

Workers' Compensation and Rehabilitation Amendment Bill 2006

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Workers' Compensation and Rehabilitation Amendment Bill 2006*.

Policy Objective of the Legislation

The primary objective of the Bill is to address the implications arising from a Queensland Court of Appeal decision which has the potential to adversely impact on the independent and non-adversarial role of the Medical Assessment Tribunals (MATs).

Reasons for the Bill

On 25 November 2005 the Queensland Court of Appeal handed down a decision in *Australia Meat Holdings Pty Limited -v- Douglas & Ors* regarding a self-insurer's right to be present to hear, see and comment on submissions made by a claimant to a MAT under the former *WorkCover Queensland Act 1996*. The Court found that a self-insurer was entitled to attend the hearing and to comment upon the material before a MAT before that body reached its conclusion. This would apply to all injured workers prior to 1 July 2003 and potentially all other injured workers.

Without legislative change, this decision creates a distinction between the procedural framework of the MATs depending on the date of the worker's injury. Where the decision applies, it makes the MAT process adversarial, more legalistic and less efficient, leading to increased costs for workers, insurers and employers. A worker's MAT experience is potentially diminished by placing greater pressure on workers before a Tribunal and consequently increasing the desirability of being legally represented.

These implications have flow on costs for both insurers and employers. This may arise from a need to obtain additional legal advice and services. Any delays between referral and a decision will increase claim durations. Further, the impact of any distortion on MAT decisions will also flow on to claims duration, levels of lump sum payments for permanent impairment and a worker's compensation entitlements while accessing common law.

For the workers' compensation scheme in general this decision places uncertainty regarding the historical practice of the MATs. In addition, it may also increase the costs of administering the scheme, due to increased duration of hearings and create a flow on effect with respect to attracting and retaining medical specialists to the MAT as their role may require greater dispute resolution and conflict management skills.

Achieving the Objectives

The proposed Bill will achieve its objectives for the workers' compensation scheme primarily by:

- reaffirming the independent and non-adversarial nature of MAT proceedings by clarifying that an insurer, employer or any other person (other than the worker or their representative) has no entitlement to be present or heard before a MAT;
- ensuring accord with natural justice principles by safeguarding all parties' rights to full disclosure and the opportunity to comment on written material submitted to a MAT before the material can be considered by a MAT at a hearing;
- clarifying the transcript and record keeping requirements on MATs to ensure the confidentiality of information disclosed to the MAT during a personal examination; and
- ensuring the amendments made in this Act also apply to references made under former Acts.

Administrative Costs

The proposed amendment has minimal cost implications for the workers' compensation scheme. However, failure to proceed with this proposed amendment would have significant cost implications for the Queensland workers' compensation scheme as a result of increased complexity, legality, delay and disputation of claims.

Fundamental Legislative Principles

The proposed amendment is consistent with the restriction placed on an employers' and insurers' right to be heard before a MAT in the 2005 amendments to the Act, which accords with original intent of the Act.

Consequently, the proposed amendment is curative, ensuring that a procedural framework consistent with the original objectives of MATs is implemented for all matters which are heard before a MAT into the future regardless of the date of injury.

The conduct of a hearing outlined by the proposal also balances the need for the MAT process to remain an independent and confidential medical hearing and examination, while introducing a natural justice safeguard. This will provide opportunity for relevant parties to have their interests heard, by making their own written submissions prior to the hearing.

Consultation

The Department of Industrial Relations has consulted with a number of government agencies and statutory bodies in the preparation of the Bill. This includes the Department of the Premier and Cabinet, the Department of Justice and Attorney-General, Office of the Queensland Parliamentary Counsel, the Queensland Workers' Compensation Regulatory Authority (Q-COMP) and the Q-COMP Board (a tripartite board which includes employer and union representatives).

Broader consultation was not undertaken as the amendments affirm the custom and practice that has existed in the operation of the MATs since their inception in 1960.

Notes on Provisions

Short title

Clause 1 sets out the short title of the Act as the *Workers' Compensation and Rehabilitation Amendment Act 2006*.

Act amended

Clause 2 provides that this Act amends the *Workers' Compensation and Rehabilitation Act 2003*.

Amendment of s 490 (Object of ch 11)

Clause 3 amends section 490 which states the objective of Chapter 11 – Medical Assessment Tribunals. The clause inserts a reference to non-adversarial to highlight the original intent of the medical assessment tribunal process. Furthermore, the clause makes reference to former Acts to which Chapter 11 also applies.

Insertion of new s 490A

Clause 4 inserts a new provision which provides that this chapter applies to injuries sustained under this Act or a former Act. However, this section does not effect the application of section 36A of the current Act in relation to latent onset injuries.

Amendment of s 491 (Meaning of worker for ch 11)

Clause 5 amends section 491 which clarifies that persons who are entitled to compensation under this Act or another Act prescribed under a regulation are considered workers for the purposes of Chapter 11. The clause provides that any terminology from a former Act as referenced in this chapter has the meaning from the former Act that applied at the date of injury.

Insertion of new s 499

Clause 6 inserts new definitions of “former tribunal” and “relevant document” for Chapter 11, part 3.

Amendment of s 500 (Reference to tribunals)

Clause 7 amends section 500 which specifies matters that may be referred to the tribunal for decision. The clause inserts a new subsection which provides that an insurer can refer a matter to the tribunal under the current provisions for a corresponding matter contained in a former Act.

Insertion of new s 500A

Clause 8 requires an insurer to provide information to the tribunal in the approved form. In addition, the clause clarifies the insurer is required to give the tribunal all relevant information and documents in relation to the matter referred to the tribunal. It is intended that all documents will be disclosed in their entirety except correspondence protected by legal professional privilege.

Insertion of new s 508A

Clause 9 inserts a new provision that clarifies where an insurer makes a reference to a tribunal from a matter under a former Act, the provisions relating to that reference as stated in the former Act apply. The clause also provides a regulation making power to declare certain provisions of a former Act applicable to these new provisions, should further clarification be required.

Amendment of s 510 (Power of tribunal to examine worker)

Clause 10 amends section 510 which allows a tribunal (on a reference to it about a non-fatal injury) to make a personal examination of the worker, or to arrange for an examination by a nominated medical practitioner. The clause provides the tribunal with the power to decide if a worker's representative is able to be present during the physical examination.

Replacement of ss 511 and 511A

Clause 11 replaces ss 511 and 511A which provide for a worker's right of representation at a hearing of a Medical Assessment Tribunal (MAT).

The new section 510A inserts new definitions for Chapter 11, part 4. For ease of reference in the proceeding provisions, the section inserts a definition of the worker's representative.

The new section 510B allows the tribunal to require an insurer to provide any further information it requires to decide the referral. The insurer must comply within the specified time.

The new section 510C outlines the timeframes and requirements for exchanging of documents before a matter is heard before a tribunal. This section ensures that all parties involved in the referral have a significant opportunity to respond to issues raised prior to the hearing. No information is required to be exchanged with an employer due to the relationship that

exists between an employer and their insurer. Regardless of whether a submission has been received from the insurer, the medical assessment tribunal is entitled to proceed with the matter referred to it. A tribunal is not able to consider or rely on any documents not exchanged in accordance with this section; however this excludes reports that may arise as a result of a worker attending an examination under section 510. In addition, for practical reasons, the clause allows radiological and diagnostic medical images such as x-rays, medical resonance images, computed tomography and ultrasound images to be presented to the tribunal on the day of the hearing.

The new section 511 clarifies the original intent of the legislation in relation to representation rights at a MAT since their establishment in 1960. Only the worker or their representative is entitled to be heard before the tribunal. This section explicitly outlines that an insurer, employer or any other person (other than the worker or their representative) has no entitlement to be present or heard before a MAT.

The new section 511A provides that where new medical information is discovered during a tribunal, for example, as a result of a personal examination, the tribunal does not need to provide this new information to any other party either for the purposes of information, consideration or for making a submission to the tribunal, before or after the tribunal decision is made. New information in this section does not include documents.

The new section 511B clarifies the transcript and record keeping requirements on the MATs to ensure the confidentiality of personal and medical details which may be disclosed to the tribunal during a personal examination. This will not restrict a tribunal's obligation to give full details of the grounds for making its decision to all parties.

Amendment of s 512 (Further reference on fresh evidence)

Clause 12 amends section 512 which allows a worker to ask an insurer to consider fresh medical evidence about the worker's injury within 12 months of the making of the original decision. The clause provides that where a reference to the tribunal is made under the new section 500(2), the corresponding provisions of a former Act which provide for fresh evidence apply and the current sections do not.

Amendment of s 516 (Decisions of tribunal)

Clause 13 amends section 516 which requires a tribunal to provide a written decision (including reasons for the decision) for a matter referred to it. The clause updates this section in accordance with the new definition of “representative”.

Insertion of new ch 19

Clause 14 inserts a new chapter 19 which contains the transitional provisions for the *Workers' Compensation and Rehabilitation Amendment Act 2006*.

The new section 638 provides the new definitions for Chapter 19.

The new section 639 provides that where a reference to a tribunal under a former Act is made before the amending Act commences, the reference is taken to have been made under the new section 500(2).

The new section 640 provides that where a reference to a MAT from an insurer occurs before the commencement of this section and a worker has been scheduled to attend before the tribunal, all sections (except sections 500A and 510C) of the amending Act apply. This section applies regardless of the worker's date of injury, or the workers' compensation legislation applicable at the time their claim was initiated, despite section 603.

The new section 641 provides that where a reference to a MAT from an insurer occurs before the commencement of this section but a date for the worker's attendance before the tribunal is not set; all sections except section 500A of the amending Act apply. This section applies regardless of the worker's date of injury, or the workers' compensation legislation applicable at the time their claim was initiated, despite section 603.

The new section 642 provides that where a reference to a MAT from an insurer occurs after the commencement of this section all the amendments made in the amending Act apply. This section applies regardless of the workers date of injury, or the workers' compensation legislation applicable at the time their claim was initiated, despite section 603.

The new section 643 provides that an existing decision of the tribunal is considered valid with respect to rights of representation, even though an insurer or employer was not present or heard before the medical assessment tribunal. Furthermore, the amending Act has no application to a decision that has been set aside by the Court of Appeal.

In addition, section 643 confirms that a tribunal has always had the authority to exercise its powers under Chapter 11 in relation to a reference from a former Act.

Schedule Minor Amendments

The schedule, clauses 1 – 12, makes minor amendments to various provisions of the *Workers' Compensation and Rehabilitation Act 2003*. This includes:

- consequential amendments as a result of inserting a new subsection which provides for reference of matters under a former Act (Clause 7); and
- amendments to the Act's dictionary of definitions, where new definitions of "former tribunal", "relevant document" and "representative" are introduced to support the new sections.