

Electrical Safety and Other Legislation Amendment Bill 2011

Explanatory Notes

Objectives of the Bill

Electrical safety amendments

The objective of the Bill is to amend the *Electrical Safety Act 2002* and *Electrical Safety Regulation 2002* to implement a new Electrical Equipment Safety System (EESS). Once the EESS is enacted in other jurisdictions, this will provide a uniform system across Australia and New Zealand.

The key objective of the system is to eliminate the human and financial costs of shock, injury and property damage that can be caused by unsafe electrical equipment used by consumers and installed in their premises. The Bill aims to provide enhanced consumer safety by refining the current system and making it more responsive to a contemporary, globalised environment. The EESS will also reduce regulatory burden and introduce a number of efficiencies for industry.

Industrial relations and workers' compensation amendments

The objective of the Bill is to: ensure that local government employees are not disadvantaged by the termination of federal transitional instruments on 27 March 2011; remove individual workplace agreements from the industrial relations system; clarify procedural and other requirements for Workers' Compensation and Regulatory Authority (Q-COMP) appeals and amend the arrangements for the Queensland Workplace Rights Ombudsman (ombudsman).

Reasons for the Bill

Electrical safety amendments

Within Australia, electrical equipment safety is the responsibility of State and Territory governments administered through local legislation, regulatory requirements and compliance interventions.

The Electrical Regulatory Authorities Council (ERAC) is the peak body of electrical safety regulators in Australia and New Zealand. ERAC acts to ensure electrical safety regulatory systems are contemporary and harmonised wherever possible.

The current electrical equipment safety system in Australia has been in place for approximately 60 years. The changing marketplace profile, including increased imports and the emergence of non-traditional retail sources such as the internet, is increasing the risk of unsafe equipment being supplied in Australia and New Zealand.

These emerging challenges led ERAC to commission a comprehensive and formal review of the electrical equipment safety system in 2007. The review made a number of recommendations to improve and harmonise the system. The Final Review Report recommended implementing a new system that is underpinned by nationally consistent performance-based legislation in each jurisdiction and comprehensive scheme rules. It was proposed that this system should contain an appropriate mixture of pre-market registration and post-market enforcement and be coordinated by a centrally administered and managed ERAC Secretariat.

In December 2008, ERAC released a preliminary National Regulation Impact Statement (RIS) which outlined four options for implementing a new system in Australia. Following analysis of public submissions and consultation on the preliminary RIS, a preferred option was developed, and presented in the National RIS. This National RIS was endorsed by Cabinet and signed by the Attorney-General and Minister for Industrial Relations on 27 July 2009.

Industrial relations and workers' compensation amendments In 2008, after the Commonwealth's 'Work Choices' legislation (Work Choices) forcibly moved 'constitutional corporations' into the federal industrial relations system, the Queensland Parliament legislated to return local governments and their employees to the State industrial relations system (*Local Government and Industrial Relations Amendment Act 2008 – LGIR Act*). This included converting the federal awards and agreements that applied to local governments into State industrial instruments. Despite these measures, federal industrial instruments for some local governments continued to operate. These instruments, which can only apply to local governments that were not 'constitutional corporations' when Work Choices commenced, expire on 27 March 2011. When the instruments expire, affected local government employees will lose their right to enforce the employment terms and conditions provided by those instruments.

Work Choices also terminated the operation of federal awards for employers that were not constitutional corporations, if the employer made a State agreement, in contrast to the concurrent operation of awards and agreements in the State system. It is necessary to ensure that local governments and their employees continue to be covered by the same awards and agreements that applied to them through negotiation or arbitration, rather than lose the instruments through the operation of federal laws. The parties may change these arrangements through the usual industrial processes, for example by applying for a new award or making a new agreement. It is not the intention of Parliament to affect any proceedings before the Queensland Industrial Relations Commission (QIRC) in relation to future award coverage.

Queensland is a signatory to a multilateral agreement for a national industrial relations system which prohibits individual workplace agreements. This necessitates the removal of Queensland Workplace Agreements (QWAs) from Queensland's industrial relations system.

A decision of the Industrial Court of Queensland (ICQ) (*Uwe Arthur Willi Hetmanska v Q-COMP (C/2006/70)*) created uncertainty about the interaction of the appeals provisions in the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) and the *Industrial Relations Act 1999* (IR Act) with respect to Q-COMP appeals. It is necessary to clarify the appeals provisions to remove this uncertainty.

The Queensland Workplace Rights Office (QWRO) and the ombudsman were established in July 2007 in response to Work Choices. The IR Act requires there to be an ombudsman. Work Choices was replaced with the *Fair Work Act 2009* and Queensland subsequently referred its industrial relations powers in relation to private sector employers. The changed industrial landscape makes greater flexibility desirable in determining whether there will be an ombudsman and that duplication of functions with the QIRC or the Commonwealth is minimised or removed, for example in conducting industry reviews.

Achievement of the Objectives

Electrical safety amendments

The policy objectives of the Bill are to be achieved by:

- Placing obligations for safety on a *responsible supplier* who is the first point of sale (ie the manufacturer or importer) in Australia or New Zealand.

- Establishing a national register where all suppliers and medium and high risk equipment must be registered prior to equipment being offered for sale.
- Providing for risk-based classification of electrical equipment into three levels (high, medium and low risk), with proportionate conformance requirements for each level.

Once enacted in other jurisdictions, the EESS will also reduce regulatory burden and introduce a number of efficiencies for industry. These include:

- Nationally consistent legislation in each Australian state and territory, and New Zealand; and
- Comprehensive rules governing the pre-market certification process.

Industrial relations and workers' compensation amendments

For local government employees covered by a federal industrial instrument that expires on 27 March, 2011, the policy objectives of the Bill are achieved by providing that a local government that was not covered by the LGIR Act but was a respondent to the original federal award that was taken to be a State award made by the QIRC under the LGIR Act (the State award), is bound by the State award. The State award reinstates provisions that were stripped from awards by Work Choices. However, wages and allowances under the federal transitional award that applies to local governments before the commencement, will continue to apply. For local governments that have pre-reform certified agreements, the agreements will be converted to State agreements. Consistent with the LGIR Act, the State agreements will have model dispute resolution procedures approved by the QIRC, rather than the restrictive procedures mandated by Work Choices.

To remove QWAs from the system, the Bill repeals Part 2 of Chapter 6 of the IR Act. Some transitional arrangements have been included for any federal individual statutory agreements that might need to be catered for if a national system employer was returned to the State system and had employees who were still on old individual statutory agreements.

The Bill clarifies the appeals provisions for workers' compensation appeals to the ICQ by clarifying the operation of the 21 day time limit for appeals and ensuring that the appeals from a decision of the QIRC are limited to errors of law or excess or want of jurisdiction. These provisions are subject to any other overriding legislation.

The Bill removes the statutory requirement for an ombudsman by providing that there may be an ombudsman. The Bill also provides for the ombudsman to undertake industry reviews at the request of the Minister for Industrial Relations.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

There will be no increase in costs for the Government in implementing the amendments contained in the Bill.

Electrical safety amendments

The Bill will introduce a user-pays system. The costs of implementation of the EESS will be met by suppliers' registration fees which will be used to fund the national register and the associated administrative functions. These registration fees will also fund improved compliance and post-market surveillance activities.

Consistency with Fundamental Legislative Principles

Electrical safety amendments

There are some minor fundamental legislative principle issues with the amendments. Generally, the Bill has been drafted in accordance with the fundamental legislative principles prescribed by the *Legislative Standards Act 1992*.

There is a possible issue with the application of the scope of the proposed system. In-scope electrical equipment is low voltage electrical equipment that is designed, or marketed as suitable, for household, personal or similar use.

In a complaint starting a proceeding, if the regulator claims that an item is within the scope of the system (ie is designed, or marketed as suitable, for household, personal or similar use), it will be taken to be that way unless the responsible supplier or manufacturer of the equipment proves the contrary is true. Such proof could include cases where electrical equipment is designed, operated and/or installed so that:

- It is only used in a workplace where occupational health and safety legislation applies, and is only marketed to the workforce; or
- By its nature and/or its electrical ratings, it is extremely unlikely to be installed in premises occupied by members of the public.

So, the responsible supplier or manufacturer of the equipment will need to show that the equipment is designed for commercial or industrial purposes in order to claim an exemption. The reason why the onus is on them is that they are in the best position to know what their products are intended for. These are the people who are designing or importing products for a particular use for particular markets. The regulator has no role in this and would find it incredibly difficult to establish what the intended use is.

Industrial relations and workers' compensation amendments

The removal of QWAs will not impact on the rights of individuals by removing their ability to make, extend or amend this type of agreement. There are no QWAs in force in the State industrial relations jurisdiction and therefore no rights or liberties of any individual will be affected by their removal.

The amendments to the WCR Act to clarify that appeals from decisions of the QIRC to the ICQ are limited to the grounds of error of law or excess or want of jurisdiction may raise a question of the abrogation of the rights and liberties of individuals by narrowing the possible present scope for appeals to the ICQ to matters of law and thereby excluding any scope for appeals on matters of fact. However, the amendments are intended to overcome the effect of the decision in *Hetmanska v Q-COMP* that these types of appeals extend to matters of law and fact. By the time an appeal reaches the ICQ the matter has already been through three tiers of review and has received written decisions, on matters of law and fact, from the insurer, the Regulatory Authority and the QIRC. As such the parties have already exercised substantial review and appeal rights without any limitation on the grounds of review.

The Bill gives sufficient regard to the rights and liberties of the individual while being mindful of the principle that there must be an end to litigation in the interests of justice and the system of review as a whole. The provisions will not have a retrospective effect as they will only apply to decisions made after the commencement of the Bill.

Consultation

Electrical safety amendments

A high level of stakeholder consultation was undertaken throughout the course of the ERAC Review. An Options Report was prepared and public consultation forums on the proposed new system were held in Brisbane, Sydney, Melbourne, Adelaide, Perth and Auckland during August 2007.

To assist with the review process, an Industry Working Group was formed to provide direct stakeholder input into the review. It included representatives of industry associations, industry workers (including contractors and unions), conformity assessment interests and Standards Australia.

In addition, during the course of the review, approximately 80 individuals representing a wide range of stakeholders were consulted. These included:

- Australian Industry Group (AiGroup);
- Australian Electrical Equipment Manufacturers Association (AEEMA);
- Consumer Electronics Suppliers Association (CESA);
- The Electrical Trades Union (CEPU);
- National Electrical Contractors Association;
- Queensland Electrical Contractors Association;
- National Association of Testing Authorities Australia;
- Electrical Compliance Testing Association; and
- Joint Accreditation System of Australia and New Zealand.

ERAC prepared a National RIS using the COAG Best Practice Regulation Guidelines. This process involved developing a Preliminary RIS outlining several options for implementing a new system. This Preliminary RIS was released for public consultation in November 2008. The comment period for the Preliminary RIS closed in February 2009. Seventeen written submissions were received.

In March 2009, representatives from ERAC met with the main industry groups AiGroup, AEEMA, CESA, the Lighting Council Australia (LCA) and the Australian Information Industry Association (AIIA) to discuss their submissions and alternative proposals for the system.

ERAC has continued to maintain ongoing consultation with stakeholders during the implementation of the ERAC Review. This has included hosting workshops and meetings with key industry groups in July 2009, February 2010, November 2010 and December 2010 to keep them informed of how implementation is progressing

Industrial relations and workers' compensation amendments

The amendments relating to local governments were developed after close consultation with the Local Government Association of Queensland and the Australian Services' Union (Queensland). The Queensland Council of Unions and the Australian Workers' Union were also consulted.

Q-COMP was consulted in relation to the workers' compensation appeals.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Act to be the *Electrical Safety Amendment Act 2011*.

Clause 2 states that the electrical safety provisions of the Act are to commence by proclamation.

In relation to the amendments to the *Industrial Relations Act 1999* clause 2 also states that clause 52, to the extent it inserts Chapter 20 Part 12, Division 1, commences, or is taken to have commenced, on 27 March 2011.

Part 2 **Amendment of Electrical Safety Act 2002**

Clause 3 states that this part and the schedule amend the *Electrical Safety Act 2002* (the Act).

Clause 4 amends section 26 of the Act to include an obligation for electrical safety on persons who conduct recognised external certification schemes.

Clause 5 amends section 32 of the Act to make it clear that the circumstances in which it applies could include circumstances where the manufacturer is a responsible supplier and the electrical equipment is in-scope electrical equipment.

Clause 6 amends section 33 of the Act to make it clear that the circumstances in which it applies could include circumstances where the importer is a responsible supplier and the electrical equipment is in-scope electrical equipment.

Clause 7 inserts a new section 40AA. This section will apply to a person who conducts a recognised external certification scheme and who certifies in-scope electrical equipment under the scheme. The person has an obligation to ensure, as far as practicable, that the in-scope electrical equipment certified by the scheme is electrically safe.

Clause 8 inserts a new Part 2A ‘In-scope electrical equipment safety system’ after section 48.

- New Part 2A, Division 1 heading ‘Preliminary’
- New section 48A provides definitions for the Part, including:
 - ‘Corresponding law’ means a law of another State (including New Zealand) that provides for the same, or substantially the same matter.
 - ‘Participating jurisdiction’ means another jurisdiction that has enacted or made a corresponding law.
 - ‘Responsible supplier’ of in-scope electrical equipment means a person who manufactures the electrical equipment, or imports the electrical equipment into, Australia. If New Zealand is a participating jurisdiction, a person who manufactures the

electrical equipment in, or who imports the electrical equipment into, New Zealand, will also be a responsible supplier.

- New section 48B provides a meaning for ‘in-scope electrical equipment’. In-scope electrical equipment is low voltage electrical equipment that is designed, or marketed as suitable, for household, personal or similar use. It is immaterial whether the low voltage electrical equipment is also designed or marketed to be used for commercial or industrial purposes. The regulation of in-scope electrical equipment is to apply to electrical equipment that is generally used by consumers, or generally found within domestic installations. Other existing regulations already specifically apply to workplaces.
- New section 48C gives the part, and the regulation made for this part, extraterritorial operation. This will enable it to operate in conjunction with the corresponding laws of other participating jurisdictions to form the Electrical Equipment Safety System (EESS).
- New Part 2A, Division 2A heading ‘Division 2 – National register’
- New section 48D provides for the chief executive to establish and maintain the national register (the register). The register will be made available for the purposes of the Act and each corresponding law:
 - To register responsible suppliers and level 2 or 3 in-scope electrical equipment;
 - To record information about certificates of conformity; and
 - To access information in the register.

Subsection (4) provides that the national register must be in electronic form available on the internet.

Subsection (5) provides the chief executive with the capacity to enter into an agreement with an entity where the entity can establish and maintain the national register for the chief executive.

Queensland will establish the national register in its legislation because as ERAC’s Co-ordinating Chair and Secretariat:

- It is leading the implementation of the ERAC Equipment Review; and
- It will operate and maintain the national register on behalf of all participating jurisdictions.

- New section 48E provides for electronic registration in the national register. This section indicates how registration of a matter in the national register comes about.
- New section 48F clarifies that information or a matter registered in the national register is taken to be registered under the Act. Whether the registration or inclusion was done for the purposes of the Act, or a corresponding law, is immaterial.
- New section 48G clarifies that if a registration is cancelled, or information recorded in the register is omitted, under a corresponding law – then the registration is cancelled or the information is also cancelled for the purposes of the Act.
- Subsection (3) clarifies that the cancellation or omission does not entitle the person to apply for a review of the decision resulting in the cancellation or omission, or to appeal against the decision, under the Act. The person would need to apply for a review of the decision, or to appeal against the decision, in the jurisdiction where the cancellation or omission happened.
- New section 48H provides the capacity for the chief executive to note a cancellation made under a corresponding law in the national register. This section is required because Queensland will be operating the national register on behalf of participating jurisdictions.

Participating jurisdictions will need to notify the chief executive of any such cancellations they make under a corresponding law in order for these cancellations to be given effect on the national register.

- New section 48I applies for prescribing fees for the registration of responsible suppliers or level 2 or 3 in-scope electrical equipment. It clarifies that the only fee to be payable for registration, whether under the Act or a corresponding law, is to be the fee prescribed under the *Electrical Safety Regulation 2002* (the Regulation).
- It provides that Queensland will collect the fees on behalf of all participating jurisdictions. Queensland will then distribute the registration fees between the participating jurisdictions under an agreement between the jurisdictions.
- New Part 2A, Division 3 heading ‘Division 3 – Recognised external certification schemes’
- New section 48J provides the chief executive with the legislative authority to declare a scheme for the certification of in-scope

electrical equipment to be a recognised external certification scheme under the Act.

- New Part 2A, Division 4 heading ‘Division 4 – Rules’
- New section 48K provides the chief executive with the authority to make rules (the equipment safety rules) under this part of the Act.

Subsection (2) provides that the rules may be about the following:

- Registration of responsible suppliers and registration of level 2 or 3 in-scope electrical equipment, including the declarations made by responsible suppliers.
- Recording of information in the national register.
- Correction, change or withdrawal of information recorded in the national register.
- Process for issuing certificates of conformity

Subsection (5) provides that the chief executive must notify the making of a rule in the gazette. Under subsection (6) a rule takes effect either on the day the making of the rule is notified in the gazette, or a later date (as stated in the notice).

These rules are not subordinate legislation. It is anticipated that other participating jurisdictions will give effect to the Queensland rules in order to achieve the policy objective of harmonisation of pre-market certification processes across Australia and New Zealand. This is a critical mechanism for regulators to set requirements for certifiers to enable them to certify in-scope electrical equipment consistently and safely in a fluid environment of rapid technological change and supply chain variation. Matters about which rules may be made are technical and administrative in nature.

Clause 9 inserts a new section 181A. This section provides that in a complaint starting a proceeding, if the regulator claims that an item is in-scope electrical equipment (ie it is designed, or marketed as suitable for household, personal or similar use), it will be taken to be that way unless the responsible supplier or manufacturer of the equipment proves the contrary is true. Such proof could include cases where the electrical equipment is designed, operated and/or installed so that:

- It is only used in a workplace where occupational health and safety legislation applies, and is only marketed to the workforce;
or

- By its nature and/or its electrical ratings, it is extremely unlikely to be installed in premises occupied by members of the public.

Under this section, the responsible supplier or manufacturer of the equipment would need to show that the equipment is designed for commercial or industrial purposes in order to claim an exemption. The reason why the onus is placed on them is that they are in the best position to know what their products are intended for. These are the people who are designing or importing products for a particular use for particular markets. The regulator has no role in this, and would find it incredibly difficult to establish what the intended use is.

Clause 10 inserts a new Part 14, Division 1A heading ‘Division 1A – In-scope electrical equipment (registration fees) fund’ after section 204.

- New section 204A establishes the in-scope electrical equipment (registration fees) fund (the fund).
- New section 204B clarifies that the purpose of the fund is to record the fees received by the chief executive for the registration of responsible suppliers and level 2 or 3 in-scope electrical equipment in the national register. Subsection (2) provides that accounts for the fund must be kept as part of the departmental accounts for the department.
- New section 204C clarifies that amounts are payable from the fund to Queensland and participating jurisdictions only for providing electrical safety services as they relate to in-scope electrical equipment. These amounts are to be payable under the terms of an agreement between Queensland and participating jurisdictions.
- Subsection (2) allows for these amounts to be paid without further appropriation. Subsection (3) authorises Queensland to enter into an agreement for the purpose of making payments from the fund.
- New section 204D authorises the State to enter into an agreement with participating jurisdictions in relation to the fund.

Clause 11 amends section 210 of the Act. This clause contains a series of amendments providing regulation-making powers to ensure the operation of the EESS. This includes regulation-making powers for:

- The registration of responsible suppliers and in-scope electrical equipment in the national register;
- The classification of in-scope electrical equipment;

- Matters relating to the sale of in-scope electrical equipment including requirements about the keeping of evidence that demonstrates that the equipment meets relevant standards;
- The recording of information about certificates of conformity in the national register; and
- The declaration of a scheme as a recognised external certification scheme.

Clause 12 inserts a new Part 19 ‘Transitional provision for Electrical Safety and Other Legislation Amendment Act 2011’ after section 246.

- New section 247 makes it clear that an amendment of the Regulation by the *Electrical Safety and Other Legislation Amendment Act 2011* does not affect the power of the Governor in Council to further amend the Regulation, or to repeal it.

Clause 13 amends the dictionary in schedule 2 to define the new terms to be used in the Act.

Part 3 Amendment of Electrical Safety Regulation 2002

Clause 14 states that this part and the schedule amend the *Electrical Safety Regulation 2002* (the Regulation).

Clause 15 replaces Part 6 and inserts a new Part 6A.

- New Part 6, heading ‘In-scope electrical equipment’
- New Part 6, Division 1 heading ‘ Division 1 – Preliminary’
- New section 95 clarifies that this part applies for the purposes of Part 2A of the Act.
- New section 96 contains definitions to be used in the part. Definitions for ‘relevant person’ and ‘relevant responsible supplier’ are included to provide a nexus with Queensland.
- New section 97 clarifies that a responsible supplier and/or electrical equipment is registered if it is appropriately recorded in the national register.

- New section 97A clarifies that a component is not a separate item. This section applies if an item of in-scope electrical equipment contains two or more components of types that are permanently attached together to make a single item. This clarifies, for example, the requirement to mark and register each item once rather than each component separately under this part.
- New section 97B provides meanings for levels 1, 2 and 3 in-scope electrical equipment. Subsection (4) clarifies that each item of the family is the same level as individual items of the type. For example, if an item is a type of level 3 in-scope electrical equipment, each item of the family is also level 3.
- New section 97C provides a meaning of relevant standard for level 1 in-scope electrical equipment. It provides the following hierarchy to be used in order to establish the relevant standard/s for a type of level 1 in-scope electrical equipment:
 - If there is an Australian or Australian and New Zealand standard that applies specifically to the type, then the relevant standards are that standard together with AS/NZS 3820; or
 - If there is an IEC standard that applies specifically to the type, then the relevant standards are that standard together with AS/NZS 3820; or
 - If neither of the above applies, the relevant standard for the type is AS/NZS 3820.
- New section 97D contains the meaning of relevant standards for levels 2 or 3 in-scope electrical equipment. Generally, the defining standard (AS/NZS 4417) will contain the relevant standard for each type of level 2 or 3 in-scope electrical equipment.

This section also provides for standards that can be readily applied to the type to be accepted as relevant standards by either the chief executive or to be accepted under a corresponding law. G

- New Part 6, Division 2 heading ‘ Division 2 – Registration of responsible suppliers and levels 2 and 3 in-scope electrical equipment’
- New Part 6, Division 2, Subdivision 1 heading ‘ Subdivision 1 – Registration of responsible suppliers’
- New section 98 provides that a responsible supplier may register themselves. Subsection (2) provides that a responsible supplier is

ineligible to register unless it has either an Australian Business Number or an IRD number (New Zealand). Subsection (3) stipulates that as part of the registration process, the responsible supplier is to make a responsible supplier's declaration and to pay the registration fee.

Subsection (5) creates an offence for giving a false information or making a false declaration under this section. The maximum penalty for a breach of this subsection is 40 penalty units.

- New section 99 provides for the term of registration as a responsible supplier to be 1 year.
- New section 100 provides for the renewal of registration as a responsible supplier.
- New section 100A provides that a responsible supplier must ensure that details in the national register are current. Subsection (2) creates an offence for not updating details in the register within 30 days of them changing. The maximum penalty for a breach of this subsection is 40 penalty units.
- New Part 6, Division 2, Subdivision 2 heading 'Subdivision 2 – Registration of level 2 in-scope electrical equipment'
- New section 101 provides that responsible suppliers may register types of level 2 in-scope electrical equipment. Subsection (3) clarifies that each registration must only relate to a single type of level 2 equipment. Subsection (4) stipulates that as part of the registration process, the responsible supplier is to make the equipment declaration and pay the registration fee. The responsible supplier is also to provide information about the compliance folder which is kept for the type.

Subsection (6) creates an offence for giving false information or making a false declaration under this section. The maximum penalty for a breach of this subsection is 40 penalty units.

- New section 102 provides that the term of registration for level 2 equipment is for 1, 2 or 5 years. It also clarifies that if the responsible supplier's registration lapses for a period during the term of the equipment's registration, then the equipment's registration is suspended during that period.
- New section 103 provides for the renewal of registration of level 2 in-scope electrical equipment.

- New Part 6, Division 2, Subdivision 3 heading ‘ Subdivision 3 – Registration of level 3 in-scope electrical equipment’
- New section 103A provides that responsible suppliers may register types of level 3 in-scope electrical equipment. Subsection (3) clarifies that each registration must only relate to a single type of level 3 equipment. Subsection (4) stipulates that as part of the registration process, the responsible supplier must identify a certificate of conformity applicable to the type, make the equipment declaration and pay the registration fee.

Subsection (6) creates an offence for giving false information or making a false declaration under this section. The maximum penalty for a breach of this subsection is 40 penalty units.

- New section 103B provides that the term of registration for level 3 in-scope electrical equipment is for 1, 2 or 5 years. However, the term of the registration can not be longer than the term of the certificate of conformity, as identified under section 103A(4)(a) at the time of registration.

It also clarifies that if the responsible supplier’s registration lapses for a period during the term of the equipment’s registration, then the equipment’s registration is suspended during that period.

Subsection (4) clarifies that if the certificate of conformity is cancelled, the term of registration for the type of level 3 equipment ends.

- New section 103C provides for the renewal of registration of level 3 in-scope electrical equipment.
- New Part 6, Division 2, Subdivision 4 heading ‘ Subdivision 4 – Responsible supplier not to be twice punished for same acts or omissions’
- New section 103D clarifies that if a relevant person is punished for a registration offence under a corresponding law, then the responsible supplier can not be punished for the same offence under this Regulation.
- New Part 6, Division 2, Subdivision 5 heading ‘ Subdivision 5 – Cancellation of registration’
- New section 103E provides the grounds for cancelling the registration of responsible suppliers of levels 2 or 3 in-scope electrical equipment.

- New section 103F outlines the procedure for the chief executive to follow before cancelling a matter under section 103E.
- New section 103G provides the chief executive with the authority to effect a cancellation. Under this section, registrations cancelled are not eligible to register again for 12 months from their cancellation.
- Section 103H provides for the chief executive to cancel the registrations if asked to do so by the responsible supplier.
- New Part 6, Division 3 heading ‘ Division 3 – Sales of in-scope electrical equipment’
- New section 104 creates an offence for responsible suppliers who sell level 1 in-scope electrical equipment if:
 - They are not registered as a responsible supplier; or
 - The equipment does not meet the relevant standard for the type; or
 - If the equipment is not electrically safe.

The maximum penalty for a breach of this subsection is 40 penalty units.

Subsection (3) creates a defence for responsible suppliers who can prove that they obtained the item from a registered responsible supplier. The example provided assumes that New Zealand is a participating jurisdiction. It demonstrates that if a responsible supplier based in Australia purchased equipment from a registered responsible supplier in New Zealand, then this defence would be applicable.

- New section 105 creates an offence for responsible suppliers who sell level 2 or 3 in-scope electrical equipment if:
 - They are not registered as a responsible supplier; or
 - The type is not registered in relation to the responsible supplier; or
 - The item does not meet the relevant standard for the type at the time the type was registered; or
 - The equipment is not electrically safe.

The maximum penalty for a breach is 40 penalty units.

Subsection (2) creates a defence for responsible suppliers who can prove that they obtained the item from a registered responsible supplier and that the equipment was registered in relation to the responsible supplier. The example provided assumes that New Zealand is a participating jurisdiction. It demonstrates that if a responsible supplier based in Australia purchased equipment from a registered responsible supplier in New Zealand, then this defence would be applicable.

Subsection (2) (b) provides a defence in situations where a multinational company has related corporations supplying the same electrical equipment in both Australia and New Zealand. This will avoid them being required to register the same equipment twice in the same register to be used across Australia and New Zealand.

- New section 106 relates to the sale of in-scope electrical equipment by persons. Subsection (1) creates an offence for persons who sell in-scope electrical equipment that is not marked with the RCM in compliance with AS/NZS 4417. The maximum penalty for a breach of this subsection is 20 penalty units.

Subsection (2) creates an offence for persons who sell an item of level 2 or 3 in-scope electrical equipment that is not registered. The maximum penalty for a breach of this subsection is 20 penalty units. Persons who have an honest and reasonable but mistaken belief that the equipment was registered are able to use subsections (3) and (4) to plead their case. They provide that regard may be given to the nature of the person's business in relation to the equipment in determining if the monitoring of the register was reasonable.

Subsection (6) clarifies that this section does not apply to responsible suppliers, or second-hand items.

- New section 106A applies to the sale of a relevant item with level 1 or 2 in-scope electrical equipment. In this section a relevant item is a plug, flexible supply cord or appliance connector, as defined in AS/NZS 4417. Relevant items can be sold for use with levels 1, 2 and 3 electrical equipment. This provision clarifies that when this happens, the relevant item is not required to be registered if the relevant item has a certificate of conformity that applies to it.
- New Part 6, Division 4 heading 'Division 4 – Evidence of compliance with relevant standards'.

- New Part 6, Division 4 Subdivision 1 heading ‘Subdivision 1 – Level 1 in-scope electrical equipment’.
- New section 107 provides that a responsible supplier who sells level 1 in-scope electrical equipment must keep evidence proving that the equipment meets the relevant standard for the type. The maximum penalty for a breach of this section is 40 penalty units.

A note under subsection (2) clarifies that it is the responsibility of the responsible supplier to ascertain the relevant standard that is applicable, as under section 97A. The maximum penalty for a breach of this subsection is 40 penalty units.

Subsection (3) creates a defence for responsible suppliers who can prove that they obtained the item from a registered responsible supplier. The example provided assumes that New Zealand is a participating jurisdiction. It demonstrates that if a responsible supplier based in Australia purchased equipment from a registered responsible supplier in New Zealand, then this defence would be applicable.

- New Part 6, Division 4 Subdivision 2 heading ‘Subdivision 2 – Level 2 in-scope electrical equipment’.
- New section 108 applies to responsible suppliers who sell level 2 in-scope electrical equipment. Subsection (2) provides that they must keep a compliance folder proving that the equipment meets the relevant standard when the equipment was registered. The maximum penalty for a breach of this subsection is 40 penalty units.

Subsection (4) provides that a compliance folder may be kept in electronic form. Subsection (5) allows responsible suppliers to keep compliance folders by making them available in the national register, or holding the folder or being able to access it within 10 business days. This allows the possibility of parties such as manufacturers keeping compliance folders on behalf of responsible suppliers.

- New Part 6, Division 4 Subdivision 3 heading ‘Subdivision 3 – Level 3 in-scope electrical equipment’.
- New section 109 applies to responsible suppliers who sell level 3 in-scope electrical equipment. Subsection (2) provides that they must keep a current certificate of conformity proving that the equipment meets the relevant standard when the equipment was registered. The maximum penalty for a breach of this subsection is 40 penalty units.

Subsection (3) allows responsible suppliers to keep certificate by holding the certificate or being able to access it within 10 business days. This allows the possibility of parties such as manufacturers keeping certificates of conformity on behalf of responsible suppliers.

- New Part 6, Division 5 heading ‘Division 5 – Effect of reclassification of in-scope electrical equipment’.
- New section 110 applies if a type of level 1 or 2 in-scope electrical equipment is reclassified to a higher level. Responsible suppliers will have a 12 month period to meet the additional registration and evidence of compliance requirements (as contained in Divisions 3 and 4 respectively). This section only applies to responsible suppliers who are selling items of the type when the reclassification happens.
- New Part 6, Division 6 heading ‘Division 6 – Marking of in-scope electrical equipment’.
- New section 111 stipulates that responsible suppliers must only sell in-scope electrical equipment that is marked with the RCM in compliance with AS/NZS 4417. Under subsection (1), the maximum penalty for a breach of this subsection is 40 penalty units.
- New section 112 stipulates that a person must not mark in-scope electrical equipment with the RCM unless the item meets the relevant standard for the type. The maximum penalty for a breach of this subsection is 40 penalty units.
- New section 113 provides the authority for the chief executive to approve a mark other than the RCM for use in exceptional circumstances. Subsections (2) and (3) clarify that a person who follows section 113, or a corresponding law, does not commit an offence under sections 106(1) or 111.
- New Part 6, Division 7 heading ‘Division 7 – Certificates of conformity issued by chief executive’.
- New Part 6, Division 7 Subdivision 1 heading ‘Subdivision 1 – Applications and terms’.
- New section 114 provides for persons to apply to the chief executive for a certificate of conformity for a type of level 3 in-scope electrical equipment. This section contains the requirements for such applications.

- New section 115 provides that the chief executive may issue a certificate of conformity if the application is approved.
- New section 116 provides that the term of a certificate of conformity is for the period stated in the certificate.
- New Part 6, Division 7 Subdivision 2 heading ‘Subdivision 2 – Modifications, renewals and transfers’.
- New section 116A applies to persons who hold a certificate of conformity issued by the chief executive. Certificate holders may apply to the chief executive to vary the brand name or model designation that is specified on the certificate. This section contains requirements for such applications.
- New section 116B applies to certificate holders who intend to modify the equipment (other than a modification described in section 116A) that would not result in creating a new type of equipment. Certificate holders may apply to the chief executive to modify the certificate. This section contains requirements for such applications.
- New section 116C applies to persons who hold a certificate of conformity issued by the chief executive. Certificate holders may apply to the chief executive to have the certificate renewed and reissued. This section contains requirements for such applications.
- New section 116D applies to persons who hold a certificate of conformity issued by the chief executive. Certificate holders may apply to the chief executive to transfer the certificate to another person. This section contains requirements for such applications.
- New Part 6, Division 7 Subdivision 3 heading ‘Subdivision 3 – Cancellation’.
- New section 116E provides grounds for cancelling a certificate of conformity issued by the chief executive.
- New section 116F contains the procedure to be followed before a certificate of conformity can be cancelled by the chief executive.
- New section 116G provides that the chief executive must cancel a certificate of conformity if the certificate holder asks for the cancellation.
- New section 116H stipulates that a certificate of conformity holder must return the certificate within 14 days of receiving a notice of

cancellation of the certificate. Breaches of this section are subject to a maximum penalty of 10 penalty units.

- New Part 6, Division 7 Subdivision 4 heading ‘Subdivision 4 – Information to be recorded in the national register’.
- New section 116I stipulates that the chief executive must ensure that information (as required by the equipment safety rules) is recorded in the national register for each certificate issued, or for each modification, renewal or transfer of a certificate. The section also requires the chief executive to ensure particulars that apply to cancellations are also recorded in the national register.
- New Part 6, Division 8 heading ‘Division 8 – Recognised external certification schemes’.
- New Part 6, Division 8 Subdivision 1 heading ‘Subdivision 1 – Preliminary’.
- New section 117 contains definitions to be used in the Division.
- New Part 6, Division 8 Subdivision 2 heading ‘Subdivision 2 – Applications and terms’.
- New section 118 applies to persons who conduct a scheme for the certification of in-scope electrical equipment. Such persons may apply to the chief executive for their scheme to be declared a recognised external certification scheme. This section contains requirements for such applications.
- New section 119 provides that if the chief executive is intending to grant an application, the chief executive must publish a notice. This section contains requirements about publishing such notices, and their submission periods.
- New section 119A provides that the chief executive can decide to grant or refuse the application.
- New section 119B stipulates that the term of the defined scheme is the period stated in the chief executive’s declaration of the scheme. This period can not exceed 5 years.
- New Part 6, Division 8 Subdivision 3 heading ‘Subdivision 3 – Conditions’.
- New section 119C provides that the chief executive may impose conditions on a declared scheme.

- New section 119D provides that the declaration holder of each declared scheme must follow conditions imposed by regulation. These conditions include the payment of an annual fee and the recording of information required by the rules in the national register.
- New section 119E provides that the chief executive may amend conditions imposed on a declared scheme by revoking or varying the conditions, or by imposing new conditions.
- New section 119F provides that the chief executive must not act on the chief executive's own initiative to amend conditions placed on a declared scheme, without first giving the declaration holder a notice. This section does not apply to instances outlined in section 119G, below.
- New section 119G applies if the chief executive considers that a type of in-scope electrical equipment certified by a declaration holder is placing, or will place, persons or property at electrical risk. Under this section, the chief executive may amend the conditions applying to the declared scheme, other than those conditions imposed by regulation under section 119D.
- New Part 6, Division 8 Subdivision 4 heading 'Subdivision 4 – Cancellation'.
- New section 119H provides grounds for cancelling the declaration of a declared scheme.
- New section 119I contains the procedure that must be followed by the chief executive before cancelling the declaration of a declared scheme.
- New section 119J provides that the chief executive must cancel the declaration of a declared scheme if the declaration holder asks for the cancellation.
- New Part 6, Division 8 Subdivision 5 heading 'Subdivision 5 – Other provisions'.
- New section 119K provides the chief executive with the authority to require a declaration holder to provide reports about particular information about certification. The maximum penalty breach for a contravention of this section is 40 penalty units.

- New section 119L requires a declaration holder to comply with the equipment safety rules. The maximum penalty for a contravention of this section is 40 penalty units.
- New Part 6, Division 9 heading ‘Division 9 – Chief executive may require testing of item of level 1, 2, or 3 in-scope electrical equipment’.
- New section 120 provides the chief executive with the authority to have an item of in-scope electrical equipment tested and examined to determine if it meets the relevant standard for the type.
- New section 121 contains the procedure to be used for obtaining an item of in-scope electrical equipment for testing.

Subsection (2) requires that a registered responsible supplier must take all steps that are reasonable in the circumstances to comply with a requirement of the chief executive. The maximum penalty for a breach of this subsection is 40 penalty units.

Subsection (3) requires that a registered responsible supplier must take all steps that are reasonable in the circumstances to ensure that an inspector is able to comply with the requirement of the chief executive. The maximum penalty for a breach of this subsection is 40 penalty units.

- New section 122 requires the chief executive to give registered responsible suppliers an opportunity to place an identifying mark on the item before the item is given to an approved testing entity. This section only applies when the item was obtained under section 121(1)(a).
- New section 123 provides how the costs of testing and liabilities for damage associated with testing are to be met.
- New Part 6, Division 10 heading ‘Division 10 – Return of in-scope electrical equipment to chief executive’.
- New section 124 provides for how items of level 2 or 3 in-scope electrical equipment provided to the chief executive are to be returned to persons by the chief executive.
- New Part 6, Division 11 heading ‘Division 11 – Second-hand in-scope electrical equipment’.
- New section 125 provides that a seller of second-hand in-scope electrical equipment must give the purchaser information on whether

the information has been tested by a licensed electrical worker. The maximum penalty for a breach of this section is 40 penalty units.

Subsection (3) provides that businesses that deal in, repair or recondition second-hand items of in-scope electrical equipment are not required to comply with this section.

- New Part 6, Division 12 heading ‘Division 12 – Program for certification of level 1 or 2 in-scope electrical equipment’.
- New section 125A provides that the chief executive may establish a program for issuing certificates relating to the suitability of levels 1 and 2 electrical equipment for connection to electricity supply. The chief executive may charge fees for the issuing of certificates. Subsection (3) clarifies that taking part in this program is voluntary.
- New Part 6A, heading ‘Part 6A Electrical equipment – general’.

Part 6A does not form part of the model provisions for the EESS. It contains some of the provisions currently in Part 6 of the Regulation that do not apply to in-scope electrical equipment. Inserting a new Part 6A and its sections is a consequential amendment.

Clause 16 inserts a new Part 14 Division 4 heading, ‘Division 4 Transitional provisions for Electrical Safety and Other Legislation Amendment Act 2011’ after section 222.

- New Part 14 Division 4 Subdivision 1 heading, ‘Subdivision 1 – Definitions’.
- New section 223 provides some definitions for the Division.
- New Part 14 Division 4 Subdivision 2 heading, ‘Subdivision 2 – Queensland approvals, external approvals and other approvals’.
- New section 224 applies to Queensland approvals that are in force immediately before the commencement.

Subsection (2) clarifies that existing Queensland approvals are taken to be certificates of conformity issued by the chief executive. Subsection (3) provides that such approvals continue in force for the balance of the period stated in the approval.

- New section 225 applies to an external approval given by an external approvals entity that is in force immediately prior to commencement, or issued within 12 months from commencement. Subsection (2)

clarifies that the external approval is taken to be a certificate of conformity issued under a corresponding law.

- New section 225A applies to an approval given under a declared scheme that is in force immediately before commencement, or issued within 12 months from commencement. Subsection (2) clarifies that the approval is taken to be a certificate of conformity issued under a scheme recognised under a corresponding law.

Subsection (4) defines a declared scheme to be a recognised external approval scheme under the *Electricity (Consumer Safety) Act 2004* (NSW). This definition is used because declared schemes are not provided for in the Regulation prior to commencement. Prior to commencement, all private certifiers act under declarations given under the New South Wales legislation.

- New Part 14 Division 4 Subdivision 3 heading, ‘Subdivision 3 – Application of certain provisions’.
- New section 226 contains transitional provisions which apply to level 1 equipment that was manufactured or imported prior to commencement. Equipment that is manufactured or imported after commencement is not subject to this provision.

These provisions provide that, for 6 months from commencement the responsible supplier registration requirements do not apply. During this transition period in-scope electrical equipment must still meet the relevant standard and be electrically safe.

- New section 227 contains transitional provisions which apply to level 2 or 3 equipment that was manufactured or imported before the commencement. Equipment manufactured or imported after commencement is not subject to this provision.

These provisions provide that, for 6 months from commencement the registration requirements for responsible suppliers and the level 2 or 3 equipment do not apply.

This transition period will allow responsible suppliers sufficient time to meet the new requirements such as compiling compliance folders for their level 2 equipment.

- New section 228 contains transitional provisions which apply to the marking requirements for the sale of in-scope electrical equipment by persons. During the five year transition period, it is sufficient compliance with section 106 (1) if the item is marked:

- With a Queensland type-approval number, or another mark approved by the chief executive; or
- Under the law of another State or New Zealand relating to electrical safety.

These provisions will recognise equipment that was marked prior to commencement, and provide sufficient time for the new marking requirements to be met.

- New section 229 contains transitional provisions for section 107.
- New section 230 contains transitional provisions which apply to the marking requirements for the sale of in-scope electrical equipment by responsible suppliers. During the three year transition period, it is sufficient compliance with section 106 (1) if the item is marked:
 - With a Queensland type-approval number, or another mark approved by the chief executive; or
 - Under the law of another State or New Zealand relating to electrical safety.

These provisions will recognise equipment that was marked prior to commencement, and provide sufficient time for the new marking requirements to be met.

- New Part 14 Division 4 Subdivision 4 heading, ‘Subdivision 4 – Marking of in-scope electrical equipment’.
- New section 231 provides transitional provisions for items that are marked with a Queensland approval number or another mark approved by the chief executive.

Clause 17 replaces Schedule 3.

- New Schedule 3 heading, ‘Schedule 3 – Information to be included in declarations by responsible suppliers’.
- New Schedule 3. Part 1 heading, ‘Part 1 – Responsible supplier’s declaration’.

This part contains information to be included in the declaration.

- New Schedule 3. Part 2 heading, ‘Part 2 – Responsible supplier’s level 2 in-scope electrical equipment declaration’.

This part contains information to be included in the declaration.

- New Schedule 3. Part 3 heading, ‘Part 3 – Responsible supplier’s level 3 in-scope electrical equipment declaration’.

This part contains information to be included in the declaration.

Clause 18 contains consequential amendments to replace items 9 to 15 of Schedule 7 (Fees).

Clause 19 contains definitions to be inserted into Schedule 9 (Dictionary).

Part 4 Amendment of Industrial Relations Act 1999

Clause 20 provides that this part and the schedule amend the *Industrial Relations Act 1999* (IR Act).

Clause 21 removes the reference to a Queensland Workplace Agreement (QWA) in section 73(2)(g).

Clause 22 removes the reference to ‘Part 1’ for Chapter 6 from section 105(2)(e).

Clause 23 removes the reference to a QWA from section 137(3).

Clause 24 amends the heading of Chapter 6 to refer to ‘certified agreements’ instead of ‘agreements’.

Clause 25 removes the present heading of ‘certified agreements’ in Chapter 6.

Clause 26 removes the reference to a QWA from section 165(2).

Clause 27 removes the reference to a part of the Chapter in section 167(2)(c) because part 2 of the Chapter about a QWA has been removed.

Clause 28 removes the reference to a part of the Chapter in section 169(3)(b) because part 2 of the Chapter about a QWA has been removed.

Clause 29 removes the reference to a part of the Chapter in section 184(1)(a) because part 2 of the Chapter about a QWA has been removed.

Clause 30 removes the reference to a part of the Chapter in section 185(1)(a) because part 2 of the Chapter about a QWA has been removed.

Clause 31 removes the whole of part 2 of Chapter 6, which is the part of the IR Act that deals with a QWA.

Clause 32 removes the reference to a QWA and ancillary documents from section 252(2).

Clause 33 removes the reference to a QWA from section 273 by removing section 273(1)(d) and renumbers section 273(1)(e) to (ha) as (d) to (h).

Clause 34 removes the reference to a QWA from section 280(2)(c)

Clause 35 removes the reference to a QWA from section 284(1) and 284(3) and renumbers section 284(4) as section 284(3).

Clause 36 provides, in section 339B, that the purpose of the Chapter is to provide for the Queensland Workplace Rights Ombudsman (ombudsman) to be appointed from time to time and to establish the Queensland Workplace Rights Office (QWRO).

Clause 37 provides, in the new section 339C, for the appointment of the ombudsman from time to time.

Clause 38 provides a new section 339D(3) which provides that the ombudsman may conduct an investigation into an industry or sector, including an investigation into a specific area or part of the industry or sector, only if requested by the Minister. Section 339D(2) provides that the ombudsman's functions are subject to the new section 339D(3).

Clause 39 amends section 339H(1) to provide that the Governor in Council may appoint a person as ombudsman.

Clause 40 replaces existing section 339L and provides, in the new section 339L(1) that, if an acting ombudsman is appointed and, during the term of the appointment is absent from duty or the State or for some other reason is unable to perform the duties of the office, then section 339L(2) provides that the Governor in Council may appoint an ombudsman to act as ombudsman.

Clause 41 provides that, if an ombudsman is appointed, the QWRO consists of the ombudsman and the officers of the QWRO.

Clause 42 provides that, generally, any appeal to an 'industrial tribunal,' under section 346, from a decision that is able to be appealed to the 'industrial tribunal', must be commenced within 21 days after the announcement of the decision at the hearing or the release of the decision through the registrar or, if, the decision is to be given in another way under another Act, given in the other way. This general provision would be

overridden by any specific provision under another Act which provided for an appeal to the 'industrial tribunal' to be commenced within a different time period or in a different way.

Clause 43 removes section 347(1) and new section 347(2) clarifies that the section applies to any appeal to the 'industrial tribunal' but is overridden by any specific provisions in another Act.

Clause 44 removes section 373(2)(c) which refers to a QWA and ancillary documents and also removes section 373(3)(b)(ii) which refers to section 373(2)(c).

Clause 45 removes the words 'or 211' from section 392(3)(b) because section 211 has been removed.

Clause 46 removes the words 'or 223' from section 662(3) because section 223 has been removed.

Clause 47 removes the words 'section 201' from section 663(5) because section 201 has been removed.

Clause 48 removes section 680(2)(c) which refers to a QWA and renumbers section 680(2)(d) to (g) as section 680(2)(c) to (f).

Clause 49 removes the reference to a QWA from section 692D(3)(a)(i) and removes the definition of an 'individual statutory agreement' by omitting section 692D(7).

Clause 50 removes the reference to a QWA from section 697(1).

Clause 51 removes the reference to a QWA from section 709(2)(a) and removes section 709(2)(b), (c), (d) and (e) which refer to a QWA or ancillary document. The clause also renumbers the section 709(2)(f) to (i) as section 709 (2)(b) to (e).

Clause 52 inserts a new Chapter 20, Part 12, ***Transitional provisions for Electrical Safety and Other Legislation Amendment Act 2011***

- New Subdivision 1 makes provision for local governments covered by federal instruments.
- New section 766 provides that Subdivision 1 applies to local governments, other than local governments mentioned in section 744(1)(a); and employees of those local governments.

Section 766(2) provides that the term 'local government' does not include Brisbane City Council.

- New section 767 provides definitions for Subdivision 1.
- New section 768 provides that, if a local government was a respondent to an original award when section 747 commenced, the local government and its employees are bound by the original award that was taken to be an award under section 747(2), from the time section 768 commences. For the purposes of Subdivision 1, the award binding the local government from commencement is known as a substitute State award.

Section 768(3) provides that the substitute State award is taken to be amended so that the remuneration applying to employees under the federal transitional award, immediately before the commencement of section 768, applies to the employees bound by the substitute State award.

Section 768(4) provides that the award has effect according to its terms, subject to sections 768(3) and section 746.

- New section 769 provides that a division 3 pre-reform certified agreement that was in force immediately before the commencement is taken to be a certified agreement certified by the Queensland Industrial Relations Commission (QIRC) under section 156. This agreement is known as a substitute State agreement.

Section 769(3) provides that any dispute settlement procedures in the agreement are taken to be omitted and replaced with clause 3.2 of the Sample Award – State 2004 attached to Practice Note PN9 issued by the QIRC on 30 June 2004 or, if the QIRC has replaced clause 3.2 with another grievance and dispute settling procedure, the replacement.

Section 769(4) provides that the certified agreement has effect according to its terms, subject to subsection 769(3) and section 770 and despite section 169(7) (which sets out the circumstances in which an agreement may be amended).

- New section 770 provides that references in a substitute State agreement to the Australian Industrial Relations Commission or Fair Work Australia are taken to be references to the QIRC; and references to provisions in Commonwealth industrial relations legislation are taken to be references to corresponding provisions of the IR Act. The section also provides that sections 746(4) and 754 apply (which

provide for the substitution of references to federal organisations by references to State organisations).

Section 770(5) defines a ‘corresponding provision of this Act’.

- New section 771 provides that an employee who is bound by a substitute State instrument is entitled to receive not less than the remuneration the employee received immediately before the commencement.

Under section 771(3), for employees bound by a substitute State agreement, this entitlement exists until the earlier of the following: the employee is bound by a certified agreement certified by the QIRC; the remuneration provisions of the substitute State agreement are amended; the substitute State agreement is terminated; or the QIRC makes a decision in relation to the remuneration the employee is entitled to receive under the substitute State agreement.

For employees bound by a substitute State award, the entitlement exists until the earlier of the following: the employee is bound by a certified agreement certified by the QIRC; the remuneration provisions of the substitute State award are amended; or the substitute State award is replaced by a new award for the employee.

- New section 772 removes the application of sections 8A, 9, 9A, 10, 11 and 15 of the IR Act to employees bound by a substitute State instrument for a transitional period.

Section 8A requires employees to receive a wage no less than the Queensland Minimum Wage. Sections 9 and 9A regulate working hours as well as penalty rates, shift allowances and casual rates. Section 10 provides for a minimum amount of sick leave. Section 11 provides for a minimum amount of annual leave. Section 15 provides for payment during public holidays.

The transitional period is until 27 March 2012 or earlier if the employee becomes bound by a certified agreement certified by the QIRC or the substitute State award that binds the employee is repealed or is replaced by a new award for the employee.

Section 772(3) provides that sections 8A, 9, 9A, 10, 11 and 15 continue to apply in relation to an employee who, immediately before the commencement, was bound by an industrial instrument.

Section 772(4) provides that sections 772(1) and 772(2) do not limit section 771 (which entitles employees to receive not less than the remuneration they received before the commencement).

- New Subdivision 2 specifies how Subdivision 1 applies to local governments or their employees covered by an industrial instrument.
- New section 773 provides that the section applies to local governments and their employees if an industrial instrument applied to them before the commencement of the section.

Section 773(2) provides that Subdivision 1 does not affect the application of the industrial instrument to the local government or the employees and does not affect the remuneration payable to the employees.

Section 773(3) provides definitions for 'local government' and 'remuneration' for section 773.

New Division 2 of Chapter 20, Part 12, 'Particular QWAs continued', provides for the continuation of any 'individual statutory agreement' which became a QWA by force of the previous section 692D(3)(a)(i).

- The new section 774, in Division 2, provides a definition of 'amending Act' and 'previous'.
- The new section 775, in Division 2, provides that if, immediately before this Bill, a new State instrument taken to exist was taken to be a QWA under the previous section 692D, then the QWA continues in force but subject to the provisions of Division 1 and the previous section 692D(3), (4) and (5), and expires (section 767(3)), on the earlier of, the specified nominal expiry date the instrument has under previous section 692D(6) or a day that is 4 months after the commencement of this section.
- The new section 776(1) of Division 2 provides for the termination of a QWA before the expiry day, by written agreement (termination agreement) of the employer and employee, which takes effect (section 776(2)) on the day, if there is one, stated in the agreement or the day the agreement is filed under section 776(3), which provides that the agreement must be filed with the registrar or chief inspector. Under section 776(4) the registrar or chief inspector must be satisfied that the termination agreement is signed and dated by each of the parties and the signatures witnessed before issuing a filing receipt to the person who filed it. Section 776(5) provides that the previous Chapter 6, Part

2, Division 5, about approving a QWA and ancillary documents, does not apply.

- The new section 777 of Division 2 provides that, subject to Division 2, the IR Act, as in force immediately before being amended by this Bill, continues to apply to a QWA continued under this Division.
- A new Division 3 of Chapter 20, Part 12 is inserted entitled ‘Other transitional provisions’.
- The new section 778 of Division 3 provides that despite the amendment of section 252 to remove the requirement for the president to report on QWAs and ancillary documents; for the financial years ending 30 June 2011 and 30 June 2012 it will still be a requirement so that a QWA continued in existence under Division 2 may be included.
- The new section 779 of Division 3 provides that the amendment of the *Industrial Relations Regulation 2000* (IRR) and the *Industrial Relations (Tribunals) Rules 2000* (IRTR) by these amendments does not affect the power of the Governor in Council to further amend the regulation or rules or to repeal them.

Clause 53 provides for definitions to be removed and inserted in the Dictionary in Schedule 5.

Part 5 Amendment of Industrial Relations Regulation 2000

Clause 54 provides that this part and the schedule amend the IRR.

Clause 55 removes the reference in section 156 to ‘part 1’ which is about a QWA and has been removed.

Clause 56 removes part 5 of the IRR which is about a QWA.

Clause 57 removes Schedules 1 and 2 of the IRR which are about a QWA.

Part 6 **Amendment of Industrial Relations (Tribunals) Rules 2000**

Clause 58 provides that this part amends the IRTR.

Clause 59 removes the reference to section 212 of the IR Act from the IRTR.

Clause 60 removes the reference to rule 147(1).

Clause 61 removes rule 87(2) which refers to a QWA or ancillary document and renumbers rule 87(3) and (4) as rule 87(2) and (3).

Clause 62 removes part 11 of the IRTR which is about a QWA or ancillary document.

Clause 63 removes from the dictionary in Schedule 2, paragraph (a) of the definition of 'filed', which refers to a QWA and renumbers paragraphs (b) and (c) of the definition as (a) and (b).

Part 7 **Amendment of Workers' Compensation and Rehabilitation Act 2003**

Clause 64 provides that this part amends the WCR Act.

Clause 65 removes paragraph (a) of the definition of a 'workplace agreement' in section 107E, which refers to a QWA and updates the rest of the definition to accord with the changes made to the Commonwealth national industrial relations legislation.

Clause 66 removes section 561(2) and (3) and provides, in the new section 561(2) that the grounds of error of law or excess or want of jurisdiction apply to an appeal from a decision under the WCR Act to the QIRC. The new section 561(3) provides that the IR Act applies to appeals under section 561 of the WCR Act from a decision of an industrial magistrate or the QIRC.

Clause 67 inserts, after section 671, a new Chapter 28, ‘Chapter 28 Transitional provisions for *Electrical Safety and Other Legislation Amendment Act 2011*:

- the new section 672(1) provides for the ‘pre-amended Act’ to continue to apply to a QWA under the IR Act as if a reference in the pre-amended Act to a QWA were a reference to a QWA continued in force under the IR Act, section 775. The new section 672(2), defines the ‘pre-amended Act’ as the WCR Act, as in force immediately before its amendment by the *Electrical Safety and Other Legislation Amendment Act 2011*;
- the new section 673 provides that section 561 of the WCR Act, as it was in force immediately before the commencement of the new section 673, continues to apply to decisions made under section 560A before the commencement of section 673. This provision ensures that the amendment to section 561 will not have any retrospective effect.

Clause 68 removes paragraph (a)(v) from the definition of ‘industrial instrument’ in the Dictionary in Schedule 6, as it refers to a QWA and renumbers paragraph (a)(vi) as paragraph (a)(v).

Part 8 Minor and consequential amendments

Clause 69 provides, that the schedule, ‘Minor and consequential amendments’ amends the legislation it mentions.

Part 1 of the Schedule contains the ‘Amendments commencing on assent’ for minor technical amendments, drafting corrections and minor consequential amendments to the IR Act, the IRR, the *Child Employment Act 2006*, the *Coal Mining Safety and Health Act 1999*, the *Mining and Quarrying Safety and Health Act 1999*, the *Pastoral Workers’ Accommodation Act 1980* and the *South East Queensland Water (Restructuring) Act 2007*.

Part 2 of the Schedule contains the ‘Amendments commencing on proclamation’ for minor technical amendments and drafting corrections to the *Electrical Safety Act 2002* and the *Electrical Safety Regulation 2002*. It also makes some amendments to the *State Penalties Enforcement Regulation 2000*.

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