

Electrical Safety and Other Legislation Amendment Bill 2011

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Cameron Dick Roberts MP Minister for Education and Industrial Relations

Title of the Bill

Electrical Safety and Other Legislation Amendment Bill 2011.

Objectives of the Amendments

The objective of the amendments is to clarify the drafting in relation to the provisions for local governments so that the objectives of the Bill are achieved and to remove the provisions amending the *Workers' Compensation and Rehabilitation Act 2003* in regard to the grounds for appeal to the Industrial Court of Queensland and the consequential transitional provision.

Achievement of the Objectives

The objectives are achieved by way of amendments to the *Electrical Safety and Other Legislation Amendment Bill 2011*.

Estimated Cost for Government Implementation

There are no costs to government in implementing the amendments.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

The Queensland Council of Unions, the Australian Workers' Union, the President of the Industrial Court of Queensland, the Bar Association of Queensland and the Queensland Industrial Relations Commission provided feedback on the workers' compensation appeal provisions in the Bill.

Notes on Provisions

- Clause 1 inserts a definition for 'pre-reform Act' into the definitions for Part 12.
- Clause 2 changes the definition of 'remuneration' to reflect changes to other parts of Part 12. The new definition provides that remuneration includes wages and salary but not amounts payable or other benefits made available to the employee under a contract of service.
- Clause 3 defines a 'substitute State award'.
- Clause 4 inserts a definition for 'Work Choices Amendment Act' into the definitions for Part 12.
- Clause 5 replaces existing section 768 of the Bill in order to achieve the objective of the Bill.

Section 768 applies to a local government that was a respondent to a federal transitional award before the commencement. Subsection 768(2) provides that the substitute State award that applies to the local government is the substitute State award that has a residency list that is substantially the same as the residency list in the transitional award to which the local government was a respondent.

Subsection 768(3) provides that, for employees to whom a transitional award applied before commencement, the substitute State award is amended so that the remuneration under the transitional award continues to apply to the employees..

Subsection 768(4) provides that the substitute State award has effect according to its terms.

Subsection 768(5) provides that the section does not affect the operation of section section 165 (which sets out the effect of a certified agreement on, among other things, awards).

Subsection 768(6) provides a definition of substitute State award.

Clause 5 also inserts a new section 768A into the Bill in order to achieve the objective of the Bill.

Section 768A makes provision for an award, as defined in the *Workplace Relations Act 1996* before the Work Choices amendments, that was continued as a transitional award and continued in force immediately before the commencement. Section 768A applies to the award if a local government was a respondent to the award (other than a local government to whom section 768(2) applies).

Under subsection 768A(2), the award is taken to be an award made by the commission under section 125 (a substitute State award). The substitute State award applies to the local government and the employees of the local government mentioned in section 768A(1)(a).

Subsection 768A(3) provides that the substitute State award is amended so that the remuneration provided for under the transitional award immediately before the commencement continues to apply to the employees.

Subsection 768A(4) provides that, subject to subsection 768A(3) and section 770 (which replaces particular terms in the award with their State counterpart terms), the award has effect according to its terms and, despite section 133 (which provides for the enforceability of awards only after their publication), an action to enforce the substitute State award may be commenced at any time.

Subsection 768A(5) provides that the section does not affect the operation of section section 165 (which sets out the effect of a certified agreement on, among other things, awards).

- Clause 6 inserts a reference to the new section 768A into section 770.
- Clause 7 substitutes the word ‘instrument’ for ‘agreement’ to include the new section 768A.
- Clause 8 removes the definition of ‘Work Choices Amendment Act’ (which is moved to section 767 by clause 4).
- Clause 9 rewords subsection 771(1) to clarify the subsection.

- Clause 10 rewords subsection 771(3)(a)(i) to clarify the subsection.
- Clause 11 rewords subsection 771(3)(b)(i) to clarify the subsection.
- Clause 12 inserts a definition of remuneration for section 771.
- Clause 13 replaces section 772 of the Bill with a new section 772. The purpose of the new section 772 is to substitute a number of terms in the current section 772 of the Bill: ‘bound by a substitute State agreement’ is replaced with ‘to whom a substitute State agreement applies’; and ‘the day, after the commencement, the employee is bound by a certified agreement certified by the commission’ is replaced with ‘the day a certified agreement certified by the commission after the commencement applies’; and ‘bound by an industrial instrument’ is replaced with ‘to whom an industrial instrument applied’.
- Clause 14 omits part of clause 66 of the Bill. Clause 66 would have amended section 561 of the *Workers’ Compensation and Rehabilitation Act 2003* with respect to appeals to the industrial court. The amendment to clause 561 would have limited the grounds upon which an appeal to the Industrial Court of Queensland could be made, namely error of law, or excess, or want, of jurisdiction. To remove doubt, the provision of clause 66 that provides that the *Industrial Relations Act 1999* applies to the appeal is not being amended. This will have the effect that the appeal period will be the period within 21 days after the decision being appealed is given.