

Queensland



WORKCOVER QUEENSLAND AMENDMENT BILL 2001

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TABLE OF PROVISIONS

Section	Page
1 Short title	8
2 Commencement	8
3 Act amended	8
4 Amendment of s 5 (Workers' compensation scheme)	8
5 Omission of s 6 (Protection of employers in relation to damages)	8
6 Amendment of s 11 (Meaning of "damages")	8
7 Omission of ch 1, pt 4, div 6, sdivs 5–6	9
8 Amendment of s 167 (Maximum entitlement)	9
9 Amendment of s 201 (Calculation of WRI)	9
10 Amendment of s 203 (WorkCover to give notice of assessment of permanent impairment)	9
11 Amendment of s 206 (Certificate injury)	10
12 Amendment of s 207 (Non-certificate injury)	10
13 Amendment of s 210 (Additional lump sum compensation for certain workers)	11
14 Amendment of s 211 (Additional lump sum compensation for gratuitous care)	11
15 Amendment of s 218 (Total dependency)	12
16 Amendment of s 248 (Worker must mitigate loss)	12
17 Amendment of s 250 (Definitions for ch 5)	12
18 Amendment of s 253 (General limitation on persons entitled to seek damages)	12
19 Amendment of s 254 (Worker with terminal condition)	13
20 Replacement of ch 5, pt 2, divs 2–6, div 7 hdg and s 273	14
255 Worker who is required to make election to seek damages	14

Division 2—Consequences, to costs, of seeking damages

256	Consequences, to costs, of seeking damages	15
-----	--	----

*Division 3—Claimant who has received notice of assessment**Subdivision 1—Application of division 3*

257	Application of div 3	15
-----	--------------------------------	----

Subdivision 2—Claimant mentioned in s 253(1)(a)(i)

258	Application of subdiv 2	15
-----	-----------------------------------	----

259	Need for urgent proceedings	16
-----	---------------------------------------	----

Subdivision 3—Claimant mentioned in s 253(1)(a)(ii)

260	Application of subdiv 3	16
-----	-----------------------------------	----

261	Claimant with more than 1 injury from an event	16
-----	--	----

262	Claimant may ask for injury to be assessed for permanent impairment	17
-----	---	----

263	Need for urgent proceedings	18
-----	---------------------------------------	----

264	When urgent proceeding must be discontinued	18
-----	---	----

Division 4—Claimant mentioned in s 253(1)(b)

265	Application of div 4	19
-----	--------------------------------	----

266	Claimant may seek damages only after being assessed	19
-----	---	----

267	Need for urgent proceedings	19
-----	---------------------------------------	----

268	When urgent proceeding must be discontinued	20
-----	---	----

Division 5—Claimant mentioned in s 253(1)(c)

269	Application of div 5	20
-----	--------------------------------	----

270	Access to damages if application for compensation is subject to review or appeal	20
-----	--	----

271	Need for urgent proceedings	21
-----	---------------------------------------	----

272	When urgent proceedings must be discontinued	21
-----	--	----

Division 6—Claimant mentioned in s 253(1)(d)

273	Application of div 6	22
-----	--------------------------------	----

273A	Access to damages if claimant has not lodged application for compensation	22
------	---	----

273B	Need for urgent proceedings	23
------	---------------------------------------	----

273C	When proceedings must be discontinued	24
------	---	----

Division 7—Person mentioned in s 253(1)(e)

	273D Application of div 7	24
	273E Claimant may seek damages only in particular cases	24
	273F Need for urgent proceedings	26
	273G When proceedings must be discontinued.	27
	<i>Division 8—Review of worker’s decision to accept payment of lump sum compensation for injury—WRI less than 20%</i>	
	273H Application of div 8	27
21	Amendment of s 274 (Decision not to seek damages reviewable in certain circumstances)	27
22	Replacement of ch 5, pt 3	27
	PART 3—MITIGATION OF LOSS AND REHABILITATION	
	275 Mitigation of loss	28
	275A Provision of rehabilitation	28
	275B Costs of rehabilitation	29
23	Replacement of s 279 (Object of pt 5)	30
	279 Object of pt 5	30
	279A Overriding obligations of parties	30
24	Amendment of s 280 (Notice of claim for damages)	30
25	Insertion of new s 280A	31
	280A Noncompliance with s 280 and urgent proceedings	31
26	Amendment of s 281 (Claimant to tell WorkCover of change to information in notice of claim)	32
27	Amendment of s 282 (Response to notice of claim)	32
28	Replacement of s 283 (WorkCover to give information to claimant)	33
	283 Claimant and WorkCover to cooperate	33
29	Amendment of s 285 (WorkCover and claimant to attempt to resolve claim)	35
30	Amendment of s 288 (Non-disclosure of certain material)	35
31	Replacement of s 293 (Compulsory conference)	36
	293 Compulsory conference	36
	293A Procedure at conference	37
	293B Information to be given by party’s lawyer before other type of settlement attempted	38
32	Omission of ch 5, pt 6, div 2	38
33	Amendment of s 302 (Compliance necessary before starting proceeding)	39

WorkCover Queensland Amendment Bill 2001

34	Amendment of s 303 (Claimant to have given complying notice of claim or WorkCover to have waived compliance)	39
35	Insertion of new s 305A	39
	305A Other provision for urgent proceedings	39
36	Amendment of s 308 (Alteration of period of limitation)	39
37	Replacement of ss 312–314.	40
	312 Contributory negligence.	40
38	Amendment of s 316 (Damages other than to claimant).	41
39	Replacement of ch 5, pt 10, hdg	41
40	Omission of ch 5, pt 10, divs 1 and 2, and div 3 hdg	41
41	Replacement of ch 5, pt 11, div 1 and div 2 hdg	41
	<i>Division 1—Costs applying to worker with WRI of 20% or more or dependant</i>	
320	Application of div 1	41
321	Principles about orders as to costs	41
322	Costs if written final offer by claimant	42
323	Costs if written final offer by WorkCover	42
323A	Interest after service of written final offer	42
	<i>Division 2—Costs applying to worker with WRI less than 20% or no WRI’.</i>	
42	Amendment of s 324 (Application of div 2)	43
43	Amendment of s 325 (Principles about orders as to costs)	43
44	Amendment of s 437 (Reference to tribunals)	44
45	Amendment of s 454 (Further reference on fresh evidence).	44
46	Replacement of s 456 (Finality of tribunal’s decision)	44
	455A Tribunal may refer non-medical matters back to WorkCover	44
	456 Finality of tribunal’s decision	45
47	Amendment of s 457 (Decisions of tribunal)	45
48	Amendment of s 489 (Application of pt 2)	45
49	Amendment of s 498 (Who may appeal).	46
50	Insertion of new s 501A	46
	501A Application of Uniform Civil Procedure Rules and Industrial Relations (Tribunals) Rules	46
51	Insertion of new ss 510A and 510B	46

	510A Costs of appeal to Industrial Court	46
	510B Recovery of costs	47
52	Insertion of new ch 14	47
	CHAPTER 14—TRANSITIONAL PROVISIONS FOR WORKCOVER QUEENSLAND AMENDMENT ACT 2001	
	587 Definitions for ch 14	47
	588 Injury before 1 July 2001	47
	589 Reference to medical assessment tribunal	48
	590 Formal revival of claim for loss of consortium	48
53	Amendment of sch 3 (Dictionary)	48
	SCHEDULE	49
	MINOR AMENDMENTS	

2001

A BILL

FOR

An Act to amend the WorkCover Queensland Act 1996

The Parliament of Queensland enacts—

1

Clause 1 Short title

2

This Act may be cited as the *WorkCover Queensland Amendment Act 2001*.

3

4

Clause 2 Commencement

5

This Act is taken to have commenced on 1 July 2001.

6

Clause 3 Act amended

7

This Act amends the *WorkCover Queensland Act 1996*.

8

Clause 4 Amendment of s 5 (Workers' compensation scheme)

9

(1) Section 5(4)(c) to (e)—

10

renumber as section 5(4)(d) to (f).

11

(2) Section 5(4)—

12

insert—

13

‘(c) provide for the protection of employers’ interests in relation to claims for damages for workers’ injuries; and’.

14

15

Clause 5 Omission of s 6 (Protection of employers in relation to damages)

16

Section 6—

17

omit.

18

Clause 6 Amendment of s 11 (Meaning of “damages”)

19

Section 11—

20

insert—

21

‘(3) Also, a reference in subsection (1) to the liability of an employer does not include a liability to pay damages for loss of consortium resulting from injury sustained by a worker.’.

Clause 7 Omission of ch 1, pt 4, div 6, sdivs 5–6

Chapter 1, part 4, division 6, subdivisions 5 and 6—
omit.

Clause 8 Amendment of s 167 (Maximum entitlement)

Section 167(1)(a), (b) and (c), ‘\$103 100’—
omit, insert—
‘\$150 000’.

Clause 9 Amendment of s 201 (Calculation of WRI)

Section 201—
insert—

‘(3) However, in relation to an event, the worker’s WRI for a psychiatric or psychological injury and the worker’s WRI for another injury must not be combined in calculating the WRI for the worker’s injury.’.

Clause 10 Amendment of s 203 (WorkCover to give notice of assessment of permanent impairment)

(1) Section 203(1), ‘28 days’—
omit, insert—
‘14 days’.

(2) Section 203(3)(b)(ii)—
omit, insert—

‘(ii) the WRI calculated for the injury; and’.

(3) Section 203(3)(c)—
omit, insert—

- (c) if the worker's WRI is 50% or more—the worker's entitlement to additional lump sum compensation under section 210;¹ and 1
2
- (d) if the worker's WRI is 15% or more—the worker's entitlement to additional lump sum compensation (if any) for gratuitous care 3
4
5 under section 211.²'.
- (4) Section 203(4), '259, 260'— 6
omit, insert— 7
'255, 256'. 8

- Clause 11 Amendment of s 206 (Certificate injury)** 9
- (1) Section 206, heading— 10
omit, insert— 11
- '206 Worker's decision about lump sum compensation—WRI 20% or more'.** 12
13
- (2) Section 206(1)— 14
omit, insert— 15
- '(1) This section applies if—** 16
- (a) the worker has— 17
- (i) a psychiatric or psychological injury that results in a WRI of 18
the worker of 20% or more; or 19
- (ii) another injury that results in a WRI of the worker of 20% or 20
more; and 21
- (b) the worker has an entitlement to lump sum compensation.' 22

- Clause 12 Amendment of s 207 (Non-certificate injury)** 23
- (1) Section 207, heading— 24
omit, insert— 25

1 Section 210 (Additional lump sum compensation for certain workers)

2 Section 211 (Additional lump sum compensation for gratuitous care)

‘207 Worker’s decision about lump sum compensation—WRI less than 20% or no WRI’.	1
	2
(2) Section 207(1)—	3
<i>omit, insert—</i>	4
‘(1) This section applies if—	5
(a) the worker—	6
(i) has—	7
(A) a psychiatric or psychological injury that results in a WRI of the worker of less than 20%; or	8
	9
(B) another injury that results in a WRI of the worker of less than 20%; and	10
	11
(ii) has an entitlement to lump sum compensation; or	12
(b) the worker has an injury that does not result in any WRI of the worker.’.	13
	14
(3) Section 207(2)(a), ‘259, 260’—	15
<i>omit, insert—</i>	16
‘255, 256’.	17
 Clause 13 Amendment of s 210 (Additional lump sum compensation for certain workers)	18
	19
Section 210(2), ‘\$103 100’—	20
<i>omit, insert—</i>	21
‘\$150 000’.	22
 Clause 14 Amendment of s 211 (Additional lump sum compensation for gratuitous care)	23
	24
Section 211(1)(a), ‘50%’—	25
<i>omit, insert—</i>	26
‘15%’.	27

Clause 15	Amendment of s 218 (Total dependency)	1
	(1) Section 218(2)(a), ‘\$164 960’—	2
	<i>omit, insert—</i>	3
	‘\$250 000’.	4
	(2) Section 218(2)(b), ‘\$6 190’—	5
	<i>omit, insert—</i>	6
	‘\$9 375’.	7
Clause 16	Amendment of s 248 (Worker must mitigate loss)	8
	Section 248—	9
	<i>insert—</i>	10
	‘(3) The worker’s duty under this section is in addition to any duty the worker may have under section 275. ³ ’.	11
		12
Clause 17	Amendment of s 250 (Definitions for ch 5)	13
	(1) Section 250, definition “ damages certificate ”—	14
	<i>omit.</i>	15
	(2) Section 250—	16
	<i>insert—</i>	17
	‘ “ written final offer ” means written final offer under section 294.’.	18
Clause 18	Amendment of s 253 (General limitation on persons entitled to seek damages)	19
	(1) Section 253(1)(a)—	20
	<i>omit, insert—</i>	22
	‘(a) the worker, if the worker—	23
	(i) has received a notice of assessment from WorkCover for the injury; or	24
		25

3 Section 275 (Mitigation of loss)

WorkCover Queensland Amendment Bill 2001

- (ii) has not received a notice of assessment for the injury, but— 1
 - (A) has received a notice of assessment for any injury 2
 - resulting from the same event (the “**assessed injury**”); 3
 - and 4
 - (B) for the assessed injury, the worker has elected or is 5
 - taken to have elected to seek damages and, under 6
 - section 255, can not change the election; or’. 7
- (2) Section 253(1)(b) and (d), ‘sustained by the worker’— 8
omit. 9
- (3) Section 253(1)(d), as amended— 10
renumber as section 253(1)(e). 11
- (4) Section 253(1)(c)— 12
omit, insert— 13
 - ‘(c) the worker, if— 14
 - (i) the worker has lodged an application, for compensation for 15
 - the injury, that is or has been the subject of a review or 16
 - appeal under chapter 9; and 17
 - (ii) the application has not been decided in or following the 18
 - review or appeal; or 19
 - (d) the worker, if the worker has not lodged any application for 20
 - compensation for any injury resulting from the event; or’. 21
- (5) Section 253— 22
insert— 23
 - ‘(2A) If a worker has accepted an offer of lump sum compensation under 24
 - chapter 3, part 9, division 3⁴ for an injury, the worker is not entitled, under 25
 - subsection (1)(a)(ii) or otherwise, to seek damages for any injury resulting 26
 - from the same event.’. 27

Clause 19 Amendment of s 254 (Worker with terminal condition) 28

(1) Section 254(2)(a) and (b)— 29

⁴ Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

<i>renumber</i> as section 254(2)(b) and (c).	1
(2) Section 254(2)—	2
<i>insert</i> —	3
‘(a) section 275(2); ⁵ ’.	4

Clause 20 Replacement of ch 5, pt 2, divs 2–6, div 7 hdg and s 273	5
Chapter 5, part 2, divisions 2 to 6, division 7 heading and section 273—	6
<i>omit, insert</i> —	7
‘255 Worker who is required to make election to seek damages	8
‘(1) This section applies if a worker’s notice of assessment states that—	9
(a) the worker’s WRI is less than 20%; or	10
(b) the worker has an injury that does not result in any WRI of the worker.	11 12
‘(2) If, in the notice of assessment, the worker is offered a payment of lump sum compensation under chapter 3, part 9, division 3 ⁶ for the injury, the worker is not entitled to both—	13 14 15
(a) payment of lump sum compensation for the injury; and	16
(b) damages for the injury.	17
‘(3) If, in the notice of assessment, the worker is required to make an election to seek damages for the injury, the worker can not change the worker’s election—	18 19 20
(a) if the worker has elected to seek damages for the injury—after notice of the election is given to WorkCover; or	21 22
(b) if the worker is taken, under section 207(7), ⁷ to have elected to seek damages for the injury—after the worker lodges a notice of claim.	23 24 25

5 Section 275 (Mitigation of loss)

6 Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

7 Section 207 (Worker’s decision about lump sum compensation—WRI less than 20% or no WRI)

‘Division 2—Consequences, to costs, of seeking damages 1**‘256 Consequences, to costs, of seeking damages** 2

‘(1) If the claimant is a worker and the claimant’s notice of assessment states that the claimant’s WRI is 20% or more, part 11, division 1 applies in relation to costs in the claimant’s proceeding for damages. 3
4
5

‘(2) If the claimant is a worker and the claimant’s notice of assessment states that— 6
7

(a) the claimant’s WRI is less than 20%; or 8

(b) the claimant has an injury that does not result in any WRI of the claimant; 9
10

part 11, division 2 applies in relation to costs in the claimant’s proceeding for damages. 11
12

‘(3) If the claimant is a dependant, part 11, division 1 applies in relation to costs in the claimant’s proceeding for damages. 13
14

‘Division 3—Claimant who has received notice of assessment 15***‘Subdivision 1—Application of division 3*** 16**‘257 Application of div 3** 17

‘This division applies to a claimant who is a person mentioned in section 253(1)(a). 18
19

‘Subdivision 2—Claimant mentioned in s 253(1)(a)(i) 20**‘258 Application of subdiv 2** 21

‘This subdivision applies to a claimant who is a person mentioned in section 253(1)(a)(i). 22
23

‘259 Need for urgent proceedings

‘(1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages.

‘(2) Section 280A⁸ provides a way for the claimant to satisfy section 308(1)(a)(ii).⁹

‘(3) Also, the claimant may, under section 305,¹⁰ seek leave to start a proceeding for damages for an injury without complying with section 302.¹¹

‘(4) However, if the leave mentioned in subsection (3) is given, a proceeding started by leave is stayed until the claimant complies with section 302.

‘Subdivision 3—Claimant mentioned in s 253(1)(a)(ii)**‘260 Application of subdiv 3**

‘This subdivision applies to a claimant who is a person mentioned in section 253(1)(a)(ii).

‘261 Claimant with more than 1 injury from an event

‘(1) The claimant need not have, and WorkCover can not decide to have, the injury assessed under chapter 3, part 9¹² to decide if the injury has resulted in a degree of permanent impairment.

‘(2) WorkCover can not decide that the claimant’s notice of claim does not comply with section 280¹³ only because the claimant has not received a notice of assessment for the injury.

‘(3) However, the claimant may seek damages for the injury only if WorkCover decides that the claimant—

8 Section 280A (Noncompliance with s 280 and urgent proceedings)

9 Section 308 (Alteration of period of limitation)

10 Section 305 (Court to have given leave despite noncompliance)

11 Section 302 (Compliance necessary before starting proceeding)

12 Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment)

13 Section 280 (Notice of claim for damages)

WorkCover Queensland Amendment Bill 2001

(a) was a worker when the injury was sustained; and	1
(b) has sustained an injury.	2
‘(4) WorkCover must make a decision for the purpose of subsection (3) within 3 months after—	3 4
(a) the claimant gives, or is taken to have given, a complying notice of claim; or	5 6
(b) the claimant gives a notice of claim for which WorkCover waives compliance with the requirements of section 280, with or without conditions; or	7 8 9
(c) a court makes a declaration under section 304. ¹⁴	10
‘(5) WorkCover must notify the claimant and the claimant’s employer of a decision it makes for the purpose of subsection (3).	11 12
‘(6) If WorkCover decides that the claimant—	13
(a) was not a worker when the injury was sustained; or	14
(b) has not sustained an injury;	15
the notification must include written reasons for the decision.	16
‘(7) If WorkCover does not make a decision for the purpose of subsection (3) within the time mentioned in subsection (4), the claimant may have the failure to make a decision reviewed under chapter 9.	17 18 19
‘(8) A person aggrieved by a decision made by WorkCover for the purpose of subsection (3) may have the decision reviewed under chapter 9.	20 21
‘262 Claimant may ask for injury to be assessed for permanent impairment	22 23
‘(1) Despite section 261, the claimant may ask WorkCover to have the injury assessed under chapter 3, part 9 to decide if the injury has resulted in a degree of permanent impairment.	24 25 26
‘(2) WorkCover must have the degree of permanent impairment assessed under chapter 3, part 9 and give the claimant a notice of assessment.	27 28
‘(3) Chapter 3, part 9 applies to the assessment, but only for the purpose of assessing the degree of permanent impairment for the purposes of part 11.	29 30 31

14 Section 304 (Court to have made declaration about noncompliance)

‘(4) To remove any doubt, it is declared that the assessment does not give the claimant an entitlement to lump sum compensation under chapter 3, part 9, division 3¹⁵ for the injury.

‘263 Need for urgent proceedings

‘(1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages.

‘(2) Section 280A¹⁶ provides a way for the claimant to satisfy section 308(1)(a)(ii).¹⁷

‘(3) Also, the claimant may, under section 305,¹⁸ seek leave to start a proceeding for damages for an injury without complying with section 302.¹⁹

‘(4) However, if the leave mentioned in subsection (3) is given, the proceeding started by leave is stayed until—

- (a) WorkCover decides that the claimant was a worker when the injury was sustained; and
- (b) WorkCover decides that the claimant has sustained an injury; and
- (c) any review or appeal under chapter 9 ends; and
- (d) if the claimant decides to have the injury assessed under chapter 3, part 9—WorkCover gives the claimant a notice of assessment; and
- (e) the claimant complies with section 302.

‘264 When urgent proceeding must be discontinued

‘(1) This section applies to a proceeding mentioned in section 263(4).

‘(2) The claimant must discontinue the proceeding if it is decided by WorkCover, or on review or appeal under chapter 9, that the claimant—

15 Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

16 Section 280A (Noncompliance with s 280 and urgent proceedings)

17 Section 308 (Alteration of period of limitation)

18 Section 305 (Court to have given leave despite noncompliance)

19 Section 302 (Compliance necessary before starting proceeding)

- (a) was not a worker when the injury was sustained; or 1
- (b) has not sustained an injury. 2

‘Division 4—Claimant mentioned in s 253(1)(b) 3

‘265 Application of div 4 4

‘This division applies to a claimant who is a person mentioned in 5
section 253(1)(b).²⁰ 6

‘266 Claimant may seek damages only after being assessed 7

‘(1) The claimant may seek damages for the injury only if WorkCover 8
gives the claimant a notice of assessment. 9

‘(2) For subsection (1), WorkCover must have the degree of permanent 10
impairment assessed under chapter 3, part 9 and give the claimant a notice 11
of assessment. 12

‘(3) Chapter 3, part 9 applies to the assessment. 13

‘267 Need for urgent proceedings 14

‘(1) This section applies in relation to an urgent need for the claimant to 15
start a proceeding for damages. 16

‘(2) Section 280A²¹ provides a way for the claimant to satisfy 17
section 308(1)(a)(ii).²² 18

‘(3) Also, the claimant may, under section 305,²³ seek leave to start a 19
proceeding for damages for an injury without complying with 20
section 302.²⁴ 21

‘(4) However, if the leave mentioned in subsection (3) is given, the 22
proceeding started by leave is stayed until— 23

20 Section 253 (General limitation on persons entitled to seek damages)

21 Section 280A (Noncompliance with s 280 and urgent proceedings)

22 Section 308 (Alteration of period of limitation)

23 Section 305 (Court to have given leave despite noncompliance)

24 Section 302 (Compliance necessary before starting proceeding)

(a) WorkCover gives the claimant a notice of assessment; and	1
(b) the claimant—	2
(i) elects to seek damages for the injury; and	3
(ii) complies with section 302.	4
 ‘268 When urgent proceeding must be discontinued	 5
‘(1) This section applies if a claimant has started a proceeding mentioned in section 267(4).	6 7
‘(2) The claimant must discontinue the proceeding if the claimant elects to accept an offer of payment of lump sum compensation under chapter 3, part 9 for the injury.	8 9 10
 <i>‘Division 5—Claimant mentioned in s 253(1)(c)</i>	 11
 ‘269 Application of div 5	 12
‘This division applies to a claimant who is a person mentioned in section 253(1)(c). ²⁵	13 14
 ‘270 Access to damages if application for compensation is subject to review or appeal	 15 16
‘(1) The claimant may seek damages for the injury only after—	17
(a) any review or appeal under chapter 9 ends; and	18
(b) the application for compensation is decided; and	19
(c) WorkCover gives the claimant a notice of assessment.	20
‘(2) For subsection (1)(c), WorkCover must have the degree of permanent impairment assessed under chapter 3, part 9 and give the claimant a notice of assessment.	21 22 23
‘(3) Chapter 3, part 9 applies to the assessment.	24

25 Section 253 (General limitation on persons entitled to seek damages)

‘271 Need for urgent proceedings

‘(1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages.

‘(2) Section 280A²⁶ provides a way for the claimant to satisfy section 308(1)(a)(ii).²⁷

‘(3) Also, the claimant may, under section 305,²⁸ seek leave to start a proceeding for damages for an injury without complying with section 302.²⁹

‘(4) However, if the leave mentioned in subsection (3) is given, the proceeding started by leave is stayed until—

(a) any review or appeal under chapter 9 ends; and

(b) WorkCover gives the claimant a notice of assessment; and

(c) the claimant—

(i) elects to seek damages for the injury; and

(ii) complies with section 302.

‘272 When urgent proceedings must be discontinued

‘(1) This section applies if the claimant has started a proceeding mentioned in section 271(4) and—

(a) it has been decided by WorkCover, or on review or appeal under chapter 9, that the claimant—

(i) was not a worker when the injury was sustained; or

(ii) has not sustained an injury; or

(b) the claimant elects to accept an offer of payment of lump sum compensation under chapter 3, part 9 for the injury.

‘(2) The claimant must discontinue the proceeding.

26 Section 280A (Noncompliance with s 280 and urgent proceedings)

27 Section 308 (Alteration of period of limitation)

28 Section 305 (Court to have given leave despite noncompliance)

29 Section 302 (Compliance necessary before starting proceeding)

Division 6—Claimant mentioned in s 253(1)(d)**‘273 Application of div 6**

‘This division applies to a claimant who is a person mentioned in section 253(1)(d).³⁰

‘273A Access to damages if claimant has not lodged application for compensation

‘(1) The claimant may only seek damages for any injury resulting from the event if WorkCover—

(a) decides, for every injury resulting from the event, whether the claimant—

(i) was a worker when the injury was sustained; and

(ii) has sustained an injury; and

(b) decides, for the injury for which damages may be sought, that the claimant—

(i) was a worker when the injury was sustained; and

(ii) has sustained an injury; and

(c) gives the claimant a notice of assessment for every injury.

‘(2) For subsection (1)(c), WorkCover must have the degree of permanent impairment assessed under chapter 3, part 9 and give the claimant a notice of assessment.

‘(3) Chapter 3, part 9 applies to the assessment, but only for the purpose of assessing the degree of permanent impairment for the purposes of part 11.

‘(4) To remove any doubt, it is declared that the assessment does not give the claimant an entitlement to lump sum compensation under chapter 3, part 9, division 3³¹ for the injury.

‘(5) WorkCover must make a decision or decisions for the purpose of subsection (1)(b) within 3 months after—

30 Section 253 (General limitation on persons entitled to seek damages)

31 Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

(a) the claimant gives, or is taken to have given, a complying notice of claim; or	1 2
(b) the claimant gives a notice of claim for which WorkCover waives compliance with the requirements of section 280, with or without conditions; or	3 4 5
(c) a court makes a declaration under section 304.	6
‘(6) WorkCover must notify the claimant and the claimant’s employer of any decision it makes for the purpose of subsection (1)(b).	7 8
‘(7) If, for any injury, WorkCover decides that the claimant—	9
(a) was not a worker when the injury was sustained; or	10
(b) has not sustained an injury;	11
the notification must include written reasons for the decision.	12
‘(8) If, for any injury, WorkCover does not make a decision for the purpose of subsection (1)(b) within the time mentioned in subsection (5), the claimant may have the failure to make a decision reviewed under chapter 9.	13 14 15 16
‘(9) A person aggrieved by a decision made by WorkCover for the purpose of subsection (1)(b) may have the decision reviewed under chapter 9.	17 18 19
‘(10) For any assessment mentioned in subsection (1)(c) made by WorkCover with which the person does not agree, section 204 ³² applies.	20 21
‘273B Need for urgent proceedings	22
‘(1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages for any injury resulting from the event.	23 24
‘(2) Section 280A ³³ provides a way for the claimant to satisfy section 308(1)(a)(ii). ³⁴	25 26

32 Section 204 (Worker’s disagreement with assessment of permanent impairment)

33 Section 280A (Noncompliance with s 280 and urgent proceedings)

34 Section 308 (Alteration of period of limitation)

‘(3) Also, the claimant may, under section 305,³⁵ seek leave to start a proceeding for damages for an injury without complying with section 302.³⁶

‘(4) However, if the leave mentioned in subsection (3) is given, the proceeding started by leave is stayed until—

(a) WorkCover decides that the claimant—

(i) was a worker when the injury was sustained; and

(ii) has sustained an injury; and

(b) any review or appeal under chapter 9 ends; and

(c) WorkCover gives the claimant a notice of assessment; and

(d) the claimant complies with section 302.

‘273C When proceedings must be discontinued

‘(1) This section applies to a proceeding mentioned in section 273B(4).

‘(2) The claimant must discontinue the proceeding if it has been decided by WorkCover, or on review or appeal under chapter 9, that the claimant—

(a) was not a worker when the injury was sustained; or

(b) has not sustained an injury.

‘Division 7—Person mentioned in s 253(1)(e)

‘273D Application of div 7

‘This division applies to a claimant who is a person mentioned in section 253(1)(e).

‘273E Claimant may seek damages only in particular cases

‘(1) The claimant may only seek damages for the injury if any of the following apply—

³⁵ Section 305 (Court to have given leave despite noncompliance)

³⁶ Section 302 (Compliance necessary before starting proceeding)

-
- (a) an application has been made for compensation under chapter 3, part 10³⁷ and— 1
2
- (i) WorkCover has paid compensation under chapter 3, part 10 for the worker's death to the claimant as a dependant of a worker; or 3
4
5
- (ii) the application is or has been the subject of a review or appeal under chapter 9 and the application has not been decided in or following the review or appeal; 6
7
8
- (b) an application for compensation mentioned in paragraph (a) has not been made and WorkCover decides that— 9
10
- (i) the claimant was a dependant of the worker; and 11
- (ii) the deceased was a worker when the event happened; and 12
- (iii) the worker sustained an injury in the event; and 13
- (iv) the injury caused the worker's death. 14
- ‘(2) WorkCover must make a decision for the purpose of subsection (1)(b) within 3 months after— 15
16
- (a) the claimant gives, or is taken to have given, a complying notice of claim; or 17
18
- (b) the claimant gives a notice of claim for which WorkCover waives compliance with the requirements of section 280, with or without conditions; or 19
20
21
- (c) a court makes a declaration under section 304. 22
- ‘(3) WorkCover must notify the claimant and the worker's employer of a decision it makes for the purpose of subsection (1)(b). 23
24
- ‘(4) If WorkCover decides that— 25
- (a) the claimant was not a dependant of the worker; or 26
- (b) the deceased was not a worker when the event happened; or 27
- (c) the worker did not sustain an injury resulting from the event; or 28
- (d) the injury did not cause the worker's death; 29
- the notification must include written reasons for the decision. 30

37 Chapter 3 (Compensation), part 10 (Compensation on worker's death)

‘(5) If WorkCover does not make a decision for the purpose of subsection (1)(b) within the time mentioned in subsection (2), the claimant may have the failure to make a decision reviewed under chapter 9.

‘(6) A person aggrieved by a decision made by WorkCover for the purpose of subsection (1)(b) may apply to have the decision reviewed under chapter 9.

‘273F Need for urgent proceedings

‘(1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages for the injury.

‘(2) Section 280A³⁸ provides a way for the claimant to satisfy section 308(1)(a)(ii).³⁹

‘(3) Also, the claimant may, under section 305,⁴⁰ seek leave to start a proceeding for damages for the injury without complying with section 302.⁴¹

‘(4) However, if the leave mentioned in subsection (3) is given, for a claimant mentioned in section 273E(1)(a)(i), the proceeding started by leave is stayed until the claimant complies with section 302.

‘(5) Also, if the claimant is a claimant mentioned in section 273E(1)(a)(ii) or (b), the proceeding is stayed until—

(a) WorkCover decides that—

(i) the claimant was a dependant of the worker; and

(ii) the deceased was a worker when the event happened; and

(iii) the worker sustained an injury from the event; and

(iv) the injury caused the worker’s death; and

(b) any review or appeal under chapter 9 ends; and

(c) the claimant complies with section 302.

38 Section 280A (Noncompliance with s 280 and urgent proceedings)

39 Section 308 (Alteration of period of limitation)

40 Section 305 (Court to have given leave despite noncompliance)

41 Section 302 (Compliance necessary before starting proceeding)

‘273G When proceedings must be discontinued	1
‘(1) This section applies to a proceeding mentioned in section 273F(5).	2
‘(2) The claimant must discontinue the proceeding if it is decided by WorkCover, or on review or appeal under chapter 9, that—	3 4
(a) the claimant was not a dependant of the worker; or	5
(b) the deceased was not a worker when the event happened; or	6
(c) the worker did not sustain an injury from the event; or	7
(d) the injury did not cause the worker’s death.	8
 <i>‘Division 8—Review of worker’s decision to accept payment of lump sum compensation for injury—WRI less than 20%</i>	9 10
 ‘273H Application of div 8	11
‘This division applies if—	12
(a) a worker has elected, under section 207, ⁴² to accept payment of lump sum compensation for an injury; and	13 14
(b) the worker has been assessed under chapter 3, part 9 as having sustained a degree of permanent impairment that results in a WRI of the worker of less than 20%.’.	15 16 17
 Clause 21 Amendment of s 274 (Decision not to seek damages reviewable in certain circumstances)	18 19
Section 274(7)(d), ‘certificate injury’—	20
<i>omit, insert—</i>	21
‘WRI of the worker of 20% or more’.	22
 Clause 22 Replacement of ch 5, pt 3	23
Chapter 5, part 3—	24
<i>omit, insert—</i>	25

42 Section 207 (Non-certificate injury)

‘PART 3—MITIGATION OF LOSS AND REHABILITATION

‘275 Mitigation of loss

‘(1) The common law duty of mitigation of loss applies to all workers in relation to claims or proceedings for damages.

‘(2) The worker must satisfactorily participate in rehabilitation.

‘(3) The worker’s duty mentioned in this section is in addition to any duty the worker may have under section 248.⁴³

‘275A Provision of rehabilitation

‘(1) WorkCover may make rehabilitation available to a worker on WorkCover’s own initiative or if the worker asks.

‘(2) If WorkCover makes rehabilitation available to a worker before admitting or denying liability for damages, WorkCover must not be taken, only for that reason, to have admitted liability.

‘(3) If—

(a) liability has been admitted for damages; or

(b) WorkCover has agreed to fund rehabilitation without making an admission of liability;

WorkCover must, if the worker asks, ensure that reasonable and appropriate rehabilitation is made available to the worker.

‘(4) The worker may, if not satisfied that the rehabilitation is reasonable and appropriate apply to WorkCover to appoint a mediator to help resolve the questions between the worker and WorkCover.

‘(5) An application for appointment of a mediator under subsection (4) must—

(a) be made in writing; and

(b) give details of any attempts made by the applicant to resolve the matter in dispute.

⁴³ Section 248 (Worker must mitigate loss)

‘(6) The fees and expenses of the mediator are to be paid as agreed between the parties or, in the absence of agreement, by the parties in equal proportions.

‘(7) WorkCover must make rehabilitation available to the worker, and the worker must satisfactorily participate in the rehabilitation, in sufficient time to enable WorkCover and the worker to comply with parts 5, 6 and 7.⁴⁴

‘275B Costs of rehabilitation

‘(1) If WorkCover intends to ask a court to take the cost of rehabilitation into account in the assessment of damages payable to a worker, WorkCover must, before providing the rehabilitation, give the worker a written statement estimating the cost of the rehabilitation.

‘(2) WorkCover must bear, or reimburse, the cost of providing the rehabilitation, unless WorkCover’s liability for the cost is reduced—

(a) by agreement with the worker; or

(b) by order of the court.

‘(3) The cost to WorkCover of providing the rehabilitation is to be taken into account in the assessment of damages on the claim if, and only if, WorkCover gave the statement mentioned in subsection (1).

‘(4) The following applies if the cost of rehabilitation is to be taken into account in the assessment of damages—

(a) the damages are first assessed, without reduction for contributory negligence, on the assumption that the worker has incurred the cost of the rehabilitation;

(b) then, any reduction of the damages assessed, on account of contributory negligence, is made;

(c) then, the total cost of rehabilitation is set-off against the amount assessed under paragraph (b).

Example—

Suppose that responsibility for an injury is apportioned equally between the worker and WorkCover. Damages (exclusive of the cost of rehabilitation) before apportionment are fixed at \$100 000. WorkCover has spent \$5 000 on rehabilitation. In this case, the worker’s damages will be assessed under paragraph (a) at \$105 000 (that is, as if the

⁴⁴ Parts 5 (Pre-court procedures), 6 (Settlement of claims) and 7 (Start of court proceedings)

WorkCover Queensland Amendment Bill 2001

worker had incurred the \$5 000 rehabilitation expense) and reduced to \$52 500 under paragraph (b), and the \$5 000 spent by WorkCover on rehabilitation will be set off against this amount, resulting in a final award of \$47 500.

‘(5) If WorkCover is induced by a worker’s fraud to provide rehabilitation to the worker, WorkCover may recover the cost of providing the rehabilitation, as a debt, from the worker.’.

Clause 23 Replacement of s 279 (Object of pt 5)

Section 279—

omit, insert—

‘279 Object of pt 5

‘The object of this part is to facilitate the just and expeditious resolution of the real issues in a claim for damages at a minimum of expense.

‘279A Overriding obligations of parties

‘(1) In accordance with the object of this part, this part is to be applied by the parties to avoid undue delay, expense and technicality and to facilitate the object.

‘(2) A party impliedly undertakes to other parties to proceed in an expeditious way.

‘(3) A court may impose appropriate sanctions if a party does not comply with a provision of this part.⁴⁵’.

Clause 24 Amendment of s 280 (Notice of claim for damages)

(1) Section 280(2)—

omit, insert—

‘(2) The claimant must—

(a) if the worker’s employer is not a self-insurer—

(i) give the notice of claim in the approved form to WorkCover at WorkCover’s registered office; and

⁴⁵ See section 291 (Court’s power to enforce compliance with chapter).

	(ii) give a copy of the notice of claim to the worker's employer;	1
	or	2
	(b) if the worker's employer is a self-insurer—give the notice of	3
	claim in the approved form to the self-insurer at the self-insurer's	4
	registered office.'.	5
	(2) Section 280(5)—	6
	<i>omit, insert—</i>	7
	'(5) Any statement made by the claimant in the notice that is in the	8
	claimant's personal knowledge must be verified by statutory declaration.'.	9
Clause 25	Insertion of new s 280A	10
	After section 280—	11
	<i>insert—</i>	12
	'280A Noncompliance with s 280 and urgent proceedings	13
	'(1) The purpose of this section is to enable a claimant to avoid the need	14
	to bring an application under section 305.	15
	'(2) Without limiting section 304 or 305, ⁴⁶ if the claimant alleges an	16
	urgent need ⁴⁷ to start a proceeding for damages despite noncompliance	17
	with section 280, the claimant must, in the claimant's notice of claim—	18
	(a) state the reasons for the urgency and the need to start the	19
	proceeding; and	20
	(b) ask WorkCover to waive compliance with the requirements of	21
	section 280.	22
	'(3) The claimant's lawyer may sign the notice of claim on the claimant's	23
	behalf if it is not reasonably practicable for the claimant to do so.	24
	'(4) The claimant's notice of claim may be given by fax in the way	25
	provided for under a regulation.	26
	'(5) WorkCover must, before the end of 3 business days after receiving	27
	the notice of claim, advise the claimant that WorkCover agrees or does not	28
	agree that there is an urgent need to start a proceeding for damages.	29

46 Section 304 (Court to have made declaration about noncompliance) or 305 (Court to have given leave despite noncompliance)

47 See sections 259, 263, 267, 271, 273B and 273F.

‘(6) If WorkCover agrees that there is an urgent need to start a proceeding for damages, WorkCover may, in the advice to the claimant under subsection (5), impose the conditions WorkCover considers necessary or appropriate to satisfy WorkCover to waive compliance under section 282(2)(b).’

‘(7) The claimant must comply with the conditions within a reasonable time that is agreed between WorkCover and the claimant.’

‘(8) The claimant’s agreement to comply with the conditions is taken to satisfy section 308(1)(a)(ii).⁴⁸’.

Clause 26 Amendment of s 281 (Claimant to tell WorkCover of change to information in notice of claim)

(1) Section 281(1), after ‘any’—

insert—

‘significant’.

(2) Section 281(2), ‘of change’—

omit.

Clause 27 Amendment of s 282 (Response to notice of claim)

(1) Section 282(2) and (3), ‘30 days’—

omit, insert—

‘14 days’.

(2) Section 282(2)(b) and (c)—

renumber as section 282(2)(c) and (d).

(3) Section 282(2)(a)—

omit, insert—

‘(a) stating whether WorkCover is satisfied that the notice of claim is a complying notice of claim; and

(b) if there is an urgent need to start a proceeding—stating that WorkCover is only willing to waive compliance with the

⁴⁸ Section 308 (Alteration of period of limitation)

WorkCover Queensland Amendment Bill 2001

requirements if the claimant agrees to satisfy conditions imposed
by WorkCover under section 280A; and’.

(4) Section 282(2)—

insert—

‘(e) stating whether WorkCover is prepared, without admitting
liability on the claim, to meet the cost of the claimant’s
reasonable and appropriate rehabilitation.’.

(5) Section 282(4)—

renumber as section 282(5).

(6) Section 282—

insert—

‘(4) If WorkCover does not give the written notice mentioned in
subsection (2) within 14 days after receiving the notice of claim, the notice
of claim is taken to be a complying notice of claim.’.

(7) Section 282(5), as renumbered, ‘30 days’—

omit, insert—

‘7 days’.

**Clause 28 Replacement of s 283 (WorkCover to give information to
claimant)**

Section 283—

omit, insert—

‘283 Claimant and WorkCover to cooperate

‘(1) A claimant and WorkCover must cooperate in relation to a claim, in
particular by—

(a) giving each other copies of relevant documents about—

(i) the circumstances of the event resulting in the injury; or

(ii) the worker’s injury; or

(iii) the worker’s prospects of rehabilitation; and

(b) giving information reasonably requested by the other party
about—

(i) the circumstances of the event resulting in the injury; and

WorkCover Queensland Amendment Bill 2001

-
- (ii) the nature of the injury and of any impairment or financial loss resulting from the injury; and 1
2
- (iii) if applicable—the medical treatment and rehabilitation the worker has sought from, or been provided with, by the worker’s employer or WorkCover; and 3
4
5
- (iv) the worker’s medical history, as far as it is relevant to the claim; and 6
7
- (v) any applications for compensation made by the claimant or worker for any injury resulting from the same event. 8
9
- ‘(2) Subsection (1)(a) applies to relevant documents that— 10
- (a) are in the possession of the claimant or WorkCover; or 11
- (b) are reasonably required by WorkCover from the worker’s employer under section 284. 12
13
- ‘(3) WorkCover must— 14
- (a) give the claimant copies of the relevant documents— 15
- (i) within 30 days after the claimant gives WorkCover a notice of claim; or 16
17
- (ii) if the relevant documents come into WorkCover’s possession later—within 30 days after they come into WorkCover’s possession; and 18
19
20
- (b) respond to a request from the claimant under subsection (1)(b) within 30 days after receiving it. 21
22
- ‘(4) The claimant must respond to a request from WorkCover under subsection (1)(b) within 30 days after receiving it. 23
24
- ‘(5) This section is subject to section 288.⁴⁹ 25
- ‘(6) In this section— 26
- “relevant documents”** means reports and other documentary material, 27
including written statements made by the claimant, the worker’s 28
employer, or by witnesses.’. 29

49 Section 288 (Non-disclosure of certain material)

Clause 29	Amendment of s 285 (WorkCover and claimant to attempt to resolve claim)	1
		2
	(1) Section 285(4)(a)—	3
	<i>omit, insert—</i>	4
	‘(a) state whether liability in connection with the event to which the claim relates is admitted or denied and—	5
		6
	(i) if liability is admitted—	7
	(A) state whether contributory liability is claimed from the worker or another party; and	8
		9
	(B) state the extent, expressed as a percentage, to which liability is admitted; and	10
		11
	(ii) if liability is denied, completely or partly—give particulars of the basis on which liability is denied; and’.	12
		13
	(2) Section 285(5) to (7)—	14
	<i>renumber</i> as section 285(6) to (8).	15
	(3) Section 285—	16
	<i>insert—</i>	17
	‘(5) WorkCover must also, within 7 days after giving the claimant the written notice, give a copy of the notice to the worker’s employer.’.	18
		19
	(4) Section 285—	20
	<i>insert—</i>	21
	‘(9) In calculating the period of 6 months mentioned in subsection (2), any period during which a decision of WorkCover relevant to the claim is subject to a review or appeal is not counted.	22
		23
		24
	‘(10) In this section—	25
	“decision”, for subsection (9), includes failure to make a decision.	26
	“review or appeal” means a review or appeal under chapter 9 that has been started.’.	27
		28
Clause 30	Amendment of s 288 (Non-disclosure of certain material)	29
	Section 288(2), from ‘, but’—	30
	<i>omit.</i>	31

Clause 31	Replacement of s 293 (Compulsory conference)	1
	Section 293—	2
	<i>omit, insert—</i>	3
	‘293 Compulsory conference	4
	‘(1) Before the claimant starts a proceeding for damages, there must be a conference of the parties (the “ compulsory conference ”).	5 6
	‘(2) Either party may call the compulsory conference.	7
	‘(3) The compulsory conference must be held within 3 months after WorkCover gives the claimant a written notice under section 285. ⁵⁰	8 9
	‘(4) However, if the parties agree, the conference may be held at a later date.	10 11
	‘(5) WorkCover must advise the worker’s employer of the time and place of the compulsory conference.	12 13
	‘(6) On application by a party, the court—	14
	(a) may—	15
	(i) fix the time and place for the compulsory conference; or	16
	(ii) dispense with the compulsory conference for good reason; and	17 18
	(b) may make any other orders the court considers appropriate.	19
	‘(7) In considering whether to dispense with the compulsory conference, the court must take into account the extent of compliance by the parties with their respective obligations in relation to the claim.	20 21 22
	‘(8) The claimant in person and a person authorised to settle on WorkCover’s behalf must attend the conference and actively participate in an attempt to settle the claim, unless the claimant or person has a reasonable excuse.	23 24 25 26
	‘(9) If it would be unreasonable for all parties to attend at the same place, for example, because of distance or illness, the conference may be conducted by telephone conferencing, video conferencing or another form of communication that allows reasonably contemporaneous and continuous communication between the parties.	27 28 29 30 31

50 Section 285 (WorkCover and claimant to attempt to resolve claim)

‘293A Procedure at conference

‘(1) The compulsory conference may be held with a mediator if both parties agree.

‘(2) An agreement that the compulsory conference is to be held with a mediator must specify how the costs of the mediation are to be borne.

‘(3) The mediator must be a person independent of the parties—

(a) agreed to by the parties; or

(b) nominated by the registrar of the court on application under subsection (4).

‘(4) If the parties are unable to agree on the appointment of a mediator within 30 days after the date for the compulsory conference is fixed, either party may apply to the registrar of the court for the nomination of a mediator.

‘(5) At least 7 days before the compulsory conference is to be held, each party must give the other party—

(a) copies of all documents not yet given to the other party that are relevant and required to be given for the claim; and

(b) a statement verifying that all relevant documents in the possession of the party or the party’s lawyer have been given as required; and

(c) details of the party’s legal representation; and

(d) if the party has legal representation—a certificate (a “**certificate of readiness**”) signed by the party’s lawyer to the effect that the party is ready for the conference.

‘(6) A certificate of readiness must state that—

(a) the party is completely ready for the conference; and

(b) all investigative material required for the conference has been obtained, including witness statements from persons, other than expert witnesses; and

(c) medical or other expert reports have been obtained from all persons the party proposes to rely on as expert witnesses at the conference; and

(d) the party has complied fully with the party’s obligations to give the other party material that is relevant and required to be given for the claim; and

	(e) the party's lawyer has given the party a statement (a "financial statement") containing the information required under subsection (7).	1 2 3
	'(7) A financial statement must state—	4
	(a) details of the legal costs payable by the party to the party's lawyer up to the completion of the conference; and	5 6
	(b) an estimate of the party's likely legal costs and net damages if the claim proceeds to trial and is decided by the court; and	7 8
	(c) an estimate of the party's likely legal costs and net damages if the claim is settled without proceeding to trial; and	9 10
	(d) the consequences to the party, in terms of costs, in each of the following cases if the claim proceeds to trial and is decided by the court—	11 12 13
	(i) the amount of the damages awarded by the court is equal to, or more than, the claimant's written final offer;	14 15
	(ii) the amount of the damages awarded by the court is less than the claimant's written final offer but equal to, or more than, WorkCover's written final offer;	16 17 18
	(iii) the amount of the damages awarded by the court is equal to, or less than, WorkCover's written final offer.	19 20
	'(8) WorkCover must give a copy of the certificates of readiness and WorkCover's costs statement to the worker's employer at least 7 days before the compulsory conference.	21 22 23
	'293B Information to be given by party's lawyer before other type of settlement attempted	24 25
	'Before settlement of a claim is attempted in a way other than by a compulsory conference, each party's lawyer must give the party a statement (also a "financial statement") containing the information mentioned in section 293A(7).'	26 27 28 29
Clause 32	Omission of ch 5, pt 6, div 2	30
	Chapter 5, part 6, division 2—	31
	<i>omit.</i>	32

Clause 33	Amendment of s 302 (Compliance necessary before starting proceeding)	1
		2
	Section 302(a)—	3
	<i>omit, insert—</i>	4
	‘(a) the relevant division under part 2, ⁵¹ to the extent the division imposes a requirement on the person; and’.	5
		6
Clause 34	Amendment of s 303 (Claimant to have given complying notice of claim or WorkCover to have waived compliance)	7
		8
	(1) Section 303(a)(i) and (ii)—	9
	<i>omit, insert—</i>	10
	‘(i) the claimant has given, or is taken to have given, a complying notice of claim; or	11
		12
	(ii) WorkCover has waived the claimant’s noncompliance with the requirements of section 280 with or without conditions; or’.	13
		14
		15
	(2) Section 303(b)—	16
	<i>omit.</i>	17
Clause 35	Insertion of new s 305A	18
	Chapter 5, part 7, division 1, after section 305—	19
	<i>insert—</i>	20
	‘305A Other provision for urgent proceedings	21
	‘Part 2, divisions 3 to 7 provide for the urgent starting of proceedings by persons mentioned in section 253(1), and for the staying and discontinuance of those proceedings.’.	22
		23
		24
Clause 36	Amendment of s 308 (Alteration of period of limitation)	25
	Section 308(1)(a)(i) and (ii)—	26
	<i>omit, insert—</i>	27

51 Part 2 (Entitlement conditions)

- ‘(i) the claimant gives, or is taken to have given, a complying notice of claim; or 1
2
- (ii) the claimant gives a notice of claim for which WorkCover waives compliance with the requirements of section 280 with or without conditions; or’. 3
4
5

Clause 37 Replacement of ss 312–314 6

Sections 312 to 314— 7

omit, insert— 8

‘312 Contributory negligence 9

‘(1) A court may make a finding of contributory negligence if the worker relevantly— 10
11

- (a) failed to comply, so far as was practicable, with instructions given by the worker’s employer for the health and safety of the worker or other persons; or 12
13
14
- (b) failed at the material time to use, so far as was practicable, protective clothing and equipment provided, or provided for, by the worker’s employer, in a way in which the worker had been properly instructed to use them; or 15
16
17
18
- (c) failed at the material time to use, so far as was practicable, anything provided that was designed to reduce the worker’s exposure to risk of injury; or 19
20
21
- (d) inappropriately interfered with or misused something provided that was designed to reduce the worker’s exposure to risk of injury; or 22
23
24
- (e) was adversely affected by the intentional consumption of a substance that induces impairment; or 25
26
- (f) failed, without reasonable excuse, to attend safety training organised by the worker’s employer that was conducted during normal working hours at which the information given would probably have enabled the worker to avoid, or minimise the effects of, the event resulting in the worker’s injury. 27
28
29
30
31

‘(2) Subsection (1) does not limit the discretion of a court to make a finding of contributory negligence in any other circumstances.’. 32
33

Clause 38	Amendment of s 316 (Damages other than to claimant)	1
	(1) Section 316, ‘under this Act’—	2
	<i>omit.</i>	3
	(2) Section 316, from ‘, including’—	4
	<i>omit.</i>	5
Clause 39	Replacement of ch 5, pt 10, hdg	6
	Chapter 5, part 10, heading—	7
	<i>omit, insert—</i>	8
	‘PART 10—EXEMPLARY DAMAGES’.	9
Clause 40	Omission of ch 5, pt 10, divs 1 and 2, and div 3 hdg	10
	Chapter 5, part 10, divisions 1 and 2, and division 3 heading—	11
	<i>omit.</i>	12
Clause 41	Replacement of ch 5, pt 11, div 1 and div 2 hdg	13
	Chapter 5, part 11, division 1 and division 2 heading—	14
	<i>omit, insert—</i>	15
	<i>‘Division 1—Costs applying to worker with WRI of 20% or more or dependant</i>	16
		17
	‘320 Application of div 1	18
	‘This division applies only if the claimant is—	19
	(a) a worker, if the worker’s WRI is 20% or more; or	20
	(b) a dependant.	21
	‘321 Principles about orders as to costs	22
	‘If a court has assessed damages in the claimant’s proceeding for	23
	damages, it must apply the principles set out in sections 322 to 323A.	24

‘322 Costs if written final offer by claimant	1
‘(1) This section applies if—	2
(a) the claimant makes a written final offer that is not accepted by WorkCover; and	3 4
(b) the claimant obtains a judgment no less favourable to the claimant than the written final offer; and	5 6
(c) the court is satisfied that the claimant was at all material times willing and able to carry out what was proposed in the written final offer.	7 8 9
‘(2) The court must order WorkCover to pay the claimants’s costs, calculated on the indemnity basis, unless WorkCover shows another order for costs is appropriate in the circumstances.	10 11 12
 ‘323 Costs if written final offer by WorkCover	 13
‘(1) This section applies if—	14
(a) WorkCover makes a written final offer that is not accepted by the claimant; and	15 16
(b) the claimant obtains a judgment that is not more favourable to the claimant than the written final offer; and	17 18
(c) the court is satisfied that WorkCover was at all material times willing and able to carry out what was proposed in the written final offer.	19 20 21
‘(2) Unless a party shows another order for costs is appropriate in the circumstances, the court must—	22 23
(a) order WorkCover to pay the claimant’s costs, calculated on the standard basis, up to and including the day of service of the written final offer; and	24 25 26
(b) order the claimant to pay WorkCover’s costs, calculated on the standard basis, after the day of service of the written final offer.	27 28
 ‘323A Interest after service of written final offer	 29
‘(1) This section applies if the court gives judgment for the claimant for the recovery of a debt or damages and—	30 31

(a) the judgment includes interest or damages in the nature of interest; or 1
2

(b) under an Act, the court awards the claimant interest or damages in the nature of interest. 3
4

‘(2) For giving judgment for costs under section 322 or 323, the court must disregard the interest or damages in the nature of interest relating to the period after the day the written final offer is given. 5
6
7

‘Division 2—Costs applying to worker with WRI less than 20% or no WRI’. 8
9

Clause 42 Amendment of s 324 (Application of div 2) 10

Section 324, ‘non-certificate injury’— 11

omit, insert— 12

‘WRI of less than 20% or no WRI’. 13

Clause 43 Amendment of s 325 (Principles about orders as to costs) 14

(1) Section 325(2)(a), ‘final offer’— 15

omit, insert— 16

‘written final offer’. 17

(2) Section 325(2)(b), ‘the WorkCover’s final offer’— 18

omit, insert— 19

‘WorkCover’s written final offer’. 20

(3) Section 325(2)(a) and (b), ‘party and party costs’— 21

omit, insert— 22

‘costs on the standard basis’. 23

(4) Section 325(3), ‘WorkCover’s final offer’— 24

omit, insert— 25

‘WorkCover’s written final offer’. 26

Clause 44	Amendment of s 437 (Reference to tribunals)	1
	(1) Section 437, after ‘the appropriate tribunal’—	2
	<i>omit, insert—</i>	3
	‘for decision on the medical matters involved’.	4
	(2) Section 437(c), ‘section 265(3)(b)’—	5
	<i>omit, insert—</i>	6
	‘section 261(3)(b), 273A(1)(b)(ii) or 273E(1)(b)(iii)’.	7
	(3) Section 437(ea) and (g)—	8
	<i>omit.</i>	9
Clause 45	Amendment of s 454 (Further reference on fresh evidence)	10
	(1) Section 454(1)—	11
	<i>omit, insert—</i>	12
	‘(1) This section applies to any reference to a tribunal under any paragraph of section 437 relating to a worker’s injury.’	13
	(2) Section 454(8), ‘non-certificate injury’—	14
	<i>omit, insert—</i>	15
	‘WRI of the worker of less than 20%’.	16
Clause 46	Replacement of s 456 (Finality of tribunal’s decision)	17
	Section 456—	18
	<i>omit, insert—</i>	19
	‘455A Tribunal may refer non-medical matters back to WorkCover	20
	‘(1) If the tribunal considers that the terms of a reference to it involve—	21
	(a) both medical and non-medical matters; or	22
	(b) entirely non-medical matters;	23
	the tribunal may refer the non-medical matters back to WorkCover for a decision.	24
	‘(2) To remove doubt, it is declared that if the tribunal decides a medical matter mentioned in subsection (1)(a), section 456 applies to that decision.	25
		26
		27
		28

‘(3) Section 455 applies to a reference back to WorkCover under subsection (1).’

‘456 Finality of tribunal’s decision

‘(1) Either of the following decisions of the tribunal is final and can not be questioned in a proceeding before a tribunal or a court, except under section 454—

(a) a decision on a medical matter referred to the tribunal under section 437;

(b) a decision under section 455A(1).

‘(2) Subsection (1) has no effect on the *Judicial Review Act 1991*.’

Clause 47 Amendment of s 457 (Decisions of tribunal)

Section 457(1), ‘an application for compensation’—

omit, insert—

‘any matter’.

Clause 48 Amendment of s 489 (Application of pt 2)

(1) Section 489(1)(a)(xiii)—

omit, insert—

‘(xiii)under section 261(3)(a) or (b), 273A(1)(b)(i) or (ii), or 273E(1)(b)(i), (ii), (iii) or (iv);’.

(2) Section 489(1)(b)(vii)—

omit, insert—

‘(vii)under section 261(3)(a) or (b), 273A(1)(b)(i) or (ii), or 273E(1)(b)(i), (ii), (iii) or (iv); or’.

(3) Section 489(1)(c)—

omit, insert—

‘(c) a failure by WorkCover or a self-insurer to make a decision—

(i) on an application for compensation within the time stated in section 161; or

- (ii) for the purpose of section 261(3)(a) or (b) within the time
stated in section 261(4); or
- (iii) for the purpose of section 273A(1)(b)(i) or (ii) within the
time stated in section 273A(5); or
- (iv) for the purpose of section 273E(1)(b)(i), (ii), (iii) or (iv)
within the time stated in section 273E(2).’.

Clause 49 Amendment of s 498 (Who may appeal)

Section 498—

insert—

‘(2) If the appellant is an employer, the claimant or worker may, if they wish, be a party to the appeal.’.

Clause 50 Insertion of new s 501A

After section 501—

insert—

‘501A Application of Uniform Civil Procedure Rules and Industrial Relations (Tribunals) Rules

‘(1) The *Uniform Civil Procedure Rules 1999*, chapter 7, part 2 and chapter 9, part 4 and the *Industrial Relations (Tribunals) Rules 2000*, rules 96 to 98 apply to an appeal under this division with necessary changes.

‘(2) However, if there is an inconsistency between a provision of the rules mentioned in subsection (1) and a provision of this division, the provision of this division prevails to the extent of the inconsistency.’.

Clause 51 Insertion of new ss 510A and 510B

After section 510—

insert—

‘510A Costs of appeal to Industrial Court

‘(1) On an appeal, the Industrial Court may order a party to pay costs incurred by another party only if satisfied the party made the application vexatiously or without reasonable cause.

‘(2) Costs of the order are to be in accordance with the <i>Industrial Relations (Tribunals) Rules 2000</i> , rule 66.	1 2
‘510B Recovery of costs	3
‘(1) If the industrial court makes an order for costs, the amount ordered to be paid is a debt payable to the party in whose favour the order is made.	4 5
‘(2) The order may be filed in the registry of a court having jurisdiction for the recovery of a debt of an equal amount.	6 7
‘(3) On being filed, the order—	8
(a) is taken to be an order properly made by the court; and	9
(b) may be enforced as an order made by the court.’.	10
Clause 52 Insertion of new ch 14	11
After chapter 13—	12
<i>insert—</i>	13
‘CHAPTER 14—TRANSITIONAL PROVISIONS FOR WORKCOVER QUEENSLAND AMENDMENT ACT 2001	14 15 16
‘587 Definitions for ch 14	17
‘In this chapter—	18
“amended Act” means this Act as amended by the amending Act.	19
“amending Act” means the <i>WorkCover Queensland Amendment Act 2001</i> .	20
‘588 Injury before 1 July 2001	21
‘The provisions of this Act, as in force immediately before 1 July 2001, continue to apply in relation to an injury resulting to a worker from an event happening before 1 July 2001 as if the amending Act had not been enacted.	22 23 24 25

‘589 Reference to medical assessment tribunal	1
‘(1) Despite section 2 of the amending Act, the amendments of this Act made by sections 44(1), 45(1), 46 and 47 of the amending Act do not apply to a decision of the tribunal made before the royal assent was given to the amending Act.	2 3 4 5
‘(2) A reference of a matter—	6
(a) that relates to an injury arising after 1 July 2001; and	7
(b) made to the tribunal under section 437 before the day of royal assent of the amending Act; and	8 9
(c) pending before the tribunal immediately before the day of royal assent;	10 11
from the day of royal assent is taken to have been referred to the tribunal under the amended Act.	12 13
 ‘590 Formal revival of claim for loss of consortium	 14
‘To the extent that the amended Act excluded an entitlement to seek damages for loss of consortium, on the commencement of this section that entitlement is revived in relation to an injury arising after 30 June 2001.’.	15 16 17
 Clause 53 Amendment of sch 3 (Dictionary)	 18
(1) Schedule 3, definitions “ certificate injury ”, “ complying notice of claim ”, “ damages certificate ” and “ non-certificate injury ”—	19 20
omit.	21
(2) Schedule 3—	22
insert—	23
‘ “ complying notice of claim ” means a notice of claim that complies with section 280.	24 25
“ written final offer ”, for chapter 5, see section 250.’.	26

SCHEDULE	1
MINOR AMENDMENTS	2
section 3	3
1 Section 24(1)(a), ‘the <i>Education (Student Work Experience) Act 1978</i> or’—	4
<i>omit.</i>	5
	6
2 Section 24(4), definition “State student”, ‘a student to which the <i>Education (Student Work Experience) Act 1978</i>, section 10 applies or’—	7
<i>omit.</i>	8
	9
	10
3 Section 66(1)(b), ‘section 500(3)’—	11
<i>omit, insert—</i>	12
‘section 500(4)’.	13
4 Section 509(2), ‘Industrial Court rules’—	14
<i>omit, insert—</i>	15
‘ <i>Industrial Relations (Tribunals) Rules 2000</i> ’.	16
	17