

Workplace Health and Safety and Other Legislation Amendment Bill 2008

Explanatory notes

General Outline

Short Title

The short title of the Bill is the *Workplace Health and Safety and Other Legislation Amendment Bill 2008*.

Policy Objectives

The Bill gives effect to recommendations arising from the Queensland review of the *Workplace Health and Safety Enforcement Framework* and introduces other minor amendments to ensure the continued efficient and effective operation of Queensland's workplace health and safety arrangements.

The amendments to the *Workers' Compensation and Rehabilitation Act* will introduce new entitlements for dependants of sufferers of work-related latent onset injuries, such as mesothelioma.

Reasons for the Bill

Workplace Health and Safety

In September 2007, Mr Robin Stewart-Crompton was commissioned by the Department of Employment and Industrial Relations to conduct an independent review into the current *Workplace Health and Safety Enforcement Framework* (the framework). The review was initiated following an approach by some trade unions raising general concerns over Workplace Health and Safety Queensland's (WHSQ) approach to enforcement.

The purpose of the review was to ensure the framework remains relevant and that it continues to provide the necessary deterrence to breaches of Queensland's workplace health and safety and electrical safety laws.

The review's terms of reference included consideration of:

- level of deterrence afforded by the current enforcement and prosecution policy;
- balance of effort between advisory, investigation and prosecution priorities;
- current jurisdictional arrangements;
- expansion of enforcement and prosecution options; and
- sufficiency of compliance resources in terms of numbers and skills.

Since the completion of the review, the Federal Government initiated a national review into model occupational health and safety (OHS) laws and appointed Robin Stewart-Crompton to chair the national review panel. The final report is due by February 2009.

The framework review made 50 recommendations. It is proposed to implement all administrative recommendations and most of the recommendations proposing legislative amendment, on the basis that they are consistent with other jurisdictions, form part of the National Model OHS legislation, or streamline Queensland's legislative procedures. In addition, one amendment implements a recommendation of an earlier review of the operation of WHSQ by Peter Phair and Frank Peach.

Electrical Safety Act 2002

The legislative amendments being made to the *Workplace Health and Safety Act 1995* (WHS Act) as a result of the review will also be mirrored in the *Electrical Safety Act 2002*. The only exception relates to allowing Workplace Health and Safety Representatives (WHSRs) to issue Provisional Improvement Notices (PINS). While PINS may be issued on electrical safety matters, the provisions for WHSRs and their functions are contained within the WHS Act.

Workers' Compensation and Rehabilitation Act 2003

Following representations from the Queensland Asbestos Related Disease Support Society, the *Workers' Compensation and Rehabilitation Act 2003* will be amended to introduce new arrangements for dependants of terminal latent onset disease (e.g. mesothelioma) sufferers.

Achievement of Objectives

Workplace Health and Safety and Electrical Safety

The Bill achieves its objectives by adopting the following provisions which are consistent with other jurisdictions and streamline Queensland's legislative arrangements:

Nationally consistent

- commencing proceedings within two years of a coronial inquest or inquiry;
- allowing for prosecution of government departments under the *Workplace Health and Safety Act 1995* and the *Electrical Safety Act 2002*;
- allowing Workplace Health and Safety Representatives to issue Provisional Improvement Notices; and
- clarifying workplace health and safety inspector immunity for giving information and advice.

Streamlines legislative arrangements

- presentation of victim impact statements at the sentencing stage; and
- Industrial Magistrates Court rather than Supreme Court to have jurisdiction over compliance with prohibition and improvement notices.

Miscellaneous Amendments

- separate bonded asbestos containing material removal from the definition of a 'prescribed activity' and thus the requirement to appoint a principal contractor and prepare a construction safety plan – the preparation of an Asbestos Removal Plan and safe work method statement are considered adequate in the circumstances;
- replace the term 'workplace' in various sections with the more general terms 'relevant place' – which then properly accounts for WHSQ jurisdiction over specified high risk plant; and
- ensure inspectors can lawfully require a person to present their licence to perform high risk work or earthmoving or particular crane certificate when requested.

Workers' Compensation and Rehabilitation Act 2003

The Bill provides a new lump sum entitlement of 15 per cent of the maximum death benefit for dependants of a worker who had already received a payment of lump sum compensation or damages for a latent onset injury that is a terminal condition. In the same situation, reasonable funeral expenses of 2 per cent of the maximum death benefit will be available to dependants.

The Bill will give insurers the ability to pay these two new lump sum entitlements at the time the statutory lump sum payment to the worker is paid.

Alternative to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Costs associated with amendments to workplace health and safety and electrical safety legislation are negligible and will be met from within existing departmental budgets.

WorkCover Queensland has estimated the costs of the *Workers' Compensation and Rehabilitation Act 2003* amendments at approximately \$1.348 million per annum, which can be met from within WorkCover's existing premium cost structure.

Consistency with Fundamental Legislative Principles

This Bill raises no fundamental legislative principle issues. The Bill has been drafted with regard to the fundamental legislative principles prescribed by the *Legislative Standards Act 1992* and complies with these principles.

Consultation

Workplace Health and Safety and Electrical Safety

The Workplace Health and Safety Board and the Electrical Safety Board endorsed the amendments. In addition, the Department of Employment and Industrial Relations (DEIR) has consulted with the following stakeholders:

Unions

Queensland Council of Unions (and their affiliates)

Australian Workers Union

Construction, Forestry, Mining and Energy Union

Builders Labourers Federation

Employer Associations and employers:

Australian Industry Group

Commerce Queensland

Queensland Masters Builders Association

Housing Industry Association

Local Government Association of Queensland

Civil Contractors Federation

National Retailers Association

Queensland Farmers Federation

Workers' Compensation

Queensland Asbestos Related Disease Support Society

Queensland Council of Unions

Construction, Forestry, Mining and Energy Union

Australian Workers Union

Association of Self-Insured Employers of Queensland

Australian Industry Group

Commerce Queensland

WorkCover Queensland

Q-COMP

DEIR also consulted with all government departments.

Notes on Provisions

Part 1 Preliminary

1 Short title

Clause 1 states the short title of the Act.

2 Commencement

Clause 2 states that Part 4 is taken to have commenced on 28 October 2008. Part 2 (other than sections relating to provisional improvement notices) and Part 3 commence on 1 January 2009. The sections relating to provisional improvement notices commence on a day to be fixed by proclamation.

Part 2 Amendment of Workplace Health and Safety Act 1995

3 Act amendment in pt 2

Clause 3 provides that the *Workplace Health and Safety Act 1995* is amended in this Part.

4, 5 and 6 Amendment of s7, s 22 and 42C

Clauses 4, 5 and 6 replaces the term ‘at a workplace’ with the more general term ‘at a relevant place’ in sections 7, 22 and 42C. This amendment clarifies that the Department of Employment and Industrial Relations has jurisdiction over ‘specified high risk plant’ (e.g. lifts, elevators, boilers etc) no matter where it is situated.

7 Amendment of s42D (Meaning of *workplace health and safety undertaking*)

Clause 6 amends section 42D to provide for the application of undertakings to public sector units. Public sector unit is defined in the *Acts Interpretation Act 1954*.

8 Amendment of s 67 (Who is a workplace health and safety representative)

Clause 8 amends section 67 by inserting a note referencing section 81A which provides the definition of a qualified workplace health and safety representative.

9 Amendment of s 81 (Entitlements of workplace health and safety representatives)

Clause 9 amends section 81 to provide qualified workplace health and safety representatives with the power to issue provisional improvement notices in their area of representation.

10 Insertion of new pt7, div 3, sdivs 4A and 4B

Subdivision 4A Provisional improvement notices

Clause 10 inserts new subdivisions 4A and 4B into division 3 of part 7 of the Act to allow workplace health and safety representatives to issue provisional improvement notices in their area of representation.

81A Who is a qualified workplace health and safety representative?

New section 81A provides the definition of a qualified workplace health and safety representative.

81B Provisional improvement notices

New section 81B allows a workplace health and safety representative to issue a provisional improvement notice (PIN) in their area of representation if they reasonably believe that a person is contravening provisions of the

Act or regulation or has contravened such a provision in circumstances that make it likely to be repeated or continued.

81C Consultation required before issue of provisional improvement notice

New section 81C states that the workplace health and safety representative must consult with the person about remedying the contravention or likely contravention prior to issuing a provisional improvement notice.

81D Contents of provisional improvement notice

New section 81D outlines what a provisional improvement notice (PIN) must contain. The PIN must have a remedy date of at least 8 days after the day the notice is given.

81E Provisional improvement notice may state measures to remedy contravention

New section 81E provides that a provisional improvement notices (PIN) may state measures to be taken to remedy the contravention or likely contravention. A workplace health and safety representative may provide measures in the PIN about fixing the health and safety issue, but is not required to do so.

81F What person given provisional improvement notice must do

New section 81F outlines the notice requirements for a person who is issued a provisional improvement notice (PIN). If a person is a worker they must bring the notice to the attention of the relevant person. If the person receiving the PIN is not a worker (e.g. employer or principal contractor) they must bring the PIN to the attention of all persons whose work may be affected by the notice. The clause also specifies requirements for display of the PIN.

81G Compliance with provisional improvement notice

New section 81G makes it an offence for a person not to comply with a provisional improvement notice where an inspector has not been required

to attend the workplace. The offence carries a maximum penalty of 40 penalty units.

81H Request for inspector to enquire into giving of provisional improvement notice

New section 81I provides for a review of provisional improvement notices (PIN) by an inspector. Within 7 days of the notice being issued, the person to whom a PIN is issued can request the chief executive to arrange an inspector to attend the workplace to enquire into the circumstances relating to the giving of the notice.

When the request has been made the PIN is effectively suspended until the inspector's enquiry is complete. An inspector must attend the workplace as soon as practicable after the request is made.

A qualified workplace health and safety representative may also ask the chief executive to arrange for an inspector to attend the workplace to enquire into the circumstances relating to the giving of the notice. The representative may request this if the recipient of the PIN has not complied within the time stated in the notice.

81I Attendance of inspector in relation to provisional improvement notice

New section 81I provides that as soon as practicable, after the request is made, the chief executive must arrange for an inspector to attend the workplace and enquire into the circumstances relating to the giving of the provisional improvement notice (PIN). Following the inspector's investigation, the inspector will either affirm the PIN (with or without modifications) or cancel the PIN by giving written notice. This notice must be given to both the workplace health and safety representative who issued it and the person to whom it was issued. The decision made by the inspector is a reviewable decision under Part 11 of the Act. Where a PIN is affirmed, the inspector will also specify a new timeframe to comply with the notice.

81J Service of provisional improvement notice

New section 81J provides for the service of a provisional improvement notice (PIN). The PIN can be delivered in person or left for the person at the workplace to which the notice relates. In most circumstances the notice

will be given to the person in control of the workplace or the work to which the notice relates.

81K Formal irregularities or defects in provisional improvement notice

New section 81K outlines that a formal defect or irregularity in a provisional improvement notice (PIN) will not automatically make it invalid. However, if the defect or irregularity, when viewed objectively, may mislead the person to whom it is issued or cause or is likely to cause substantial injustices, then the notice will be invalid. For example a failure to use the correct name of the person to which the notice is given, if the notice clearly identifies the person, will not make the PIN invalid.

81L Qualified workplace health and safety representative may cancel provisional improvement notice at any time

New section 81L allows a workplace health and safety representative to cancel a provisional improvement notice (PIN) at any time. Written notice must be given to the relevant person of the cancellation. This provision applies in circumstances where a PIN may have been issued in error.

81M Proceedings for offence not affected by provisional improvement notice

New section 81M provides that proceedings for an offence against the Act are not affected by the fact that a provisional improvement notice has been issued for a matter.

Subdivision 4B Suspension or cancellation of workplace health and safety representative's entitlement to give provisional improvement notice

This new subdivision outlines the circumstance in which the entitlement of a workplace health and safety representative to issue a provisional improvement notice (PIN) can be suspended or cancelled.

81N Application to suspend or cancel

The new section 81N provides that the chief executive or the relevant person may apply to the Industrial Commission to suspend or cancel the

workplace health and safety representative's entitlement to issue a PIN, if they reasonably believe that the representative has issued it unreasonably.

81O Decision on application may be given on the papers or at a hearing

The new section 81O provides that the Industrial Commission has the discretion to decide whether to take on an application under section 81N on the papers filed.

81P Application decided on the papers

The new section 81P provides how an application must be decided on the papers.

81Q Applications decided at a hearing

The new section 81Q provides how an application must be decided at a hearing. A decision of the Industrial Commission under this section or section 81P may be appealed under Part 11 of the *Industrial Relations Act 1999*.

11 Amendment of s 85 (Ceasing to be a workplace health and safety representative)

Clause 11 amends section 85 to provide that a workers stops being a qualified workplace health and safety representative (entitlement to issue provisional improvement notices) when they stop being a workplace health and safety representative.

12 Amendment of s 90Q (Applications decided on the papers)

Clause 12 amends section 90Q(2)(a) to replace the terms 'suspending or cancelling' with the terms 'to suspend or cancel'.

13 Amendment of s 97 (Employer and principal contractor to help workplace health and safety officer etc)

Clause 13 amends section 97(1)(a) to replace the term 'at a workplace' with 'at a relevant place'. This is for the sake of completeness of the matters covered by the Act.

14 Amendment of s 104 (Entry to places)

Clause 14 amends section 104(1)(f) to include the term ‘a prescribed activity, or work to remove bonded asbestos containing material, is being performed at the place by a person who holds a certificate to perform the activity or work’. The amendment is required as a result of removing bonded asbestos containing material from the definition of a ‘prescribed activity’ and thus the requirement to appoint a principal contractor and prepare a construction safety plan. The removal of bonded asbestos containing materials will still need to be undertaken in accordance with the *National Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)]* and an asbestos management plan prepared.

15 Insertion of new pt 9, div 3A hdg and new s 118A

Clause 15 inserts a new Part 9, Division 3A to provide for orders to secure compliance with notices given by an inspector.

118A Definition for div 3A

New section 118A inserts a definition of ‘notice’ for Division 3A. This is to include a notice given by an inspector in relation to a provisional improvement notice.

16 Amendment of s 119 (Order to secure compliance with notices)

Clause 16 amends section 119 to provide that the chief executive may apply to an industrial magistrate for an order directing a person to comply with a notice. This section is amended to take into account the introduction of a notice given by an inspector in relation to a provisional improvement notice.

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

Clause 17 amends section 122 by removing subsection (8) which was inserted by section 61 of the *Workers’ Compensation and Rehabilitation and Other Acts Amendment Act 2007* which will automatically commence on 10 November 2008. This amendment returns section 122 to its pre-10 November 2008 form and ensures inspectors can lawfully require a person

to present their licence to perform high risk work or earthmoving or particular crane certificate when requested.

In addition, the clause replaces the term ‘workplace’ in section 122 (1)(b) with the more general term ‘relevant place’. This is for the sake of completeness of the matters covered by the Act.

18 Amendment of s 147A (Definitions for pt 11)

Clause 18 amends section 147A which provides the definitions for Part 11. The definition of original decision is amended to allow an order or decision of the Industrial Commission under section 81P or 81Q.

19 Amendment of s 165 (Limitation on time for starting proceedings)

Clause 19 amends section 165 to provide that a proceeding for an offence against this Act must start, if the offence involves a breach of an obligation causing death and the death is investigated by a coroner under the *Coroners Act 2003*, within two years after the coroner makes a finding in relation to the death.

20 Amendment of s 166 (Responsibility for acts or omissions of representatives)

Clause 20 amends s 166 to extend the definition of representative to the public sector. This includes all relevant persons such as an officer or employee.

21 Insertion of new s 168B

New section 168B provides that at the sentencing of an offender, the prosecutor should inform the sentencing court of appropriate details of the harm caused to the victim by the crime and that the prosecutor may have regard to the victim’s wishes. However, the presentation of the harm caused to a victim by the defendant’s failure to comply with the Act is not mandatory. The prosecutor should ensure the sentencing court has regard to the *Penalties and Sentences Act 1992*. The section also provides definitions of the terms ‘harm’ and ‘victim’.

22 Insertion of new pt 12 div 3

Clause 22 inserts a new Part 12, Division 3 to provide for proceedings against government bodies.

170 Definitions for div 3

New section 170 provides the definitions for government body, responsible entity and successor in law.

170A Government body may be prosecuted

New section 170A expressly provides that a government body may be prosecuted for an offence against the Act. Where a prosecution is taken, the proceeding must be taken against the responsible entity as defined in the new section 170B.

170B Responsible entity for a proceeding against the State

New section 170B outlines who is a responsible entity for a proceeding against the State. In this first instance it is:

- the public sector unit the acts or omissions of which are alleged to constitute the offence; or otherwise
- the successor in law of the public sector unit; or
- the entity declared by the court – if there is no clear successor.

The section provides that for proceedings against the State, the responsible entity is a separate legal entity and is to be stated in the charge for the offence. The responsible entity also has the procedural rights and obligations of the State. The section also provides that the prosecutor may substitute another responsible entity for the entity in the proceeding on the ground that the entity may have ceased to exist.

The chief executive of the responsible entity may act on behalf of the responsible entity for the purpose of the proceeding. The chief executive can authorise a person to act for the responsible entity on their behalf. In addition, the section outlines the process for the service of documents relating to the proceedings on the responsible entity.

170C Penalties in proceedings against government body

New section 170C provides that body corporate penalties apply to government bodies if convicted of an offence under this Act. The section also clarifies that an infringement notice may also be served on a government body.

170D Notices may be given to a government body

New section 170D clarifies for the sake of completeness that a government body may also be served with other notices under the Act.

23 Amendment of s176 (Impersonating inspectors and others)

Clause 23 amends section 176 to include a qualified health and safety representatives.

24 Amendment of s 183 (Protection from liability – officials)

Clause 24 amends section 183 to provide an example of an action done in giving information or advice.

25 Amendment of s 185A (Powers of chief executive to require production of particular documents)

Clause 25 amends section 185A(1)(b) by replacing the term 'at a workplace' with the term 'at a relevant place'. This is for the sake of completeness of the matters covered by the Act.

26 Insertion of new pt 17 div 5

Clause 26 inserts a new Part 17, Division 5 to provide for transitional provisions for the *Workplace Health and Safety and Other Legislation Amendment Bill 2008*.

195 Applications to Supreme Court

New section 195 provides that section 119 (Order to secure compliance with notices) continues to apply to an application to the Supreme Court made before commencement.

27 Amendment of sch 1 (Prescribed activities)

Clause 27 amends Schedule 1(2) of the Act to provide that work to remove friable asbestos containing material is a prescribed activity. The clause removes bonded asbestos containing material from the definition of a 'prescribed activity' and thus the requirement to appoint a principal contractor and prepare a construction safety plan. The removal of bonded asbestos containing materials will still need to be undertaken in accordance with the *National Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)]* and an asbestos management plan prepared. This amendment removes unnecessary additional regulation for the removal of small quantities of bonded asbestos containing materials and brings the requirements in Queensland in line with other States and Territories.

28 Amendment of sch 3 (Dictionary)

Clause 28 omits, amends and inserts various definitions. In particular, the clause:

- removes *asbestos removal work, relevant place* and *unbonded asbestos containing material*;
- inserts new definitions of *provisional improvement notice; qualified workplace health and safety representative, relevant person, relevant place*; and
- amends the definition of *friable asbestos containing material* by removing reference to 'unbonded'.

Part 3 Amendment of Electrical Safety Act 2002

29 Act amendment in pt 3

Clause 29 provides that this part amends the *Electrical Safety Act 2002*.

30 Amendment of s 3 (Act binds all persons)

Clause 30 deletes section 3(3) of the Act which provides that the Act binds all persons.

31 Amendment of s 49 (Meaning of electrical safety undertaking)

Clauses 31 amends section 49 to provide for the application of undertakings to public sector units. Public sector unit is defined in the *Acts Interpretation Act 1954*.

32 Amendment of s 156 (Order to secure compliance with notices)

Clauses 32 amends section 156(2) to provide that the chief executive may apply to an industrial magistrate for an order directing a person to comply with a notice. This section is amended to take into account the introduction of a notice given by an inspector in relation to a provisional improvement notice.

33 Amendment of s 187 (Limitation on time for starting proceedings)

Clause 33 amends section 187 to provide that a proceeding for an offence against this Act must start, if the offence involves a breach of an obligation causing death and the death is investigated by a coroner under the *Coroners Act 2003*, within two years after the coroner makes a finding in relation to the death.

34 Amendment of s 188 (Responsibility for acts or omissions of representative)

Clause 34 amends s 188(4) to extend the definition of representative to the public sector. This includes all relevant persons such as an officer or employee.

35 Insertion of new s 189A

Clause 35 inserts a new section 189A to provide that at the sentencing of an offender, the prosecutor should inform the sentencing court of appropriate details of the harm caused to the victim by the crime and that the

prosecutor may have regard to the victim's wishes. However, the presentation of the harm caused to a victim by the defendant's failure to comply with the Act is not mandatory. The prosecutor should ensure the sentencing court has regard to the *Penalties and Sentences Act 1992*. The clause also provides definitions of the terms 'harm' and 'victim'.

36 Insertion of new pt 13 div 2A

Clause 36 inserts a new Part 13, Division 2A to provide for proceedings against government bodies.

192A Definitions for div 3

The new section 192A provides the definitions for government body, responsible entity and successor in law.

192B Government body may be prosecuted

New section 192B expressly provides that a government body may be prosecuted for an offence against the Act. Where a prosecution is taken, the proceeding must be taken against the responsible entity as defined in the new section 170B.

192C Responsible entity for a proceeding against the State

New section 192C outlines who is a responsible entity for a proceeding against the State. In this first instance it is:

- the public sector unit the acts or omissions of which are alleged to constitute the offence; or otherwise
- the successor in law of the public sector unit; or
- the entity declared by the court – if there is no clear successor.

The section provides that for proceedings against the State, the responsible entity is a separate legal entity and is to be stated in the charge for the offence. The responsible entity also has the procedural rights and obligations of the State. The section also provides that the prosecutor may substitute another responsible entity for the entity in the proceeding on the ground that the entity may have ceased to exist.

The chief executive of the responsible entity may act on behalf of the responsible entity for the purpose of the proceeding. The chief executive

can authorise a person to act for the responsible entity on their behalf. In addition, the section outlines the process for the service of documents relating to the proceedings on the responsible entity.

192D Penalties in proceedings against government body

New section 192D provides that body corporate penalties apply to government bodies if convicted of an offence under this Act. The section also clarifies that an infringement notice may also be served on a government body.

192E Notices may be given to a government body

New section 192E clarifies for the sake of completeness that a government body may also be served with other notices under the Act.

37 Insertion of new pt 17

Clause 37 inserts a new Part 17, to provide for transitional provisions for the *Workplace Health and Safety and Other Legislation Amendment Bill 2008*.

243 Applications to Supreme Court

New section 243 provides that section 156 (Order to secure compliance with notices) continues to apply to an application to the Supreme Court made before commencement.

Part 4 Amendment of Workers' Compensation and Rehabilitation Act 2003

38 Act amended in pt 4

Clause 38 provides that this part amends the *Workers' Compensation and Rehabilitation Act 2003*.

39 Amendment of s 128B (Entitlements of worker with terminal condition)

Clause 39 amends section 128B to specify that the payment under subsection 2(b) is for care, including gratuitous care.

40 Insertion of new ss 128D and 128E

Clause 40 inserts a new section 128D to introduce a new benefit for dependants of terminal, latent onset disease sufferers. The new entitlements apply to all dependants collectively; dependants are not individually entitled to the amounts specified. The benefit consists of:

- (a) 15% of the maximum death benefit under section 200(2)(a); and
- (b) an amount for the reasonable expenses of the worker's funeral of 2% of the maximum death benefit.

This benefit applies if a worker had already received a payment of lump sum compensation or damages for the latent onset injury that did not include a payment on account of his or her dependants. If the worker did not receive a lump sum payment or damages prior to death, normal death benefits under Chapter 3, Part 11 (Compensation on worker's death) apply. The clause also specifies that payments for dependants under section 128D may be made to the worker at the time a payment is made under section 128B, to reduce financial hardship on families. The meaning of dependant is defined for this section to take into account the new ability to pay the dependants compensation while the worker is still alive. The benefits under this section are the total amount of benefits payable to the dependants. No further compensation is available under the Act.

The clause also inserts a new section 128E which specifies compensation is only payable to a dependent after a worker's death, if the worker dies of the latent onset injury and a payment has not been made for dependants under section 128D. The compensation is paid to the worker's legal personal representative or, if no legal personal representative, to the worker's dependants. If compensation is paid to the worker's legal representative, that person must pay or apply the compensation for the benefit of the worker's dependants.

41 Amendment of s 194 (Application and object of pt 11)

Clause 41 amends section 194 to specify that Chapter 3, Part 11 (Compensation on worker's death) does not apply if the worker had

received a payment of lump sum compensation or damages for the latent onset injury under this Act, another Act or a law of another State or the Commonwealth.

42 Insertion of new ch 24

Clause 42 inserts a new transitional and declaratory provision to specify that the amendments apply:

- for workers – to applications made on or after 28 October 2008; and
- for dependants – to applications made where the death of a worker from the latent onset injury occurs on or after 28 October 2008 and the worker has received compensation under section 128B.

The clause also specifies that the amendment of the *Workers' Compensation and Rehabilitation Regulation 2003* by the *Workplace Health and Safety and Other Legislation Amendment Bill 2008* does not affect the power of the Governor in Council to further amend the Regulation or to repeal it.

Part 5 Amendment of Workers' Compensation and Rehabilitation Regulation 2003

43 Regulation amended in pt 5

Clause 43 provides that this part amends the *Workers' Compensation and Rehabilitation Regulation 2003*. While it is not customary to amend a regulation by an Act of Parliament, the prospective application of the amendments from 28 October 2008 requires a regulation amendment for the Act provisions to operate correctly. Although regulation amendments have previously been delegated by the Parliament to the Governor in Council, given the urgency in this instance the Parliament is considered the appropriate body to expedite the correct operation of the provisions.

44 Amendment of s 85 (Application for compensation)

Clause 44 amends section 85 of the *Workers' Compensation and Rehabilitation Regulation 2003* to specify that a claim for compensation, in relation to dependants of a worker with a latent onset injury that is a terminal condition, must be supported by proof of the relationship to the worker of persons claiming to be the worker's dependants.

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