

# Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

## Explanatory Notes

### For

### Amendments to be moved during consideration in detail by the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing

#### Short title

The short title of the Bill is the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (Bill).

#### Policy objectives and the reasons for them

The Bill proposes amendments to the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) to respond to accepted legislative recommendations of the 2023 Review of the operation of the Queensland workers' compensation scheme (2023 Review) and the Decision Impact Analysis Statement for workers' compensation entitlements for workers in the gig economy and taxi and limousine industry in Queensland.

The Bill also proposes amendments to the *Industrial Relations Act 2016* (IR Act) and the *Labour Hire Licensing Act 2017* (LHL Act) to support modern and efficient industrial relations and labour hire licensing frameworks that meet the changing needs of Queenslanders.

#### *Workers' Compensation and Rehabilitation Act 2003*

The objective of the further proposed amendments to the WCR Act is to:

- ensure presumptive rights in the WCR Act are available to firefighters diagnosed with primary site uterine cancer to reflect the elevated risk of occupational cancers faced by firefighters, the increasing number of women choosing firefighting, and to align with national policy developments; and
- support the effective operation of amendments in the Bill by correcting minor editorial errors.

#### *Amendment to include primary site uterine cancer as a specified disease*

The WCR Act streamlines the workers' compensation process for eligible firefighters diagnosed with one of 12 specified diseases by presuming they sustained the disease in the course of employment unless evidence exists to the contrary. This effectively reverses the onus of proof in

workers' compensation claims, ensuring these firefighters do not have to prove the work-relatedness of the disease.

The 2023 Review recommended an additional 10 categories of diseases be added to the WCR Act's list of specified diseases (recommendation 26). This recommendation responded to the World Health Organisation International Agency for Research on Cancer's escalation of occupational exposure in the firefighting profession to *Group 1 – Carcinogenic to humans*; the addition of eight further cancers to the Commonwealth's list of specified diseases; and recognition of a number of the additional cancers as specified diseases in other Australian workers' compensation jurisdictions. This recommendation is implemented in full by clause 60 of the Bill.

At the time of the 2023 Review's completion in June 2023, no Australian jurisdiction recognised primary site uterine cancer as a specified disease. In late 2023, two jurisdictions (Victoria and Tasmania) moved amendments to recognise primary site uterine cancer as a specified disease for firefighters, both of which have now received assent. In June 2024, the South Australian Government also announced its intention to add primary site uterine cancer as a specified disease.

The inclusion of primary site uterine cancer in the Bill is consistent with the policy intent of clause 60 of the Bill to recognise the elevated risk of occupational cancers facing firefighters and ensure alignment in the presumptive rights available to firefighters nationally. The inclusion of this cancer reflects the increasing number of women choosing firefighting as a calling or volunteer.

#### *Other amendments*

Other proposed amendments to the WCR Act seek to correct minor editorial errors in the Bill including typographical and cross-referencing errors.

These amendments do not affect the policy intent of the Bill.

#### *Industrial Relations Act 2016*

##### *Amendments relating to appeal pathways*

The objective of the proposed amendments to the IR Act is to support modern and efficient industrial relations frameworks that meet the changing needs of Queenslanders.

The amendments included in the Bill to change the appeal pathway for Queensland Industrial Relations Commission (QIRC) matters where a Presidential Member sits on the full bench (for the appeal to lie in the Queensland Court of Appeal (QCA) instead of the Industrial Court of Queensland (ICQ), were intended to provide for appropriate hierarchical/seniority arrangements and consistency with the broader Queensland judicial system.

On 7 June 2024, the Education, Employment, Training and Skills Committee (the Committee) tabled its Report No. 7 following its consideration of the Bill.

The proposed amendments relating to appeal pathways responds to Recommendation 2 of the Committee's Report. This recommended further consultation be undertaken with stakeholders on proposed amendments to the IR Act relating specifically to the appeal pathways for full bench decision of the QIRC.

The amendments included in the Bill were considered technical in nature and aligned with the original policy intent and the broader Queensland justice system hierarchical arrangements for the purpose of consistency and clarity. Submissions to the Committee from the Queensland Nurses and Midwives Union (QNMU), Queensland Council of Unions (QCU) and Queensland Law Society (QLS) highlighted several concerns and possible unintended consequences from the proposed amendment to the appeal pathways for full bench decisions of the QIRC if constituted with at least one member who is a presidential member.

To effectively address concerns highlighted by the submitters, and respond to the Committee's recommendation, it is proposed to omit the clauses in the Bill relating to the IR Act appeal provisions. The appeal pathways within the IR Act will remain the same as currently in force. This will allow for further consultation with stakeholders and impacted parties in due course.

#### *Amendments relating to administration of Construction and General division of CFMEUQ*

The Policy objectives of these amendments are to:

1. in circumstances where the federally registered Construction, Forestry and Maritime Employees Union, Construction and General Division and its branches (federal CFMEU) is placed under administration (federal administration scheme); then place the Queensland state registered organisation, the Construction, Forestry, Mining and Energy Industrial Union of Employees, Queensland (CFMEUQ), State Construction and General Division (State C&G Division) under administration for up to 5 years;
2. enable the Minister if satisfied that it is in the public interest, having regard to the purposes of the amendments and any other relevant considerations, to determine a scheme for the administration by legislative instrument, which mirrors to the extent possible the federal administration scheme.
3. The amendments are proposed because:
  - (a) it is in the public interest, including by ensuring public confidence that registered organisations act lawfully and appropriately, and in the interests of their members, and
  - (b) the legislation is necessary to:
    - ensure the effective and efficient operation of any administration scheme across all entities operating in the construction and general division of the CFMEU; and
    - remove the prospect of avoidance of an administration scheme; and
  - (c) existing legislation is ineffective to achieve the policy objectives outlined.

## **Achievement of policy objectives**

### *Workers' Compensation and Rehabilitation Act 2003*

Including uterine cancer as a specified disease in the Bill achieves its objective of recognising the elevated risk of occupational cancers faced by firefighters, aligns with approaches taken by other Australian jurisdictions, and recognises the increasing number of women firefighters. Corrections to editorial errors also support the effective operation of amendments in the Bill.

### Industrial Relations Act 2016

The proposed amendments support the Bill to achieve its policy objectives by acknowledging and responding to the stakeholder feedback, particularly from the QLS and the QCU and affiliate member unions and the recommendation made by the Committee.

### Industrial Relations Act 2016 amendments relating to administration of C&G division of CFMEUQ

There are serious allegations of criminal behaviour, systematic contraventions of workplace laws and threatening and intimidatory actions by the CFMEU, resulting in a loss of public confidence in the CFMEU being able to operate in a democratic, legally compliant and responsible way.

The Federal Government introduced the *Fair Work (Registered Organisations) Amendment (Administration) Bill 2024* (federal bill) on 12 August 2024, which, was passed on 20 August 2024 and will place the federal CFMEU under administration.

The General Manager of the Fair Work Commission has also formed the view that the majority of branches of the Construction and General Division of the CFMEU were no longer able to function effectively, including in the interests of members, and that there were no effective means under the relevant rules to address the situation, and has made an application to place the federal CFMEU under administration.

While the federal CFMEU is registered under the *Fair Work (Registered Organisations) Act 2009* and therefore subject to the federal jurisdiction, the CFMEUQ is a state registered organisation under the *Industrial Relations Act 2016* (IR Act). Given the structure of the CFMEU, any federal measure will not be effective to impose a consistent regime of administration arrangements across the federal CFMEU and CFMEUQ, Construction and General Division (CFMEU C&G Division).

An Administrator to the federal CFMEU appointed by the Federal Court or by legislative measure would include any Queensland (or other) state branches of the federal CFMEU.

However, it would not result in the appointment of an Administrator to the CFMEUQ, the registered organisation under the Qld IR Act.

Existing processes for appointment of an Administrator under the IR Act are not contemplated for these circumstances and are inconsistent with the proposed federal administration scheme.

This may result in the proposed federal administration scheme being ineffective or more easily avoided, which is not in the public interest. Complementary legislative amendments are required to ensure the federal CFMEU and CFMEUQ are subject to the same administration scheme and optimise the effectiveness of any administration scheme.

## **Alternative ways of achieving policy objectives**

### Amendments to the Industrial Relations Act relating to the administration of C&G division of CFMEUQ

The government must ensure there is confidence in the building and construction industry; for the public, construction industry participants including employers and workers, and for union members to ensure their fees are not misused.

Registered organisations play an important role in Queensland's industrial relations system, including representing workers, bargaining, monitoring compliance and taking enforcement action in certain circumstances.

Since July 2024, serious allegations have been raised about the conduct of some officials and associates of the CFMEU's Construction and General Division. These have included allegations of corruption, criminal conduct and other serious misconduct including bullying and harassment and general disregard for workplace laws.

The legislative amendments proposed by the Bill are required to ensure urgent complementary action can be taken as soon as is practicable after any federal scheme of administration is enlivened.

The legislative amendments in the Bill seek to protect the public interest in ensuring public confidence that registered organisations act lawfully and appropriately, and in the interests of their members.

For these reasons the proposed administration would include strong powers to act and will be targeted, time limited, and include a number of safeguards.

#### Other amendments

There are no alternative means of achieving the policy objectives.

## **Estimated cost for government implementation**

#### Workers' Compensation and Rehabilitation Act 2003

Expanding the list of presumptive diseases for firefighters (including uterine cancer) is expected to result in an additional 27 claims per annum and total estimated scheme cost of around \$15.7 million per annum. Costs may be less, noting these cancers (if work-related) are already covered by the scheme under the usual claims pathway. This cost impact is an estimate only and is sensitive to the number of workers who may be eligible, and behaviour and claims experience changes.

#### Industrial Relations Act 2016

There are no additional costs to the Government.

#### Industrial Relations Act 2016 amendments relating to administration of C&G division of CFMEUQ

Costs of the Administration Scheme will be borne by the CFMEUQ (State C&G Division).

## **Consistency with fundamental legislative principles**

#### Industrial Relations Act 2016 amendments relating to administration of C&G division of CFMEUQ

The Bill provides a Ministerial power that would normally be exercised by the Registrar.

The Bill provides that the Minister is not required to provide procedural fairness in relation to certain decisions.

The Bill provides limitations on rights to review.

Having regard to the unique circumstances that exist in this matter, including the seriousness of the allegations and the need to ensure complementary measures to the federal administration scheme, it is considered that it is in the public interest to require these provisions in the bill.

The features are balanced and safeguarded by the temporary nature of the provisions, the narrow focus of the provisions (only the CFMEUQ and specifically State Construction and General Division) and requirements to act consistently with the objects of the scheme.

#### Other amendments

The proposed amendments are consistent with the fundamental legislative principles under the *Legislative Standards Act 1992*.

## **Consultation**

#### Workers' Compensation and Rehabilitation Act 2003

Specific stakeholder consultation has not been undertaken as these amendments are minor and beneficial in nature. During the development of the Bill a stakeholder reference group comprising registered industrial organisations, insurers, legal and medical and allied health bodies was consulted on the inclusion of additional specified diseases in the WCR Act. The inclusion of primary site uterine cancer aligns with the views expressed by members of the group.

#### Industrial Relations Act 2016

The proposed amendment responds to Recommendation 2 of the Committee's Report and to issues raised through submissions during the Committee process.

#### Industrial Relations Act 2016 amendments relating to administration of C&G division of CFMEUQ

Consultation has occurred with interjurisdictional governments and with the proposed Administrator.

The result of the consultation is that the administration scheme, including the Administrator's powers and functions as applied to the C & G division of CFMEUQ should, to the extent that is lawful in Queensland and appropriate, mirror the powers and functions of federal scheme to ensure effectiveness.

## **Consistency with legislation of other jurisdictions**

#### Workers' Compensation and Rehabilitation Act 2003

The inclusion of uterine cancer as a specified disease for firefighters achieves consistency with the approach taken in Victoria and Tasmania and proposed to be taken in South Australia.

#### Industrial Relations Act 2016

Not applicable as the proposed amendment retains the status quo.

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*Industrial Relations Act 2016 amendments relating to administration of C&G division of CFMEUQ*

The legislation is consistent with *Fair Work (Registered Organisations) Amendment (Administration) Bill 2024* to the extent that is lawful and appropriate to the Queensland jurisdictional context.

The legislation is consistent with the New South Wales Industrial Relations Amendment (Administrator) Bill 2024 to the extent that is lawful and appropriate to the Queensland jurisdictional context.

The amendments are specific to the State of Queensland, but with the express purpose of being complementary to legislation of the Commonwealth.

## **Reasons for non-inclusion of information**

Not applicable.

## Notes on provisions

*Clause 1* provides for expiry of the civil penalty amendments specific to the administrator.

*Clause 2* is consequential amendment to renumber the commencement clauses.

*Clause 3* omits clause 13 in the Bill to retain the existing provisions under section 554 in the *Industrial Relations Act 2016*.

*Clause 4* omits clause 14 in the Bill to retain the existing provisions under section 557 in the *Industrial Relations Act 2016*.

*Clause 5* inserts a new *Division 4 of Chapter 11, part 8*

*New section 578AA Other orders for contravention of s 876K or 876P*

New section 578AA describes how a relevant industrial tribunal may make any other order it considers appropriate for a contravention of a civil penalty provision under either section 876K(2) or 876P(1).

*Section 578AA Other orders for contravention of s 876K or 876P*

*New subsection 578AA(2)* provides that on an application under section 572, the relevant industrial tribunal may make any other order the tribunal considers appropriate.

*New subsection 576AA(3)* provides that, without limiting subsection (2), the relevant industrial tribunal may make an order requiring a person to comply, wholly or partly, with a notice to provide assistance to an Administrator when required in accordance with s876K(1).

*New subsection 576AA(4)* states that this section applies whether or not a civil penalty order is made in relation to a contravention of either section 876K(2) or 876O(1).

*Section 576AB Expiry*

S578AB provides that the Division is temporary and expires on the day chapter 12, part 15A expires.

Inserts a new *part 15A of Chapter 12* to enable the Construction and General Division of the CFMEUQ to be placed into administration.

### **Part 15A Administration of C&G Division of CFMEUQ**

*Section 876A Application of part*

S876A provides that part 15A only applies if the Construction and General Division of the federal CFMEU and its branches have been placed under administration under the Commonwealth Registered Organisations Act as defined in Schedule 5. As such, the provisions in this Part are intended to complement any Federal scheme of administration.

*Section 876B Purpose of part*

S876B Purpose of part is to enable the C&G division of the CFMEUQ to be placed into administration consistent with any Federal scheme of administration, to protect the public interest. The scheme of administration will protect the public interest by ensuring the C&G division acts lawfully and appropriately and in the interests of members; and complement any corresponding administration scheme that applies to the CFMEU in another jurisdiction so it can operate effectively.



Proposed subsection 876B(2) provides that a corresponding administration scheme for the purposes of this scheme means the administration scheme for the Construction and General Division of the CFMEU (federal) mention in section 876A; or a scheme for the administration, under the *Industrial Relations Act* (NSW), of the Construction and General Division of the organisation of employees registered under that Act with the registration number EE70.

*Section 876C Definitions for Part*

S876C Defines relevant terms for part 15A.

*Section 876D C&G Division placed under administration*

S876D makes provision for the dates of commencement and cessation of any administration scheme made under this Part.

The proposed section 876D provides that the CFMEUQ C&G Division to be placed under administration on the later of the day an administration notice takes effect or the day an administrator is appointed under the administration notice.

Proposed subsection 876D(2) provides that the administration ends on the day the administration notice is revoked. It is noted that the Part expires after 5 years.

## **Division 2 Making of administration scheme and appointment of administrator**

*Section 876E Power of Minister to make administration notice*

The proposed section 876E would require the Minister to make an administration notice if satisfied it is in the public interest for the C&G division to be placed in administration having regard to the purpose of this part; and any other matters the Minister considers relevant. An example of a matter the Minister may consider relevant would be whether making an administration notice would complement any existing scheme of administration in the Commonwealth or another jurisdiction.

Proposed subsection 876E(2) provides that the Minister must, by gazette notice (an administration notice) establish a scheme for the administration of the C&G division and appoint a person to be the administrator for that scheme.

Proposed subsection 876E(3) provides that the administration notice made is a statutory instrument, but is not subordinate legislation.

Proposed subsection 876E(4) sets out a non-exhaustive list of the matters that may be provided for in a scheme determined by the minister. The scheme would enable the administrator to exercise management control of the Construction and General Division. Provision is also made for:

- Accountability and transparency: for example, requiring reporting in relation to the administration and a duty for the administrator to cooperate with an inquiry by a law enforcement agency or a regulatory body.
- Alteration of CFMEUQ rules to the extent that they apply or relate to the C&G Division.
- Administrative and other matters – for example, delegation of functions and powers and the engagements of assistants to the administrator.

The provisions allow for flexibility in the design of the scheme, and for details to be determined by the administrator.

Subsection 876E(5) clarifies for the avoidance of doubt that the administration scheme may provide for the taking of disciplinary action in circumstances not provided for in the CFMEUQ rules.

Subsection 876E(6) provides that the disqualification of officers and former officers of the C&G division under the administration scheme is not limited by part 9, division 2.

Proposed subsection 876E(7) provides that in making an administration notice the Minister under this part the Minister is not required to observe procedural fairness. The administration is time limited and the exclusion of natural justice is a legitimate temporary measure to ensure that the administration of the Division, if determined, can proceed swiftly and effectively, in alignment with any Federal scheme of administration. This complementary legislative action to support any Federal scheme is intended to support the public interest in ensuring the C&G division acts lawfully and appropriately and in the interests of its members.

*Section 876F Period of administrator's appointment etc.*

S876F provides that the administration notice may provide for the period of the administrator's appointment and the terms of any such appointment. It further provides that the Minister may by gazette notice do any of the following:

- terminate the appointment of the administrator;
- appoint another person as the administrator;
- vary the terms of the administrator's appointment.

*Section 876G When administration notice takes effect*

S 876G deals with when the administration notice takes effect. It provides that an administration notice takes effect on either the day the notice is published in the gazette; or if a later day is stated in the notice – the stated day.

*Section 876H Variation and revocation of administration notice*

S 876H provides an ability for the Minister to vary and/or revoke the administration scheme subject to mandatory conditions.

Proposed subsection 876H(2) clarifies that the administration notice must not be revoked earlier than the day that is 3 years after the day the scheme started unless:

- The administrator is satisfied that the C&G division is functioning lawfully and appropriately and in the interests of its members; and
- The administrator gives the Minister a written notice stating the administrator is satisfied that the C&G division is functioning lawfully and appropriately and in the interests of its members.

For the purposes of variation or revocation, proposed subsection 876(3) the Minister must have regard to: the purpose of this part; and any other matter the Minister considers relevant.

Proposed subsection 876H(4) requires the Minister to obtain the consent of the administrator before varying or revoking the administration notice. Proposed subsection 876H(5) provides that the Minister is not required to observe procedural fairness in varying or revoking the administration notice. The administration is time limited and the exclusion of procedural fairness is a legitimate temporary measure to ensure that the administration of the Division,

if determined, can proceed swiftly and effectively in alignment with any scheme of administration in other jurisdictions, and to support the public interest in ensuring the C&G division acts lawfully and appropriately and in the interests of its members.

*Section 876I Interaction with chapter and CFMEUQ rules*

Proposed subsection 876I would provide that the administration notice or administration scheme have effect despite any inconsistency with a provision of this chapter; or the CFMEUQ rules. It further provides at proposed subsection 876H(2) that to the extent of any inconsistency the administration notice or administration scheme will prevail and will not be limited by the provision of this chapter. This arrangement is necessary to provide the flexibility to support the public interest in ensuring an effective scheme of administration applies to the CFMEUQ. The scheme would be appropriately confined and is proportionate to address the problem that has been identified. Specifically, it would protect the public interest by ensuring the C&G division acts lawfully and appropriately and in the interests of its members; and if a CFMEU administration scheme is in effect in another jurisdiction – ensure the effectiveness of that scheme. Provision is made for the scheme to run for up to 5 years but no longer to ensure that appropriate action can be taken to protect the public interest. Provision is also made for the scheme to be revoked 3 years after its commencement subject to particular criteria.

### **Division 3 Functions and powers of administrator**

*Section 876J Functions and powers of administrator*

New section 876J would confer specified functions on the administrator. If a scheme of administration is determined, the administrator will have control of the property and affairs of the C&G Division. They will be empowered to manage the Division's property (including by disposing of it) and to undertake functions that the Division or its officers could have undertaken.

New subsection 876J(2) clarifies to remove any doubt, that it is declared that in performing functions and exercising powers as administrator, the administrator may undertake investigations into past practices of the C&G division.

New subsection 876J(3) confers on the administrator the function of promoting compliance by the C&G division with the laws, including workplace laws of the State and the Commonwealth. It further provides that it is a function of the administrator to ensure that officers and employees of the C&G division have complied, and continue to comply, with their obligations under this chapter. This would include ensuring compliance of officers and employees of the C&G division prior to the commencement of the scheme of administration. To the extent an officer of the C&G division or an employee has not complied with an obligation under this chapter, it is a function of the administrator as far as reasonably practicable to ensure the officer is held accountable for the non-compliance. This would empower the administrator to, for example, hold officers and employees accountable for conduct that may have occurred prior to the administration commencing. It would also enable the administrator to monitor and promote ongoing compliance during the administration.

New subsection 876J(4) would require the administrator to apply the specified principles when exercising their functions and powers to ensure that members' interests are properly considered. The administrator must:

- Have regard to the purpose of this part; and
- The objectives of the CFMEUQ as stated in the rules of the CFMEUQ rules as in effect on the commencement and to the extent the rules are lawful.

New subsection 876J(5) provides that a reference to property of the C&G Division includes property that, immediately before commencement was solely or predominantly used for the benefit or purposes of the C&G Division. This is to ensure that any administration scheme is not avoided.

#### *Section 876K providing assistance to the administrator*

This section would provide the administrator with the power to compel the production of documents or the provision of other information or assistance.

New subsection 876K(1) would provide that the administrator may, by written notice, require a relevant person to produce documents or provide other information or assistance reasonably required by the administrator for the performance of functions under the scheme. The administrator must specify the time for compliance in the notice, which must be reasonable in all the circumstances.

New subsection 876K(2) would provide an exception if the person who has been given a notice under subsection (1) has a reasonable excuse and notifies the administrator of the reasonable excuse before the end of the period specified in the notice. The term 'reasonable excuse' for the purposes of this subsection is not defined. What amounts to a reasonable excuse depends on the circumstances of the individual case, considering the purpose of the provision and its context. A reasonable excuse is not confined to physical or practical difficulties in complying. It includes any excuse which would be accepted by a reasonable person as sufficient to justify non-compliance, considering the purpose of the requirement.

This subsection is a civil penalty provision which will attract a penalty of 1,200 penalty units. The current value of a penalty unit is \$161.30. This subsection refers to section 571 in relation to persons involved in a contravention of a civil penalty provision. In determining the quantum of the penalty regard has been had to comparable penalty regimes in other jurisdictions.

New subsection 876K(3) provides that it is a reasonable excuse for a relevant person not to comply with the notice if doing so might tend to incriminate the person.

New subsection 876K(4) defines a relevant person for the purposes of the section to mean:

- An officer, agent or employee of the CFMEUQ or any of its divisions; or
- A former officer, agent or employee of the CFMEUQ or any of its divisions; or
- A person who provides, or provided, services to the CFMEUQ or the C&G division under a contract; or
- A person prescribed by regulation.

#### *Section 876L Reporting to Minister*

New section 876L outlines requirements for the administrator to provide the Minister with a report about the operation of the administration scheme for tabling in the Legislative Assembly.

New subsections 876L(1)(a) and 876L(1)(b) outline timeframes for the provision of the reports to the Minister.

New subsection 876L(2) provides that the Minister must table a copy of a report in the Legislative Assembly within 15 sitting days after the Minister receives the report.

For the avoidance of doubt, the tabling of reports under this section is to align broadly with reporting in relation to any Federal scheme of administration.

### *876M Protection from liability*

New section 876M deals with protection from liability. It provides that the administrator is not civilly liable for an act done, or omission made, honestly and without negligence under this part. This provision is directed at immunity from civil proceedings only.

For the immunity to apply, it would need to be proven that the administrator was acting in honestly and without negligence in the performance or exercise of their functions or powers. Acts and omissions an administrator mistakenly thought were in scope of their functions will be covered by the proposed immunity, providing that the administrator was acting honestly and without negligence.

By providing an immunity from civil liability for acts or omissions done honestly and without negligence in the specified circumstances, this section would reduce the risk that the administrator or persons assisting the administrator would adopt a less rigorous approach to the performance of their functions to protect their personal interests at the expense of the public interest.

New subsection 876M(2) provides that where subsection 876M(1) prevents civil liability attaching to a person, the liability attaches instead to the State.

### *Section 876N Actions of administrator under administration scheme*

New section 876N would ensure that certain actions undertaken by the administrator continue in effect beyond the end of the administration period and despite any provision in this chapter or the CFMEUQ rules. These actions would include suspension or removal of officers and employees, and any disciplinary action taken by the administrator.

New subsection 876N(2) would empower the Minister to, by legislative instrument, make rules prescribing the effect of actions taken under the scheme for the purposes of other laws.

The proposed rule-making power is necessary to ensure that actions taken by the administrator are effective and not inadvertently undermined by the operation of other laws. The proposed rule-making power would, in a practical sense, be time limited as rules may only apply in relation to actions taken under the scheme, which itself is time limited. The rules could only have narrow application, in relation to actions taken under the scheme during an administration determined by the Minister.

New subsection 876N(3) provides that this section does not limit the Acts Interpretation Act 1954, sections 20 and 20A.

### *Section 876O Application of pt 15, div 3.*

New section 876O provides that Part 15, division 3 does not apply in relation to the administrator in performing functions or exercising powers under this part.

## **Division 4 Other Provisions for operation of administration scheme**

### *Section 876P Anti-avoidance provision*

The anti-avoidance provision prohibits, without reasonable excuse, conduct (including a course of conduct), where as a result of the conduct:

- Another person is prevented from taking action under the administration scheme; or

- The administrator is prevented from effectively administering the administration scheme.

Examples of avoidance conduct include destroying business records or membership lists, transferring assets for an improper purpose and other action that could reasonably 'obstruct or frustrate' the administration work.

What amounts to a 'reasonable excuse' for the purposes of the proposed provision is not defined. What amounts to a reasonable excuse depends on the circumstances of the individual case, considering the purpose of the provision and its context. A reasonable excuse is not confined to physical or practical difficulties in complying. It includes any excuse which would be accepted by a reasonable person as sufficient to justify non-compliance, considering the purpose of the requirement.

The new subsection 876P(1) would provide that proscribed conduct attracts a maximum criminal penalty of 6,000 penalty units or 2 years imprisonment for an individual. The proposed maximum term of imprisonment was determined with reference to comparable offences in other jurisdictions.

The proposed subsection 876P(1) further provides that this subsection is a civil penalty provision. It refers to section 571 in relation to persons involved in a contravention of a civil penalty provision. It further refers to the Criminal Code, section 7 and section 937 of this Act in relation to parties to an offence under this section.

New subsection 876P(2) provides that a criminal proceeding may be started against a person for contravention of subsection (1) regardless of whether a civil penalty has been imposed on the person for the contravention.

New subsection 876P(3) clarifies that a civil penalty must not be imposed on a person on the grounds of a contravention of subsection (1) if the person has been convicted of an offence against subsection (1).

New subsection 876P(4) provides that this section applies despite section 571(1).

New subsection 876P(5) provides that conduct for the purposes of this section includes a course of conduct. It further provides that for the purposes of this section the term convicted means found guilty, or having a plea of guilty accepted, by a court whether or not a conviction is recorded.

#### *Section 876Q Disclosure of information to administrator by registrar or industrial inspector*

New section 876Q permits disclosure of information about the C&G division that is in either the registrar's possession or control or an industrial inspector's possession or control to the administrator for the purposes of the administration scheme. It further provides at new section 876Q(3) that the administrator may use information disclosed under this section for the purposes of the administration scheme.

For the avoidance of doubt, New subsection 876Q(4) provides that a person who, acting honestly, discloses or uses information under this section is not liable, civilly, criminally or under an administrative process, for the disclosure or use.

The provision of information or complaints to the administrator by members of the public is not provided for under this Bill on the basis that these are intended to be dealt with under the Federal scheme. Where information or complaints are received from members of the public in Queensland these will be referred to be dealt with as part of the Federal scheme.

### *Section 876R Costs of administration*

New section 876R would require the CFMEUQ C&G Division to bear costs of any administration established under this Bill, including the costs incurred by the administrator (acting in that capacity), except as otherwise provided in that scheme.

### *Section 876S Alteration of CFMEUQ rules under administration scheme*

New section 876S would establish a process for the alteration of the CFMEUQ rules under the administration scheme.

New subsection 876S(2) provides a requirement for the administrator to file written notice of the particulars of an alteration made within 35 days after the alteration is made or within a longer period decided by the registrar.

New subsection 876S(3) provides a requirement for the administrators notice of particulars of an alteration to include a declaration that the alteration was made in accordance with the administration scheme; and the particulars stated in the notice are true and correct to the best of the administrator's knowledge and belief.

New subsection 876S(4) provides an ability for the registrar to, with the administrator's consent, amend an alteration made under this section to correct a typographical, clerical or formal error.

New subsection 876S(5) provides that an alteration made under this section does not take effect unless the requirements at subsections 876R(2)-(3) are met and the registrar has certified it. For the alteration to be certified the registrar must be satisfied that in the alteration complies with, and is not contrary to, this act, the Commonwealth Fair Work Act, modern awards or enterprise agreements; and is not otherwise contrary to law; and has been made in accordance with the administration scheme.

New subsection 876S(6) provides that an alteration made under this section takes effect on the day it is certified by the registrar under New subsection 876S(5).

New subsection 876S(7) provides that this section applies despite Part 6.

### *Section 876T Decision about excluded matter final*

New section 876T provides that unless the Supreme Court decides that a decision to make, vary or revoke an administration notice is affected by jurisdictional error, the decision –

- Is final and conclusive; and
- Can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way under the *Judicial Review Act 1991* or otherwise (whether by the Supreme court, another court, a tribunal or another entity); and
- Is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.\

New subsection 876T(2) provides that the *Judicial Review Act 1991*, Part 5 applies to a decision about an excluded matter to the extent it is affected by jurisdictional error.

## **Division 5 Expiry**

### *Section 876U Expiry*

New section 876U provides that this part expires on the day that is 5 years after the day this section commences.

*Clause 6 Amendment of schedule 3 (civil penalties)*

New section 6 of the Bill provides for the amendment of schedule 3 to include civil penalties relevant to this Part.

*Clause 7* corrects a typographical error in new section 146A (Employer to provide necessary information to WorkCover).

*Clause 8* corrects a cross referencing error in amendments to section 220 (Insurer's responsibility for rehabilitation and return to work)

*Clause 9* updates the definition of 'reasonable steps offence' in amended section 486A (Codes of practice) to ensure it includes an offence against section 232AB(1) (Insurer's responsibility for providing support to worker).

*Clause 10* corrects a cross referencing error in amendments to section 486B (Effect of code of practice).

*Clause 11* amends Schedule 4A (Specified diseases) to include primary site uterine cancer as a specified disease for firefighters. The qualifying period is 10 years.

*Clause 12* corrects a cross referencing error in amendments to 220(6)(b) (Insurer's responsibility for rehabilitation and return to work).

*Clause 13* corrects a typographical error in amendments to section 325Q(2) (Meaning of claim referral).

*Clause 14* corrects a cross referencing error in amendments to section 325S(2)(a)(ii) (Meaning of consideration for s 325R).

*Clause 15* corrects a cross referencing error in amendments to section 540 (Application of pt 2).