Clause 20 amends s 24 to delete the reference in existing s 24(8)(c) to “an officer mentioned in existing section 13(3)” and replace it with that of a person performing work for the board under a work performance arrangement.

**Clause 21                      Amendment of s 25 (Persons having  
dealings with board etc.)**

Clause 21 amends s 25 to delete the reference in existing s 25(6)(c) to “an officer mentioned in [existing] section 13(3)” and replace it with a reference to a person performing work for the board under a work performance arrangement.

**Clause 22                      Amendment of s 40 (Delegation by board)**

Clause 22 amends s 40 by providing for the board to be able to delegate its powers *inter alia* to an appropriately qualified person performing work for

the board under a work performance arrangement. Clause 22 also removes the reference to “an appropriately qualified officer” mentioned in [existing] section 13(3)”.

### **Clause 23                    Insertion of new pt 2, div 6 Other provisions**

Clause 23 inserts into part 2, a new division 6 consisting of new s 40A.

#### **s 40A Board may enter into work performance arrangements**

New s 40A(1) provides for the board to be able to enter into and give effect to a work performance arrangement with either the chief executive of a public service department (including a public service office) or the appropriate authority of another government entity. For a definition of “government entity” section 2 of this Act (as amended) refers to s 21 of the *Public Service Act 1996*.

The new s 40A(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the board’s functions set out in the existing s 20.

The new s 40A(3) provides some inclusive examples of what a work performance arrangement may provide for.

The new s 40A(4) makes it clear that a person who performs work for the board under a work performance arrangement is not an employee of the board and at all times remains an employee of the entity which is the other party to the arrangement.

The new s 40A(5) expressly provides that the board has no power to employ any person while they are performing work for the board under a work performance arrangement.

### **Clause 24                    Amendment of s 81 (Inspection of material or receptacle brought onto board’s premises)**

Clause 24 amends existing s 81 by widening its application to expressly include a person performing work for the board under a work performance arrangement.

**Clause 25**                    **Insertion of new pt 10, div 1 hdg Transitional provisions for Arts Legislation Amendment Act 2003**

Clause 25 partitions part 10 into 2 divisions and inserts a heading for division 1.

**Clause 26**                    **Amendment of s 88 (Definition for pt 10)**

Clause 26 amends existing s 88 by referring to the definition it contains as applying to the newly created division 1.

**Clause 27**                    **Insertion of new pt 10, div 2 Transitional provisions for Statutory Bodies Legislation Amendment Act 2007**

**s 90 Rights and entitlements of particular employees**

Clause 27 inserts a new s 90 to provide for employees of the board who take up employment as a public service employee and who immediately before doing so were employees of the board. [Section 6 of the *Public Service Act 1996* provides that public service employees are employed in a public service department or public service office].

The new s 90(1) prescribes that a person who was an employee of the board immediately before the commencement of the section and immediately before becoming a public service employee will benefit from the transitional arrangements associated with the preservation of employment terms and conditions, recognition of accrual of entitlements, and continuity of service. Such preservation of rights and entitlements will not extend to a person whose employment with the board ceased prior to the commencement date of the section, or a person who, having previously been employed by the board, is employed by another employer or not employed at the time of taking up new employment with the public service department or public service office as a public service employee.

Section 90(2) provides that on becoming a public service employee, the person is to keep rights and entitlements accrued during the period the person was employed by the board as if the board had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. It also provides that the person's superannuation entitlements are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)*. It is intended that the person's category of membership within the superannuation



scheme also will remain unchanged upon becoming a public service employee.

Section 90(3) provides for the recognition and continuity of service of a person during the period the person was an employee of the board, for the purpose of calculating the person's rights and entitlements.

### **s 91 Non-application of Industrial Relations Act 1999, s167**

Clause 27 inserts a new s 91. The intention of this provision is to ensure that a person taking up employment with a public service department or office pursuant to the new s 90 will be covered by the most recent certified agreement that is applicable to other employees of that department or office which may not apply to them if s 167 of the *Industrial Relations Act 1999* is triggered.

### **s 92 Amending Act does not affect particular powers of board**

Clause 27 inserts a new s 92 to put beyond doubt that the board's legal capacity and general powers as outlined in existing s 22 are not affected or diminished by the *Statutory Bodies Legislation Amendment Act 2007*.

### **s 93 Continued application of repealed s 18**

Clause 27 inserts a new s 93 to make clear that notwithstanding the repeal of the express power for the board to employ staff, the provisions of existing s 18 will continue to apply to employees who have been employed by the board pursuant to that section while that employment continues.

### **s 94 Application of Act to particular officers**

Clause 27 inserts a new s 94 to make provision for a person who was employed under existing s 13(3) and who continues to perform work for the board under an existing delegation from the chief executive of a public service department, to be able to continue to perform that work for the board until the board enters into a work performance arrangement pursuant to new s 40A. Any powers delegated to that person pursuant to s 17 or s 40 are to continue in force until revoked.

## **Part 4**                      **Amendment of *Major Sports Facilities Act 2001***

### **Clause 28**                      **Act amended in pt 4**

Clause 28 provides that Part 4 amends the *Major Sports Facilities Act 2001*.

### **Clause 29**                      **Insertion of new s 25A**

#### **s 25A Authority may enter into work performance arrangements**

Clause 29 provides for the Authority to be able to enter into work performance arrangements.

The new s 25A(1) provides for the Authority to be able to enter into and give effect to a work performance arrangement with either the Major Sports Facilities Employing Office (the employing office) or the appropriate authority of another government entity. For a definition of “government entity” amended Schedule 2 (Dictionary) of the Act refers to s 21 of the *Public Service Act 1996*.

The new s 25A(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the Authority’s functions set out in the existing s 7(1).

The new s 25A(3) provides some inclusive examples of what a work performance arrangement may provide for.

The new s 25A(4) makes it clear that a person who performs work for the Authority under a work performance arrangement is not an employee of the Authority and at all times remains an employee of the entity which is the other party to the arrangement, namely the employing office or other government entity.

The new s 25A(5) expressly provides that the Authority has no power to employ any person while that person is performing work for the Authority under a work performance arrangement.

**Clause 30                      Amendment of s 30 (Delegations)**

Clause 30 amends existing s 30 by renumbering existing s 30(1)(b) as new s 30(1)(c) and inserting a new s 30(1)(b) to provide for the Authority to also delegate its powers to an appropriately qualified employee of either the employing office or of another government entity who is performing work for the Authority under a work performance arrangement, the definition of which is stated in Schedule 2 (Dictionary) of the Act.

Existing s 30(2) is amended to replace the existing example of an employee's seniority level within the staff of the Authority with that of an employee's seniority level within the staff of an entity (party to the work performance arrangement with the Authority) to exemplify who might be "appropriately qualified" to receive a delegation.

**Clause 31                      Insertion of new pt 3A Major Sports Facilities Employing Office****Division 1                      Establishment and functions of employing office**

Clause 31 inserts a new Part 3A. The purpose of Part 3A is to provide for the new Major Sports Facilities Employing Office (the employing office), its executive officer and staff.

Division 1 of Part 3A establishes the employing office and outlines its functions.

**s 30AA Establishment of employing office**

New s 30AA establishes the employing office as a separate unincorporated entity from the Major Sports Facilities Authority. It provides that the employing office consists of both the employing office's executive officer and its staff.

**s 30AB Employing office represents the state**

New s 30AB provides that the employing office represents the State and has all the privileges and immunities of the State. The intention is to ensure that employment in the employing office is employment by the Crown. In contrast, existing section 6(2) expressly provides that the Authority does not represent the State.

### **s 30AC Functions of employing office**

New s 30AC lists the functions of the employing office.

New s 30AC(1) sets out the main functions of the employing office. Its first main function is to enter into a work performance arrangement with the Authority under which arrangement, the staff of the employing office will perform work for the Authority. Its second main function is to employ staff, on behalf of the State, to perform work for the Authority under a work performance arrangement. A third main function is to do anything that is incidental to the other two main functions.

New s 30AC(2) provides for the employing office to have any other function that the Act or another Act of the Queensland Parliament confers on it.

New s 30AC(3) makes clear that the section does not limit the power of the employing office to be able to enter into and give effect to a work performance arrangement with a different government entity from the Authority at the same time it has an existing work performance arrangement with the Authority. For example, to effect the secondment of a particular employee, the employing office might enter into an interchange arrangement with the chief executive of a public service department pursuant to s 82 of the *Public Service Act 1996*.

## **Division 2            Executive Officer**

### **s 30AD Appointment of executive officer**

New section 30AD provides for the statutory appointment of an executive officer of the employing office. It mandates the appointment of this executive officer and provides for the appointment to be made by the Governor in Council. The section makes clear that the executive officer's appointment is made pursuant to the *Major Sports Facilities Act 2001*.

### **s 30AE Executive officer acting for employing office**

New s 30AE provides for the executive officer to be the authorised person through whom the employing office acts. Anything the executive officer does in the name of or for the employing office is regarded as being done by the employing office.

## **Division 3            Staff of employing office**

### **s 30AF Employing office may employ staff**

New s 30AF provides a discretionary right for the employing office to be able to employ staff. It provides that such employment is done so on behalf of the State, consistent with the intention that staff are employees of the Crown. It clarifies that a person employed by the employing office is an employee of that office. It grants the employing office the authority to decide its employees' terms of appointment, subject to any industrial instrument that applies. It makes clear that the employment of employing office staff is done pursuant to the *Major Sports Facilities Act 2001*.

### **s 30AG Employing office may enter into work performance arrangements**

Section 30AG is the reciprocal provision for the new s 25A.

The new s 30AG(1) enables the employing office to be able to enter into and give effect to a work performance arrangement with either the Authority or the appropriate authority of another government entity. For a definition of "government entity" Schedule 2 (Dictionary) of the Act refers to s 21 of the *Public Service Act 1996*.

The new s 30AG(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the Authority's functions set out in the existing s 7(1).

The new s 30AG(3) provides some inclusive examples of what the terms of a work performance arrangement may provide for.

The new s 30AG(4) makes it clear that a person who performs work for the Authority or other government entity under a work performance arrangement is not an employee of the Authority or the other government entity which is party to the agreement. At all times the person remains an employee of the employing office.

The new s 30AG(5) expressly provides that the Authority or other government entity cannot employ a person who performs work for that entity under a work performance arrangement with the employing office.

## **Division 4            Other provisions**

### **s 30AH Employing office is statutory body**

The new s 30AH provides that the employing office is a statutory body under and subject to the *Financial Administration and Audit Act 1997* and the *Statutory Bodies Financial Arrangements Act 1982*. In the application of the *Financial Administration and Audit Act 1997*, new s 30AH deems the employing office's executive officer as the chairperson under that Act and in that role imposes express obligations arising under that Act, for example action to be taken relating to the auditor-general's report on audit..

### **Clause 32                            Insertion of new pt 6, div 6 Transitional provisions for Statutory Bodies Legislation Amendment Act 2007**

### **s 80 Rights and entitlements of particular employees**

Clause 32 inserts a new s 80 to provide for employees who take up employment with the employing office and who immediately before doing so were employees of the Authority.

The new s 80(1) prescribes that a person who was an employee of the Authority immediately before the commencement of the section and immediately before becoming an employee of the employing office will benefit from the transitional arrangements associated with the preservation of employment terms and conditions, recognition of accrual of entitlements, and continuity of service. Such preservation of rights and entitlements will not extend to a person whose employment with the Authority ceased prior to the commencement date of the section, or a person who, having previously been employed by the Authority, is employed by another employer or not employed at the time of taking up new employment with the employing office.

Section 80(2) provides that upon becoming employed by the employing office a person is taken to be employed on the conditions on which the person would have been employed by the Authority, immediately before the person became an employee of the employing office, if the Authority had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. The intent is to ensure a person's employment conditions are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)* and in particular that any entitlements prescribed by this Act and that may

have prevailed during the period it had any application to the Authority are not continued with the person's employment by the employing office.

Section 80(3) provides that a person is to keep rights and entitlements accrued during the period the person was employed by the Authority as if the Authority had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. It also provides that the person's superannuation entitlements are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)*.

Section 80(4) provides for the recognition and continuity of service of a person during the period the person was an employee of the Authority, for the purpose of calculating the person's rights and entitlements.

Section 80(5) allows employee secondment arrangements to be unaffected by the operation of the Statutory Bodies Legislation Amendment Act 2007 and for the provision relating to the preservation of terms and conditions of employment to have effect in respect of a person when the person concludes the person's period of secondment. In this way s 80(5) is an exception to s 80(2) and temporarily suspends its operation for the duration of an existing period of secondment of an employee.

Section 80(6) clarifies that the transitional provisions subsections 80(2) and 80(5)(b) relating to the preservation of terms and conditions of employment of an employee upon becoming an employee of the employing office, do not limit s 30AF(3) and (4) which provide for the employing office to decide the terms of employment of employees of the employing office. This allows the employing office to decide the future terms and conditions of employment of an employee of the employing office after the employee commences employment with the employing office.

Section 80(7) defines "employee of the Authority" and "seconded employee" for the purposes of this section.

## **s 81 Application of industrial instruments**

Clause 32 inserts a new s 81 to ensure that the employing office is bound by the same industrial instruments by which the Authority was bound prior to 27 March 2006, the date the *Workplace Relations Act 1996 (Cwlth)* commenced its application to the Authority.

## **Clause 33 Amendment of sch 2 (Dictionary)**

Clause 33 amends schedule 2 by inserting relevant new definitions into the dictionary.

## **Part 5**                      **Amendment of *Queensland Art Gallery Act 1987***

### **Clause 34**                      **Act amended in pt 5**

Clause 34 provides that Part 5 amends the *Queensland Art Gallery Act 1987*.

### **Clause 35**                      **Amendment of s 2 (Definitions)**

Clause 35 amends existing s 2(1) by inserting new definitions. The broad definition of “government entity” set out in section 21 of the *Public Service Act 1996* has been utilised and imported into the *Libraries Act 1988*. Use of this definition has been made for no other purpose than to provide wide eligibility for entry into a “work performance arrangement” which is also defined and in so doing, makes use of the term, “government entity”.

### **Clause 36**                      **Amendment of pt 2, div 2 heading (Director and staff)**

Clause 36 amends the heading to part 2, division 2 by omitting the reference to “and staff” from the existing heading.

### **Clause 37**                      **Amendment of s 12 (Director and other officers)**

Clause 37 replaces the heading to existing s12 with “Appointment of director” and omits existing s 12(3), thereby removing reference to anyone other than the director.

### **Clause 38**                      **Omission of s 13 (Employees)**

Clause 38 repeals the board’s express power to be able to employ staff as the primary mode of staffing will be pursuant to a work performance arrangement. In the event the Board wishes to employ a person directly, it could do so pursuant to its general powers outlined in existing s 21.

### **Clause 39**                      **Amendment of s 17 (Delegation by director)**

Clause 39 amends existing s 17(1) to provide for the director to be able to delegate powers to a person performing work for the board under a work performance arrangement, as opposed to someone performing work for the



board under, for example, a delegation by the chief executive of a public service department.

In addition, clause 39 continues to provide for the director to be able to delegate powers to an appropriately qualified employee of the board. A person employed under existing s 12(3) is not an “employee of the board”. However, a person employed under existing s 13 would be an “employee of the board”. In addition, a person employed by the board pursuant to the board’s general powers set out in existing s 21 would also be an “employee of the board”.

**Clause 40                      Relocation and renumbering of s 18  
(Superannuation schemes)**

Clause 40 relocates and renumbers existing s 18 to section 40B.

**Clause 41                      Amendment of s 23 (Restrictions on powers  
of board)**

Clause 41 amends s 23 to delete the reference in existing s 23(8)(c) to “an officer mentioned in existing section 12(3)” and replace it with that of a person performing work for the board under a work performance arrangement.

**Clause 42                      Amendment of s 24 (Persons having  
dealings with board etc.)**

Clause 42 amends s 24 to delete the reference in existing s 24(6)(c) to “an officer mentioned in [existing] section 12(3)” and replaces it with a reference to a person performing work for the board under a work performance arrangement.

**Clause 43                      Amendment of s 40 (Delegation by board)**

Clause 43 amends s 40 by providing for the board to be able to delegate its powers *inter alia* to an appropriately qualified person performing work for the board under a work performance arrangement. Clause 43 also removes the reference to “an appropriately qualified officer mentioned in [existing] section 12(3)”.

**Clause 44                      Insertion of new pt 2, div 6 Other provisions**

Clause 44 inserts into part 2, a new division 6 consisting of new s 40A.

**s 40A Board may enter into work performance arrangements**

New s 40A(1) provides for the board to be able to enter into and give effect to a work performance arrangement with either the chief executive of a public service department (including a public service office) or the appropriate authority of another government entity. For a definition of “government entity” section 2 of this Act (as amended) refers to s 21 of the *Public Service Act 1996*.

The new s 40A(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the board’s functions set out in the existing s 19.

The new s 40A(3) provides some inclusive examples of what a work performance arrangement may provide for.

The new s 40A(4) makes it clear that a person who performs work for the board under a work performance arrangement is not an employee of the board and at all times remains an employee of the entity which is the other party to the arrangement.

The new s 40A(5) expressly provides that the board has no power to employ any person while they are performing work for the board under a work performance arrangement.

**Clause 45                      Amendment of s 52 (Monitoring and assessment of board)**

Clause 45 amends s 52 to expressly exclude a person performing work for the board under a work performance arrangement from being eligible to be asked by the Minister to investigate and report to the Minister pursuant to that section.

**Clause 46                      Insertion of new pt 7, div 1 hdg Transitional provisions for Arts Legislation Amendment Act 2003**

Clause 46 partitions part 7 into 2 divisions and inserts a heading for division 1.

**Clause 47                      Amendment of s 69 (Definition for pt 7)**

Clause 47 amends existing s 69 by referring to the definition it contains as applying to the newly created division 1.

**Clause 48**                      **Insertion of new pt 7, div 2 Transitional provisions for Statutory Bodies Legislation Amendment Act 2007**

**s 71 Rights and entitlements of particular employees**

Clause 48 inserts a new s 71 to provide for employees of the board who take up employment as a public service employee and who immediately before doing so were employees of the board. [Section 6 of the *Public Service Act 1996* provides that public service employees are employed in a public service department or public service office].

The new s 71(1) prescribes that a person who was an employee of the board immediately before the commencement of the section and immediately before becoming a public service employee will benefit from the transitional arrangements associated with the preservation of employment terms and conditions, recognition of accrual of entitlements, and continuity of service. Such preservation of rights and entitlements will not extend to a person whose employment with the board ceased prior to the commencement date of the section, or a person who, having previously been employed by the board, is employed by another employer or not employed at the time of taking up new employment with the public service department or public service office as a public service employee.

Section 71(2) provides that on becoming a public service employee, the person is to keep rights and entitlements accrued during the period the person was employed by the board as if the board had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. It also provides that the person's superannuation entitlements are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)*. It is intended that the person's category of membership within the superannuation scheme will also remain unchanged upon becoming a public service employee.

Section 71(3) provides for the recognition and continuity of service of a person during the period the person was an employee of the board, for the purpose of calculating the person's rights and entitlements.

**s 72 Non-application of Industrial Relations Act 1999, s167**

Clause 48 inserts a new s 72. The intention of this provision is to ensure that a person taking up employment with a public service department or office pursuant to new s 71 will be covered by the most recent certified agreement that is applicable to other employees of that department or office

which may not apply to them if s 167 of the *Industrial Relations Act 1999* is triggered.

### **s 73 Amending Act does not affect particular powers of board**

Clause 48 inserts a new s 73 to put beyond doubt that the board's legal capacity and general powers as outlined in existing s 21 are not affected or diminished by the *Statutory Bodies Legislation Amendment Act 2007*.

### **s 74 Continued application of repealed s 41**

Clause 48 inserts a new s 74 to make clear that notwithstanding the repeal of the express power for the board to employ staff, the provisions of existing s 13 will continue to apply to employees who have been employed by the board pursuant to that section while that employment continues.

### **s 75 Application of Act to particular officers**

Clause 48 inserts new s 75 to provide for a person who was employed under existing 12(3) and who continues to perform work for the board under an existing delegation from the chief executive of a public service department, to be able to continue to perform that work for the board until the board enters into a work performance arrangement pursuant to new s 40A. Any powers delegated to that person pursuant to s 17 or s 40 are to continue in force until revoked.

## **Part 6                      *Amendment of Queensland Building Services Authority Act 1991***

### **Clause 49                      Act amended in pt 6**

Clause 49 provides that Part 6 amends the *Queensland Building Services Authority Act 1991*.

### **Clause 50                      Appointment of s 10A (Appointment of members)**

Clause 50 replaces s 10A(3)(b). It replaces the reference to someone employed by the authority with the term "relevant officer" of the authority. The term, "relevant officer" of the authority is inserted into the amended

schedule 2 (Dictionary). It defines such a person as someone performing work for the authority under a work performance arrangement as well as an officer or employee of the authority.

### **Clause 51                      Amendment of s 20 (Delegation)**

Clause 51 amends s 20 to provide for the general manager to be able to delegate to a “relevant officer” of the authority [as defined in schedule 2] instead of to an “officer or employee” of the authority.

New s 20 also now requires a delegate to be “appropriately qualified” where no such condition was expressly imposed in old s 20. This stipulation accords with the fundamental legislative principle that permits “the delegation of administrative power only in appropriate cases and to appropriate persons” as prescribed by s 4(3)(c) of the *Legislative Standards Act 1992*.

### **Clause 52                      Amendment of s 21 (Appointment of insurance manager)**

Clause 52 amends s 21 to provide for the role of the authority’s insurance manager to be filled either by (a) direct appointment by the authority or (b) through a work performance arrangement with another government entity, by which provision is made for one of its employees to hold that office.

Clause 52 amends s 21(2) to limit the requirement for the authority to decide the insurance manager’s remuneration and conditions of appointment to circumstances when the authority directly appoints the insurance manager, as in (a) above.

Clause 52 also contains some consequential amendments to s 21 resulting from the circumstances provided for in (b) above. In addition, some subsections are renumbered.

### **Clause 53                      Insertion of new pt 2, div 7 Other Provisions**

#### **s 29 Authority may enter into work performance arrangements**

Clause 53 provides for the authority to be able to enter into work performance arrangements.

The new s 29(1) provides for the authority to be able to enter into and give effect to a work performance arrangement with either the Queensland Building Services Employing Office (the employing office) or the

appropriate authority of another government entity. For a definition of “government entity” amended Schedule 2 (Dictionary) of the Act refers to s 21 of the *Public Service Act 1996*.

The new s 29(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the authority’s functions set out in the Act.

The new s 29(3) provides some inclusive examples of what a work performance arrangement may provide for.

The new s 29(4) makes it clear that a person who performs work for the authority under a work performance arrangement is not an employee of the authority and at all times remains an employee of the entity which is the other party to the arrangement, namely the employing office or other government entity.

The new s 29(5) expressly provides that the authority has no power to employ any person while they are performing work for the authority under a work performance arrangement.

**Clause 54                      Insertion of new pt 2A Queensland Building Services Employing Office**

**Division 1                      Establishment and functions of employing office**

Clause 54 inserts a new Part 2A. The purpose of Part 2A is to provide for the new Queensland Building Services Employing Office (the employing office), its executive officer and staff. Division 1 of Part 2A establishes the employing office and outlines its functions.

**s 29A Establishment of employing office**

New s 29A establishes the employing office as a separate unincorporated entity from the Queensland Building Services Authority. It provides that the employing office consists of both the employing office’s executive officer and its staff.

**s 29B Employing office represents the state**

New s 29B provides that the employing office represents the State and has all the privileges and immunities of the State. The intention is to ensure that employment in the employing office is employment by the Crown.

**s 29C Functions of employing office**

New s 29C lists the functions of the employing office.

New s 29C(1) sets out the main functions of the employing office. Its first main function is to enter into a work performance arrangement with the authority under which arrangement, the staff of the employing office will perform work for the authority. Its second main function is to employ staff, on behalf of the State, to perform work for the authority under a work performance arrangement. A third main function is to do anything that is incidental to the other two main functions.

New s 29C(2) provides for the employing office to have any other function that the Act or another Act of the Queensland Parliament confers on it.

New s 29C(3) makes clear that the section does not limit the power of the employing office to be able to enter into and give effect to a work performance arrangement with a different government entity from the authority at the same time it has an existing work performance arrangement with the authority. For example, to effect the secondment of a particular employee, the employing office might enter into an interchange arrangement with the chief executive of a public service department pursuant to s 82 of the *Public Service Act 1996*.

**Division 2            Executive Officer****s 29D Appointment of executive officer**

New section 29D provides for the statutory appointment of an executive officer of the employing office. It mandates the appointment of this executive officer and provides for the appointment to be made by the Governor in Council. The section makes clear that the executive officer's appointment is made pursuant to the *Queensland Building Services Authority Act 1991*.

### **s 29E Executive officer acting for employing office**

New s 29E provides for the executive officer to be the authorised person through whom the employing office acts. Anything the executive officer does in the name of or for the employing office is regarded as being done by the employing office.

## **Division 3            Staff of employing office**

### **s 29F Employing office may employ staff**

New s 29F provides a discretionary right for the employing office to be able to employ staff. It provides that such employment is done so on behalf of the State, consistent with the intention that staff are employees of the Crown. It clarifies that a person employed by the employing office is an employee of that office. It grants the employing office the authority to decide its employees' terms of appointment, subject to any industrial instrument that applies. It makes clear that the employment of employing office staff is done pursuant to the *Queensland Building Services Authority Act 1991*.

### **s 29G Employing office may enter into work performance arrangements**

Section 29G is the reciprocal provision for the new s 29.

The new s 29G(1) enables the employing office to be able to enter into and give effect to a work performance arrangement with either the authority or the appropriate authority of another government entity. For a definition of "government entity" Schedule 2 (Dictionary) of the Act refers to s 21 of the *Public Service Act 1996*.

The new s 29G(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the authority's functions set out in the Act.

The new s 29G(3) provides some inclusive examples of what the terms of a work performance arrangement may provide for.

The new s 29G(4) makes it clear that a person who performs work for the authority or other government entity under a work performance arrangement is not an employee of the authority or the other government entity which is party to the agreement. At all times the person remains an employee of the employing office.



The new s 29G(5) expressly provides that the authority or other government entity cannot employ a person who performs work for that entity under a work performance arrangement with the employing office.

## **Division 4            Other provisions**

### **s 29H Employing office is statutory body**

The new s 29H provides that the employing office is a statutory body under and subject to the *Financial Administration and Audit Act 1997* and the *Statutory Bodies Financial Arrangements Act 1982*. In the application of the *Financial Administration and Audit Act 1997*, new s 29H deems the employing office's executive officer as the chairperson under that Act and in that role imposes express obligations arising under that Act, for example action to be taken relating to the auditor-general's report on audit.

### **Clause 55                    Amendment of s 104 (Appointment of inspectors)**

Clause 55 amends existing s 104 to ensure that a person performing work for the authority under a work performance arrangement is eligible for appointment to the role of inspector. Through use of the term "relevant officers of the authority" new s 104 applies the definition of "relevant officer" of the authority inserted into the amended schedule 2 (Dictionary). There such a person is defined as someone performing work for the authority under a work performance arrangement as well as an officer or employee of the authority.

### **Clause 56                    Amendment of s 108 (Obligation of assessment manager)**

Clause 56 amends s 108 by replacing the reference to an inspector or any other officer or employee [of the authority] with that of "relevant officer", defined in schedule 2 (Dictionary) as a person performing work for the authority under a work performance arrangement as well as an officer or employee of the authority.

**Clause 57**                      **Amendment of s 114**

Clause 57 amends s 114 by utilising the definition of “relevant officer” contained in the amended schedule 2 (Dictionary) to replace the words, “an officer or employee” contained in existing s 114(1).

**Clause 58**                      **Insertion of new sch 1, pt 7 Transitional provisions for Statutory Bodies Legislation Amendment Act 2007****s 29 Rights and entitlements of particular employees**

Clause 58 inserts a new s 29 into schedule 1 to provide for employees who take up employment with the employing office and who immediately before doing so were employees of the authority.

The new s 29(1) prescribes that a person who was an employee of the authority immediately before the commencement of the section and immediately before becoming an employee of the employing office will benefit from the transitional arrangements associated with the preservation of employment terms and conditions, recognition of accrual of entitlements, and continuity of service. Such preservation of rights and entitlements will not extend to a person whose employment with the authority ceased prior to the commencement date of the section, or a person who, having previously been employed by the authority, is employed by another employer or not employed at the time of taking up new employment with the employing office.

Section 29(2) provides that upon becoming employed by the employing office a person is taken to be employed on the conditions on which the person would have been employed by the authority, immediately before the person became an employee of the employing office, if the Authority had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. The intent is to ensure a person’s employment conditions are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)* and in particular, that any entitlements prescribed by this Act and that may have prevailed during the period it had any application to the authority are not continued with the person’s employment by the employing office.

Section 29(3) provides that a person is to keep rights and entitlements accrued during the period the person was employed by the authority as if the authority had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. It also provides that the person’s

superannuation entitlements are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)*.

Section 29(4) provides for the recognition and continuity of service of a person during the period the person was an employee of the authority, for the purpose of calculating the person's rights and entitlements.

Section 29(5) allows employee secondment arrangements to be unaffected by the operation of the *Statutory Bodies Legislation Amendment Act 2007* and for the provision relating to the preservation of terms and conditions of employment to have effect in respect of a person when the person concludes the person's period of secondment. In this way s 29(5) is an exception to s 29(2) and temporarily suspends its operation for the duration of an existing period of secondment of an employee.

Section 29(6) clarifies that the transitional provisions subsections 29(2) and 29(5)(b) relating to the preservation of terms and conditions of employment of an employee upon becoming an employee of the employing office, do not limit subsections 29F(3) and (4) in the body of the Act which provide for the employing office to decide the terms of employment of employees of the employing office. This allows the employing office to decide the future terms and conditions of employment of an employee of the employing office after the employee commences employment with the employing office.

Section 29(7) defines "employee of the Authority" and "seconded employee" for the purposes of this section.

### **s 30 Application of industrial instruments**

Clause 58 inserts a new s 30 to ensure that the employing office is bound by the same industrial instruments by which the Authority was bound prior to 27 March 2006, the date the *Workplace Relations Act 1996 (Cwlth)* commenced its application to the Authority.

### **Clause 59                      Amendment of sch 2 (Dictionary)**

Clause 59 amends schedule 2 by inserting relevant new definitions into the Act's dictionary.

## **Part 7**                      **Amendment of *Queensland Museum Act 1970***

### **Clause 60**                      **Act amended in pt 7**

Clause 60 provides that Part 7 amends the *Queensland Museum Act 1970*.

### **Clause 61**                      **Amendment of s 2 (Definitions)**

Clause 61 amends existing s 2 by inserting new definitions. The broad definition of “government entity” set out in section 21 of the *Public Service Act 1996* has been utilised and imported into the *Queensland Museum Act 1970*. Use of this definition has been made for no other purpose than to provide wide eligibility for entry into a “work performance arrangement” which is also defined and in so doing, makes use of the term, “government entity”.

### **Clause 62**                      **Amendment of s 16 (Restrictions on powers of board)**

Clause 62 amends s 16 to delete the reference in existing s 16(8)(c) to “an officer mentioned in existing section 35(3)” and replace it with that of a person performing work for the board under a work performance arrangement.

### **Clause 63**                      **Amendment of s 17 (Persons having dealings with board etc.)**

Clause 63 amends s 17 to delete the reference in existing s 17(6)(c) to “an officer mentioned in [existing] section 35(3)” and replace it with a reference to a person performing work for the board under a work performance arrangement.

### **Clause 64**                      **Amendment of s 34 (Delegation by board)**

Clause 64 amends s 34 by providing for the board to be able to delegate its powers *inter alia* to an appropriately qualified person performing work for the board under a work performance arrangement. Clause 64 also removes the reference to “an appropriately qualified officer mentioned in [existing] section 35(3)”.

**Clause 65**                    **Amendment of pt 2, div 5 heading (Director and staff)**

Clause 65 amends the heading to part 2, division 5 by omitting the reference to “and staff” from the existing heading.

**Clause 66**                    **Amendment of s 35 (Director and other officers)**

Clause 66 replaces the heading to existing s 35 with “Appointment of director” and omits existing s 35(3), thereby removing reference to anyone other than the director.

**Clause 67**                    **Amendment of s 39 (Delegation by director)**

Clause 67 amends existing s 39(1) to provide for the director to be able to delegate powers to a person performing work for the board under a work performance arrangement, as opposed to someone performing work for the board under, for example, a delegation by the chief executive of a public service department.

In addition, clause 67 continues to provide for the director to be able to delegate powers to an appropriately qualified employee of the board. A person employed pursuant to existing s 35(3) is not an “employee of the board”. However, a person employed pursuant to existing s 41 would be an “employee of the board”. In addition, a person employed by the board pursuant to the board’s general powers set out in existing s 14 would also be an “employee of the board”.

**Clause 68**                    **Relocation and renumbering of s 40 (Superannuation schemes)**

Clause 68 relocates and renumbers existing s 40 to section 42B.

**Clause 69**                    **Omission of s 41 (Employees)**

Clause 69 repeals the board’s express power to be able to employ staff as the primary mode of staffing will be pursuant to a work performance arrangement. In the event the board wishes to employ a person directly, it could do so pursuant to its general powers outlined in existing s 14.

**Clause 70**                      **Relocation and renumbering of s 42  
(Honorary assistants)**

Clause 70 relocates and renumbers existing s 42 to section 42C.

**Clause 71**                      **Insertion of new pt 2, div 6 (Other  
provisions)**

Clause 71 inserts into part 2, a new division 6 consisting of new s 42A.

**s 42A (Board may enter into work performance arrangements)**

New s 42A(1) provides for the board to be able to enter into and give effect to a work performance arrangement with either the chief executive of a public service department (including a public service office) or the appropriate authority of another government entity. For a definition of “government entity” section 2 of this Act (as amended) refers to s 21 of the *Public Service Act 1996*.

The new s 42A(2) gives wide scope for the terms of any work performance arrangement. For example, such an arrangement might provide for the performance of any number of the board’s functions set out in the existing s 12.

The new s 42A(3) provides some inclusive examples of what a work performance arrangement may provide for.

The new s 42A(4) makes it clear that a person who performs work for the board under a work performance arrangement is not an employee of the board and at all times remains an employee of the entity which is the other party to the arrangement.

The new s 42A(5) expressly provides that the board has no power to employ any person while they are performing work for the board under a work performance arrangement.

**Clause 72**                      **Amendment of s 57 (Protection from liability  
of persons acting under the Act)**

Clause 72 contains a consequential amendment following the renumbering of old s 42 to new s 42C.

**Clause 73**                      **Insertion of new pt 7, div 1 hdg Transitional provisions for Arts Legislation Amendment Act 2007**

Clause 73 partitions part 7 into 2 divisions and inserts a heading for division 1.

**Clause 74**                      **Amendment of s 70 (Definition for pt 7)**

Clause 74 amends existing s 70 by referring to the definition it contains as applying to the newly created division 1.

**Clause 75**                      **Insertion of new pt 7, div 2**

**s 72 Rights and entitlements of particular employees**

Clause 75 inserts a new s 72 to provide for employees of the board who take up employment as a public service employee and who immediately before doing so were employees of the board. [Section 6 of the *Public Service Act 1996* provides that public service employees are employed in a public service department or public service office].

The new s 72(1) prescribes that a person who was an employee of the board immediately before the commencement of the section and immediately before becoming a public service employee will benefit from the transitional arrangements associated with the preservation of employment terms and conditions, recognition of accrual of entitlements, and continuity of service. Such preservation of rights and entitlements will not extend to a person whose employment with the board ceased prior to the commencement date of the section, or a person who, having previously been employed by the board, is employed by another employer or not employed at the time of taking up new employment with the public service department or public service office as a public service employee.

Section 72(2) provides that on becoming a public service employee, the person is to keep rights and entitlements accrued during the period the person was employed by the board as if the board had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. It also provides that the person's superannuation entitlements are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)*. It is intended that the person's category of membership within the superannuation scheme will remain unchanged upon becoming a public service employee.

Section 72(3) provides for the recognition and continuity of service of a person during the period the person was an employee of the board, for the purpose of calculating the person's rights and entitlements.

### **s 73 Non-application of Industrial Relations Act 1999, s167**

Clause 75 inserts a new s 73. The intention of this provision is to ensure that a person taking up employment with a public service department or office pursuant to new s 72 will be covered by the most recent certified agreement that is applicable to other employees of that department or office which may not apply to them if s 167 of the *Industrial Relations Act 1999* is triggered.

### **s 74 Amending Act does not affect particular powers of board**

Clause 75 inserts a new s 74 to put beyond doubt that the board's legal capacity and general powers as outlined in existing s 14 are not affected or diminished by the *Statutory Bodies Legislation Amendment Act 2007*.

### **s 75 Continued application of repealed s 41**

Clause 75 inserts a new s 75 to make clear that notwithstanding the repeal of the express power for the board to employ staff, the provisions of existing s 41 will continue to apply to employees who have been employed by the board pursuant to that section while that employment continues.

### **s 76 Application of Act to particular officers**

Clause 75 inserts a new s 76 to make provision for a person who was employed under existing s 35(3) and who continues to perform work for the board under an existing delegation from the chief executive of a public service department, to be able to continue to perform that work for the board until the board enters into a work performance arrangement pursuant to new s 42A. Any powers delegated to that person pursuant to s 34 or s 39 are to continue in force until revoked.



## **Part 8**                      **Amendment of *Residential Tenancies Act 1994***

### **Clause 76**                      **Act amended in pt 8**

Clause 76 provides that Part 8 amends the *Residential Tenancies Act 1994*.

### **Clause 77**                      **Amendment of s 295 (Duration of appointment)**

Clause 77 amends s 295 by replacing existing s 295(2)(c) to provide for an additional circumstance under which a vacancy can arise in the office of a director of the authority's board of directors to include the occurrence of a director becoming employed by an entity performing work for the authority under a work performance arrangement.

### **Clause 78**                      **Insertion of new s 302A**

#### **s 302A Authority may enter into work performance arrangements**

The new s 302A(1) provides for the authority to be able to enter into and give effect to a work performance arrangement with either the Residential Tenancies Employing Office (the employing office) or the appropriate authority of another government entity. For a definition of "government entity" amended Schedule 3 (Dictionary) of the Act refers to s 21 of the *Public Service Act 1996*.

The new s 302A(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the authority's functions set out in s 289 of the Act.

The new s 302A(3) provides some inclusive examples of what a work performance arrangement may provide for.

The new s 302A(4) makes it clear that a person who performs work for the authority under a work performance arrangement is not an employee of the authority and at all times remains an employee of the entity which is the other party to the arrangement, namely the employing office or other government entity.

The new s 302A(5) expressly provides that the authority has no power to employ any person while they are performing work for the authority under a work performance arrangement.

**Clause 79**                      **Replacement of ch 8, pt 7 hdg (Staff of the authority)**

Clause 79 replaces the existing heading to Part 7 of Chapter 8 with that of “Chief Executive Officer”.

**Clause 80**                      **Omission of ch 8, part 7, div 1 hdg (Chief executive officer)**

Clause 80 omits the existing divisional heading.

**Clause 81**                      **Omission of ch, pt 7, div 2 (Staffing the authority)**

Clause 81 repeals Division 2 which contains existing s 309 and s 310.

The repeal of s 309 removes the authority’s express power to employ staff as the primary mode of staffing will be pursuant to a work performance arrangement. In the event the authority wishes to employ a person directly, it could do so pursuant to its general powers set out in existing s 290.

The existing s 310 is repealed for the reason that it becomes redundant with the insertion of the new s 302A which provides that the authority may enter into a work performance arrangements with the appropriate authority of another government entity.

**Clause 82**                      **Omission of ch 8, pt 7, div 3 hdg (Conflict of Interest)**

Clause 82 omits the existing divisional heading.

**Clause 83**                      **Amendment, relocation and renumbering of s 311 (Disclosure of interests)**

Clause 83 amends s 311 by inserting the sectional definition, “a relevant employee” and providing for this term to apply both to a person performing work for the authority under a work performance arrangement as well as to an employee of the authority.

**Clause 84**                      **Insertion of new ch 8A Residential  
Tenancies Employing Office**

**Part 1**                      **Establishment and functions of  
employing office**

Clause 84 inserts a new Chapter 8A. The purpose of Chapter 8A is to provide for the new Residential Tenancies Employing Office (the employing office), its executive officer and staff. Part 1 of Chapter 8A establishes the employing office and outlines its functions.

**s 309 Establishment of employing office**

New s 309 establishes the employing office as a separate unincorporated entity from the Residential Tenancies Authority. It provides that the employing office consists of both the employing office's executive officer and its staff.

**s 310 Employing office represents the state**

New s 310 provides that the employing office represents the State and has all the privileges and immunities of the State. The intention is to ensure that employment in the employing office is employment by the Crown.

**s 311 Functions of employing office**

New s 311 lists the functions of the employing office.

New s 311(1) sets out the main functions of the employing office. Its first main function is to enter into a work performance arrangement with the authority under which arrangement, the staff of the employing office will perform work for the authority. Its second main function is to employ staff, on behalf of the State, to perform work for the authority under a work performance arrangement. A third main function is to do anything that is incidental to the other two main functions.

New s 311(2) provides for the employing office to have any other function that the Act or another Act of the Queensland Parliament confers on it.

New s 311(3) makes clear that the section does not limit the power of the employing office to be able to enter into and give effect to a work performance arrangement with a different government entity from the

authority at the same time it has an existing work performance arrangement with the authority. For example, to effect the secondment of a particular employee, the employing office might enter into an interchange arrangement with the chief executive of a public service department pursuant to s 82 of the *Public Service Act 1996*.

## **Part 2                      Executive Officer**

### **s 311A Appointment of executive officer**

New section 311A provides for the statutory appointment of an executive officer of the employing office. It mandates the appointment of this executive officer and provides for the appointment to be made by the Governor in Council. The section makes clear that the executive officer's appointment is made pursuant to the *Residential Tenancies Act 1994*.

### **S 311B Executive officer acting for employing office**

New s 311B provides for the executive officer to be the authorised person through whom the employing office acts. Anything the executive officer does in the name of or for the employing office is regarded as being done by the employing office.

## **Part 3                      Staff of employing office**

### **s 311C Employing office may employ staff**

New s 311C provides a discretionary right for the employing office to be able to employ staff. It provides that such employment is done so on behalf of the State, consistent with the intention that staff are employees of the Crown. It clarifies that a person employed by the employing office is an employee of that office. It grants the employing office the authority to decide its employees' terms of appointment, subject to any industrial instrument that applies. It makes clear that the employment of employing office staff is done pursuant to the *Residential Tenancies Act 1994*.

### **s 311D Employing office may enter into work performance arrangements**

Section 311D is the reciprocal provision for the new s 302A.

The new s 311D(1) enables the employing office to be able to enter into and give effect to a work performance arrangement with either the authority or the appropriate authority of another government entity. For a definition of “government entity” Schedule 3 (Dictionary) of the Act refers to s 21 of the *Public Service Act 1996*.

The new s 311D(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the authority’s functions set out in s 289 of the Act.

The new s 311D(3) provides some inclusive examples of what the terms of a work performance arrangement may provide for.

The new s 311D(4) makes it clear that a person who performs work for the authority or other government entity under a work performance arrangement is not an employee of the authority or the other government entity which is party to the agreement. At all times the person remains an employee of the employing office.

The new s 311D(5) expressly provides that the authority or other government entity cannot employ a person who performs work for that entity under a work performance arrangement with the employing office.

## **Part 4 Other provisions**

### **s 311E Employing office is statutory body**

The new s 311E provides that the employing office is a statutory body under and subject to the *Financial Administration and Audit Act 1997* and the *Statutory Bodies Financial Arrangements Act 1982*. In the application of the *Financial Administration and Audit Act 1997*, new s 311E deems the employing office’s executive officer as the chairperson under that Act and in that role imposes express obligations arising under that Act, for example action to be taken relating to the auditor-general’s report on audit.

**s 311F Application of Crime and Misconduct Act 2001**

The express application of the *Crime and Misconduct Act 2001* to the employing office in section 311F accords with that Act's express application to the authority in the existing s 304.

**Clause 85                      Amendment of s 319 (Protection from liability)**

Clause 85 amends s 319 by expanding the sectional definition of "official" to include a person performing work for the authority under a work performance arrangement.

**Clause 86                      Insertion of new ch 11, pt 4 Transitional provisions for Statutory Bodies Legislation Amendment Act 2007**

Clause 86 inserts a new Part 4 into Chapter 11 to provide transitional arrangements for employees who take up employment with the employing office and who immediately before doing so were employees of the authority.

**s 351 rights and entitlements of particular employees**

The new s 351(1) prescribes that a person who was an employee of the authority immediately before the commencement of the section and immediately before becoming an employee of the employing office will benefit from the transitional arrangements associated with the preservation of employment terms and conditions, recognition of accrual of entitlements, and continuity of service. Such preservation of rights and entitlements will not extend to a person whose employment with the authority ceased prior to the commencement date of the section, or a person who, having previously been employed by the authority, is employed by another employer or not employed at the time of taking up new employment with the employing office.

Section 351(2) provides that upon becoming employed by the employing office a person is taken to be employed on the conditions on which the person would have been employed by the authority, immediately before the person became an employee of the employing office, if the Authority had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. The intent is to ensure a person's employment conditions are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)* and in particular, that any entitlements prescribed by this Act and that may

have prevailed during the period it had any application to the authority are not continued with the person's employment by the employing office.

Section 351(3) provides that a person is to keep rights and entitlements accrued during the period the person was employed by the authority as if the authority had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. It also provides that the person's superannuation entitlements are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)*.

Section 351(4) provides for the recognition and continuity of service of a person during the period the person was an employee of the authority, for the purpose of calculating the person's rights and entitlements.

Section 351(5) clarifies that the transitional provisions subsection 351(2) relating to the preservation of terms and conditions of employment of an employee upon becoming an employee of the employing office, does not limit subsections 311C(3) and (4) which provide for the employing office to decide the terms of employment of employees of the employing office. This allows the employing office to decide the future terms and conditions of employment of an employee of the employing office after the employee commences employment with the employing office.

### **s 352 Application of industrial instruments**

Clause 86 inserts a new s 352 to ensure that the employing office is bound by the same industrial instruments by which the authority was bound prior to 27 March 2006, the date the *Workplace Relations Act 1996 (Cwlth)* commenced its application to the authority.

### **s 353 Amending Act does not affect particular powers of authority**

Clause 86 inserts a new s 353 to put beyond doubt that the authority's legal capacity and the general powers of a person that it has under existing s 290 are not affected or diminished by Part 8 of the *Statutory Bodies Legislation Amendment Act 2007*.

### **s 354 Continued application of repealed s 309**

Clause 86 inserts a transitional provision, s 354 to continue the application of repealed s 309 to employees who have been employed by the authority pursuant to that section, while that employment continues. Section 354(2)

also makes clear that the authority's powers as set out in s 290 are not affected by s 354.

**Clause 87**                      **Amendment of sch 3 (Dictionary)**

Clause 87 amends schedule 3 by inserting relevant new definitions into the Act's dictionary.

**Part 9**                              **Amendment of *South Bank Corporation Act 1989***

**Clause 88**                      **Act amended in pt 9**

Clause 88 provides that Part 9 amends the *South Bank Corporation Act 1989*.

**Clause 89**                      **Amendment of long title**

Clause 89 amends the long title of the Act to include provision for the establishment of the South Bank Employing Office.

**Clause 90**                      **Amendment of s 3 (Definitions)**

Clause 90 amends s 3 by inserting relevant new definitions into the Act's definition section.

**Clause 91**                      **Omission of s 14 (Employment of staff and consultants)**

Clause 91 repeals s 14 thereby removing the corporation's express power to employ staff and consultants as the primary mode of staffing will be pursuant to a work performance arrangement. In the event the corporation wishes to employ a person directly, it could do so pursuant to its general powers as a corporation.



**Clause 92                      Insertion of new s 31A****s 31A Corporation may enter into work performance arrangements**

Clause 92 provides for the corporation to enter into work performance arrangements.

The new s31A(1) provides for the corporation to be able to enter into and give effect to an arrangement with either the employing office or the appropriate authority of another government entity. For a definition of “government entity” s 3 (Definitions) of the Act refers to s 21 of the *Public Service Act 1996*.

The new s 31A(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the corporation’s functions set out in the existing s 25 of the Act.

New s 31A(3) provides some inclusive examples of what a work performance arrangement may provide for.

The new s 31A(4) makes it clear that a person who performs work for the corporation under a work performance arrangement is not an employee of the corporation and at all times remains an employee of the entity which is the other party to the arrangement, namely the employing office or other government entity.

The new s 31A(5) expressly provides that the corporation has no power to employ any person while they are performing work for the corporation under a work performance arrangement.

**Clause 93                      Insertion of new pt 4A South Bank  
Employing Office****Division 1                      Establishment and functions of  
employing office**

Clause 93 inserts a new Part 4A. The purpose of Part 4A is to provide for the new South Bank Employing Office (the employing office), its executive officer and staff. Division 1 of Part 4A establishes the employing office and outlines its functions.

### **s 31B Establishment of employing office**

New s 31B establishes the employing office as a separate unincorporated entity from the South Bank Corporation. It provides that the employing office consists of both the employing office's executive officer and its staff.

### **s 31C Employing office represents the state**

New s 31C provides that the employing office represents the State and has all the privileges and immunities of the State. The intention is to ensure that employment in the employing office is employment by the Crown. Existing s 8 expressly provides that the corporation represents the State.

### **s 31D Functions of employing office**

New s 31D lists the functions of the employing office.

Section 31D(1) sets out the main functions of the employing office.

- (a) The first main function is for it to enter into a work performance arrangement with the corporation under which arrangement, the staff of the employing office will perform work for the corporation.
- (b) The second function is for it to employ staff, on behalf of the State, to perform work for the corporation under a work performance arrangement.
- (c) A third main function is to do anything that is incidental to (a) and (b).

Section 31D(2) provides for the employing office to have any other function that the *South Bank Corporation Act 1989* or another Act of the Queensland Parliament confers on it.

Section 31D(3) makes clear that the section does not limit the power of the employing office to be able to enter into and give effect to a work performance arrangement with a different government entity from the corporation at the same time it has an existing work performance arrangement with the corporation. For example, to effect the secondment of a particular employee, the employing office might enter into an interchange arrangement with the chief executive of a public service department pursuant to s 82 of the *Public Service Act 1996*.

## **Division 2            Executive Officer**

### **s 31E Appointment of executive officer**

Section 31E provides for the statutory appointment of an executive officer of the employing office. It mandates the appointment of this executive officer and provides for the appointment to be made by the Governor in Council. The section makes clear that the executive officer's appointment is made pursuant to the *South Bank Corporation Act 1989*.

### **s 31F Executive officer acting for employing office**

Section 31F provides for the executive officer to be the authorised person through whom the employing office acts. Anything the executive officer does in the name of or for the employing office is regarded as being done by the employing office.

## **Division 3            Staff of employing office**

### **s 31G Employing office may employ staff**

New s 31G provides a discretionary right for the employing office to be able to employ staff. It provides that such employment is done so on behalf of the State, consistent with the intention that staff are employees of the Crown. It clarifies that a person employed by the employing office is an employee of that office. It grants the employing office the authority to decide its employees' terms of appointment, subject to any industrial instrument that applies. It makes clear that the employment of employing office staff is done pursuant to the *South Bank Corporation Act 1989*.

### **s 31H Employing office may enter into work performance arrangements**

Section 31H is the reciprocal provision for the new s 31A.

The new s 31H(1) provides for the employing office to be able to enter into and give effect to a work performance arrangement with either the corporation or the appropriate authority of another government entity. For a definition of "government entity" section 3 (Definitions) of the Act refers to s 21 of the *Public Service Act 1996*.

The new s 31H(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the corporation's functions set out in the existing s 25 of the Act.

The new s 31H(3) provides some inclusive examples of what the terms of a work performance arrangement may provide for.

The new s 31H(4) makes it clear that a person who performs work for the corporation or other government entity under a work performance arrangement is not an employee of the corporation or the other government entity which is party to the agreement. At all times the person remains an employee of the employing office.

The new s 31H(5) expressly provides that the corporation or other government entity cannot employ a person who performs work for that entity under a work performance arrangement with the employing office.

## **Division 4            Other provisions**

### **s 31I Employing office is statutory body**

The new s 31I provides that the employing office is a statutory body under and subject to the *Financial Administration and Audit Act 1997* and the *Statutory Bodies Financial Arrangements Act 1982*.

In the application of the *Financial Administration and Audit Act 1997*, new s 31I deems the employing office's executive officer as the chairperson under that Act and in that role imposes express obligations arising under that Act, for example action to be taken relating to the auditor-general's report on audit.

## **Clause 94            Insertion of new pt 11, div 3 Transitional provisions for Statutory Bodies Legislation Amendment Act 2007**

### **s 125 Rights and entitlements of particular employees**

Clause 94 inserts a new s 125 to provide for employees who take up employment with the employing office and who immediately before doing so were employees of the corporation.

The new s 125(1) prescribes that a person who was an employee of the corporation immediately before the commencement of the section and immediately before becoming an employee of the employing office will benefit from the transitional arrangements associated with the preservation of employment terms and conditions, recognition of accrual of entitlements, and continuity of service. Such preservation of rights and entitlements will not extend to a person whose employment with the corporation ceased prior to the commencement date of the section, or a person who, having previously been employed by the corporation, is employed by another employer or not employed at the time of taking up new employment with the employing office.

Section 125(2) provides that upon becoming employed by the employing office a person is taken to be employed on the conditions on which the person would have been employed by the corporation, immediately before the person became an employee of the employing office, if the corporation had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. The intent is to ensure a person's employment conditions are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)* and in particular that any entitlements prescribed by this Act and that may have prevailed during the period it had any application to the corporation are not continued with the person's employment by the employing office.

Section 125(3) provides that a person is to keep rights and entitlements accrued during the period the person was employed by the corporation as if the corporation had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. It also provides that the person's superannuation entitlements are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)*.

Section 125(4) provides for the recognition and continuity of service of a person during the period the person was an employee of the corporation, for the purpose of calculating the person's rights and entitlements.

Section 125(5) clarifies that the transitional provisions subsection 125(2) relating to the preservation of terms and conditions of employment of an employee upon becoming an employee of the employing office, do not limit subsections 31G(3) and (4) which provide for the employing office to decide the terms of employment of employees of the employing office. This allows the employing office to decide the future terms and conditions of employment of an employee of the employing office after the employee commences employment with the employing office.

**s 126 Application of industrial instruments**

Clause 94 inserts a new s 126 to ensure that the employing office is bound by the same industrial instruments by which the corporation was bound prior to 27 March 2006, the date the *Workplace Relations Act 1996 (Cwlth)* commenced its application to the corporation.

**s 127 Amending Act does not affect particular powers of corporation**

Clause 94 inserts a new s 127 to put beyond doubt that the corporation's legal capacity and powers under existing s 7 are not affected or diminished by the *Statutory Bodies Legislation Amendment Act 2007*.

**s 128 Continued application of repealed provisions**

Clause 94 inserts a transitional provision, s128 to continue the application of repealed s 14 to employees who were employed by the corporation pursuant to that section while that employment continues. Section 128(2) also makes clear that the corporation's powers as provided by s 7 are not affected by new s 127.

**Clause 95                      Amendment of sch 1 Additional provisions about members and procedure of the board**

Clause 95 amends Schedule 1, section 2(a) to make provision for a person who performs work for the corporation, on a full-time basis, under a work performance arrangement to be disqualified from membership of the board.

**Part 10                      Amendment of *Tourism Queensland Act 1979*****Clause 96                      Act amended in Part 10**

Clause 96 provides that Part 10 amends the *Tourism Queensland Act 1979*.

**Clause 97                      Amendment of long title**

Clause 97 amends the long title of the Act to include provision for the establishment of the Tourism Queensland Employing Office.

**Clause 98                      Amendment of s 2 (Definitions)**

Clause 98 amends s 2 by inserting relevant new definitions into the Act's definition section.

**Clause 99                      Replacement of ss 16 and 17****s 16 (Engagement and employment of staff)**

Clause 99 repeals s 16 thereby removing the corporation's express power to employ staff as the primary mode of staffing will be pursuant to a work performance arrangement. In the event the corporation wants to employ a person directly, it could do so pursuant to its general powers provided in s 14.

**s 17 Rights of officers previously employed in public service**

Clause 99 repeals s 17 which was inserted as a transitional provision and is now redundant. It is being repealed on advice from the corporation that the provision no longer has application to anyone in its employ.

**s16 Corporation may enter into work performance arrangements**

New s 16 provides for the corporation to enter into work performance arrangements.

The new s 16(1) provides for the corporation to be able to enter into and give effect to an arrangement with either the employing office or the appropriate authority of another government entity. For a definition of "government entity" s 2 (Definitions) of the Act refers to s 21 of the *Public Service Act 1996*.

The new s 16(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the corporation's functions set out in the existing s 13 of the Act.

The new s 16(3) provides some inclusive examples of what a work performance arrangement may provide for.

The new s 16(4) makes it clear that a person who performs work for the corporation under a work performance arrangement is not an employee of the corporation and at all times remains an employee of the entity which is

the other party to the arrangement, namely the Tourism Queensland Employing Office or other government entity.

The new s 16(5) expressly provides that the corporation has no power to employ any person while they are performing work for the corporation under a work performance arrangement.

### **Clause 100                    Amendment of s 19 (Delegation)**

Clause 100 amends s 19 to expand the list of persons able to receive a delegation from the corporation. The list retains a member of the corporation [s19(1)(a)] and now expressly includes the general manager of the corporation [s 19(1)(b)]. In addition, the list now includes an “appropriately qualified” person performing work for the corporation under a work performance arrangement [s 19(1)(c)]. Similar to existing s 19, an employee of the corporation can still receive a delegation [s19(1)(d)], however this person is now required to be “appropriately qualified” where no such condition was expressly imposed in old s 19. This stipulation accords with the fundamental legislative principle that permits “the delegation of administrative power only in appropriate cases and to appropriate persons” as prescribed by s 4(3)(c) of the *Legislative Standards Act 1992*.

### **Clause 101                    Insertion of new pt 2, div 2A General Manager**

#### **s 20A Appointment of general manager**

Clause 101 inserts a new s 20A to expressly require the appointment of a general manager and for this appointment to be made by the Governor in Council. Existing section 16(1) provides the corporation with the discretion to appoint and employ a general manager.

New s 20A aligns with the new s 29AD which mandates the appointment of an executive officer of the employing office and for this appointment to be made by the Governor in Council. The requirement for the corporation to have a general manager will ensure that such a person is available to be appointed as the executive officer of the employing office, as a concurrent statutory office holder.



**Clause 102**                    **Amendment of s 27 (Custody of seal-  
authentication of documents)**

Clause 102 amends s 27(1) by replacing “an officer of the corporation” with “a person”. New s 27 authorises the corporation to give custody of its seal to persons other than an employee, for example to a legal representative pursuant to a contract for services. This reflects the corporation’s current practice.

**Clause 103**                    **Insertion of pt 2AA Tourism Queensland  
Employing Office****Division 1**                    **Establishment and functions of  
employing office**

Clause 103 inserts a new Part 2AA. The purpose of Part 2AA is to provide for the new Tourism Queensland Employing Office (the employing office), its executive officer and staff. Division 1 of Part 2AA establishes the employing office and outlines its functions.

**s 29AA Establishment of employing office**

New s 29AA establishes the employing office as a separate unincorporated entity from the corporation. It provides that the employing office consists of both the employing office’s executive officer and its staff.

**s 29AB Employing office represents the state**

New s 29AB provides that the employing office represents the State and has all the privileges and immunities of the State. The intention is to ensure that employment in the employing office is employment by the Crown.

**s 29AC Functions of employing office**

New s 29AC lists the functions of the employing office.

Section 29AC(1) sets out the main functions of the employing office.

- (a) The first main function is for it to enter into a work performance arrangement with the corporation under which arrangement, the staff of the employing office will perform work for the corporation.

(b) The second function is for it to employ staff, on behalf of the State, to perform work for the corporation under a work performance arrangement.

(c) A third main function is to do anything that is incidental to (a) and (b).

Section 29AC(2) provides for the employing office to have any other function that the *Tourism Queensland Act 1979* or another Act of the Queensland Parliament confers on it.

Section 29AC(3) makes clear that the section does not limit the power of the employing office to be able to enter into and give effect to a work performance arrangement with a different government entity from the corporation at the same time it has an existing work performance arrangement with the corporation. For example, to effect the secondment of a particular employee, the employing office might enter into an interchange arrangement with the chief executive of a public service department pursuant to s 82 of the *Public Service Act 1996*.

## **Division 2            Executive Officer**

### **s 29AD Appointment of executive officer**

Section 29AD provides for the statutory appointment of an executive officer of the employing office. It mandates the appointment of this executive officer and provides for the appointment to be made by the Governor in Council. The section makes clear that the executive officer's appointment is made pursuant to the *Tourism Queensland Act 1979*.

### **s 29AE Executive officer acting for employing office**

Section 29AE provides for the executive officer to be the authorised person through whom the employing office acts. Anything the executive officer does in the name of or for the employing office is regarded as being done by the employing office.

## **Division 3            Staff of employing office**

### **s 29AF Employing office may employ staff**

Section 29AF provides a discretionary right for the employing office to be able to employ staff. It provides that such employment is done so on behalf of the State, consistent with the intention that staff are employees of the Crown. It clarifies that a person employed by the employing office is an employee of that office. It grants the employing office the authority to decide its employees' terms of appointment, subject to any industrial instrument that applies. It makes clear that the employment of employing office staff is done pursuant to the *Tourism Queensland Act 1979*.

### **s 29AG Employing office may enter into work performance arrangements**

Section 29AG is the reciprocal provision for the new s 16.

Section s 29AG(1) provides for the employing office to be able to enter into and give effect to a work performance arrangement with either the corporation or the appropriate authority of another government entity. For a definition of "government entity" section 2 (Definitions) of the Act refers to s 21 of the *Public Service Act 1996*.

The new s 29AG(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of the corporation's functions set out in the existing s 13 of the Act.

The new s 29AG(3) provides some inclusive examples of what the terms of a work performance arrangement may provide for.

The new s 29AG(4) makes it clear that a person who performs work for the corporation or other government entity under a work performance arrangement is not an employee of the corporation or the other government entity which is party to the agreement. At all times the person remains an employee of the employing office.

The new s 29AG(5) expressly provides that the corporation or other government entity cannot employ a person who performs work for that entity under a work performance arrangement with the employing office.

**Division 4            Other provisions****s 29AH Employing office is statutory body**

Section 29AH provides that the employing office is a statutory body under and subject to the *Financial Administration and Audit Act 1997* and the *Statutory Bodies Financial Arrangements Act 1982*.

In the application of the *Financial Administration and Audit Act 1997*, 29AH deems the employing office's executive officer as the chairperson under that Act and in that role imposes express obligations arising under that Act, for example, action to be taken relating to the auditor-general's report on audit.

**Clause 104            Insertion of new pt 5, div 1 hdg.**

Clause 104 inserts before section 36, a new heading for Division 1 of Part 5, *Transitional Provisions for Tourism Legislation Amendment Act 1999*

**Clause 105            Insertion of new pt 5, div 2 Transitional provisions for Statutory Bodies Legislation Amendment Act 2007****s 38 Rights and entitlements of particular employees**

Clause 105 inserts a new s 38 to provide for employees who take up employment with the employing office and who immediately before doing so were employees of the corporation.

The new s 38(1) prescribes that a person who was an employee of the corporation immediately before the commencement of the section and immediately before becoming an employee of the employing office will benefit from the transitional arrangements associated with the preservation of employment terms and conditions, recognition of accrual of entitlements, and continuity of service. Such preservation of rights and entitlements will not extend to a person whose employment with the corporation ceased prior to the commencement date of the section, or a person who, having previously been employed by the corporation, is employed by another employer or not employed at the time of taking up new employment with the employing office.

Section 38(2) provides that upon becoming employed by the employing office, a person is taken to be employed on the conditions on which the

person would have been employed by the authority, immediately before the person became an employee of the employing office, if the corporation had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. The intent is to ensure a person's employment conditions are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)* and in particular, that any entitlements prescribed by this Act and that may have prevailed during the period it had any application to the authority are not continued with the person's employment by the employing office.

Section 38(3) provides that a person is to keep rights and entitlements accrued during the period the person was employed by the corporation as if the corporation had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. It also provides that the person's superannuation entitlements are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)*.

Section 38(4) provides for the recognition and continuity of service of a person during the period the person was an employee of the corporation, for the purpose of calculating the person's rights and entitlements.

Section 38(5) allows employee secondment arrangements to be unaffected by the operation of the *Statutory Bodies Legislation Amendment Act 2007* and for the provision relating to the preservation of terms and conditions of employment to have effect in respect of a person when the person concludes the person's period of secondment. In this way s 38(5) is an exception to s 38(2) and temporarily suspends its operation for the duration of an existing period of secondment of an employee.

Section 38(6) clarifies that the transitional provisions subsections 38(2) and 38(5)(b) relating to the preservation of terms and conditions of employment of an employee upon becoming an employee of the employing office, do not limit subsections 29AF(3) and (4) which provide for the employing office to decide the terms of employment of employees of the employing office. This allows the employing office to decide the future terms and conditions of employment of an employee of the employing office after the employee commences employment with the employing office.

Section 29(7) defines "employee of the corporation" and "seconded employee" for the purposes of this section.

### **s 39 Application of industrial instruments**

Clause 110 inserts a new s 39 to ensure that the employing office is bound by the same industrial instruments by which the corporation was bound

prior to 27 March 2006, the date the *Workplace Relations Act 1996 (Cwlth)* commenced its application to the corporation.

### **s 40 Amending Act does not affect particular powers of corporation**

Clause 110 inserts a new s 40 to put beyond doubt that the corporation's legal capacity and powers under existing s 14 are not affected or diminished by the *Statutory Bodies Legislation Amendment Act 2007*.

### **s 41 Continued application of repealed s 16**

Clause 110 inserts a transitional provision, s 41 to continue the application of repealed s 16 to employees who were employed by the corporation pursuant to that section while that employment continues. Section 41 also makes clear that the corporation's powers as provided by s 14 are not affected by new s 40.

### **s 42 Continuation in office of general manager**

Clause 110 inserts a transitional provision, s 42 to provide for someone appointed by the corporation to the position of general manager pursuant to old s 16. Section 42 provides for that person to be able to continue in that position until an appointment to the position is made by the Governor in Council, pursuant to new s 20A(2) unless the person's appointment made under old s 16 otherwise ends sooner.

## **Part 11                      Amendment of *Water Act 2000***

### **Clause 106                      Act amended in pt 11**

Clause 106 provides that Part 11 amends the *Water Act 2000*.

### **Clause 107                      Amendment of s 542 (Purpose of ch 4)**

Clause 107 amends existing s 542 to provide for an additional purpose for Chapter 4, namely to establish the employing offices for water authorities.

**Clause 108                      Replacement of ch 4, pt 3, div 4 (Water authority employees)**

Clause 108 repeals existing Chapter 4, Part 3, Division 4 which consists of one section, s 584 (Employees). Old s 584 provides for a water authority to be able to engage employees and decide their terms and conditions of employment.

Clause 108 inserts a new Division 4 Work performance arrangements.

**s 584 Water authority may enter into work performance arrangements**

New s 584 provides for a water authority to enter into a work performance arrangement.

The new s 584(1) provides that a water authority may enter into and give effect to an arrangement with either the employing office for the water authority or the appropriate authority of another government entity. For a definition of “government entity” Schedule 4 (Dictionary) refers to s 21 of the *Public Service Act 1996*.

The new s 584(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of a water authority’s functions outlined in existing s 569 or s 570 of the Act.

The new s 584(3) provides some inclusive examples of what a work performance arrangement may provide for.

The new s 584(4) makes it clear that a person who performs work for a water authority under a work performance arrangement is not an employee of the water authority and at all times remains an employee of the entity which is the other party to the arrangement, namely the employing office for the water authority or other government entity.

The new s 584(5) expressly provides that the water authority has no power to employ any person while they are performing work for the water authority under a work performance arrangement.

**Clause 109                      Amendment of s 585 (Duties and liabilities of water authority officers)**

Clause 109 amends s 585 to expand the definition of “officer of a water authority” to include a person performing work for the water authority pursuant to a work performance arrangement.

**Clause 110**                    **Amendment of s 618 (Power to grant relief)**

Clause 110 amends s 618 to extend its application beyond “an officer or employee of a water authority” to include a person who performs work for a water authority under a work performance arrangement.

**Clause 111**                    **Amendment of s 619 (False or misleading information or documents)**

Clause 111 amends s 619 to expand the definition of an “officer of a water authority” to take in a person performing work for the water authority under a work performance arrangement.

**Clause 112**                    **Insertion of new ch 4, pt 4A Employing offices for water authorities****Division 1**                    **Establishment and functions of employing office**

Clause 112 inserts a new Part 4A. The purpose of Part 4A is to provide for employing offices for water authorities, for their executive officers and their staff. Division 1 of Part 4A provides for the establishment and functions.

**s 625 Establishment of employing office for water authority**

Section 625 provides the head of power for the establishment by regulation of employing offices of water authorities, as separate entities from water authorities. It provides that an employing office consists of both the employing office’s executive officer and its staff.

**s 626 Employing office for water authority represents the state**

Section 626 provides that an employing office for a water authority represents the State and has all the privileges and immunities of the State. The intention is to ensure that employment in the employing office is employment by the Crown.

**s 627 Functions of employing office for water authority**

Section 627 lists the functions of the employing office.



Section 627(1) sets out the main functions of the employing office.

- (a) The first main function is for it to enter into a work performance arrangement with the water authority under which arrangement, the staff of the employing office will perform work for the water authority.
- (b) The second function is for it to employ staff, on behalf of the State, to perform work for the water authority.
- (c) A third main function is to do anything that is incidental to (a) and (b).

Section 627(2) provides for the employing office to have any other function that the *Water Act 2000* or another Act of the Queensland Parliament confers on it.

Section 627(3) makes clear that the section does not limit the power of the employing office to be able to enter into and give effect to a work performance arrangement with a different government entity from the water authority.

## **Division 2            Executive Officer**

### **s 628 Appointment of executive officer**

Section 628 provides for the statutory appointment of an executive officer of the employing office. It mandates the appointment of this executive officer and provides for the appointment to be made by the Governor in Council. The section makes clear that the executive officer's appointment is made pursuant to the *Water Act 2000*.

### **s 629 Executive officer acting for employing office of water authority**

Section 629 provides for the executive officer to be the authorised person through whom the employing office for a water authority acts. Anything the executive officer does in the name of or for the employing office is regarded as being done by the employing office.

## **Division 3                    Staff of employing offices for water authorities**

### **s 630 Employing office for water authority may employ staff**

New s 630 provides a discretionary right for the employing office for a water authority to be able to employ staff. It provides that such employment is done so on behalf of the State, consistent with the intention that staff are employees of the Crown. It clarifies that a person employed by the employing office for a water authority is an employee of that office. It grants the employing office the authority to decide its employees' terms of appointment, subject to any industrial instrument that applies. It makes clear that the employment of staff for the employing office for a water authority is done pursuant to the *Water Act 2000*.

### **s 631 Employing office for water authority may enter into work performance arrangements**

Section 631 is the reciprocal provision for the new s 584.

The new s 631(1) provides for the employing office for a water authority to be able to enter into and give effect to a work performance arrangement with either the water authority or the appropriate authority of another government entity. For a definition of "government entity" Schedule 4 (Dictionary) to the Act refers to s 21 of the *Public Service Act 1996*.

The new s 631(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of a water authority's functions set out in existing s 569 or s 570 of the Act.

The new s 631(3) provides some inclusive examples of what the terms of a work performance arrangement may provide for.

The new s 631(4) makes it clear that a person who performs work for a water authority or other government entity under a work performance arrangement is not an employee of the water authority or the other government entity which is party to the agreement. At all times the person remains an employee of the employing office for the water authority.

The new s 631(5) expressly provides that the water authority or other government entity cannot employ a person who performs work for that entity under a work performance arrangement.

## **Division 4            Other provisions**

### **s 632 Employing office for water authority is statutory body**

The new s 632 provides that the employing office for a water authority is a statutory body under and subject to the *Financial Administration and Audit Act 1997* and the *Statutory Bodies Financial Arrangements Act 1982*.

In the application of the *Financial Administration and Audit Act 1997*, new s 632 deems the employing office's executive officer as the chairperson under that Act and in that role imposes express obligations arising under that Act, for example action to be taken relating to the auditor-general's report on audit.

### **Clause 113            Replacement of s 704 (Existing employees)**

Clause 113 replaces existing s 704 to provide for the protection of employees of water authorities as well as employees of employing offices for water authorities in the event of their being affected by an amalgamation or conversion to an alternative institutional structure, for example, a cooperative.

### **Clause 114            Amendment of s 936 (Responsibility for acts or omissions of representatives)**

Clause 114 expands the definition of "representative" contained in s 936 to include an employee who is employed under a work performance arrangement.

### **Clause 115            Insertion of new ch 9, pt 5, div 8 Transitional provisions for Statutory Bodies Legislation Amendment Act 2007**

### **s 1147 Rights and entitlements of particular employees**

Clause 115 inserts a new s 1147 to provide for employees who take up employment with the employing office for a water authority and who immediately before doing so were employees of the water authority.

Section 1147(1) prescribes that a person who was an employee of the water authority immediately before the commencement of the section and immediately before becoming an employee of the employing office for a water authority will benefit from the transitional arrangements associated

with the preservation of employment terms and conditions, recognition of accrual of entitlements, and continuity of service. Such preservation of rights and entitlements will not extend to a person whose employment with the water authority ceased prior to the commencement date of the section, or a person who, having previously been employed by the water authority, is employed by another employer or not employed at the time of taking up new employment with the employing office for the water authority.

Section 1147(2) provides that upon becoming employed by the employing office for a water authority a person is taken to be employed on the conditions on which the person would have been employed by the water authority, immediately before the person became an employee of the employing office for a water authority, if the water authority had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. The intent is to ensure a person's employment conditions are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)* and in particular that any entitlements prescribed by this Act and that may have prevailed during the period it had any application to the water authority are not continued with the person's employment by the employing office for the water authority.

Section 1147(3) provides that a person is to keep rights and entitlements accrued during the period the person was employed by the water authority as if the water authority had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. It also provides that the person's superannuation entitlements are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)*.

Section 1147(4) provides for the recognition and continuity of service of a person during the period the person was an employee of the water authority, for the purpose of calculating the person's rights and entitlements.

Section 1147(5) clarifies that the transitional provisions subsection 1147(2) relating to the preservation of terms and conditions of employment of an employee upon becoming an employee of the employing office for a water authority, do not limit subsections 630(3) and (4) which provide for the employing office for the water authority to decide the terms of employment of its employees. This allows the employing office for the water authority to decide the future terms and conditions of employment of an employee after the employee commences employment with it.

**s 1148 Application of industrial instruments**

Clause 115 inserts a new s 1148 to ensure that the employing office is bound by the same industrial instruments by which the water authority was bound prior to 27 March 2006, the date the *Workplace Relations Act 1996 (Cwlth)* commenced its application to the water authority.

**s 1149 Amending Act does not affect particular powers of corporation**

Clause 115 inserts a new s 1149 to put beyond doubt that the water authority's existing legal capacity and powers are not affected or diminished by the *Statutory Bodies Legislation Amendment Act 2007*.

**s 1150 Continued application of repealed provisions**

Clause 115 inserts a transitional provision, s1150 to continue the application of repealed s 584 to employees who were employed by the water authority pursuant to that section while that employment continues. Section 1150 also makes clear that the water authority's powers are not affected by new s 1149.

**Clause 116                      Amendment of sch 4 (Dictionary)**

Clause 116 amends schedule 4 by inserting relevant new definitions into the Act's dictionary.

**Part 12                      Amendment of *Workers' Compensation and Rehabilitation Act 2003*****Clause 117                      Act amended in pt 12**

Clause 117 provides that Part 12 amends the *Workers' Compensation and Rehabilitation Act 2003*.

**Clause 118                      Amendment of s 337 (Regard to particular ability in appointment of directors)**

Clause 118 amends s 337 to expand the list of people ineligible for appointment as a director of the Workers Compensation Regulatory

Authority, to include a person performing work for WorkCover under a work performance arrangement.

**Clause 119**                    **Amendment of s 389 (General restriction of WorkCover’s powers)**

Clause 119 amends s 389 to include in the sectional definition of a “WorkCover officer”, a person performing work for WorkCover under a work performance arrangement.

**Clause 120**                    **Amendment of s 392 (Protection of persons who deal with WorkCover)**

Clause 120 expands the sectional definition of a “WorkCover officer” set out in s 392 to include a person performing work for WorkCover under a work performance arrangement.

**Clause 121**                    **Amendment of s 422 (Power to grant relief)**

Clause 121 amends s 422 to include in the sectional definition of a “WorkCover officer”, a person performing work for WorkCover under a work performance arrangement.

**Clause 122**                    **Amendment of s 423 (False or misleading information or documents)**

Clause 122 extends the sectional definition of a “WorkCover officer” provided in section 423, to take account of a person performing work for WorkCover under a work performance arrangement.

**Clause 123**                    **Amendment of s 428 (Delegation by board)**

Clause 123 amends s 428 to provide for the board to delegate its powers to *inter alia* a person performing work for WorkCover under a work performance arrangement.

**Clause 124**                    **Amendment of s 445 (Delegation by chief executive officer)**

Clause 124 amends s 445 to expand the list of appropriately qualified persons able to receive a delegation from the chief executive, to include a person performing work for WorkCover under a work performance arrangement.

**Clause 125                      Replacement of s 448 (Basis of employment generally)**

Clause 125 repeals existing s 448 thereby removing WorkCover’s express power to employ staff as the primary mode of staffing will be pursuant to a work performance arrangement, and inserts a new provision. In the event WorkCover wishes to employ a person directly, it could do so pursuant to its general powers set out in existing section 388.

**s 448 WorkCover may enter into work performance arrangements**

New s 448 provides for WorkCover to enter into work performance arrangements.

The new s 448(1) provides for WorkCover to be able to enter into and give effect to an arrangement with either the WorkCover Employing Office or the appropriate authority of another (Queensland) government entity or non-Queensland government entity. [New schedule 6 (Dictionary) to the Act redefines a “government entity” to include “a GOC” as well as having the meaning given by s 21 of the *Public Service Act 1996*. In addition, new schedule 6 includes a definition of a “non-Queensland government entity”]

The new s 448(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of WorkCover’s functions provided for in existing s 383 of the Act.

The new s 448(3) provides some inclusive examples of what a work performance arrangement may provide for.

The new s 448(4) makes it clear that a person who performs work for WorkCover under a work performance arrangement is not an employee of WorkCover and at all times remains an employee of the entity which is the other party to the arrangement, namely the WorkCover Employing Office or other entity.

The new s 448(5) expressly provides that WorkCover has no power to employ any person while that person is performing work for it under a work performance arrangement.

**Clause 126                      Omission of s 450 (Arrangements relating to staff)**

Clause 126 repeals s 450 for the reason that this provision is made redundant by the new section 448 which provides for the same breadth in

types of work performance arrangements that can be entered into, including with non-Queensland government entities.

**Clause 127**                    **Amendment of s 466 (Appointment of authorised persons)**

Clause 127 amends s 466 to expand the list of people eligible for appointment as “an authorised person” to include an appropriate person performing work for WorkCover under a work performance arrangement.

**Clause 128**                    **Insertion of new ch 8A WorkCover Employing Office**

**Part 1**                         **Establishment and functions of employing office**

Clause 128 inserts a new chapter 8A, the purpose of which is to provide for the new WorkCover Employing Office (the employing office), its executive officer and staff. Part 1 of chapter 8A establishes the employing office and outlines its functions.

**s 475A Establishment of employing office**

New s 475A establishes the employing office as a separate unincorporated entity from WorkCover. It provides that the employing office consists of both the employing office’s executive officer and its staff.

**s 475B Employing office represents the state**

New s 475B provides that the employing office represents the State and has all the privileges and immunities of the State. The intention is to ensure that employment in the employing office is employment by the Crown.

**s 475C Functions of employing office**

New s 475C lists the functions of the employing office.

Section 475C(1) sets out the main functions of the employing office.

- (a) The first main function is for it to enter into a work performance arrangement with WorkCover under which arrangement, the staff of the employing office will perform work for WorkCover.



- (b) The second function is for it to employ staff, on behalf of the State, to perform work for WorkCover under a work performance arrangement.
- (c) A third main function is to do anything that is incidental to (a) and (b).

Section 475C(2) provides for the employing office to have any other function that the *Workers' Compensation and Rehabilitation Act 2003* or another Act of the Queensland Parliament confers on it.

Section 475C(3) makes clear that the section does not limit the power of the employing office to be able to enter into and give effect to a work performance arrangement with a different government entity from WorkCover at the same time it has an existing work performance arrangement with WorkCover. For example, to effect the secondment of a particular employee, the employing office might enter into an interchange arrangement with the chief executive of a public service department pursuant to s 82 of the *Public Service Act 1996*.

## **Part 2                      Executive Officer**

### **s 475D Appointment of executive officer**

Section 475D provides for the statutory appointment of an executive officer of the employing office. It mandates the appointment of this executive officer and provides for the appointment to be made by the Governor in Council. The section makes clear that the executive officer's appointment is made pursuant to the *Workers' Compensation and Rehabilitation Act 2003*.

### **s 475E Executive officer acting for employing office**

Section 475E provides for the executive officer to be the authorised person through whom the employing office acts. Anything the executive officer does in the name of or for the employing office is regarded as being done by the employing office.

## **Part 3                      Staff of employing office**

### **s 475F Employing office may employ staff**

Section 475F provides a discretionary right for the employing office to be able to employ staff. It provides that such employment is done so on behalf of the State, consistent with the intention that staff are employees of the Crown. It clarifies that a person employed by the employing office is an employee of that office. It grants the employing office the authority to decide its employees' terms of appointment, subject to any industrial instrument that applies. It makes clear that the employment of employing office staff is done pursuant to the *Workers' Compensation and Rehabilitation Act 2003*.

### **s 475G Employing office may enter into work performance arrangements**

Section 475G is the reciprocal provision for the new s 448.

Section s 475G(1) provides for the employing office to be able to enter into and give effect to a work performance arrangement with either WorkCover or the appropriate authority of another government entity or non-Queensland government entity. [Schedule 6 (Dictionary) of the Act (as amended) includes definitions for "government entity" and "non-Queensland government entity".]

The new s 475G(2) gives wide scope for the terms of the work performance arrangement. For example, such an arrangement might provide for the performance of any number of WorkCover's functions outlined in existing s 383 of the Act.

The new s 475G(3) provides some inclusive examples of what the terms of a work performance arrangement may provide for.

The new s 475G(4) makes it clear that a person who performs work for WorkCover or other entity under a work performance arrangement is not an employee of WorkCover or the other entity which is party to the agreement. At all times the person remains an employee of the employing office.

The new s 475G(5) expressly provides that WorkCover or another entity cannot employ a person who performs work for that entity under a work performance arrangement with the employing office.

## **Part 4                      Other provisions**

### **s 475H Employing office is statutory body**

Section 475H provides that the employing office is a statutory body under and subject to the *Financial Administration and Audit Act 1997* and the *Statutory Bodies Financial Arrangements Act 1982*.

In the application of the *Financial Administration and Audit Act 1997*, s 475H deems the employing office's executive officer as the chairperson under that Act and in that role imposes express obligations arising under that Act, for example, action to be taken relating to the auditor-general's report on audit.

### **Clause 129                      Amendment of s 599 (Previous non-policy compensation arrangement with State)**

Clause 129 preserves the existing definition of "government entity" for the purposes of s 599.

### **Clause 130                      Insertion of new ch 20 Transitional provisions for Statutory Bodies Legislation Amendment Act 2007**

### **s 644 Rights and entitlements of particular employees**

Clause 130 inserts a new s 644 to provide for employees who take up employment with the employing office and who immediately before doing so were employees of WorkCover.

The new s 644(1) prescribes that a person who was an employee of WorkCover immediately before the commencement of the section and immediately before becoming an employee of the employing office will benefit from the transitional arrangements associated with the preservation of employment terms and conditions, recognition of accrual of entitlements, and continuity of service. Such preservation of rights and entitlements will not extend to a person whose employment with WorkCover ceased prior to the commencement date of the section, or a person who, having previously been employed by WorkCover, is employed by another employer or not employed at the time of taking up new employment with the employing office.

Section 644(2) provides that upon becoming employed by the employing office, a person is taken to be employed on the conditions on which the person would have been employed by WorkCover, immediately before the person became an employee of the employing office, if WorkCover had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. The intent is to ensure a person's employment conditions are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)* and in particular, that any entitlements prescribed by this Act and that may have prevailed during the period it had any application to WorkCover are not continued with the person's employment by the employing office.

Section 644(3) provides that a person is to keep rights and entitlements accrued during the period the person was employed by WorkCover as if WorkCover had never become an employer under the *Workplace Relations Act 1996 (Cwlth)*. It also provides that the person's superannuation entitlements are unaffected by the operation of the *Workplace Relations Act 1996 (Cwlth)*.

Section 644(4) provides for the recognition and continuity of service of a person during the period the person was an employee of WorkCover, for the purpose of calculating the person's rights and entitlements.

Section 644(5) allows employee secondment arrangements to be unaffected by the operation of the Statutory Bodies Legislation Amendment Act 2007 and for the provision relating to the preservation of terms and conditions of employment to have effect in respect of a person when the person concludes the person's period of secondment. In this way s 644(5) is an exception to s 644(2) and temporarily suspends its operation for the duration of an existing period of secondment of an employee.

Section 644(6) clarifies that the transitional provisions subsections 644(2) and 644(5)(b) relating to the preservation of terms and conditions of employment of an employee upon becoming an employee of the employing office, do not limit s 475F(3) and (4) which provide for the employing office to decide the terms of employment of employees of the employing office. This allows the employing office to decide the future terms and conditions of employment of an employee of the employing office after the employee commences employment with the employing office.

Section 644(7) defines "employee of WorkCover" and "seconded employee" for the purposes of this section.

**s 645 Application of industrial instruments**

Clause 130 inserts a new s 645 to ensure that the employing office is bound by the same industrial instruments by which WorkCover was bound prior to 27 March 2006, the date the *Workplace Relations Act 1996 (Cwlth)* commenced its application to WorkCover.

**s 646 Amending Act does not affect particular powers of WorkCover**

Clause 130 inserts a new s 646 to put beyond doubt that WorkCover's legal capacity and powers under existing s 388 are not affected or diminished by the *Statutory Bodies Legislation Amendment Act 2007*.

**s 647 Continued application of repealed s 16**

Clause 130 inserts a transitional provision, s 647 to continue the application of repealed s 448 to employees who were employed by WorkCover pursuant to that section while that employment continues. Section 647 also makes clear that WorkCover's powers as provided by s 388 are not affected by new s 647.

**Clause 131 Amendment of sch 6 (Dictionary)**

Clause 131 amends schedule 6 by inserting relevant new definitions into the Act's dictionary. It provides a definition of "government entity" that extends to include "a GOC". In addition, it includes a definition of a "non-Queensland government entity".