

Queensland



# **WORKCOVER QUEENSLAND AMENDMENT BILL 2002**



# Queensland



## WORKCOVER QUEENSLAND AMENDMENT BILL 2002

### TABLE OF PROVISIONS

| Section                                                                                 | Page |
|-----------------------------------------------------------------------------------------|------|
| 1 Short title . . . . .                                                                 | 4    |
| 2 Commencement . . . . .                                                                | 4    |
| 3 Act amended . . . . .                                                                 | 4    |
| 4 Amendment of s 52 (Employer's obligation to insure) . . . . .                         | 4    |
| 5 Amendment of s 55 (Offence of contravening general obligation to insure) . . . . .    | 4    |
| 6 Amendment of s 59 (Setting premium on change of ownership of business) . . . . .      | 5    |
| 7 Replacement of ch 3, pt 2, div 2 hdg. . . . .                                         | 6    |
| 8 Replacement of s 139 (Entitlement depends on where injury is sustained) . . . . .     | 6    |
| 139 Employment must be connected with State. . . . .                                    | 6    |
| 139A Recognition of determination of State of connection in another State . . . . .     | 7    |
| 9 Insertion of new ch 3, pt 2, div 2A hdg. . . . .                                      | 8    |
| 10 Amendment of s 140 (Interstate and overseas arrangements). . . . .                   | 8    |
| 11 Replacement of ch 3, pt 3, div 1 . . . . .                                           | 9    |
| <i>Division 1—Workers on ships</i>                                                      |      |
| 145 Application of div 1 . . . . .                                                      | 9    |
| 146 Payment on account of workers on ships. . . . .                                     | 9    |
| 12 Insertion of new s 252A . . . . .                                                    | 9    |
| 252A Period of limitation under Limitation of Actions Act 1974 never affected . . . . . | 10   |
| 13 Insertion of new ch 5 pt 7A . . . . .                                                | 10   |
| PART 7A—STRUCTURED SETTLEMENTS                                                          |      |

---

|    |                                                                                  |    |
|----|----------------------------------------------------------------------------------|----|
|    | 310A Court may make consent order for structured settlement . . . . .            | 10 |
| 14 | Insertion of new ch 5A . . . . .                                                 | 11 |
|    | CHAPTER 5A—CHOICE OF LAW FOR DAMAGES                                             |    |
|    | PART 1—APPLICATION OF CHAPTER 5A                                                 |    |
|    | 329A Claims to which chapter applies . . . . .                                   | 11 |
|    | PART 2—INTERPRETATION                                                            |    |
|    | 329B Meaning of “substantive law” . . . . .                                      | 11 |
|    | 329C What constitutes injury and employment and who is employer . . . .          | 12 |
|    | PART 3—SUBSTANTIVE LAW THAT GOVERNS CLAIM                                        |    |
|    | 329D The applicable substantive law for work injury claims . . . . .             | 13 |
|    | 329E Availability of action in another State not relevant . . . . .              | 13 |
| 15 | Insertion of new ch 16 . . . . .                                                 | 14 |
|    | CHAPTER 16—TRANSITIONAL PROVISION FOR WORKCOVER<br>QUEENSLAND AMENDMENT ACT 2002 |    |
|    | 592 Cross border rules . . . . .                                                 | 14 |
| 16 | Insertion of new sch 2B . . . . .                                                | 14 |
|    | SCHEDULE 2B                                                                      |    |
|    | ADJACENT AREAS                                                                   |    |
| 17 | Amendment of sch 3 (Dictionary) . . . . .                                        | 16 |

**2002**

---

**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 2002*.

3

4

**Clause 2 Commencement**

5

Sections 4 and 5, 7 to 11 and 14 to 17 commence on 1 July 2003.

6

**Clause 3 Act amended**

7

This Act amends the *WorkCover Queensland Act 1996*.

8

**Clause 4 Amendment of s 52 (Employer's obligation to insure)**

9

Section 52(6)—

10

omit.

11

**Clause 5 Amendment of s 55 (Offence of contravening general obligation to insure)**

12

13

Section 55—

14

*insert—*

15

‘(2) It is a defence to prove that at the time of the alleged contravention—

16

17

(a) the employer believed on reasonable grounds that the employer could not be liable under this Act in relation to the worker because under section 139 the worker's employment was not connected with this State; and

18

19

20

21

(b) the employer had workers' compensation cover in relation to the worker's employment under the law of the State with which the employer believed on reasonable grounds the worker's employment was connected under section 139.

22

23

24

25

‘(3) In subsection (2)—

26

**“workers’ compensation cover”** means insurance or registration required under the law of a State in relation to liability for statutory workers’ compensation under that law.’.

**Clause 6    Amendment of s 59 (Setting premium on change of ownership of business)**

(1) Section 59(2), ‘must’—

*omit, insert—*

‘may’.

(2) After section 59(2)—

*insert—*

‘(2A) In deciding whether to have regard to the claims experience of the business under a former employer, WorkCover may consider any relevant matter, including the following—

(a) if the new employer is an individual, whether the new employer is or was—

(i) a partner of the former employer; or

(ii) an officer or shareholder of the former employer; or

(iii) an officer or shareholder of a related body corporate of the former employer;

(b) if the new employer is a partnership, whether any of the partners of the new employer is or was—

(i) an individual who was the former employer; or

(ii) a partner of the former employer; or

(iii) an officer or shareholder of the former employer; or

(iv) an officer or shareholder of a related body corporate of the former employer;

(c) if the new employer is a body corporate, whether the new employer is or was a related body corporate of the former employer;

(d) if the new employer is a body corporate, whether any of the officers or shareholders of the new employer is or was—

(i) an individual who was the former employer; or

|                 |                                                                                                                                                                                                        |                |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
|                 | (ii) a partner of the former employer; or                                                                                                                                                              | 1              |
|                 | (iii) an officer or shareholder of the former employer; or                                                                                                                                             | 2              |
|                 | (iv) an officer or shareholder of a related body corporate of the former employer.’.                                                                                                                   | 3<br>4         |
|                 | (3) Section 59(3), ‘and location of the business remain’—                                                                                                                                              | 5              |
|                 | <i>omit, insert—</i>                                                                                                                                                                                   | 6              |
|                 | ‘of the business remains’.                                                                                                                                                                             | 7              |
|                 | (4) Section 59—                                                                                                                                                                                        | 8              |
|                 | <i>insert—</i>                                                                                                                                                                                         | 9              |
|                 | ‘(4) In this section—                                                                                                                                                                                  | 10             |
|                 | “officer” has the meaning given by the Corporations Act.’.                                                                                                                                             | 11             |
| <b>Clause 7</b> | <b>Replacement of ch 3, pt 2, div 2 hdg</b>                                                                                                                                                            | 12             |
|                 | Chapter 3, part, 2 division 2, heading—                                                                                                                                                                | 13             |
|                 | <i>omit, insert—</i>                                                                                                                                                                                   | 14             |
|                 | <b>‘Division 2—Entitlement according to jurisdiction’.</b>                                                                                                                                             | 15             |
| <b>Clause 8</b> | <b>Replacement of s 139 (Entitlement depends on where injury is sustained)</b>                                                                                                                         | 16<br>17       |
|                 | Section 139—                                                                                                                                                                                           | 18             |
|                 | <i>omit, insert—</i>                                                                                                                                                                                   | 19             |
|                 | <b>‘139 Employment must be connected with State</b>                                                                                                                                                    | 20             |
|                 | ‘(1) Compensation under this Act is only payable in relation to employment that is connected with this State.                                                                                          | 21<br>22       |
|                 | ‘(2) The fact that a worker is outside this State when the injury is sustained does not prevent compensation being payable under this Act in relation to employment that is connected with this State. | 23<br>24<br>25 |
|                 | ‘(3) A worker’s employment is connected with—                                                                                                                                                          | 26             |
|                 | (a) the State in which the worker usually works in that employment;                                                                                                                                    | 27             |
|                 | or                                                                                                                                                                                                     | 28             |



- 
- (b) if no State or no 1 State is identified by paragraph (a), the State in which the worker is usually based for the purposes of that employment; or
- (c) if no State or no 1 State is identified by paragraph (a) or (b), the State in which the employer's principal place of business in Australia is located.
- ‘(4) In the case of a worker on a ship, if no State or no 1 State is identified by subsection (3), a worker's employment is, while on a ship, connected with the State in which the ship is registered or (if the ship is registered in more than 1 State) the State in which the ship most recently became registered.
- ‘(5) If no State is identified by subsection (3) or (if applicable) (4), a worker's employment is connected with this State if—
- (a) the worker is in this State when the injury is sustained; and
- (b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.
- ‘(6) In deciding whether a worker usually works in a State, regard must be had to the worker's work history with the employer and the intention of the worker and employer.
- ‘(7) However, regard must not be had to any temporary arrangement under which the worker works in a State for a period of not longer than 6 months.
- ‘(8) Compensation under this Act does not apply in relation to the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* (Cwlth) applies to the worker's employment.
- ‘(9) In this section—
- “State”, in a geographical sense, includes a State's relevant adjacent area as described in schedule 2B.
- ‘139A Recognition of determination of State of connection in another State**
- ‘(1) If a designated court makes a determination of the State with which a worker's employment is connected for the purposes of a corresponding law, that State is to be recognised for the purposes of section 139 as the State with which the worker's employment is connected.

‘(2) Subsection (1) does not prevent or affect the operation of a determination of the State with which a worker’s employment is connected for the purposes of section 139 made by a court of this State before the determination is made by a designated court.

‘(3) Subsection (1) does not prevent any appeal relating to a determination of a designated court and, if the determination is altered on appeal, the altered determination is to be recognised under subsection (1).

‘(4) In this section—

“**corresponding law**” means the provisions of the statutory workers’ compensation scheme of another State that correspond with section 139.

“**designated court**” means—

- (a) the Supreme Court of a State in which a corresponding law is in force; or
- (b) a court, tribunal or other decision-making body of a State in which a corresponding law is in force that is declared under a regulation to be a designated court for the purposes of this section.’.

## Clause 9 Insertion of new ch 3, pt 2, div 2A hdg

Before section 140—

insert—

*‘Division 2A—Overseas arrangements’.*

## Clause 10 Amendment of s 140 (Interstate and overseas arrangements)

(1) Section 140, heading—

*omit, insert—*

**‘140 Overseas arrangements’.**

(2) Section 140, ‘State or’—

*omit.*

(3) Section 140(5), ‘continuous’—

*omit.*

|                  |                                                                                                                                                                                                                                                                                                                     |                            |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| <b>Clause 11</b> | <b>Replacement of ch 3, pt 3, div 1</b>                                                                                                                                                                                                                                                                             | 1                          |
|                  | Chapter 3, part 3, division 1—                                                                                                                                                                                                                                                                                      | 2                          |
|                  | <i>omit, insert—</i>                                                                                                                                                                                                                                                                                                | 3                          |
|                  | <b><i>‘Division 1—Workers on ships</i></b>                                                                                                                                                                                                                                                                          | 4                          |
|                  | <b>‘145 Application of div 1</b>                                                                                                                                                                                                                                                                                    | 5                          |
|                  | ‘This division applies to an injury sustained by a worker who was employed on a ship when the injury was sustained.                                                                                                                                                                                                 | 6<br>7                     |
|                  | <b>‘146 Payment on account of workers on ships</b>                                                                                                                                                                                                                                                                  | 8                          |
|                  | ‘(1) Compensation is not payable for the death of the worker who leaves no dependants, if the owner or charterer of the ship on which the worker was employed when the injury was sustained is, under an Act or law in force in the State, liable to pay the expenses of the worker’s funeral.                      | 9<br>10<br>11<br>12        |
|                  | ‘(2) Compensation is not payable for injury sustained by the worker for a period during which the owner or charterer of the ship on which the worker was employed when the injury was sustained is, under another Act or law in force in the State, liable to pay the expenses, maintenance or wages of the worker. | 13<br>14<br>15<br>16<br>17 |
|                  | ‘(3) Compensation payable for injury sustained by the worker must be paid in full, despite any limitation of liability prescribed by another law.                                                                                                                                                                   | 18<br>19                   |
|                  | ‘(4) Subsection (3) applies subject to section 141. <sup>1</sup> ’.                                                                                                                                                                                                                                                 | 20                         |
| <b>Clause 12</b> | <b>Insertion of new s 252A</b>                                                                                                                                                                                                                                                                                      | 21                         |
|                  | Chapter 5, part 1 after section 252—                                                                                                                                                                                                                                                                                | 22                         |
|                  | <i>insert—</i>                                                                                                                                                                                                                                                                                                      | 23                         |

---

1 Section 141 (Entitlement ends if compensated under corresponding laws)

**‘252A Period of limitation under Limitation of Actions Act 1974  
never affected**

‘(1) It is declared that nothing in this Act affects, or has ever affected, the commencement of the period of limitation provided by the *Limitation of Actions Act 1974*, section 11.<sup>2</sup>

‘(2) To remove any doubt, it is declared that the period of limitation provided by the *Limitation of Actions Act 1974*, section 11 applicable to an action for damages for injury sustained by a worker in circumstances creating, independently of this Act, a legal liability in the worker’s employer to pay the damages for the injury is, and always has been, the same as would have been applicable to that action if this Act had not been enacted.

‘(3) This section is subject to section 308.<sup>3</sup>’.

**Clause 13 Insertion of new ch 5 pt 7A**

After section 310—

*insert—*

**‘PART 7A—STRUCTURED SETTLEMENTS**

**‘310A Court may make consent order for structured settlement**

‘(1) This section applies if the parties to a claim agree to settle the claim by making a structured settlement and apply to a court for an order approving of or in the terms of the structured settlement.

‘(2) The court may make the order even though the payment of damages is not in the form of a lump sum award of damages.

‘(3) In this section—

**“structured settlement”** means an agreement providing for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.’.

<sup>2</sup> *Limitation of Actions Act 1974*, section 11 (Actions in respect of personal injury)

<sup>3</sup> Section 308 (Alteration of period of limitation)

|                  |                                                                                                                                                                                                              |    |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| <b>Clause 14</b> | <b>Insertion of new ch 5A</b>                                                                                                                                                                                | 1  |
|                  | After section 329—                                                                                                                                                                                           | 2  |
|                  | <i>insert—</i>                                                                                                                                                                                               | 3  |
|                  | <b>‘CHAPTER 5A—CHOICE OF LAW FOR DAMAGES</b>                                                                                                                                                                 | 4  |
|                  | <b>‘PART 1—APPLICATION OF CHAPTER 5A</b>                                                                                                                                                                     | 5  |
|                  | <b>‘329A Claims to which chapter applies</b>                                                                                                                                                                 | 6  |
|                  | ‘(1) This chapter applies only to a claim for damages against a worker's employer in relation to an injury that was caused by—                                                                               | 7  |
|                  |                                                                                                                                                                                                              | 8  |
|                  | (a) the negligence or other tort (including breach of statutory duty) of the worker's employer; or                                                                                                           | 9  |
|                  |                                                                                                                                                                                                              | 10 |
|                  | (b) a breach of contract by the worker's employer.                                                                                                                                                           | 11 |
|                  | ‘(2) Subsection (1)(a) applies even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.                                                  | 12 |
|                  |                                                                                                                                                                                                              | 13 |
|                  |                                                                                                                                                                                                              | 14 |
|                  | <b>‘PART 2—INTERPRETATION</b>                                                                                                                                                                                | 15 |
|                  | <b>‘329B Meaning of “substantive law”</b>                                                                                                                                                                    | 16 |
|                  | ‘(1) In this chapter, “substantive law” includes—                                                                                                                                                            | 17 |
|                  | (a) a law that establishes, modifies, or extinguishes a cause of action or a defence to a cause of action; and                                                                                               | 18 |
|                  |                                                                                                                                                                                                              | 19 |
|                  | (b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgment of that time); and                                                          | 20 |
|                  |                                                                                                                                                                                                              | 21 |
|                  |                                                                                                                                                                                                              | 22 |
|                  | (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not commenced within a particular time limit; and | 23 |
|                  |                                                                                                                                                                                                              | 24 |
|                  |                                                                                                                                                                                                              | 25 |
|                  | (d) a law that limits the kinds of injury, loss or damage for which damages or compensation may be recovered; and                                                                                            | 26 |
|                  |                                                                                                                                                                                                              | 27 |

- (e) a law that precludes the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered; and 1
- (f) a law expressed as a presumption, or rule of evidence, that affects substantive rights; and 2
- (g) a provision of a State's legislation about damages for a work related injury, whether or not it would be otherwise regarded as procedural in nature; 3
- but does not include a law prescribing rules for choice of law. 4
- ‘(2) In this section— 5
- “a State's legislation about damages for a work related injury”** 6
- means— 7
- (a) for Queensland—chapter 5 and any other provision of this Act providing for the interpretation of anything in chapter 5; and 8
- (b) otherwise—any provisions of a law of a State that are declared under a regulation to be the State's legislation about damages for work related injury. 9
- ‘329C What constitutes injury and employment and who is employer** 10
- ‘For this chapter— 11
- (a) injury and employer include anything that is within the scope of a corresponding term in the statutory workers' compensation scheme of another State; and 12
- (b) the determination of what constitutes employment or whether or not a person is the worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers' compensation scheme of another State. 13

## **‘PART 3—SUBSTANTIVE LAW THAT GOVERNS CLAIM**

### **‘329D The applicable substantive law for work injury claims**

‘(1) If compensation is payable (whether or not it has been paid) under the statutory workers’ compensation scheme of a State in relation to an injury to a worker, the substantive law of that State is the substantive law that governs—

(a) whether or not a claim for damages in relation to the injury can be made; and

(b) if it can be made, the determination of the claim.

‘(2) For the purposes of this section, compensation is considered to be payable under a statutory workers’ compensation scheme of a State in relation to an injury if compensation in relation to it—

(a) would have been payable apart from a provision of the scheme that excludes the worker’s right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision; or

(b) would have been payable if a claim for that compensation had been properly made, and (if applicable) an election to claim that compensation (instead of damages) had been properly made.

### **‘329E Availability of action in another State not relevant**

‘(1) It makes no difference for the purposes of this chapter that, under the substantive law of another State—

(a) it is the nature of the circumstances that they would not have given rise to a cause of action had they occurred in that State; or

(b) the circumstances on which the claim is based do not give rise to a cause of action.

‘(2) In this section—

**“another State”** means a State other than the State with which the injury is connected.’.

|                  |                                                                                       |    |
|------------------|---------------------------------------------------------------------------------------|----|
| <b>Clause 15</b> | <b>Insertion of new ch 16</b>                                                         | 1  |
|                  | Before schedule 1—                                                                    | 2  |
|                  | <i>insert—</i>                                                                        | 3  |
|                  | <b>‘CHAPTER 16—TRANSITIONAL PROVISION FOR</b>                                         | 4  |
|                  | <b>WORKCOVER QUEENSLAND AMENDMENT ACT</b>                                             | 5  |
|                  | <b>2002</b>                                                                           | 6  |
|                  | <b>‘592 Cross border rules</b>                                                        | 7  |
|                  | ‘(1) This section applies to the amendments to the Act made by the                    | 8  |
|                  | <i>WorkCover Queensland Amendment Act 2002</i> , sections 4 and 5, 7 to 11 and        | 9  |
|                  | 14 to 17 (the “ <b>amending provisions</b> ”).                                        | 10 |
|                  | ‘(2) The provisions of this Act, as in force immediately before 1 July                | 11 |
|                  | 2003, continue to apply in relation to an injury sustained by a worker                | 12 |
|                  | before 1 July 2003 as if the amending provisions had not been enacted.’.              | 13 |
| <b>Clause 16</b> | <b>Insertion of new sch 2B</b>                                                        | 14 |
|                  | After schedule 2A—                                                                    | 15 |
|                  | <i>insert—</i>                                                                        | 16 |
|                  | <b>‘SCHEDULE 2B</b>                                                                   | 17 |
|                  | <b>‘ADJACENT AREAS</b>                                                                | 18 |
|                  | section 139(9)                                                                        | 19 |
|                  | <b>‘1 Definitions</b>                                                                 | 20 |
|                  | In this schedule—                                                                     | 21 |
|                  | “ <b>continental shelf</b> ” has the same meaning as in the <i>Seas and Submerged</i> | 22 |
|                  | <i>Lands Act 1973</i> (Cwlth).                                                        | 23 |
|                  | “ <b>territorial sea</b> ” has the same meaning as in the <i>Seas and Submerged</i>   | 24 |
|                  | <i>Lands Act 1973</i> (Cwth).                                                         | 25 |



**‘2 Adjacent areas**

(1) The adjacent area for New South Wales, Victoria, South Australia or Tasmania is so much of the area described in the *Petroleum (Submerged Lands) Act 1967* (Cwlth), schedule 2 in relation to that State as is within the outer limits of the continental shelf and includes the space above and below that area.

(2) The adjacent area for Queensland is—

- (a) so much of the area described in the *Petroleum (Submerged Lands) Act 1967* (Cwlth), schedule 2 in relation to Queensland as is within the outer limits of the continental shelf; and
- (b) the Coral Sea area (within the meaning of the *Petroleum (Submerged Lands) Act 1967* (Cwlth), section 5A(7)) other than the territorial sea within the Coral Sea area; and
- (c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 4 February 1983 under the *Seas and Submerged Lands Act 1973* (Cwlth), section 7; and
- (d) the space above and below the areas described in paragraphs (a), (b) and (c).

(3) The adjacent area for Western Australia is so much of the area described in the *Petroleum (Submerged Lands) Act 1967* (Cwlth), schedule 2 in relation to Western Australia as—

- (a) is within the outer limits of the continental shelf; and
- (b) is not within Area A of the Zone of Cooperation;

and includes the space above and below that area.

(4) The adjacent area for the Northern Territory is—

- (a) so much of the area described in the *Petroleum (Submerged Lands) Act 1967* (Cwlth), schedule 2 in relation to the Northern Territory as—
  - (i) is within the outer limits of the continental shelf; and
  - (ii) is not within Area A of the Zone of Cooperation; and
- (b) the adjacent area for the Territory of Ashmore and Cartier Islands (within the meaning of the *Petroleum (Submerged Lands) Act 1967* (Cwlth), section 5A(3)) other than the territorial sea within that area; and

(c) the space above and below the areas described in paragraphs (a) and (b). 1  
2

(5) However, the adjacent area for a State does not include any area inside the limits of any State or Territory.’. 3  
4

## Clause 17 Amendment of sch 3 (Dictionary) 5

(1) Schedule 3, definitions “coaster”, “port”, “Queensland ship”, “seafarer”, “ship” and “State ship”— 6  
7

*omit.* 8

(2) Schedule 3— 9

*insert—* 10

‘ “ship” means any kind of vessel used in navigation by water, however propelled or moved, and includes— 11  
12

(a) a barge, lighter, or other floating vessel; and 13

(b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water. 14  
15

“substantive law”, for chapter 5A, see section 329B.’. 16

17