

# Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015

## Explanatory Notes

### Short title

The short title of the Bill is the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2015*.

### Policy objectives and the reasons for them

The Bill implements a number of policy proposals made by the current Queensland Government in its pre-election policy document *Restoring the rights of Queenslanders injured at work*. The Bill aims to achieve the following objectives:

- reinstate common law rights for injured workers that were affected by changes made by the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013* (the 2013 Amendment Act) and establish the ability to provide additional compensation to particular workers impacted by the operation of the common law threshold;
- provide greater certainty of entitlement and accessibility to compensation for firefighters by introducing deemed disease provisions for firefighters with prescribed diseases; and
- prohibit prospective employers from continuing to access an individual's claims history as they have been able to following other changes made by the 2013 Amendment Act.

The Bill also makes a number of other minor miscellaneous amendments that will improve the day-to-day operation of Queensland's workers' compensation scheme.

### Achievement of policy objectives

The Bill will achieve the Government's policy objectives by amending the *Workers' Compensation and Rehabilitation Act 2003* (the Act) to:

- remove the current limitation on the entitlement to seek damages that requires a worker to have a degree of permanent impairment as a result of the injury greater than 5% to access common law since the date of the Queensland State election;
- establish the ability to provide additional compensation to particular workers impacted by the operation of the common law threshold, between 15 October 2013 and 31 January 2015;

- introduce provisions for firefighters diagnosed with one of 12 specified diseases that will deem their injury to be work related if they meet the required qualifying period of active firefighting service; and
- remove the entitlement prospective employers have to obtain a copy of a prospective worker's compensation claims history from the Workers' Compensation Regulator; and
- clarify certain procedural aspects of the claims process and reduce regulatory burden through a number of minor miscellaneous amendments.

These amendments are reasonable and appropriate in that they achieve the intention of the Government's policy agenda in an efficient legislative manner.

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

There are no alternative ways of achieving the policy objectives other than by legislative amendment.

## **Estimated cost for government implementation**

The removal of the common law threshold and the introduction of deemed disease provisions for firefighters will have cost impacts for Queensland's workers' compensation scheme.

While the WorkCover Queensland Board sets premium annually, it has been estimated the impact of removing the threshold for all injuries on or after the date of the State election and providing additional compensation to particular workers impacted by the operation of the common law threshold prior to the Queensland State election, can be achieved without an increase in the average premium rate of \$1.20 per \$100 wages paid. WorkCover will remain fully solvent as, while its substantial reserves will reduce, the solvency target of 120% will be maintained. The 120% target is above the level of solvency required in any other centrally funded workers' compensation scheme in Australia.

There will be some financial impacts for self-insured employers who make up an estimated 9.5 per cent of claims within the Queensland scheme (2014-15), by removing the threshold for all injuries on or after the date of the State election and providing additional compensation to particular workers impacted by the operation of the common law threshold prior to the Queensland State election. However, this will vary between self-insurers.

The amendments to introduce the deemed disease provisions for Queensland firefighters will have a cost impact on the Queensland Fire and Rescue Service (QFRS). Any additional cost as a consequence of the amendments will impact on QFRS annual WorkCover premium, which is able to be met within existing QFRS resources.

## **Consistency with fundamental legislative principles**

The fundamental legislative principles in the *Legislative Standards Act 1992* requires that legislation does not adversely affect rights and liberties, or impose obligations, retrospectively. Relevant considerations for legislation that will operate retrospectively include whether retrospective application of the provisions are beneficial or adverse to persons other than the government or government authorities, and whether individuals have relied on and have a legitimate expectation under previous legislation.

Retrospective application of amendments to remove the common law threshold from the 31 January 2015 aligns with the Government's election commitment to reinstate common law rights for injured workers by removing the common law threshold. This option conforms with the fundamental legislative principles, in that restoring the entitlement to seek common law damages for a greater number of injured workers with accepted workers' compensation claims is beneficial to the rights and liberties of individuals. Providing only a limited retrospective operation ensures the amendments will not apply to a time prior to the Government being elected into office. This will also minimise impacts on scheme financial viability and individual premium's for impacted employers.

## Consultation

In pursuing its reform agenda, the Government made a commitment to work with industrial organisations and the legal community to seek a swift and calm transfer to the new workers' compensation system, with consideration of the rights of injured workers and the timing of workers' compensation payments.

To that end, the Government established a stakeholder reference group to advise the government on appropriate arrangements to reinstate common law rights for injured workers under the *Workers' Compensation and Rehabilitation Act 2003*. In formulating its advice, the group was required to give consideration to: the rights of injured workers; the sustainability of the workers' compensation scheme; the timing of the reforms and any transitional arrangements; ensuring that the reforms emphasise rehabilitation and return to work for workers and employers; and ensuring that the reforms contribute to Queensland's employment growth.

Membership of the group was drawn from employer representatives including the Chamber of Commerce and Industry Queensland, the AiGroup and Housing Industry Association, employee representatives including the Queensland Council of Unions, the Queensland Nurses' Union, the Construction, Forestry, Mining & Energy Union and Australian Workers' Union, legal representatives including the Queensland Law Society, the Bar Association of Queensland and the Australian Lawyers Alliance, and WorkCover Queensland and the Association of Self-Insured Employers Queensland.

The Government is continuing to take advice from the stakeholder reference group on how to mitigate the negative impact on workers who were injured between 15 October 2013 and 30 January 2015 who were unable to access damages by way of providing additional lump sum compensation.

The Government also met with relevant internal and external stakeholders on the deemed disease provisions, which included meeting with representatives of Queensland Fire and Emergency Services, the United Firefighters Union Queensland, the

Firefighter Cancer Foundation Australia, the Queensland Fire and Rescue Senior Officers Union of Employees and Rural Fire Brigades Association Queensland.

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

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

The deemed disease provisions included in the Bill are based on the same schedule of diseases introduced in the Commonwealth, Tasmania, South Australia, Western Australia and the Northern Territory.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* sets out the short title of the Bill.

*Clause 2* states that Part 2, divisions 1 and 2 of the Bill are taken to have commenced on 31 January 2015, Part 2, division 3 is taken to have commenced on the date the Bill was introduced into the Legislative Assembly, and Part 2, division 5 commences on a day to be fixed by proclamation.

### Part 2 Amendment of Workers' Compensation and Rehabilitation Act 2003

*Clause 3* states that Part 2 of the Bill amends the *Workers' Compensation and Rehabilitation Act 2003* (the Act).

*Clause 4* amends section 132A of the Act to specify the decisions the insurer must make in determining the application, the time the decision must be made within, and that the decisions of an insurer is reviewable. The amendment also clarifies that the decision of the insurer to accept the application does not entitle a worker to compensation for the injury.

*Clause 5* inserts a new section 132B in the Act to provide provision for a dependant of a deceased worker to apply for a certificate of dependency to support amendments made by clause 6 of the bill to reinstate an injured worker's entitlement to seek damages.

*Clause 6* amends section 237 of the Act to remove the requirement that a worker must have an assessed degree of permanent impairment of more than 5% arising from their injury in order for that worker to be entitled to seek damages for the injury under the Act. The amendment reinstates an injured worker's entitlement to seek damages that was removed by the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013* (the 2013 Amendment Act).

*Clause 7* inserts a new section 239A to the Act to provide the provisions required to be satisfied for a worker to add injuries to a claim for damages that have not been assessed for a degree of permanent impairment under chapter 3, part 10. This supports amendments made by clause 6 to reinstate an injured worker's entitlement to seek damages.

*Clause 8* amends section 296 of the Act as a result of the amendment of section 302 (see clause 9).

*Clause 9* amends section 302 of the Act to allow for the extension of the period of limitation in specified circumstances. These include if a workers application for compensation is the subject of a review or appeal, or if the claimant has applied for a certificate of dependency under the new section 132B. This amendment supports amendments made by clause 6 of the bill to reinstate an injured worker's entitlement to seek damages.

*Clause 10* amends section 540 of the Act to specify that a decision by an insurer to allow or reject an application made under section 132A, section 132B or section 239A of the Act is a reviewable decision under the Act. This supports amendments made by clause 6 of the bill to reinstate an injured worker's entitlement to seek damages.

*Clause 11* inserts a new Chapter 32 into the Act. The clause provides transitional arrangements for claims where a worker's injury was sustained before the 31 January 2015.

*Clause 12* inserts a new Schedule 5 into the Act. This supports amendments made to section 302 of the Act (see clause 9) by providing for the extension of the period of limitation in specified circumstances.

*Clause 13* inserts into the dictionary in schedule 6 a new definition as a result of amendment of section 302 (clause 9).

*Clause 14* amends section 12 of the Act to provide that the contracts of insurance covering specified volunteer firefighters must cover the payment of damages for specified diseases.

*Clause 15* amends section 14 of the Act to clarify the coverage of a contract of insurance for rural fire brigade members covered by the new deemed disease provisions for firefighters.

*Clause 16* amends section 15 of the Act to clarify the coverage of a contract of insurance for volunteer fire fighters or volunteer fire wardens covered by the new deemed disease provisions for firefighters.

*Clause 17* amends section 36A to provide that subsection 2(b) does not have application to firefighters who have an injury under the new section 36D (see clause 18).

*Clause 18* inserts new subdivision 3B under Chapter 1, Part 4, division 6 of the Act to provide new deemed disease provisions for firefighters who develop specified diseases. Under these new provisions, if a current or former firefighter is diagnosed with one of twelve specified latent onset injuries and has been engaged in active firefighting duties for a specified number of years then their injury is deemed to be a work-related injury. This new subdivision specifies additional exposure requirements for volunteer firefighters. The new subdivision also clarifies that the deemed diseases provisions do not apply if it can be proved that there is another cause of the firefighter's specified disease or their firefighting work was not a significant contributing factor to the specified disease.

*Clause 19* inserts a new section 236A to clarify that specified volunteer firefighters covered by a contract of insurance under section 12 of the Act are entitled to seek damages for a specified disease under Chapter 5.

*Clause 20* inserts a new Part 3 in the new Chapter 32 to clarify that the new deemed disease provisions for firefighters (clause 18) do not apply to firefighters who were first diagnosed with a specified disease before the commencement of these provisions. It

also validates relevant volunteer contracts that may have been entered prior to commencement.

*Clause 21* inserts a new schedule 4A listing the twelve specified diseases to which the deemed disease provisions made under clause 18 apply and the minimum number of years that an active firefighter is required to be employed for the presumption in the new s36 D (clause 18) to apply.

*Clause 22* inserts into the dictionary in schedule 6 new definitions required as a result of the deemed disease provisions inserted by clause 18.

*Clause 23* amends section 43 to align with previous changes made the 2013 Amendment Act.

*Clause 24* amends section 44 to align with previous changes made the 2013 Amendment Act.

*Clause 25* amends section 186 to clarify the application of this provision.

*Clause 26* amends the heading of section 192 to clarify the application of this provision.

*Clause 27* amends section 327 of the Act to clarify the existing functions of the Workers' Compensation Regulator.

*Clause 28* amends section 542 of the Act to clarify that the Workers' Compensation Regulator has discretion to grant extensions of time to lodge review applications if the applicant can satisfy the Workers' Compensation Regulator that special circumstances exist. This amendment is a consequence of the decision of the Industrial Court in the matter of *Blackwood v Pearce*. It also provides that the applicant can only ask the Workers' Compensation Regulator once to allow further time to apply for review

*Clause 29* amends section 550 of the Act to allow a respondent the right to allow further time for the appellant to appeal on consent of the parties. This is consistent with the amendments made in relation to review applications under clause 28.

*Clause 30* removes the entitlement given to prospective employers under section 571D of the Act to apply to the Workers' Compensation Regulator for a copy of a prospective worker's claims history summary.

*Clause 31* inserts a new Part 4 in the new Chapter 32. This clarifies the operation of the amendments made to sections 542 and 550 in clauses 28 and 29. It also clarifies how the Workers' Compensation Regulator is to consider applications made under the previous section 571D. It also continues the requirements under the previous section 571D regarding the disclosure, access and use of a worker's claims history summary. This includes the penalties for employers who fail to comply with these requirements.

*Clause 32* amends section 185 to simplify the notice requirements.

*Clause 33* inserts a new section 193A to provide for the payment of additional lump sum compensation amounts to particular workers.

*Clause 34* amends section 548 of the Act to provide that a decision by an insurer regarding additional lump sum compensation under section 193A (see clause 33) is not an appealable decision. Review rights are provided for in the new section 193A (clause 33).

*Clause 35* inserts a new Part 5 in the new Chapter 32 into the Act. The clause provides transitional arrangements for injuries sustained on or after 15 October 2013 and before the 31 January 2015.

### **Part 3 Other amendments**

*Clause 36* states that Part 3 Division 1 of the Bill amends the *Electrical Safety Act 2002*.

*Clause 37* amends section 122 of the *Electrical Safety Act 2002* to clarify the existing functions of the Regulator.

*Clause 38* states that Part 3 Division 2 of the Bill amends the *Work Health and Safety Act 2011*.

*Clause 39* amends section 152 of the *Work Health and Safety Act 2011* to clarify the existing functions of the Regulator.